

CHILDREN IN PRETRIAL DETENTION:

PROMOTING STRONGER
INTERNATIONAL TIME LIMITS



THE UNIVERSITY OF
MINNESOTA LAW SCHOOL



About the Authors

The **International Human Rights Law Clinic (IHRLC)** is one of ten law clinics within the Clinical Program at American University Washington College of Law (WCL). The Clinical Program is designed to give students the opportunity to represent real clients with real legal problems, to handle litigation from beginning to end, to explore and address pressing legal and policy issues with institutional clients, and to learn lawyering skills at both a practical and theoretical level. Both the collaboration with the co-authors in producing, as well as the topic of this report exemplifies the IHRLC's commitment to giving students the opportunity to represent non-U.S. citizens and non-profit organizations working to defend the human rights of foreign nationals in the U.S. and abroad.

The **University of Minnesota Human Rights Center** promotes research on pressing real-world challenges, prepares future lawyers with the commitment and skills to defend human rights, and partners with civil society to impact law, policy, and practice. Areas of human rights research and work at the Law School span transitional justice, national security, international humanitarian law, business and human rights, international criminal law, gender and women's human rights, rights of non-citizens, environmental justice, poverty and inequality, rule of law, and the history of international human rights law.

Juvenile Justice Advocates International (JJAI) is a nonprofit organization founded in 2013. JJAI believes that the detention of children should be used exclusively as a last resort, only in extreme circumstances, and for the shortest period of time possible. Using internationally-recognized evidence-based best practices, JJAI collaborates with stakeholders - courts, prison officials, prosecutors, public defenders, and civil society - to create and promote sustainable reforms to policies and practices in order to reduce excessive detention. JJAI is part of a national Group of Experts advising the Mexican federal government on juvenile justice reform. JJAI's demonstration project is in the Mexican state of Chihuahua.

Photographs by Amanda Keillor

Juvenile Justice Advocates International, 2018



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Preface: Juan E. Méndez

Throughout my long career in the defense of human rights, especially to abolish torture, I have always maintained a particular concern for children in detention. Notably, the pretrial detention of children has grave effects on the well-being of children and societies. Despite this, many countries continue to detain children unnecessarily and harmfully, and international human rights law is not uniform in its condemnation of the practice.

Although human rights law places the highest priority upon the best interest of the child, countries around the world hurt children by unnecessarily detaining them. Children in detention, especially pretrial detention, are at a heightened risk of torture or inhumane, cruel, and degrading treatment. However, even in the best possible detention conditions, each day of detention harms a child emotionally and psychologically, putting him or her at higher risk of depression, self-harm, or suicide. Alienation from families, communities, schools, and support systems hurt a child's chance of social and economic success, affecting his or her future and that of the whole community.

Children should only be detained when absolutely necessary and for the shortest period of time possible. The unique vulnerability of children deprived of their liberty requires higher standards and broader safeguards to minimize the use of detention and prevent ill-treatment in detention.

This report is an essential resource to human rights lawyers and members of organizations of civil society who wish to advocate for better treatment of children, whether in domestic legal systems or international human rights systems. This report makes important suggestions of concrete measures which countries should adopt to ensure that children's rights are respected.

I hope to see the following recommendations adopted and further research conducted into this important area.

Juan E. Méndez

Professor of Human Rights Law in Residence
American University Washington College of Law
Former UN Special Rapporteur on Torture (2010-2016)

Forward

“You expect miracles,” the chief juvenile public defender in Chihuahua, Mexico leaned over and said to me. I had just proposed that the juvenile court in Chihuahua state start working towards a 30-day limit for children awaiting trial in detention. Some of the judges were incredulous. I showed how pretrial detention populations would plummet from around 140 children a day in detention to just over 20 children if we could accomplish this reduction in time. With the incredible advances that Chihuahua state had made in utilizing pretrial alternatives and diversion to resolve over half of the cases that reached the court, I believed that if any jurisdiction could significantly reduce time in pretrial detention, it was Chihuahua state. But the reactions I received from government officials, who were usually my allies, were jarring. Was I mistaken? Was 30 days an unreasonable goal?

After my meeting with the Chihuahua juvenile court, I sought out every resource I could, at the national, regional, and international level, to help us advocate for shorter times in pretrial detention. It soon became clear that there were few resources and only vague standards. A few months later, Mexico’s legislature enacted the National Juvenile Justice Law. It was a revolutionary advancement in most areas and largely applauded by civil society—but it still allowed for up to five months of pretrial detention for children.

Children in detention deserve better. When countries like Mexico reform their child justice laws, stronger international standards would compel them to do more to protect children in pretrial detention. Human rights advocates should be working with governments to shorten the time it takes to process the cases of children in detention. Doing so would benefit hundreds of thousands of the most marginalized children around the world. This goal has inspired our organization to lead the effort and create this report.

Douglas Keillor

Executive Director

Juvenile Justice Advocates International







Introduction

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 Pretrial detention is only permitted as a measure of last resort and for "*the shortest appropriate period of time*."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 The Committee additionally recommended that any such detention should be reviewed regularly by a competent body.⁴ These recommendations can and should be strengthened.

Defendants in pretrial detention are more likely to be abused, mistreated and tortured,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

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>.

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

³ Comm. on the Rights of the Child, General Comment 10: Children's Rights in Juvenile Justice, S 80, U.N. Doc.

⁴ Id. ¶ 83 (specifying that regular review is "preferably every two weeks").

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>.



among children.⁶ Research shows that children's sense of time is significantly different than that of adults, making even short periods of detention particularly harmful.⁷ Unfortunately, in many countries the majority of children in detention are awaiting trial and may spend months or years behind bars before their cases are 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.

While significant research, documentation, and promising practices exist for monitoring detention conditions and implementing alternatives to detention, there is very little international research that documents the duration of child pretrial detention. Some organizations advocate for a maximum of 30 days for children in pretrial detention, and many countries have clear legal maximums.⁸ Yet it is unclear which nations are in

fact adhering to a statutory maximum, what the average pretrial duration is, or what emerging good practices may be for reducing the duration of pretrial detention.

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 detention⁹. This means that the most significant time

⁶ Barry Holman & Jason Zidenberg. *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.

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).



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 seeks to fill in some of these gaps in knowledge. Section 1 summarizes existing literature on the negative impacts of pretrial detention on children. Because of these negative impacts, every day that detention can be reduced is a benefit for children, their families, and society. Section 2 examines existing international and regional human rights standards and recommendations. Section 3 documents existing statutory or court-imposed time limits for child pretrial detention across 118 countries. There are many different practices and definitions of “pretrial detention,” but certain trends emerge that can help direct international bodies and advocates toward a more informed approach to reducing pretrial detention time limits. Section 4 examines case studies

in two jurisdictions that have sought to reduce the length of child pretrial detention. Section 5 recommends 10 emerging good practices that countries and advocates should pursue. Section 6 recommends that international, regional, and national human rights bodies adopt stronger standards that will significantly reduce the amount of time children spend deprived of liberty while awaiting adjudication. Finally, Section 7 presents additional areas that require more research to obtain a clearer grasp of existing national practices regarding children in pretrial detention.

State actors and civil society should be made aware that reducing the duration of pretrial detention for children is an urgent priority, and they need the tools to understand both effective practices which can reduce pretrial detention, as well as the governing international standards. This report represents an important step toward these goals.

⁸ E.g. Marina Ilminska, *Pretrial Detention of Juveniles: As Common as It Is Wrong*, OPEN SOC’Y FOUND.: VOICES (Sept. 1, 2015), <https://www.opensocietyfoundations.org/voices/pretrial-detention-juveniles-common-it-wrong>.

⁹ 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].



Julio had spent 11 months in pretrial detention. During that time, the police took him from the jail and tortured him, seeking a confession and coercing him to identify others they believed were involved in the crime. Since the day the police took him from his small town, Julio had not seen his family. Juvenile Justice Advocate International's team traveled to Julio's mother's house, four hours from the detention center, and drove her and other family members back for visiting day. Julio's mother insisted on her son's innocence. A week later, he was found not guilty. Julio returned to his mother's house to help her pick vegetables in the nearby fields for a few dollars a day. But after 11 months of suffering in detention, Julio's life would never be the same.



1. The harms of extended pretrial detention

For children in detention, every day counts. Pretrial detention impedes the exercise of children's due process rights, negatively impacts their physical and mental health, and leads to social effects that last their entire lives. Additionally, excessive detention undermines public security goals often used to justify detention. The following is a summary of existing literature—academic research and documented impacts by intergovernmental organizations and civil society—on the harmful effects of child pretrial detention.

1.1 Due process rights and the integrity of the justice system

Children's due process rights are undermined by long periods of pretrial detention. Furthermore, excessive durations undermine the administration of justice for both detained and non-detained children.

- » **Violation of the presumption of innocence:** Children can spend months or years in pretrial detention before seeing a judge or having access to a lawyer. Pretrial detention can last longer than the actual sentence if convicted.¹⁰ Many children in pretrial detention will receive diversion or probation once adjudicated, meaning pretrial is the only time that they are detained.¹¹ The longer that pretrial detention lasts, the more the presumption of innocence is eroded.
- » **Increased likelihood of torture:** Detainees awaiting trial face increased risk of torture, especially as the length of detention increases and when detainees lack legal aid.¹²

¹⁰ Martin Schönteich, *Presumption of Guilt: The Global Overuse of PTB*, 11, OPEN SOC'Y FOUND. (2014), <https://www.opensocietyfoundations.org/sites/default/files/presumption-guilt-09032014.pdf>.

¹¹ *Id.*; see, e.g., *Diagnóstico* 2017, 8–10.

¹² Birk, *supra* note 5, at 14.



13 *The Disappearing Trial: Towards a Rights-Based Approach to Trial Waiver Systems*, 17, FAIR TRIALS (Apr. 27, 2017) <https://www.fairtrials.org/wp-content/uploads/2017/12/Report-The-Disappearing-Trial.pdf>; *The Troubling Spread of Plea-Bargaining from America to the World: A Deal You Can't Refuse*, ECONOMIST (Nov. 9, 2017), <https://www.economist.com/news/international/21731159-tool-making-justice-swifter-too-often-snares-innocent-troubling-spread>; Juleyka Lantigua-Williams, *Why Poor, Low-Level Offenders Often Plead to Worse Crimes*, ATLANTIC (July 24, 2016), <https://www.theatlantic.com/amp/article/491975/>; Jeffrey D. Stein, *How to Make an Innocent Client Plead Guilty*, WASH. POST (Jan. 12, 2018), https://www.washingtonpost.com/opinions/why-innocent-people-plead-guilty/2018/01/12/e05d262c-b805-11e7-a908-a3470754bbb9_story.html. For an empirical study on the impact of pretrial detention or release on case outcomes, see also Will Dobbie et. al., *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108(2) AM. ECON. REV. 201, 203 (July, 2016);

- » **False confessions and unfair plea bargains:** Being detained before trial decreases an individual's bargaining power and increases the pressure to plead guilty, even for innocent detainees. As negotiated plea bargaining becomes more common worldwide, abuses that are well documented in the United States are spreading.¹³
- » **Increased corruption:** Pretrial detention contributes to corruption because the pretrial period is subject to little scrutiny and affords decision-makers enhanced discretion. The burden of such corruption also falls most heavily on the poor, who remain detained if they cannot afford to pay a bribe.¹⁴
- » **Inability to seek legal recourse:** When children are facing months or years in detention while awaiting trial, it discourages families and legal

counsel to appeal judicial decisions because appeals may lengthen the time the child will spend in detention. Even accessing appellate courts to challenge or enforce pretrial detention time limits becomes impractical. Some states have a practice of "stopping the clock" during appeals, that is, not counting the time while the appeal is pending against the pretrial detention time limit.¹⁵ Preventative measures at regional and international human rights bodies are often impractical, as pursuing such redress could further lengthen the duration of pretrial detention.

- » **Undermining pretrial release programs:** One of the causes of excessive pretrial detention durations is that justice systems take a long time to resolve cases. Case delays impact children on supervised release or bail, as well. When children are on conditional release



for prolonged periods there is an increased likelihood that the youth will violate conditions of release and end up detained.¹⁶ Pretrial alternatives to detention can thus be undermined if the court inefficiencies that cause excessive case processing times are not addressed.

- » **Court inefficiencies:** Efficient case processing reduces strains on judicial systems and can reduce waste caused by excessive adjournments, disorderly case processing, multiple appearances by police in court and the revictimization that occurs when children or witnesses are interviewed multiple times; each of which is a cause of excessive durations of pretrial detention.¹⁷
- » **No specialized courts for children and trying children as adults:** Trying children in adult courts can extend the time spent

in pretrial detention, as adult courts often have more delays, allow for longer pretrial processing times, and do not have as strict time limits compared with child courts.¹⁸

- » **Disproportionate impacts for racial and ethnic minorities:** Child pretrial detention and exceptionally long case processing times disproportionately affect marginalized racial and ethnic minorities, in addition to affecting girls and boys differently.¹⁹

1.2 Physical impacts on children

Despite existing international standards that call for improving detention conditions for children, detention centers are often inadequate, overcrowded, and a source of abuse. Extended periods of time in pretrial detention increases

Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from NYC Arraignments*, 60 J.L. & ECON. 529, 530–31 (2017).

¹⁴ *The Global Campaign for Pretrial Justice: Pretrial Detention and Corruption*, 2, OPEN SOC'Y JUST. INITIATIVE, <https://www.opensocietyfoundations.org/sites/default/files/Factsheet%20PTD%20Corruption%2002142013.pdf> (last visited Mar. 31, 2018).

¹⁵ See e.g., COLUM. HUM. RTS. L. REV., A JAILHOUSE LAWYER'S MANUAL 1056–57 (11th ed. 2017).

¹⁶ Bart Lubow, *A Guide to Juvenile Detention Reform: Timely Justice: Improving JDAI Results Through Case Processing Reforms*, 5, ANNIE E. CASEY FOUND. (2017) <http://www.aecf.org/m/resourcedoc/aecf-TimelyJustice-2017.pdf>.

¹⁷ *Measures to Reduce Pretrial Detention*, 75, INTER-AM. COMM'N HUM. RTS. (July 3, 2017), <http://www.oas.org/en/iachr/reports/pdfs/PretrialDetention.pdf>; Lubow, *supra* note 16, at 9.

¹⁸ Lubow, *supra* note 16, at 24–25.

¹⁹ *Id.* at 8–9; COLUM. HUM. RTS. L. REV., A JAILHOUSE LAWYER'S MANUAL, *supra* note 17, at 49–51.

children's exposure to various forms of child abuse and mistreatment:

- » **Physical abuse:** Pretrial detainees are extremely vulnerable to torture and abuses because they are entirely in the power of authorities, whose interests are often to gain information and a confession. Documented abuses in pretrial detention include: beatings, blows, electroshocks, asphyxiation, suspension in the air, stress positions, psychological forms of torture, and other ill-treatment, such as death threats and threats against family members.²⁰
- » **Sexual abuse:** Children are at risk of sexual abuse by other detainees and authority figures, especially when pretrial detainees are mixed with convicted youth or are detained with adults.²¹ Girls in pretrial detention face additional risks of sexual abuse—from pregnancy to the stigma that many communities attach to premarital intercourse.
- » **Poor prison conditions:** Children are often detained in facilities that lack adequate conditions, sufficient food, sanitary water, medical care, and hygienic facilities. Restrictions on visits from lawyers and family members, and the total isolation from the outside world are common realities for children in pretrial detention around the world.²²
- » **Competition for services:** Many facilities house children both pre- and post-trial. Some facilities prioritize children who have been detained longer when allocating scarce resources and services. Educational services, vocational opportunities, and even recreation and leisure time may be limited or nonexistent for pretrial detainees.²³

- » **Spread of diseases:** Overcrowding in institutions increases the contracting and spreading of diseases and viruses, which detainees, visitors and staff can bring back into their homes.²⁴
- » **Deteriorating physical condition:** Overcrowding, isolation, and the use of solitary confinement negatively impacts physical fitness due to lack of exercise, and may result in stunted growth, hair loss, and weight loss due to chronic hunger, since meals are often nutritionally inadequate for children.²⁵

1.3 Psychological impacts on children

Many children who suffer from trauma and mental health disorders before they are detained see these problems worsen as their mental health deteriorates in detention. Children in pretrial detention, given the new environment, the trauma of being detained, and the uncertainty in their legal situation, are more vulnerable than adults.

- » **Exacerbates existing mental health disorders:** Many incarcerated children have at least one mental disorder.²⁶ Anxiety and depression may result from fear, and children may experience an inability to build relationships both during and after detention.²⁷
- » **Post-traumatic stress disorder:** Many detained children have already experienced childhood trauma, the effects of which may be further exacerbated by detention.²⁸ Abuse of youth in custody, including in overcrowded facilities and solitary confinement, correlates with high rates of suicide, post-traumatic stress disorder (PTSD), and depression. This

²⁰ *Id.* at 17, 36.

²¹ *Juvenile Justice in a Developmental Framework: A 2015 Status Report*, 12, 20, 31, MACARTHUR FOUND. (2015), <https://www.macfound.org/media/files/MacArthurFoundation2015StatusReport.pdf>.

²² Martin Schönteich, *supra* note 10, at 57–61 (“In comparison with sentenced juveniles [children in pretrial detention are] greater risk of, for example, being in contact with adults (e.g. in police cells), being held in unhealthy accommodation, lacking supervision by specially trained staff, being without an activity programme, and having to remain in closed quarters up to 23 or even 24 hours a day”).

²³ *Diagnóstico 2017*, *supra* note 11, at 21.

²⁴ Birk, *supra* note 5, at 5.

²⁵ Tamar R. Birkhead, *Children in Isolation: The Solitary Confinement of Youth*, 50 WAKE FOREST L. REV. 1, 12, 14–15, 20, 31 (2015).

²⁶ Birkhead, *supra* note 25, at 13–14 (“[U]p to seventy percent of incarcerated adolescents satisfy the criteria for one mental health disorder and many of them suffer from multiple disorders.”).

results in hypersensitivity to stimuli; confusion, memory loss, irritability, and anger; loss of ability to initiate or to control their own behavior or to organize their own lives; a diminished grasp of who they are and of how and whether they are connected to a larger social world; nightmares, mistrust of others, fear of the future, feelings of helplessness and worthlessness, obsessive compulsive behavior, bedwetting, aggression, withdrawal, and lack of motivation.²⁹

- » **Substance abuse:** Even short periods of pretrial detention have been shown to increase the likelihood of substance abuse among children.³⁰ Drug abuse and mental illness during adolescence/childhood (periods when the brain undergoes major developmental changes) alters the brain in ways that increase the risk of long term mental illness and the likelihood of subsequent drug abuse.³¹
- » **Increases suicide risks:** Children in detention are at increased risk of suicide because of many stressors, such as isolation from family and community support networks.³² Children in detention are prone to self-harm such as cutting, strangling, and hanging due to “violence, neglect, poor detention conditions, prolonged periods of deprivation of liberty, isolation and mental health problems that may or may not have existed prior to detention.”³³
- » **Lacking mental health resources:** Mental health impacts are exacerbated because facilities often lack mental and physical health resources, especially in overcrowded institutions, which consequently have higher rates of suicide and depression.³⁴

1.4 Social and developmental impacts on children

The impacts of detention, even short periods of detention, on children last long after they are released and follow them as they return to their communities and become adults.

» **Leads to institutionalization:**

“Institutionalization”—a psychological adaptation that incorporates norms of prison life into habits of thinking, feeling, and acting—occurs more quickly in youth than adults. Traits of “institutionalization” include:

- Decreased initiative and independence, and increased dependence on institutional decision-makers to make personal choices.³⁵
- Atrophy of self-control, as well as of ability to rely on self-imposed limits to guide actions and conduct due to ever-present external rules and regulations;
- Emotional flatness, similar to clinical depression, resulting from limited meaningful social interactions, and limited expression of emotions and social connection due to fear of exploitation in the prison environment.

» **Decreases chance of successful social reintegration:**

Any period of time in detention, especially prolonged periods, decreases the likelihood that youth will successfully reintegrate into the community upon release.³⁶

» **Stunts child development:**

Detention impedes children’s regular adolescent development. Specifically, due to the restrictive environment of detention, as well as denial of educational and

²⁷ Malik Johnson, *The Effects of Incarceration on the Youth*, ODYSSEY (Mar. 22, 2016), <https://www.theodysseyonline.com/the-effects-of-incarceration-on-the-youth>.

²⁸ Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment*, 11, U.S. DEPT OF HEALTH & HUM. SERV. (Dec. 1, 2001), <https://aspe.hhs.gov/system/files/pdf/75001/Haney.pdf>.

²⁹ *Id.* at 14; Birkhead, *supra* note 25, at 10, 12–13, 37.

³⁰ Holman & Zidenberg, *supra* note 6, at 5.

³¹ Birkhead, *supra* note 25, at 13–14.

³² Holman & Zidenberg, *supra* note 6, at 2.

³³ Joint Rep. of the Office of the High Comm’r for Human Rights, the Office on Drugs and Crime, and The Special Representative of the Sec’y Gen. on Violence against Children, *Prevention of and Responses to Violence Against Children within the Juvenile Justice System*, ¶ 44, U.N. Doc. A/HRC/21/25 (June 27, 2012).

³⁴ Henry, *supra* note 8, at 5.

³⁵ Haney, *supra* note 28.

³⁶ Birkhead, *supra* note 25, at 17; *Juvenile Justice in a Developmental Framework: 2015 Status Report*, *supra* note 21, at 12, 20, 31.

community activities, children are unable to develop mastery (the sense of having control over the forces that affect one's life) and identity, both of which are critical stages of adolescent psychosocial development.³⁷ Lack of nurturing by caring adults and opportunities for self-expression hurt children's ability to develop an independent identity. Youth thus cannot develop into adults who can function adequately in society—in the workplace, in marriage or other intimate unions, or as citizens.³⁸ Negative or traumatic experiences such as isolation, barriers to family contact, and time in adult prisons can skew behavioral and brain development in children, resulting in lifelong consequences for the individual and for society.³⁹

- » **Increased likelihood of school dropout:** Detention interrupts education, and youths have a hard time returning to school.⁴⁰ Children who experience confinement are more likely to drop out of school and be incarcerated as adults, compared with children in conflict with the law who were not incarcerated.⁴¹
- » **Limits lifelong economic potential:** Imprisonment during teenage years leads to interruptions in capital accumulation, which further results in a reduction of future wages and increases likelihood of greater criminal activity.⁴² Furthermore, time in detention negatively affects a child's ability to retain a job or remain in the workforce.⁴³

1.5 Public insecurity and recidivism

Contrary to the claims of those who advocate for harsh detention policies, excessive child pretrial detention

actually undermines public security goals.

- » **Increases recidivism:** Children who have been detained have higher recidivism rates than children in pre-trial release programs. The trauma of detention, “school of crime” effect (where detention conditions cause children to recidivate when released), and even the perception of gross unfairness or indifference in the justice system can further alienate children or cause them to lose respect for the justice system.⁴⁴
- » **Undermines deterrence:** Long periods of time between the commission of the crime and disposition of the case makes it particularly difficult for children to connect their actions to their consequences, negating any positive effect the justice system's intervention may have.⁴⁵

This academic cross-sample makes it clear that detention must be the absolute last option for children and alternatives must be utilized whenever feasible. The length that children spend in pretrial detention must be limited to the shortest possible time. Every day a child spends in detention exposes him or her to additional trauma as well as long-term physical, psychological, and social harm, as well as unacceptable human rights violations.

³⁷ Birkhead, *supra* note 21, at 17.

³⁸ Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 22 ANN. REV. CLINICAL PSYCHOLOGY, 22 (2009), <https://ejj.org/sites/default/files/graham-media-kit-science-adolescent-development.pdf>

³⁹ *Juvenile Justice in a Developmental Framework: 2015 Status Report*, *supra* note 21, at 12, 20, 31.

⁴⁰ *Id.* at 9.

⁴¹ Anna Aizer & Joseph J. Doyle Jr., *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges*, 130(3) QJ. ECON. 1, 4 (2015). Per a study of 35,000 juveniles over ten years in Chicago, Illinois: those incarcerated as children are 39% less likely to graduate from high school and are 41% more likely to have entered adult prison by age 25.


⁴² Johnson, *supra* note 27.

⁴³ Holman & Ziedenberg, *supra* note 6, at 2; David Berry, *The Socioeconomic Impact of Pretrial Detention*, 27, OPEN SOC'Y JUST. INITIATIVE (2010), <http://www.undp.org/content/dam/undp/library/Democratic%20Governance/a2j-%20Socioeconomic%20impact%20of%20PTD%20OSI%20UNDP.pdf>.

⁴⁴ Arredondo, *supra* note 7, at 16; Megan Stevenson, *Breaking Bad: Mechanisms of Social Influence and the Path to Criminality in Juvenile Jails*, 99(5) REV. ECON. & STAT. 824, 830 (2017).

⁴⁵ G.A. Res. 40/33, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) art. 20 commentary (1985) [hereinafter Beijing Rules].





*Detention pending trial shall be used
only as a measure of last resort and for
the shortest possible period of time.*

Beijing Rules, Article 13.1

The Committee also recommends that the States parties ensure by strict legal provisions that the legality of a pretrial detention is reviewed regularly, preferably every two weeks. In case a conditional release of the child, e.g. by applying alternative measures, is not possible, the child should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority or judicial body, not later than 30 days after his/her pretrial detention takes effect. The Committee, conscious of the practice of adjourning court hearings, often more than once, urges the States parties to introduce the legal provisions necessary to ensure that the court/ juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.

*Committee on the Rights of the Child, General Comment 10:
Children's Rights in Juvenile Justice, paragraph 83.*



2. Existing human rights standards

International and regional bodies have established standards for children in pretrial detention. Unfortunately, standards regarding specific time limits are vague and human rights bodies have not given clear guidance that adequately protects children in this respect. This section first examines existing universal instruments and standards and then looks at regional human rights bodies' jurisprudence related to child pretrial detention time limits.

2.1 Universal standards

In 1985, the UN General Assembly adopted the "Standard Minimum Rules for the Administration of Juvenile Justice", also known as the Beijing Rules. This was the first time that international standards were adopted to govern pretrial detention of children. In November 1989, the UN Convention on the Rights of the Child (CRC) was opened for signature. The CRC is the primary source of international law for children in the justice system,⁴⁶ and has incorporated many concepts from the Beijing Rules.⁴⁷ An underlying principle in both of these documents is that "any involvement in the juvenile justice system can be 'harmful' per se" and that such systems must "take account of a child's sense of time."⁴⁸

Article 13.1 of the Beijing Rules states that pretrial detention should be "*for the shortest possible period of time.*" Similarly, article 37 of the CRC states "[t]he arrest, detention or imprisonment of a child shall be in conformity with the law and shall be *used only as a measure of last resort and for the shortest appropriate period of time.*"⁴⁹ In regard to procedural rights, the CRC mirrors language from the International Covenant on Civil and Political Rights, which specifies that juveniles should be "*brought as speedily as possible for adjudication.*"⁵⁰ Article 40 of the CRC guarantees children accused of violating criminal law the ability "to have the matter determined *without delay.*"⁵¹

⁴⁶ SHARON DETRICK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 2 (1999).

⁴⁷ Beijing Rules, *supra* note 45; SHARON DETRICK, *supra* note 46, at 630.

⁴⁸ GERALDINE VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD, 35 INT'L STUDIES IN HUMAN RIGHTS 175 (1995).

⁴⁹ CRC, *supra* note 2, art. 37(b).

⁵⁰ G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 10(2)(b), (Dec. 16, 1966).

⁵¹ CRC, *supra* note 2, art. 40(2)(b)(iii); see also Beijing Rules, *supra* note 45, art 20.

⁵² CRC General Comment 10, *supra* note 3, ¶ 80.

⁵³ *Id.* at ¶ 83.

⁵⁴ *Id.*

⁵⁵ THE EU CHARTER OF FUNDAMENTAL RIGHTS: A COMMENTARY 137–138 (Steve Peers et al. eds., 2014).

⁵⁶ *Id.*; *Assenov v. Bulgaria*, App. No. 24760/94, Eur. Ct. H.R. (1998) (holding that remand should only be ordered in “exceptional circumstances” for children and emphasizing the need for a speedy trial).

⁵⁷ TON LIEFAARD, DEPRIVATION OF LIBERTY OF CHILDREN IN LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS 183 (2008).

⁵⁸ *Grabowski v. Poland*, App. No. 57722/12, Eur. Ct. H.R. (2015).

⁵⁹ See generally *Ilminska*, *supra* note 8. Press Release: *Poland Must Take Legislative Measures to Stop the Practice of Detaining Juveniles Subject to Correctional Proceedings without a Specific Judicial Decision*, EUR. CT. HUM. RTS.: REGISTRAR CT. (June 30, 2015), <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-5121550-6317569%22%5D%7D>.

⁶⁰ *Shishkov v. Bulgaria*, App. No. 38822/97, Eur. Ct. H.R. (2003).

⁶¹ *Smirnova v. Russia*, App. Nos. 46133/99 and 48183/99, Eur. Ct. H.R. (2003).

⁶² *Bouamar v. Belgium*, ¶¶ 50–52, App. No. 9106/80, Eur. Ct. H.R. (2008).

However, neither the Beijing Rules nor the CRC explicitly set out a time limit for child pretrial detention.

In 2007, the UN Committee on the Rights of the Child [CRC Committee] issued “General Comment 10: Children’s Rights in Juvenile Justice,” which interpreted many CRC protections for children in conflict with the law. General Comment 10 recommended that “[t]he duration of pretrial detention should be limited by law and be subject to regular review.”⁵² Specifically, the CRC Committee stated that the legality of the detention be reviewed every two weeks, and that a child should not be detained longer than 30 days before being formally charged.⁵³ Finally, the Committee urged States to ensure “a final decision on the charges not later than six months after they have been presented.”⁵⁴ The CRC Committee in General Comment 10, thus sets a standard of limiting child pretrial detention to six months.

2.2 Regional standards

Regional human rights bodies have rarely addressed time limits for child Convention on Human Rights, the American Convention on Human Rights, and the African Commission on Human and Peoples’ Rights each borrow heavily from or incorporate the CRC’s protections for children into their regional jurisprudence. The lack of stronger limits on pretrial detention shows that these regional bodies have neglected to elaborate on the guarantee of “*shortest appropriate period of time*” for the children in their respective regions.

The European Court of Human Rights jurisprudence has developed some pretrial detention protections, including a

presumption in favor of pretrial release, pretrial detention for only a reasonable amount of time before trial,⁵⁵ and regular review of child pretrial detention.⁵⁶

Unfortunately, the Court’s jurisprudence does not provide a clear limit on how long a country should permit a child to await trial in detention.⁵⁷ The European Court of Human Rights recently addressed this issue in *Grabowski v. Poland*, in which a teenager was held for three months in pretrial detention during his initial investigation, and then served another five months pending trial after his request for release was denied. He was ultimately sentenced to two years of parole, none of which was to be spent in custody.⁵⁸ The court ruled the detention unlawful and ordered Poland to “stop the practice of detaining juveniles subject to correctional proceedings without a specific judicial decision.”⁵⁹

Grabowski expands on a 2003 European Court of Human Rights case, *Shishkov v. Bulgaria*, which held that “[j]ustification for any period of [pretrial] detention, no matter how short, must be convincingly demonstrated by the authorities.”⁶⁰ In the same year, the court defined continued detention as being justified “only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty.”⁶¹ *Bouamar v. Belgium*, another notable European decision, ruled that the applicant’s nine remand orders, totaling 119 days, collectively failed to meet Belgium’s statutory requirement that remand detention be executed with the goal of educational supervision.⁶²

The European Court of Human Rights has not set out a strict time limit for child pretrial detention in its jurisprudence. While this report does not

include an exhaustive study of national human rights bodies, the Ombudsman for Children in Sweden, a country that does not have a statutory time limit for children in pretrial detention, has made a striking recommendation. In 2015, the Ombudsman recommended that Sweden adopt a 30-day limit for children awaiting trial in detention.⁶³ This is a strong recommendation that encourages good practices and reflects a desire to see child pretrial detention truly be as short as possible. It would be encouraging to see not only Sweden adopt this recommendation but the European Court of Human Rights as well.

The American Convention on Human Rights specifies that juvenile offenders “shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.”⁶⁴ In various cases, the Inter-American Commission and Inter-American Court have invoked Article 19 of the American Convention as grounds for incorporating all of the protections of the CRC.⁶⁵ Nonetheless, the Inter-American human rights system has not specified a time limit for child pretrial detention.

The African Charter on the Rights and Welfare of the Child incorporates and expands on the CRC and includes a guarantee that children in conflict with the law “shall have the matter determined as speedily as possible.”⁶⁶ The African Commission on Human and Peoples’ Rights and the African Committee of Experts on the Rights and Welfare of the Child have not specifically limited the amount of time a child can spend in pretrial detention.⁶⁷

While the European, Inter-American, and African regional human rights

systems have all adopted pretrial detention protections for children, none have adopted specific time limits. It is unclear if human rights bodies lack a stronger standard for the duration of child pretrial detention because the six-month standard recommended by the CRC Committee in General Comment 10 is widely accepted, because human rights bodies are unaware or unconvinced of the need for a stronger standard, or because the issue is rarely raised to them. Nonetheless, it is clear that reducing the duration of pretrial detention would be a great benefit to the millions of children that go through the world’s justice systems every year.

The international standard, embodied in the Beijing Rules and the CRC, is that child pretrial detention should be for the “*shortest possible period of time*,” and General Comment 10 is the only international recommendation that quantifies the time limit to be a maximum of six months. Despite general pretrial detention protections, national human rights bodies have not reached out to embrace a stricter standard than the one called for in General Comment 10. Sweden’s Ombudsman for Children appears to stand alone calling for a 30-day maximum for children awaiting trial in detention.

⁶³ CHILD-FRIENDLY JUSTICE: A QUARTER OF A CENTURY OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD 154 (Said Mahmoudi et al. eds., 2015).

⁶⁴ Organization of American States, American Convention on Human Rights art. 5 § 5, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

⁶⁵ See, e.g., Minors in Detention, Case 11.491, Inter-Am. Ct. H.R., Report No. 41/99, ¶ 124 (Mar. 10, 1999).

⁶⁶ African Charter on the Rights and Welfare of the Child art. 17(2) (iv), OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999; African Committee on the Rights and Welfare of the Child, CHILD. RTS. INT’L NETWORK, <https://www.crin.org/en/guides/un-international-system/regional-mechanisms/african-committee-experts-rights-and-welfare> (last visited Apr. 19, 2018).

⁶⁷ See General Comment 30 on the African Charter on the Rights and Welfare of the Child, Twenty-second session, ACERWC/GC/01 (2013); William Schabas & Helmut Sax, Article 37: Prohibition of Torture, Death Penalty, Life Imprisonment and Deprivation of Liberty, 48–49, in COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (André Alen et al. eds., 2006).



Alejandra sat in the common area of the girl's dormitory reading a book of poems. Alejandra likes poetry and sometimes writes her own poems. She had been in pretrial detention for five months. Her trial was the previous week. She received a sentence of probation and she would be released in a few days. She was excited because she would be able to be with her baby boy when he turned one year old in a month. The only time Alejandra would spend in detention was while she was awaiting her trial. Her conviction meant freedom.



3. Global survey of child pretrial detention limits

This section analyzes currently available data regarding states' pretrial detention legislation and court rules. There is limited documentation of national practices or comments by human rights bodies on the duration of child pretrial detention. In order to develop good practices and recommendations to reduce the period of pretrial detention, it is necessary to understand existing state practices. This global survey examines national laws related to child pretrial detention time limits, but further research on state practice is necessary (*see Section 7*).

3.1 Summary of countries included by region

This global survey examines legal time limits for children in pretrial detention in 118 countries. The survey attempts to represent a cross-section of different regions by including over half of the countries from each UN Regional Group. The following chart, *Figure 3.1*, shows a breakdown of researched countries in the five different UN Regional Groups and whether they have a legal limit for child pretrial detention. Countries which could be confirmed to lack any legal limits are included in these statistics. Countries were omitted if the lack of legal limit could not be confirmed, or if resources were not available to find the current legislation.

⁶⁸ Code de Procédure Pénale (Loi No. 2005/007) art. 221 (Cameroon).

⁶⁹ *Id.* (“(1) La durée de la détention provisoire est fixée par le Juge d’Instruction dans le mandat. Elle ne peut excéder six (6) mois. Toutefois, elle peut être prorogée par ordonnance motivée, au plus pour douze (12) mois en cas de crime et six (6) mois en cas de délit.”).

⁷⁰ CODE OF CRIMINAL PROCEDURE arts. 122–23 (Libya). This statute applies to the entire population, including juveniles. *Id.* at art. 320 (“Procedures that apply to misdemeanour shall be adhered to before the Juvenile Court in all cases except where a legal text stipulates otherwise.”).

⁷¹ Criminal Procedure Code (Presidential Decree No. 137 of Feb. 23, 2014) art. 100 (Afg.), *translated in Justice Sector Support Program* (Mar. 9, 2014), https://www.unodc.org/res/cld/document/criminal-procedure-code_html/Criminal_Procedure_Code_-_Endorsed_by_President_EN_2014_03_14_with_TOC.pdf; Federal Law No. (9) of 1976, Concerning Delinquent Juveniles and Homelessness, art. 28/2 (UAE).

Region	UN State Parties	Total # Countries Researched	Countries With Pretrial Detention Limits		Countries Without Pretrial Detention Limits	
Africa	54	32	24	75%	8	25%
Asia-Pacific	55	28	20	71%	8	29%
Eastern Europe	23	14	14	100%	0	0%
Latin America & Caribbean	33	26	17	68%	8	32%
Western Europe & Others	29	19	12	63%	7	37%
Global	194	118	87	74%	32	27%

Figure 3.1: Overview of countries researched by region

3.2 Base Limits and Extended Limits

Each country’s statute limiting pretrial detention is different, and countries have a variety of maximum durations. Some had calculations for how to determine the duration, and most allow exceptions to the time limit based on various criteria. In order to conduct comparisons between countries, this study calculated a “Base Limit” and an “Extended Limit” for each country. The “Base Limit” is the maximum number of days a child can be legally held without taking into account exceptions or time extensions. The “Extended Limit” is the maximum number of days a child can be legally held under the most extreme circumstances anticipated—that is, applying every extension or exception possible. Cameroon’s criminal procedure code

provides a straightforward example.⁶⁸ Article 221 permits a warrant for remand custody up to six months. The statute continues, however, that the duration “may be extended, by reasoned order, not more than 12 months in the case of a crime and six months in the case of an offense.”⁶⁹ In this case, the Base Limit is the initial six months. Adding the longest possible extension of 12 months to the Base Limit produces an Extended Limit of 18 months.

Figure 3.2 shows the average Base Limit (121 days) and the average Extended Limit (332) for all of the countries in the survey. Notably, not every state has an “Extended Limit.” Some states do not limit the time or number of extensions

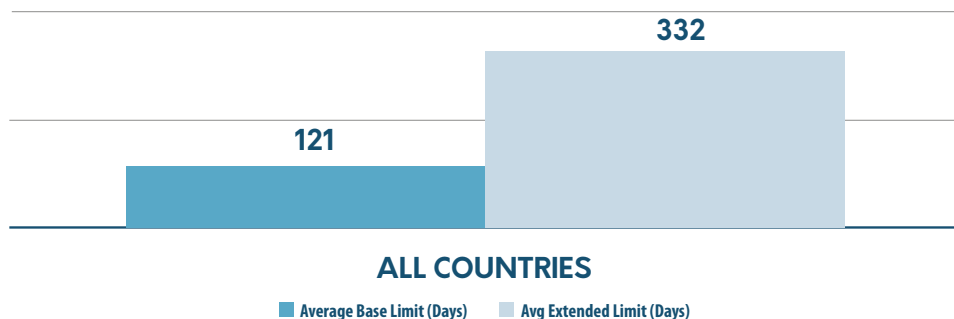


Figure 3.2 Average Base Limit v Average Extended Limit

allowed which could result in indefinite detention. For example, Libya's Base Limit is 30 days, but permits consecutive 45-day extensions "until the end of the investigation."⁷⁰ The "Average Extended Limits" do not account for the 15 countries that do have Base Limits but whose statutes do not include any limit to the ultimate duration of extensions, such as Libya. Of all the countries researched, the lowest Base Limit found was that of Afghanistan and the United Arab Emirates, which is seven days in both countries.⁷¹ The three countries tied for the highest "Base Limit," at 730 days (two years) are Mongolia,⁷² Paraguay,⁷³ and Hungary.⁷⁴

The global average Extended Limit was 332 days, or just about 11 months. Indonesia's juvenile remand detention limit, with its one exception applied, seems to be the world's lowest Extended Limit at just 25 days.⁷⁵ Of countries for which an Extended Limit could be calculated, Cape Verde⁷⁶ and Turkey⁷⁷ tie at 1095 days, or three years, for highest Extended Limits (neither statute is child-specific).

3.3 Child-Specific Limits versus Generally-Applicable Limits

Of the countries researched that have pretrial detention time limits, some have Child-Specific Limits and others have Generally Applicable Limits, the latter which apply to both children and adults. Child-Specific Limits are more common and are found in 50 of 87 countries, whereas the remaining 37 countries have a Generally Applicable Limit (**Figure 3.3**).

Comparing statutes designed for children with those that are generally applicable reveals that countries with Child-Specific Limits have shorter pretrial detention time limits. Of the 50 jurisdictions that have a Child-Specific limit for pretrial detention, the Average Base Limit was 93 days, compared to 160 days for Generally Applicable limits. The Average Extended Limit was 211 days for Child-Specific statutes, and 484 for Generally Applicable statutes (**Figures 3.4 and 3.5**).

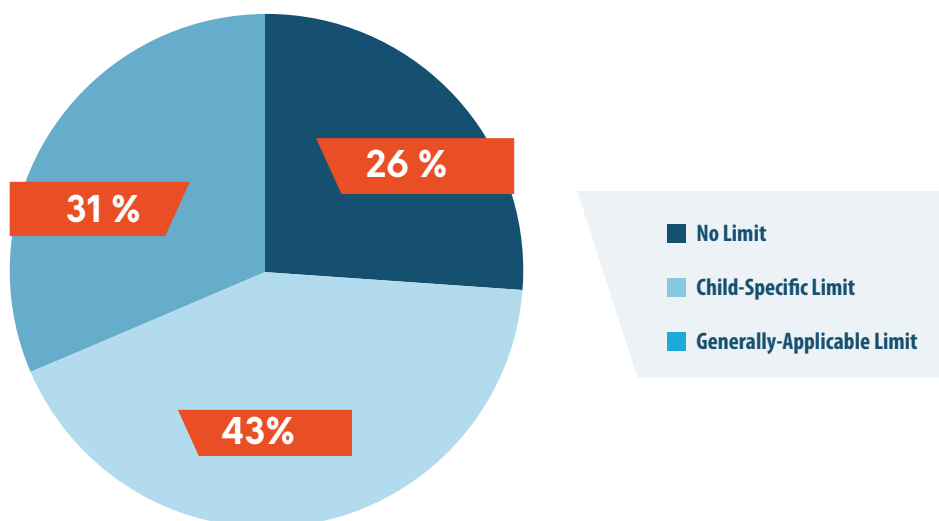


Figure 3.3 Percentage of countries by type of pretrial detention limit

⁷² Bureau of Democracy, Human Rights and Labor, *Mongolia 2016 Human Rights Report*, 6, U.S. DEP'T STATE (2017), <https://www.state.gov/documents/organization/265568.pdf>.

⁷³ Código Procesal Penal [Criminal Procedure Code], Ley No.1286/98, art. 236 (Paraguay).

⁷⁴ 1998. évi XIX. büntetőeljárás törvény (Act XIX of 1998 on Criminal Proceedings) art. 455 (Hung.).

⁷⁵ Sistem Peradilan Pidana Anak (Juvenile Criminal Justice System), Undang-Undang Nomor 11 Tahun 2012, art. 35 (Indon.).

⁷⁶ Código de Processo Penal [Criminal Procedure Code], Decreto-Legislativo nº2/ 2005, art. 279 (Cape Verde).

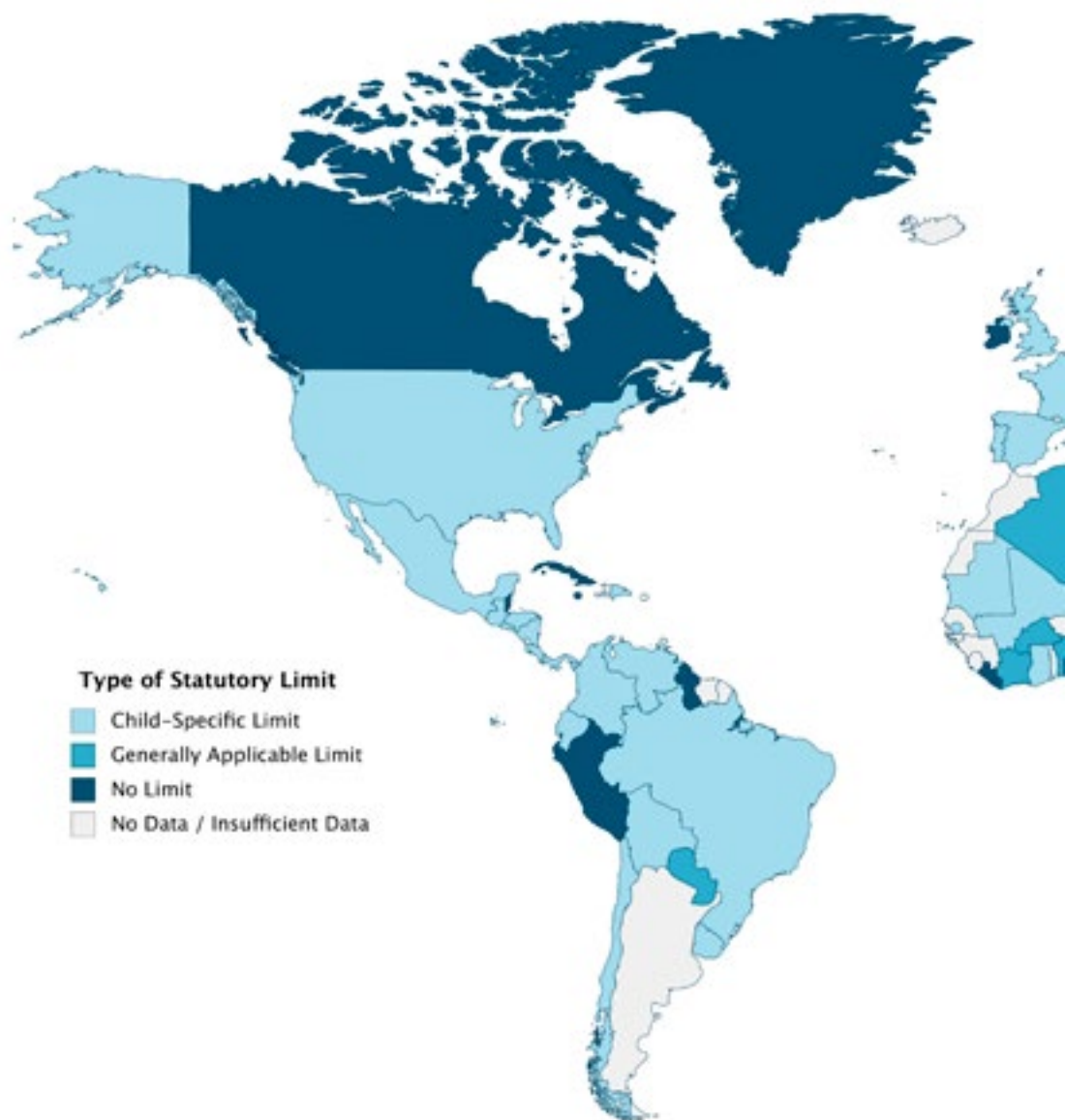
⁷⁷ Ceza Muhakemesi Kanunu [Criminal Procedure Code] art. 102 (Turk.), translated by Feridun Yenisey (2009), https://www.unodc.org/res/cld/document/tur/2005/turkish_criminal_procedure_code.html/2014_Criminal_Procedure_Code.pdf.

Type of Limit	# of Countries	Avg. Base Limit (Days)	Avg. Extended Limit (Days)
Child-Specific Limit	50	93	211
Generally-Applicable Limit	37	160	484
Total	87	121	332

Figure 3.4: Child-Specific and Generally Applicable Statutes

The difference in average time limits between countries with Child-Specific versus Generally Applicable Limits demonstrates that the better practice is to adopt child-specific limits to pretrial detention.

If more countries enacted Child-Specific Limits for pretrial detention, it is likely to benefit more children in pretrial detention than applying the Generally-Applicable criminal code would.



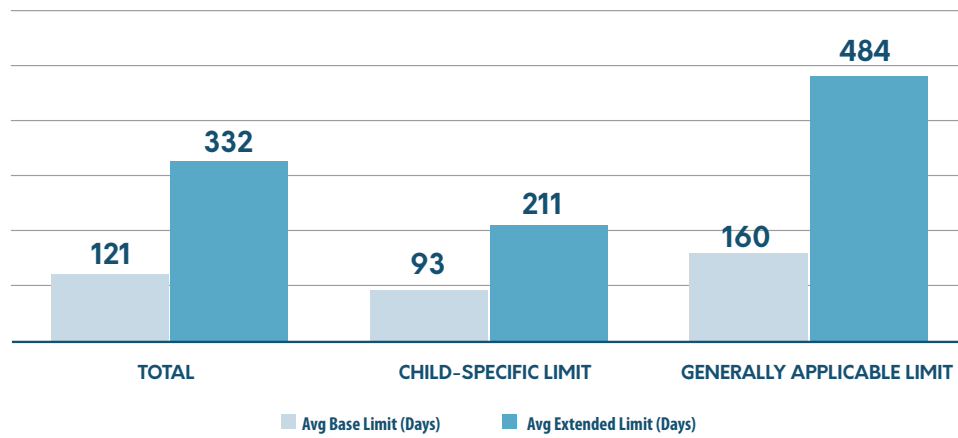


Figure 3.5: Average pretrial detention time limits, Child-Specific v Generally Applicable

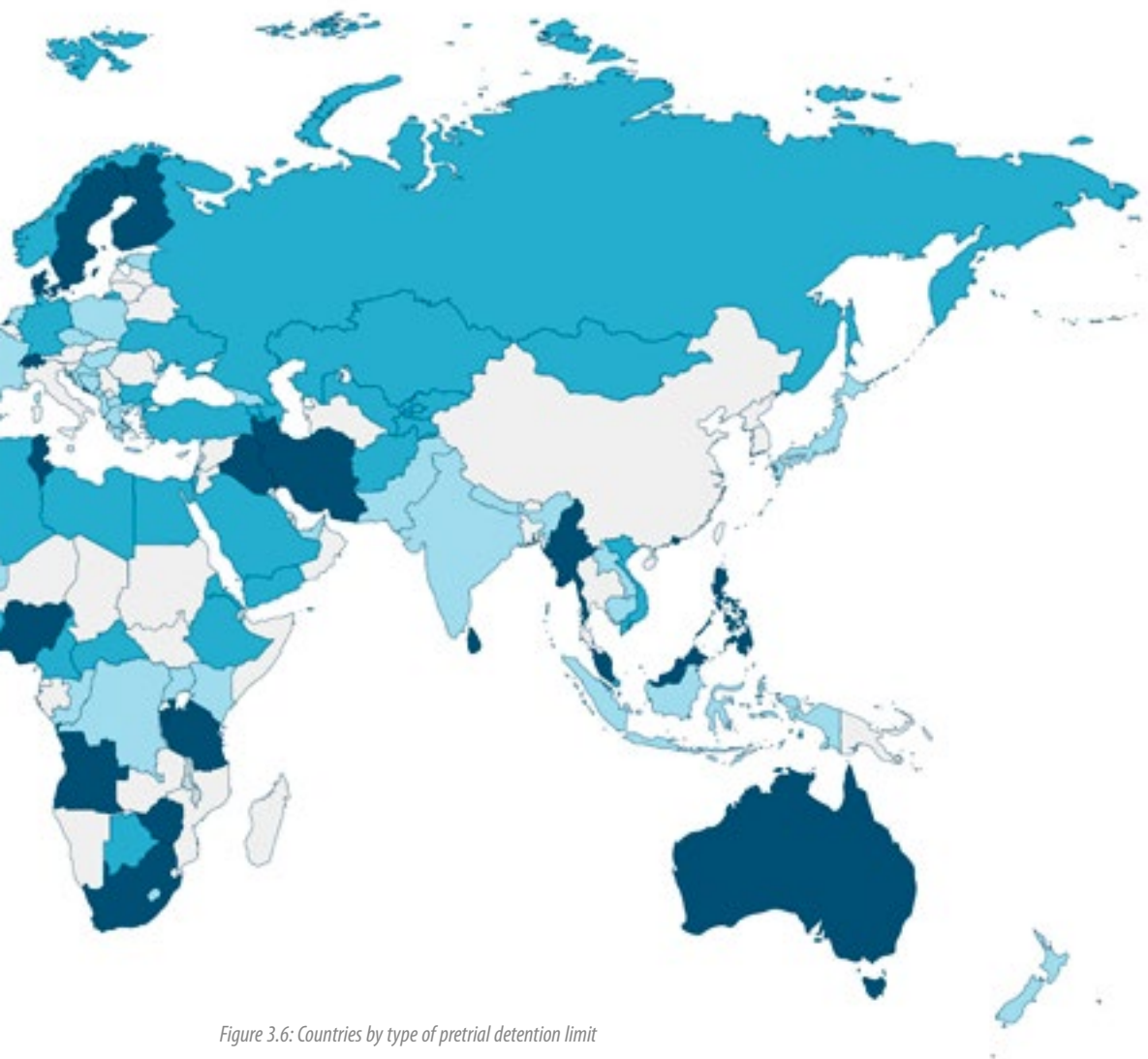


Figure 3.6: Countries by type of pretrial detention limit

3.4 Blanket Limits versus Crime-Based Limits

Individual countries have developed unique methods to limit the amount of time children spend in pretrial detention. Pretrial detention limits and their statutory exceptions can be categorized into two main types of legal limits, 1) Blanket Limits that apply to all youth; and 2) Crime-Based Limits based on the type or gravity of the crime charged or the potential sentence of the alleged crime.

The most straight forward type of limit is a Blanket Limit without Exceptions, which does not allow a judge to extend pretrial detention for any reason, nor does it allow for exceptions, such as longer limits for particularly egregious crimes. Lesotho provides a very straight-forward blanket statute, mandating, “remand in custody shall be for the shortest period possible and shall not exceed three months.”⁷⁸

The next type of limit is a Blanket Limit with Exceptions. These exceptions may be based on the age of the child, the crime with which the child is charged or the potential sentence that crime could merit, or procedural justifications ranging from investigatory need to “good cause.” The children’s acts of both Ghana⁷⁹ and Kenya,⁸⁰ for example, feature a Blanket Limit of three months, but carve out exceptions for six-month custody if the child

is held for a serious crime or one punishable by death, respectively. Grenada’s statutory structure is similar to those of Ghana and Kenya, mandating that a child should be released from pretrial detention after six months.⁸¹ However, Ghana’s exceptions, applicable if the alleged crime is murder, manslaughter, or rape, justify pretrial detention for an indefinite period.⁸²

In many cases, there is no set number of days that serves as the basis for extensions or exceptions. These statutes use a scale based on the crime, possible sentence, or age of the offender. Afghanistan predicates its limits on whether the crime was defined as a misdemeanor (20-day limit), or a felony (60-day limit) under national law, although this is not a separate juvenile limit.⁸³

Figures 3.7 and 3.8 demonstrate that countries with Blank Limits without exceptions tend to have higher Base Limits than countries with exceptions. Further study would be required to determine why this is the case, but it may be that this allows countries to more strictly limit pretrial detention in the majority of cases but provides a “safety valve” for more complex or serious cases.

In addition to Blanket and Crime-Based Limits, four countries in this study also take into account the age of the child by applying two or more age ranges to justify longer limits, usually in combination with a Crime-Based Limit. For example,

Type of Limit	Number of Countries	Avg. Base Limit (Days)	Avg. Extended Limit (Days)
Blanket Limit without Exceptions	15	210	-
Blanket Limit with Exceptions	48	93	303
Crime-Based Limit	19	107	361
Total	87	121	332

Figure 3.7: Blanket Limits and Crime-Based Limits

⁷⁸ Children’s Protection and Welfare Act (Act No. 7/2011) § 132 (Lesotho).

⁷⁹ Juvenile Justice Act of 2003 (Act No. 653) § 23 (Ghana).

⁸⁰ The Children Act (2001) Cap. 141 § 194 (Fifth Sched. § 10) (Kenya).

⁸¹ Juvenile Justice Act (Act. No. 24/2012) art. 48 (Gren.).

⁸² *Id.*

⁸³ Criminal Procedure Code (Presidential Decree No. 137 of Feb. 23, 2014) art. 100(6) (Afg.), *translated in Justice Sector Support Program* (Mar. 9, 2014), https://www.unodc.org/res/cld/document/criminal-procedure-code_html/Criminal_Procedure_Code_-_Endorsed_by_President_EN_2014_03_14_with_TOC.pdf.

⁸⁴ Criminal Procedure Code art. 213-214 (Cambodia).

⁸⁵ *Id.* at art. 204.

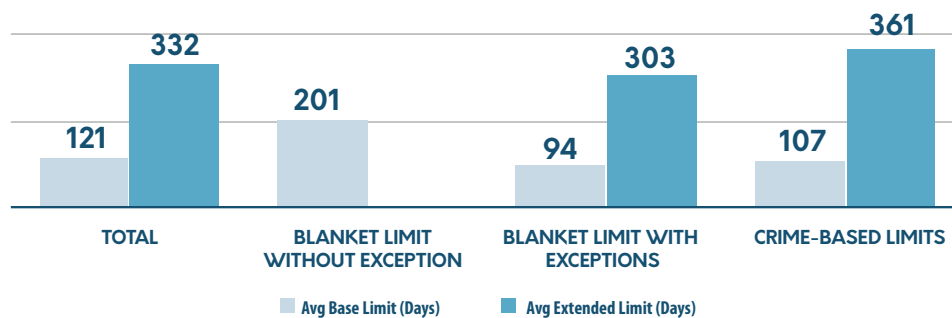


Figure 3.8: Graph of Blanket Limits v Crime-Based Limits

Cambodia's Criminal Procedure Code provides different limits for offenders 14–15 years of age and 16–18 years of age, as well as dividing both groups into misdemeanor and felony violations—essentially designing a sliding scale of remand custody from 60 to 180 days.⁸⁴ Furthermore, Cambodia only allows pretrial detention if the potential sentence is at least one year.⁸⁵ An additional four countries use a Procedural Limit that takes into account the stage of the case to determine the maximum duration of pretrial detention. Procedural statutes vary in complexity, are uncommon as a Base Limit, but more frequently serve as Extended Limits. Cape Verde's criminal procedure code mandates release from pretrial detention if certain milestones have not been reached within the specified time, ranging from 120 days without charge to 660 days without a final judgment.⁸⁶ Albania has a more intricate procedure-based statute permitting pretrial detention for specific periods depending on the progress of the case, such as the filing of documents.⁸⁷ The absolute limit is one year, and they do not appear to contain any child-specific limits in regard to pretrial detention duration.⁸⁸

Other legislation provides regulations, but no maximum static pretrial detention duration. Nepal demonstrates a common yet frustrating cap by allowing detention up to the maximum potential sentence,⁸⁹ but then failing to make clear what the

maximum potential amount of time to which a child over 14 can be sentenced.⁹⁰ While Nepal's Children's Act curbs the sentence for children between 10 and 14 years of age to a maximum of six months, resulting in an equal maximum pretrial detention period, juveniles older than 14 can face up to half the sentence of an adult, which does not appear to be limited by statute, meaning children older than 14 could face indefinite pretrial detention.⁹¹

3.5 Global trends in setting Base Limits and Extended Limits

When looking at the Base and Extended Limits that these countries adopted, a number of trends begin to emerge. Of the countries that have a Base Limit (87 of 118), nearly half (42 of 87) set their limit at or below 60 days, and nearly two-thirds (57 of 87), set their Base Limit at 90 days or less. When only looking at countries with Child-Specific Base Limits (51 of 87), nearly 50 percent have a Base Limit of 60 days or less (25 of 51). This is a good indicator that somewhere between 30 and 90 days is emerging as a consensus Base Limit, and that setting a Base Limit at 60 days or less is an emerging practice (Figure 3.9).

When examining the Extended Limits that countries allow, there is a more than

⁸⁶ Código de Processo Penal [Criminal Procedure Code], Decreto-Legislativo nº2/ 2005, art. 279 (Cabo Verde).

⁸⁷ Criminal Procedure Code (Law No. 7905) art. 263 (Alb.).

⁸⁸ *Id.*

⁸⁹ Muluki Ain [General Code], No. 119 of Chapter on Court Management (Nepal).

⁹⁰ Children's Act (Act No. 2048/1992) art. 11 (Nepal), translated in Nepal Democracy, http://www.nepaldemocracy.org/documents/national_laws/children_act.htm.

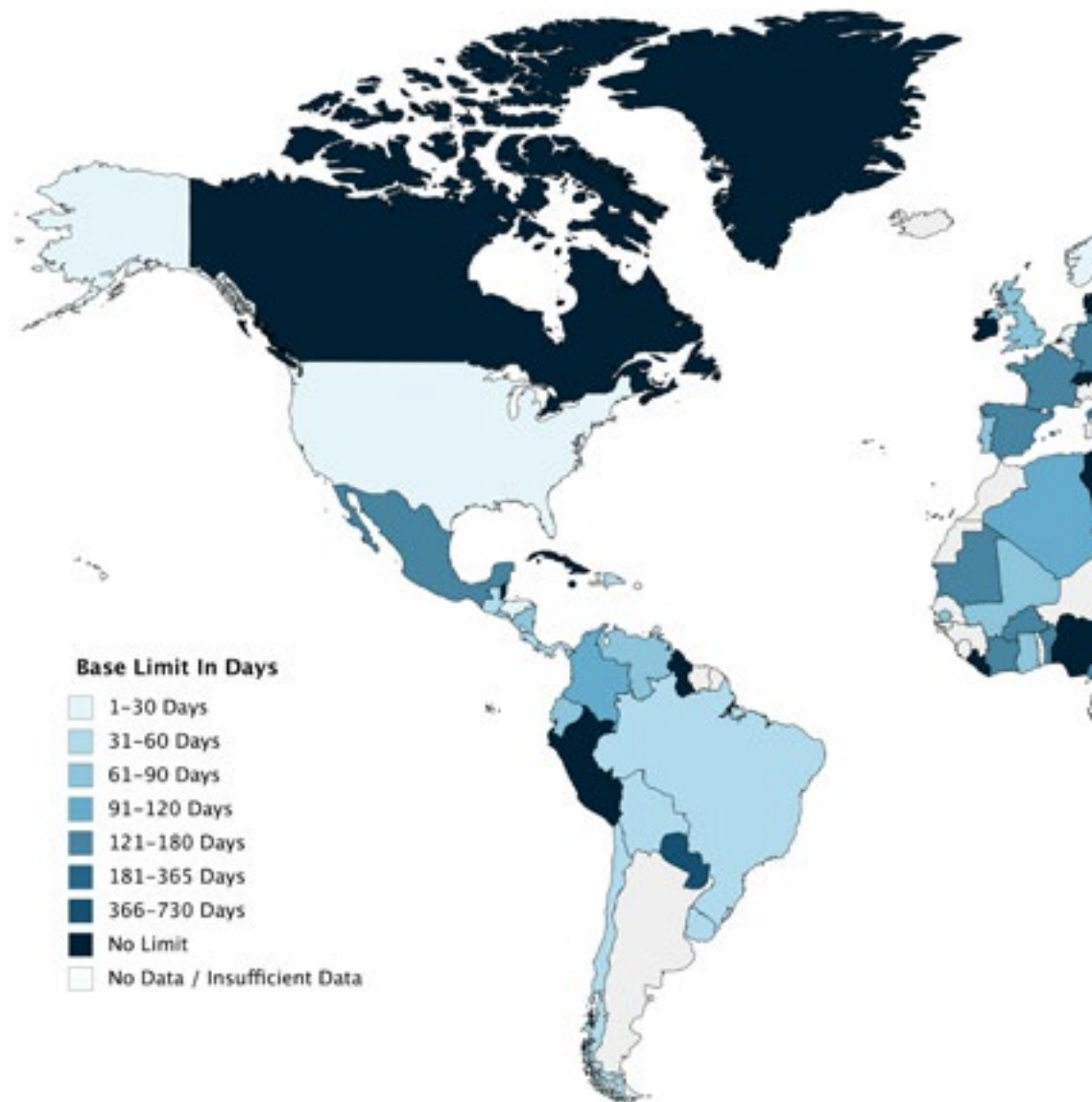
⁹¹ *Id.*

Type of Limit	1-30 Day Limit	31-60 Day Limit	61-90 Day Limit	91-120 Day Limit	121- 180 Day Limit	181- 365 Day Limit	366- 730 Day Limit	731+ Day Limit	No Limit
Child-Specific Limit	12	13	13	4	8	0	1	0	-
Generally-Applicable Limit	7	10	2	3	3	8	4	0	-
TOTAL:	19	23	15	7	11	8	4	0	31

Figure 3.9: Number of countries' Base Limits by range of days

50 percent increase in the number of countries that do not have an absolute Extended Limit compared to a Base Limit (31 countries do not have any limit and an additional 16 countries have Base Limits but no Extended Limit for a total of 47 countries who do not have an Extended

Limit) (*Figure 3.10*). This means that even among countries that have a Base Limit established, a significant number allow for exceptions to that limit, which could potentially extend the time in pretrial detention indefinitely.



Type of Limit	1-30 Day Limit	31-60 Day Limit	61-90 Day Limit	91-120 Day Limit	121- 180 Day Limit	181- 365 Day Limit	366- 730 Day Limit	731+ Day Limit	No Limit
Child-Specific Limit	1	7	5	4	10	9	3	0	11
Generally-Applicable Limit	1	1	1	0	5	9	11	3	5
TOTAL:	2	8	6	4	15	18	14	3	47⁹²

Figure 3.10: Number of Countries' Extended Limits by range of days

Of the countries that do have an Extended Limit, over 65 percent allow extensions between 121 and 730 days, or up to two years. Allowing extensions past four months and up to two years is most common among Extended Limits. Considering the existing international recommendation

of not extending child pretrial detention past six months, it is difficult to call this trend an emerging “good” practice. Rather, it highlights the need for states to reexamine the exceptions and extensions that they permit.

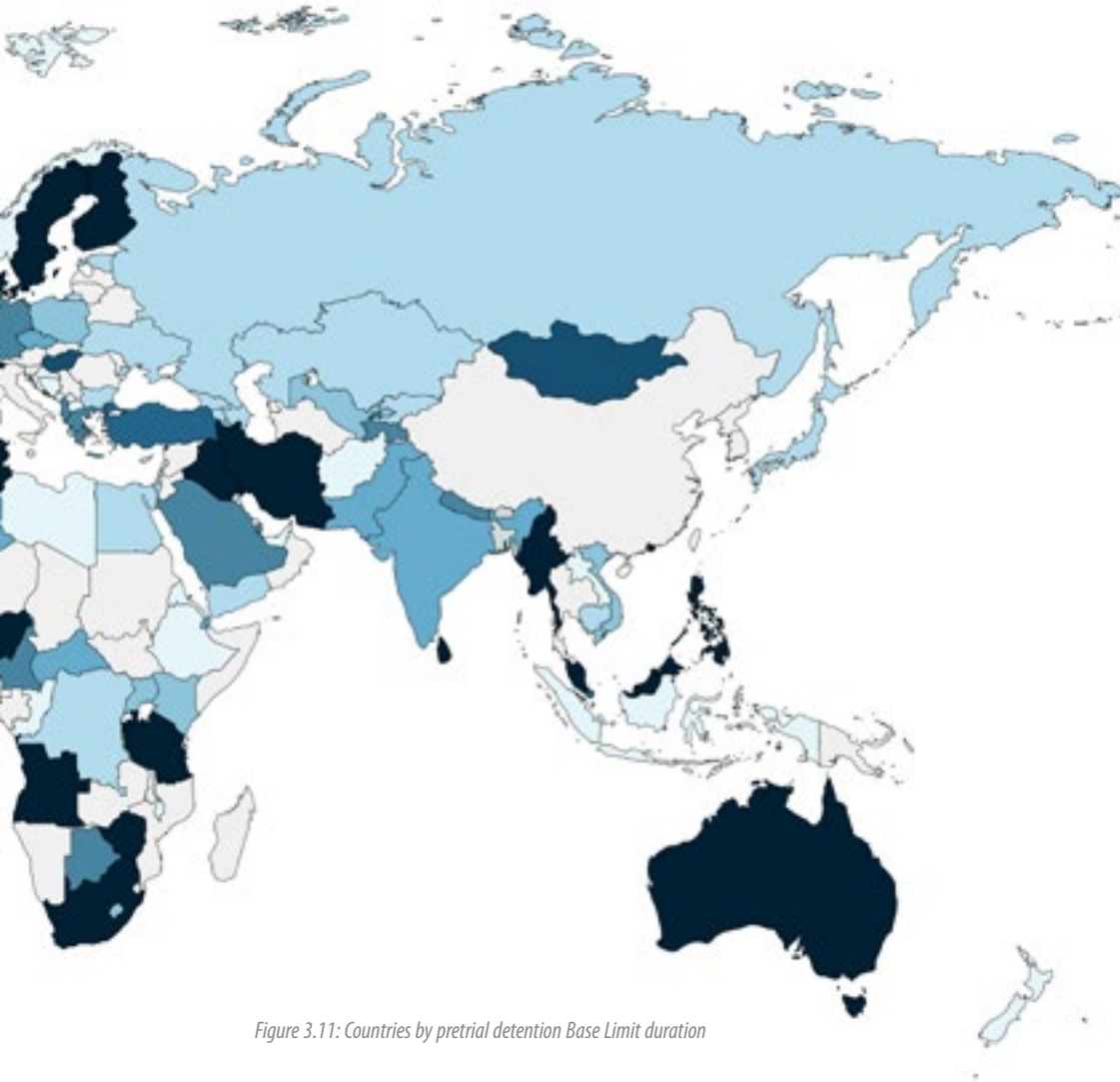
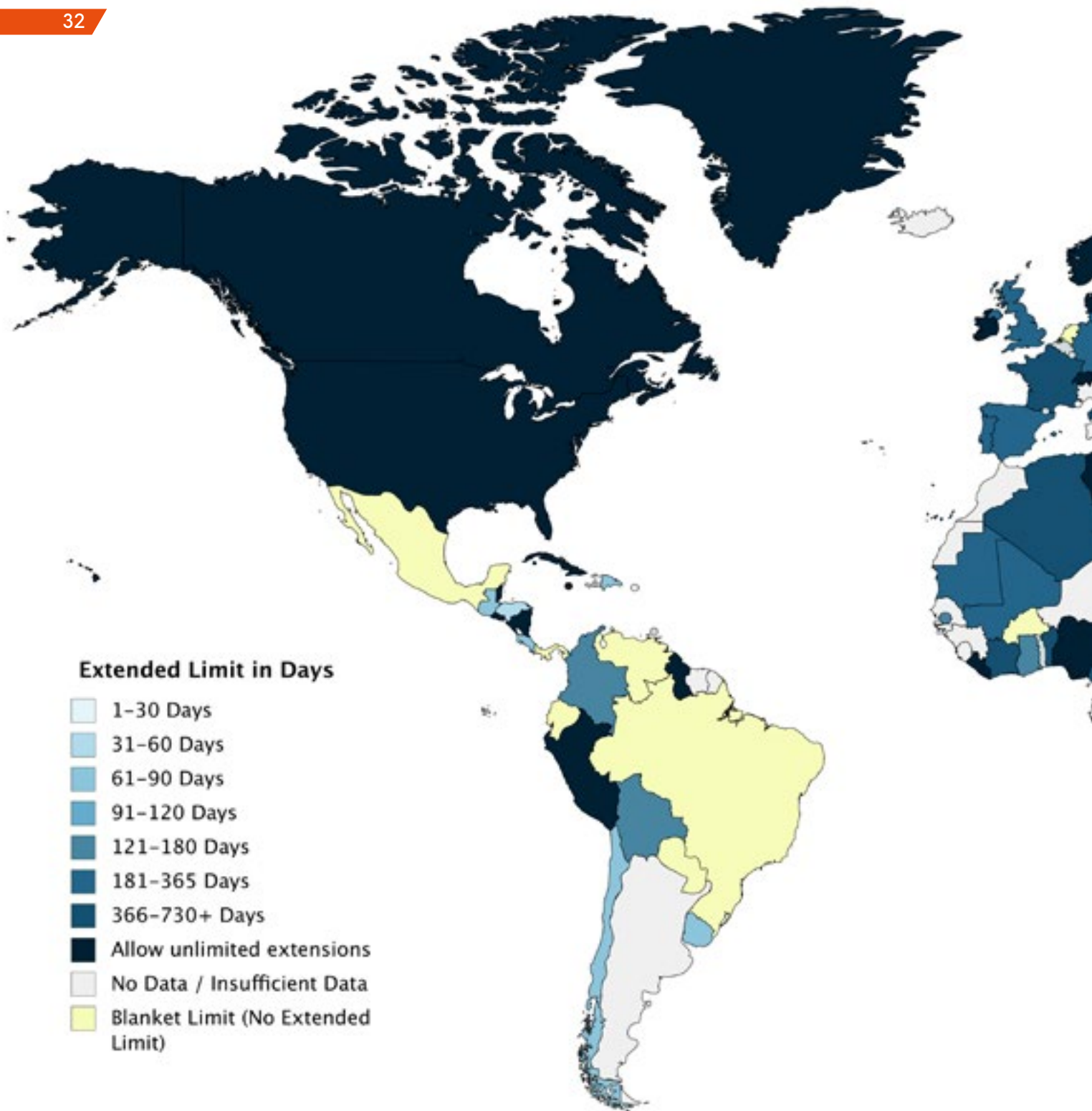


Figure 3.11: Countries by pretrial detention Base Limit duration

⁹² The “No Limit” column does not add up to the global total because the remaining countries have neither a Base Limit nor an Extended Limit and therefore cannot be determined if the statute is Child-Specific or Generally Applicable.



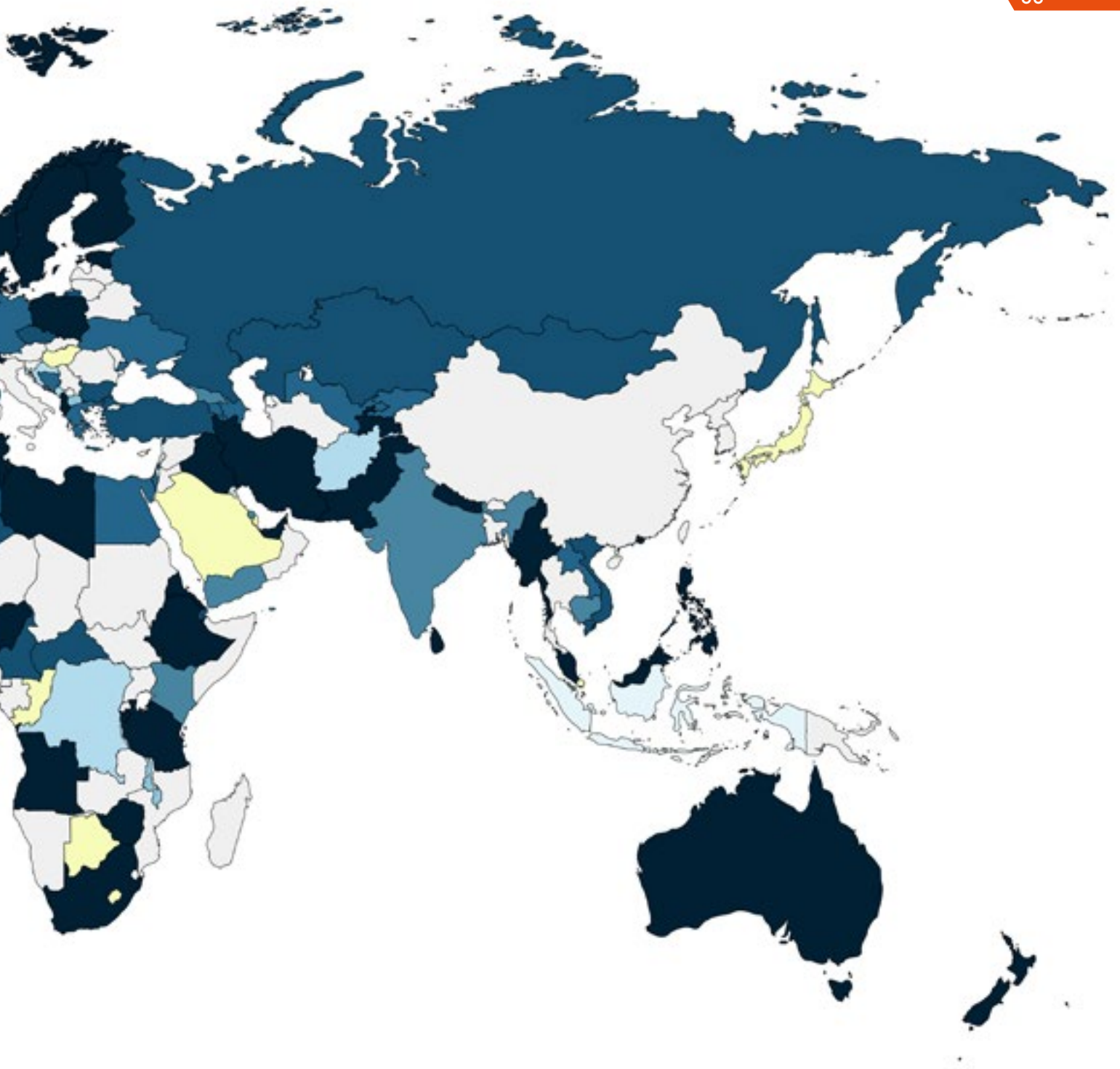


Figure 3.12: Countries by pretrial detention Extended Limit duration

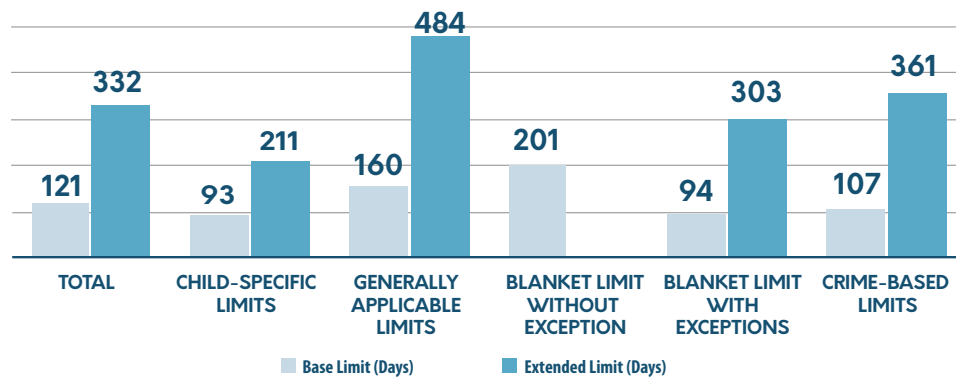


Figure 3.13: Comparison of Base and Extended Limits by Types of Statutes

3.6 Key conclusions from the global survey

⁹³ World Justice Project Rule of Law Index 2017–2018, 39, WORLD JUST. PROJECT (2018) https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition.pdf (ranking Sweden's criminal justice system fourth in the world for its respect for human rights and due process).

⁹⁴ For example, the U.S. federal criminal justice system limits child pretrial detention to 30 days, and over 42 states have a limit of 60 days or less. See Appendix 3.

⁹⁵ Sistem Peradilan Pidana Anak (Juvenile Criminal Justice System), Undang-Undang Nomor 11 Tahun 2012, art. 35 (Indon.) (limiting pretrial detention to 25 days).

⁹⁶ 4 JUVENILE JUSTICE SYSTEMS IN EUROPE: CURRENT SITUATION AND REFORM DEVELOPMENTS 1749 (Frieder Dünkler et al. eds., 2010).

The global survey shows that the problem of excessive length of child pretrial detention is not confined to one region or to less economically developed countries. Countries that are generally considered to have more human rights-oriented criminal justice systems, such as Sweden, have no statutory pretrial detention limit.⁹³ On the other hand, the United States, which is the only country that has not ratified the CRC and has the largest per capita population of children in detention, has some of the strongest base limits on pretrial detention durations for children.⁹⁴ Other less developed countries such as Indonesia have relatively strong limits below one month,⁹⁵ whereas Ireland, a developed country, allows unlimited pretrial detention.⁹⁶ The lack of strong statutory pretrial detention limits for children is truly a global problem.

From this study of global statutory time limits for child pretrial detention, we can draw a number of conclusions. First, countries that have a child-specific statutory limit appears to result in a much lower maximum duration (Base

Limit): 93 days globally on average for countries with a Child-Specific Limit compared to 160 days for countries with a Generally Applicable Limit.

Second, Blanket Limits with Exceptions appear to provide a better balance between due process concerns and strong pretrial detention time limits. Countries' Base Limits are set much lower when there is a Blanket Limit with Exceptions as opposed to a Blanket Limit without Exceptions. By allowing limited exceptions to a strong time limit appears to allow countries some measure a flexibility in their legal processes while still ensuring that pretrial detention is limited for children.

While it is difficult to see a discernable trend between statutes that have Crime-Base Limits versus Blanket Limits, international standards are clear that pretrial detention should never be based solely on the crime charged, so it follows that the duration of pretrial detention should follow the same guidelines. Crime-Based standards for




pretrial detention violate the presumption of innocence ([see Section 6.1](#)).

Third, Child-Specific time limits provide more protection than Generally Applicable limits. This is in line with the principle of specialization within the child justice system. Furthermore, setting an international standard for a Base Limit of 30 or 60 days would follow broadly in line with the time limits of about half of the countries included in this study, while also reflecting the emerging promising practice of those countries that have established child-specific Base Limits.

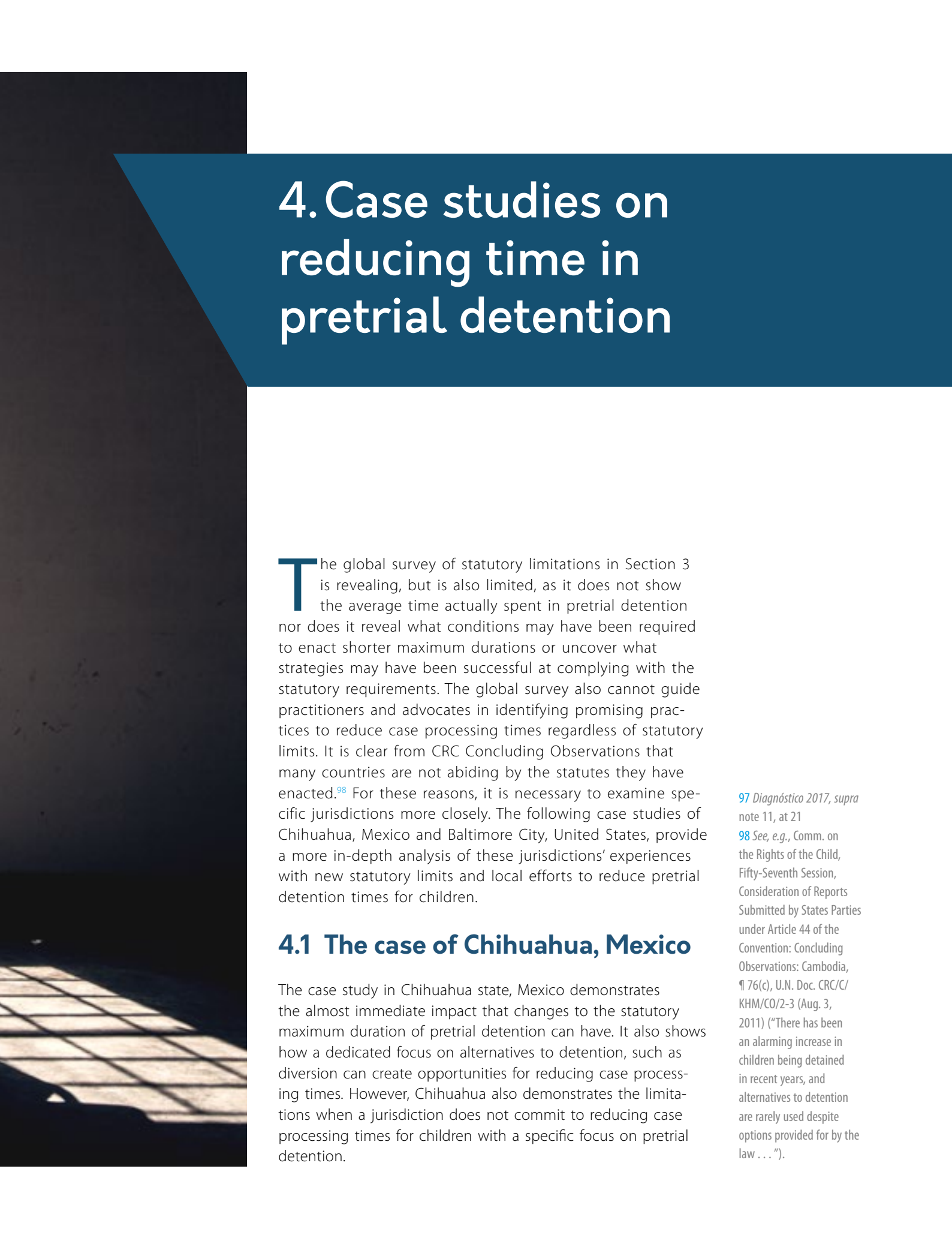
Fourth, the need to have a clear international standard for Extended Limits is even greater, as 40 percent of countries effectively allow indefinite pretrial detention because of the lack

of an Extended Limit, and many more allow extended pretrial detention to stretch from four months to two years. Establishing a clear, narrowly defined exception with a time limited extension is needed around the globe.

Based on these results, a Child-Specific statute that has a Blanket Limit of 30 or 60 days with narrowly defined exceptions that allow the time to be extended for a maximum of another 30 or 60 days would result in a pretrial detention limit that closely aligns with the international standards for child pretrial detention, and reflects emerging good practices and addresses some of the most glaring disparities in existing pretrial detention limits. ([see Section 6.2](#)).



Children in pretrial detention frequently found themselves in small cells for up to 24 hours a day, especially during the first few days at the detention center. It was common for them to only leave their cell for an hour or two a day, either during mealtimes or for activities⁹⁷.



4. Case studies on reducing time in pretrial detention

The global survey of statutory limitations in Section 3 is revealing, but is also limited, as it does not show the average time actually spent in pretrial detention nor does it reveal what conditions may have been required to enact shorter maximum durations or uncover what strategies may have been successful at complying with the statutory requirements. The global survey also cannot guide practitioners and advocates in identifying promising practices to reduce case processing times regardless of statutory limits. It is clear from CRC Concluding Observations that many countries are not abiding by the statutes they have enacted.⁹⁸ For these reasons, it is necessary to examine specific jurisdictions more closely. The following case studies of Chihuahua, Mexico and Baltimore City, United States, provide a more in-depth analysis of these jurisdictions' experiences with new statutory limits and local efforts to reduce pretrial detention times for children.

4.1 The case of Chihuahua, Mexico

The case study in Chihuahua state, Mexico demonstrates the almost immediate impact that changes to the statutory maximum duration of pretrial detention can have. It also shows how a dedicated focus on alternatives to detention, such as diversion can create opportunities for reducing case processing times. However, Chihuahua also demonstrates the limitations when a jurisdiction does not commit to reducing case processing times for children with a specific focus on pretrial detention.

⁹⁷ *Diagnóstico 2017*, *supra* note 11, at 21

⁹⁸ See, e.g., Comm. on the Rights of the Child, Fifty-Seventh Session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations: Cambodia, ¶ 76(c), U.N. Doc. CRC/C/KHM/CO/2-3 (Aug. 3, 2011) ("There has been an alarming increase in children being detained in recent years, and alternatives to detention are rarely used despite options provided for by the law . . .").

Background

Chihuahua state reformed the criminal procedural code in 2006, the first state in Mexico to adopt an adversarial system in place of Mexico's traditional inquisitorial system. Most of the rest of Mexico began this transition starting in 2008 with a Constitutional amendment requiring all states to switch their juvenile and adult criminal justice systems to an adversarial system. This transition was largely completed in the adult system in 2016 with the adoption and implementation of a new National Procedural Code, and in the juvenile justice system in 2017 with the adoption and implementation of a National Integrated Juvenile Justice System Law.⁹⁹

Even before these national reforms, Chihuahua state was a leader in the adoption of the new criminal procedures. As part of this transition, Chihuahua state made a concerted effort to implement alternatives to detention for children, replace the bail system with a pretrial release system, adopt alternatives to detention such as diversion as case resolution mechanisms, and reduce the overuse of pretrial detention. Part of the motivation for the Chihuahua juvenile court to implement alternatives arose from the deplorable conditions of the detention centers. Children awaiting trial were not enrolled in school or other activities, resulting in 17–24 hours a day in their cells, and 57% reported being abused or beaten. It was common to find cells with more children than beds, and abusive practices were pervasive, including physical abuse, denial of meals, denial of family phone calls while being punished with solitary confinement, and corruption.¹⁰⁰

Interventions Implemented

The interventions implemented in Chihuahua state took place over a number of years, starting with the 2006 state juvenile justice reforms, and later, the National Juvenile Justice Law of 2016 (entering into force in June of 2016)¹⁰¹. These reforms included:

- » Supervised pretrial release program.
- » Adoption of diversion and other alternative case resolution mechanisms such as a “modified plea bargaining.”¹⁰²
- » A reduction in the maximum allowed duration of pretrial detention from 365 days under the state law (2006–2016) to 150 days under the new National Juvenile Justice Law (June 2016 and forward).¹⁰³
- » Limitations on pretrial detention through limiting types of criminal charges that are eligible for pretrial detention and limiting the ages at which a child can be detained. The National Juvenile Justice Law only permits the detention of children 14 and older.¹⁰⁴ The statute also cut the maximum youth sentence from 15 years to five years, which led to the automatic release of those who had served the new maximum time, and the issuance of prorated sentences for other children.¹⁰⁵
- » Creation of an interagency task force to reduce case processing times for children in pretrial detention in the Bravos Judicial District (Ciudad Juárez) in 2017.

⁹⁹ Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes [LNSIJPA], Diario Oficial de la Federación [DOF] 16-06-2016 (Mex.).

¹⁰⁰ *Diagnóstico 2017*, *supra* note 11, at 21–23.

¹⁰¹ Ley de Justicia Especial para Adolescentes Infractores del Estado de Chihuahua [LJEAIEC] Diario Oficial de la Federación [DOF] 16-06-2016, últimas reformas DOF 07-05-2011 (Mex.), *repealed by* Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes [LNSIJPA], art. 122 (limiting pretrial detention to 150 days, and only allowing detention of children at least 14 years old).

¹⁰² *Diagnóstico 2017*, *supra* note 11, at 6. Plea bargains in Chihuahua state, called *Procedimiento Abreviado* or abbreviated processes, are allowed when the defendant, prosecutor, and victim all agree on the facts of the case and the sentence. The negotiated settlement is presented for the judge to approve.

Impacts of Interventions

The impacts of these changes in Chihuahua state resulted in significant decreases in the use of both pretrial and post-trial detention. This decline started even before the 2016 National Law took effect. From 2014 to 2016, the percentage of cases that resulted in pretrial detention went from 50% to just 27% due to a significant increase in pretrial release using a community-supervision model (*Figure 4.1*).

By 2016, Chihuahua was also utilizing diversion and modified plea bargains to resolve the vast majority of its cases: 69% of cases were resolved through diversion and 21% through plea bargains, and only 1% of cases went to trial (*Figure 4.2*).¹⁰⁶

Despite these advances in the utilization of alternatives to detention, their application had little impact

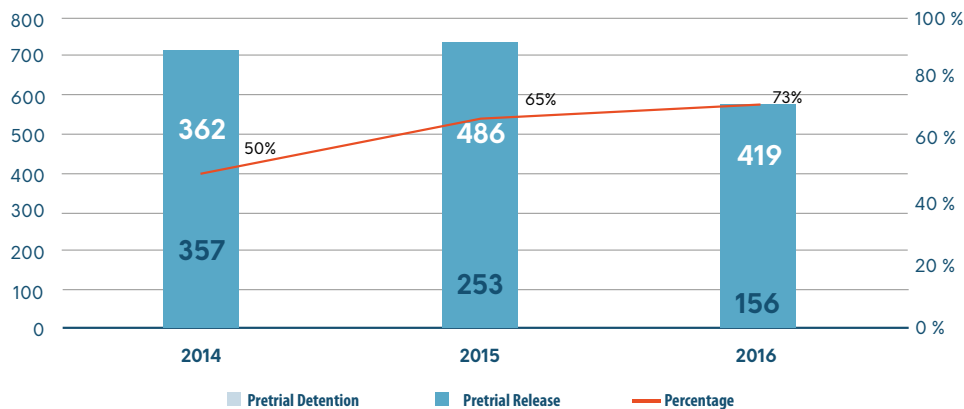


Figure 4.1: Chihuahua pretrial release v pretrial detention

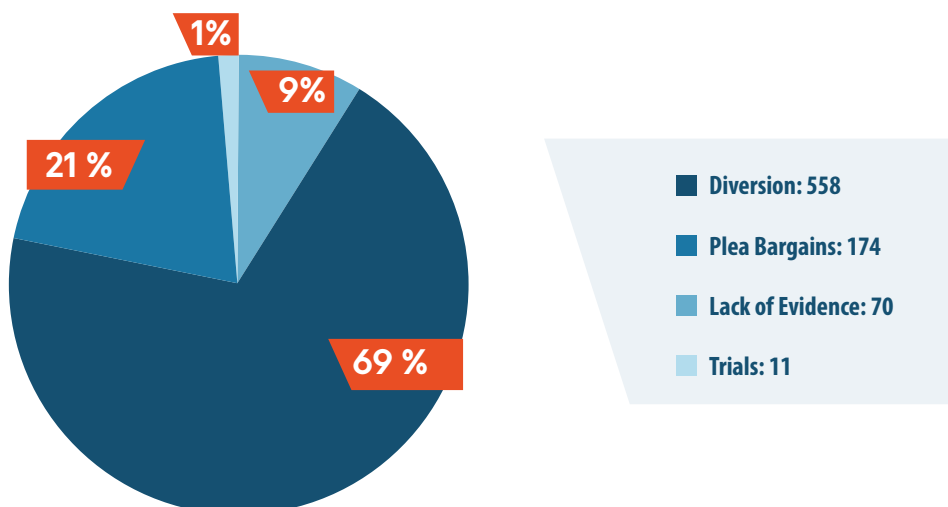


Figure 4.2: Chihuahua cases by resolution mechanism

¹⁰³ Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes [LNSIIPA], art. 63.

¹⁰⁴ *Id.* at art. 122.

¹⁰⁵ *Id.* at art. 145; see *Grave Error que la Nueva Ley de Justicia para Adolescentes Reduzca Penalidades*, EL DIARIO (June 25, 2016), <http://eldiariodechihuahua.mx/Opinion/2016/06/25/grave-error-que-la-nueva-ley-de-justicia-para-adolescentes-reduzca-penalidades/>. See also *Diagnóstico 2017*, *supra* note 11, at 4. The five-year maximum applies to adolescents between the ages of 16 and 18, whereas youth who are 14 to 15 years old can be sentenced to a maximum of three years.

¹⁰⁶ *Diagnóstico 2017*, *supra* note 11, at 9. These statistics are virtually unchanged from 2015, the initial year JJA produced the study.

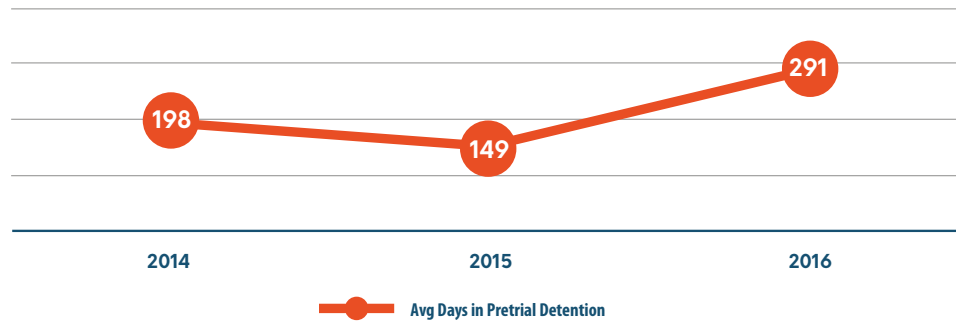


Figure 4.3: Chihuahua average days in pretrial detention, 2014-2016

on the duration of pretrial detention in Chihuahua prior to the National Law. In 2014, the average duration of pretrial detention was 198 days, it then decreased to 149 days in 2015—but increased again in the first half of 2016 to 291 days. This occurred despite the fact that the vast majority of cases were resolved through a negotiated diversion option or a plea bargain. The state law allowed the prosecutor to negotiate a diversion option or a plea bargain any time after the initial court hearing up until the pretrial hearing, a few weeks before the start of the trial. As a result, approximately half of all children in pretrial detention received a diversion alternative or supervised release, but only after spending months in pretrial detention.

An analysis of the number of children in pretrial detention shows the

difference a shortened pretrial detention time would have on the daily prison population.¹⁰⁷ Children in the state of Chihuahua spent an average of 291 days in pretrial detention in 2016.¹⁰⁸ This resulted in an average daily prison population of 124 non-sentenced youths. If the average had been 60 days, the average daily pretrial detention population would have been 26 children.¹⁰⁹ If there was a statutory 30-day cap on pretrial detention, and every single child ended up spending the full month in detention, the average daily pretrial detention population would be a mere 13 children. In other words, with a strict limit of 30 days, the pretrial detention population would be reduced by around 90%.¹¹⁰

With the adoption of the 2016 National Law, there was a continued decrease in detention populations. Between the

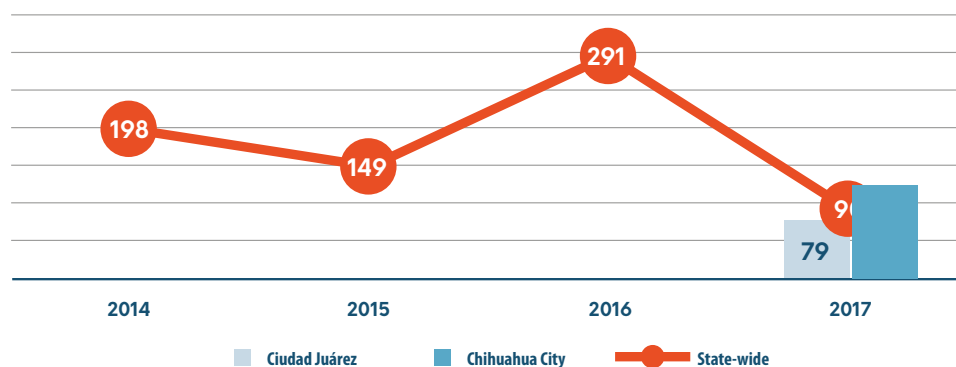


Figure 4.4: Chihuahua average days in pretrial detention, 2014-2017

¹⁰⁷ *Diagnóstico 2017*, supra note 11, at 6–7.

¹⁰⁸ *Id.* at 6.

¹⁰⁹ *Id.* at 7.

¹¹⁰ *Id.*



summers of 2016 and 2017, provisions in the new penal code caused the juvenile prison population to drop by over half.¹¹¹ The new law also shortened the duration of pretrial detention significantly, from 12 months to five months maximum. Despite this significant reduction, Chihuahua had little difficulty complying with the increased pace required to process cases, as such a high percentage of cases were already resolved without a trial using diversion and plea bargains. In fact, by 2017 the average duration of pretrial detention had declined to 90 days (**Figure 4.4**). However, this decline was not uniform across the state. There are two detention centers in Chihuahua state, one in the Morelos judicial district (Chihuahua City) and one in the Bravos judicial district (Ciudad Juárez). Ciudad Juárez saw a much more significant decline to 79 days on average, while Chihuahua City experienced a smaller

decline to 124 days. In 2017, Juvenile Justice Advocates International created a task force in Ciudad Juárez to identify opportunities to further reduce case processing times for children in detention.

The outcomes of the interventions in Chihuahua state show that a concerted effort to utilize pretrial detention alternatives and implement alternative case resolution mechanisms can have a marginal impact on the duration of pretrial detention and make it much easier to comply with stricter statutory limits when and if they are implemented, as they were in Chihuahua in 2016. However, without a targeted and ongoing effort to reduce the duration of pretrial detention, jurisdictions run the risk of stagnating in their progress when they become content to comply with the statutory limits.

¹¹¹ *Censo Nacional de Gobierno, Seguridad Pública y Sistema Penitenciario Estatales 2014*, INSTITUTO NACIONAL DE ESTADÍSTICA Y GEOGRAFÍA, <http://www.beta.inegi.org.mx/proyectos/censosgobern/estatal/cngspspe/2014/> (last visited Apr. 18, 2018) (showing that there were 10,963 children detained in 2014); *Censo Nacional de Gobierno, Seguridad Pública y Sistema Penitenciario Estatales 2014*, INSTITUTO NACIONAL DE ESTADÍSTICA Y GEOGRAFÍA, [HTTP://WWW.BETA.INEGI.ORG.MX/PROYECTOS/CENSOSGOBIERNO/ESTATAL/CNGSPSPE/2014/](http://www.beta.inegi.org.mx/proyectos/censosgobern/estatal/cngspspe/2014/) (last visited Apr. 18, 2018) (showing that there were 4,507 children detained in 2017).

4.2 The case of Baltimore City, United States

The case of Baltimore City, United States, demonstrates the positive impacts that a dedicated focus on reducing case processing delays, committing to alternatives to detention, and stricter statutory maximums can have when combined.

Background

In the 1990s, Baltimore City, Maryland experienced significant increases in its juvenile justice case load. As a result, court delays became commonplace.¹¹² In response, the state of Maryland enacted additional statutory requirements for juvenile delinquency cases to be processed more quickly. Specifically, in cases where the child was held in custody pending a hearing, the state required that an “emergency arraignment” and detention hearing be held on the “next court date,” and that the adjudicatory hearing, or trial, be held within 30 days. In 2000, the Maryland Justice Analysis Center at the University of Maryland conducted a comprehensive study showing the impact of changes to case processing measures in decreasing court delays. Following this study, in 2001, Baltimore City implemented a number of changes to the processing of juvenile delinquency cases aimed at increasing efficiency of the juvenile justice system. The University of Maryland researchers conducted a follow-up study in 2004, after the implementation, to examine the effect of the changes.¹¹³

While the University of Maryland study examined the effects of a general effort to reduce case processing delays for

all juvenile cases, at about the same time, in 2002, Baltimore City adopted other changes as a result of joining the Juvenile Detention Alternative Initiative (JDAI), a national effort led by the Annie E. Casey Foundation to reduce child detention. One of the core focus areas of JDAI is reducing case processing delays specifically for children detained awaiting trial.

Interventions Implemented

In an effort to eliminate case processing delays in the juvenile court, Baltimore City made the following changes:¹¹⁴

- » Implemented 24/7 intake at the Department of Juvenile Services to allow children who are arrested to be processed immediately;
- » Began holding pre-set arraignment hearings, called the Immediate Charging Project, where detained youth were automatically scheduled on the next business day, and non-detained youth were automatically scheduled 45 days after arrest;
- » Assigned all initial court appearances or arraignments occurring on the same day to one courtroom each afternoon on a rotating basis as that courtroom’s exclusive assignment;
- » Made advancements in the Juvenile Court Information System to improve the collection of case processing data, court backlog data, and workload analyses;

¹¹² Claire Souryal-Shriver & Charles Wellford, *Baltimore City Delinquency Case Processing Study, Maryland Justice Analysis Center*, iii, UNIV. MD., (Nov. 29, 2001) (hereinafter 2001 Baltimore Case Processing Study).

¹¹³ See *id.*; Claire Souryal-Shriver & Charles Wellford, *Baltimore City Delinquency Case Processing Study: 2004 Follow Up*, iii, MARYLAND JUSTICE ANALYSIS CTR., UNIV. MD. (Aug. 10, 2006) (hereinafter Baltimore Case Processing Study: 2004 Follow Up).

¹¹⁴ Baltimore Case Processing Study: 2004 Follow Up, *supra* note 113, at iii.

- » Created initiatives to improve court appearance rates by children on pretrial release, thereby increasing confidence in release supervision, such as the creation of the Detention Reduction and Advocacy Program (DRAP) to monitor released youth, and automatic telephone calls from the Juvenile Court Clerk's office the night before a scheduled arraignment hearing to remind children and families of the court hearing; and
- » Created an ongoing task force, or "stakeholder team," including the Department of Juvenile Services and the Baltimore City Court Juvenile Division, among others, as part of JDAI to monitor case processing times for children in detention.

Impacts of Interventions

The changes were remarkably effective in decreasing processing times for juvenile cases. Due to the immediate 24/7 intake, overall case processing times decreased by 36 days. In the case of detained children, case processing times went from an average of 63 days to 53 days. The rate of failure to appear in court also drastically declined from 46% to 24% due to reminder calls, use

of pre-set arraignment dates, and the Immediate Charging project.

Rates of pretrial detention also decreased. The percentage of cases where the child was determined ineligible for community supervision and detained awaiting trial decreased significantly from 36% in 2001 to 19% in 2004. A secondary effect was a reduction in the percentage of commitment orders (post-trial detention) at trial, which decreased from 35% to 20%.

Another positive impact was the overall reductions in case processing times for children not in detention. Total average case processing time dropped from 198 days in 2000 to 99 days in 2004.¹¹⁵ While overall case processing reduction was the goal of many of the interventions, Baltimore City's initiatives demonstrate that any strategy to improve efficiencies can have positive impacts for both detained and non-detained children. This may also be part of the reason that failure-to-appear rates declined, as shorter waiting periods before trial reduce the likelihood that teenagers will violate conditions and have their release revoked.

Baltimore City's ongoing participation in JDAI has made an even more significant long-term impact on reducing the

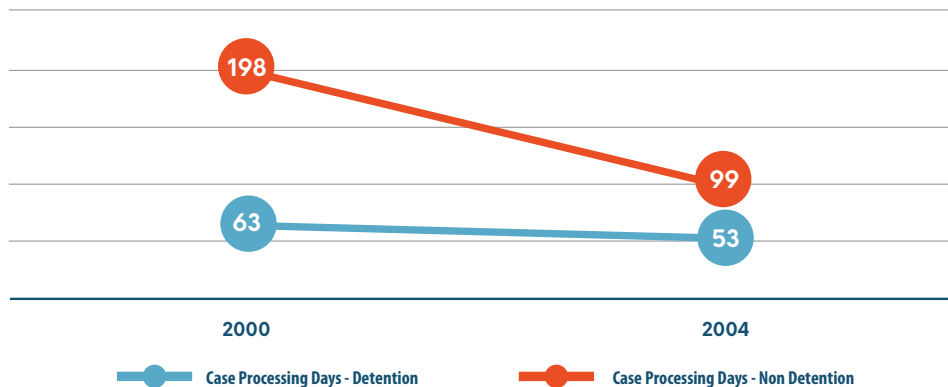


Figure 4.5: Baltimore City case processing duration, 2000-2004

¹¹⁵ *Id.* at 46.

time children spend in pretrial detention. One of JDAI's principles when targeting reducing case processing delays is that every day in detention counts.¹¹⁶

Even if a jurisdiction is substantially complying with statutory maximums, JDAI still focuses on reducing time in pretrial detention. A 2012 study, as part of Baltimore City's ongoing JDAI project, showed that the case processing time for children in detention had further been reduced to an average of 13.3 days, and only 5% of children remained in detention for more than 90 days.¹¹⁷ As a result of these and other JDAI related initiatives, overall pretrial detention in Baltimore City fell 23% from 2010 to 2013, despite an increase of 6.4% in the number of cases that were referred to the juvenile court over the same period.¹¹⁸

One notable exception to the successful case example that Baltimore City represents is for the children who are tried in adult courts. Removing juvenile cases to adult court is a legally permitted practice in much of the United States. For children detained while awaiting trial in adult court, the average length of pretrial detention was 56.9 days, the longest of any category of detained youth. Trying children in adult courts, while allowed under state and federal laws in the United States, is not

in compliance with international law.¹¹⁹ The study's finding provides another reason to try children in a separate specialized court system.

The outcome of the reforms in Baltimore demonstrates case processing times can be significantly improved with seemingly small changes to processes and protocols, and a dedicated focus by multiple actors on reducing detention times. Baltimore City's efforts have had powerful impacts on judicial delays, thus resulting in prompt trials and outcomes for youth that minimize the negative impacts for children involved in the justice system.

The case of Chihuahua state in Mexico shows that having a shorter statutory pretrial detention period can result in significant declines in the actual amount of time children spend detained. The case of Baltimore City further demonstrates how a sustained commitment to reduce detention times below the statutory maximum can yield even more reductions. Both cases are examples of jurisdictions where stakeholders take their responsibility to ensure the best interest of the child seriously as they seek to put into practice the guarantee that pretrial detention last the "shortest possible period of time."

¹¹⁶ See Lubow, *supra* note 16, at 5 ("A system that embraces the notion that 'every bed day counts' will be less tolerant of unnecessary delay in individual cases and improve results overall.")

¹¹⁷ "The Doors to Detention" A Study of Baltimore City Detention Utilization, 13, MD. DEP'T JUV. SERV. (2013) http://djs.maryland.gov/Documents/publications/Detention_Utilization_Report_Final_Screen.pdf.

¹¹⁸ Baltimore City Juvenile Services Long Term Trends, 3, MD. DEP'T JUV. SERV. (2013) http://djs.maryland.gov/Documents/trends/Baltimore_City_Region_Trends_FY2013.pdf.

¹¹⁹ E.g., Alison Parker, Letter to Inter-American Commission on Human Rights: Examine Incarceration of Youth in US Adult Prisons and Jails, HUM. RTS. WATCH (Mar. 11, 2013, 1:01 AM) <https://www.hrw.org/news/2013/03/11/letter-inter-american-commission-human-rights-examine-incarceration-youth-us-adult>.

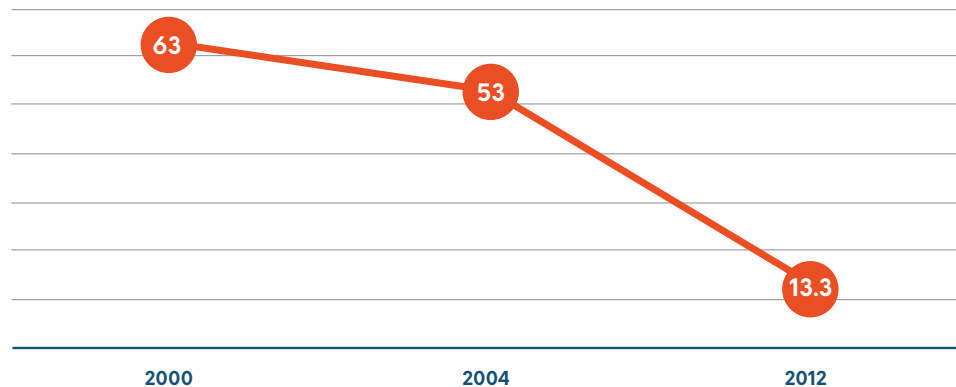
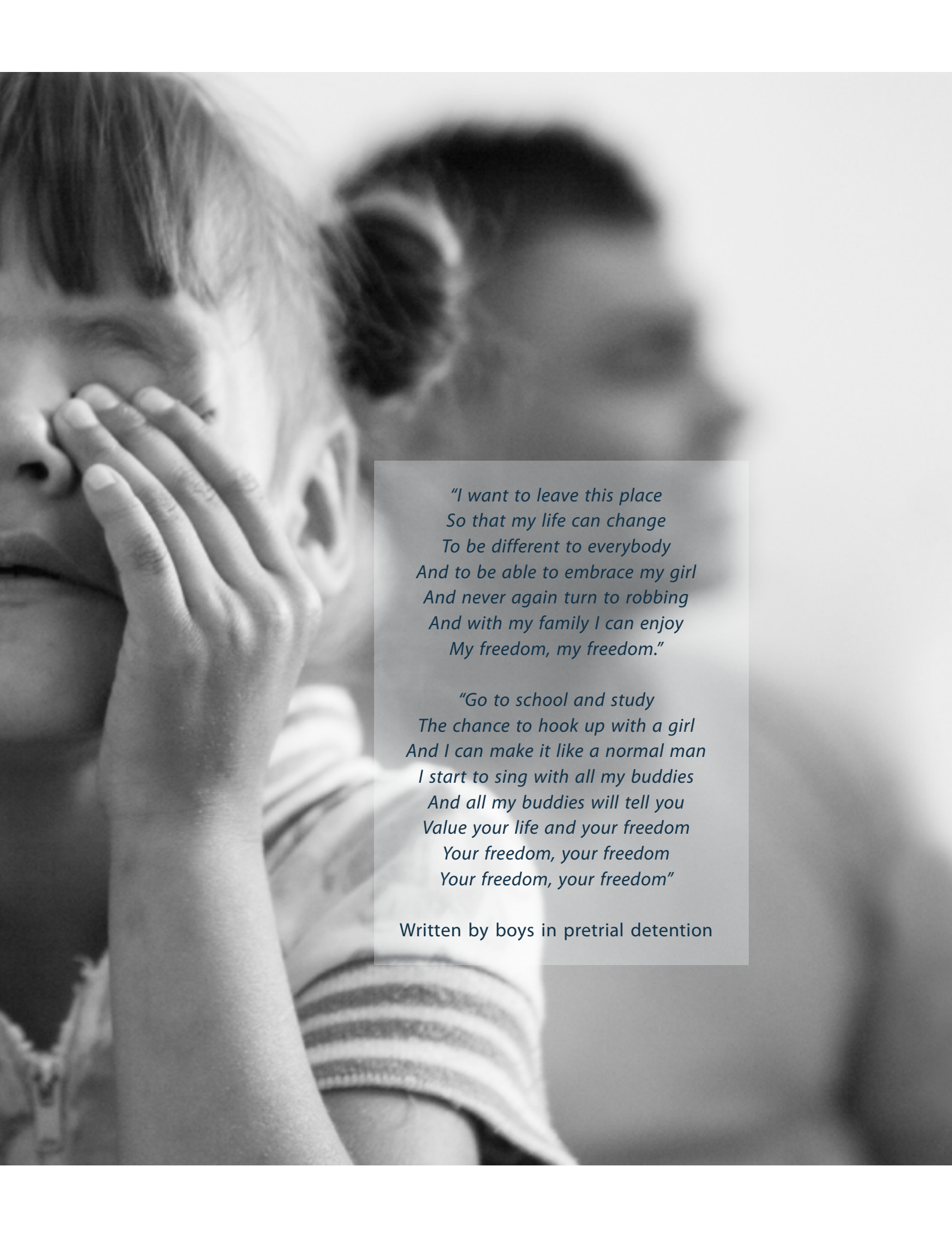


Figure 4.6: Baltimore City case processing duration, 2000-2012





*"I want to leave this place
So that my life can change
To be different to everybody
And to be able to embrace my girl
And never again turn to robbing
And with my family I can enjoy
My freedom, my freedom."*

*"Go to school and study
The chance to hook up with a girl
And I can make it like a normal man
I start to sing with all my buddies
And all my buddies will tell you
Value your life and your freedom
Your freedom, your freedom
Your freedom, your freedom"*

Written by boys in pretrial detention

5. Recommended good practices for national practitioners

Reducing the time children spend in pretrial detention should be a critical priority and equally important as focusing on promoting diversion and other alternatives to detention, to ensure that all children are protected. International, regional, and national human rights bodies, advocates, and justice sector officials must understand the urgency of reducing pretrial detention durations for children and begin to explore additional legal, procedural, and practical solutions specifically designed to reduce the length of pretrial detention.

The Committee on the Rights of the Child recommends that nations utilize tools created by international organizations that specialize in juvenile justice to develop domestic systems in line with CRC recommendations.¹²⁰ While more research is needed in this important area (*see Section 7*), based on the global survey (*see Section 3 above*), recommendations from international, regional and national human rights bodies, and case studies (*see Section 4 above*), the following good practices are emerging to reduce the time spent in pretrial detention.

¹²⁰ See, e.g., Comm. on the Rights of the Child, Sixty-Eighth Session, Concluding Observations on the Combined Third to Fifth Periodic Reports of the Uruguay, ¶ 73, U.N. Doc. CRC/C/URY/CO/3-5 (Mar. 5, 2015); Comm. on the Rights of the Child, Fifty-Ninth Session, Consideration of Reports Submitted by State Parties Under Article 44 of the Convention, Concluding Observations: Thailand, ¶ 80, U.N. Doc. CRC/C/THA/CO/3-4 (Feb. 17, 2012); Comm. on the Rights of the Child, Fifty-Eighth Session, Consideration of Reports Submitted by State Parties Under Article 44 of the Convention, Concluding Observations: Panama, ¶ 77, U.N. Doc. CRC/C/PAN/CO/3-4 (Dec. 21, 2011).

¹²¹ Israel, for example, mandates release “if an indictment has not been filed within 75 days of arrest,” or “if sentencing has not been passed within nine months.” Criminal Procedure Law, § 59–61, (1996) (Isr.). Other states, such as Malawi, define pretrial detention as the period up until the start of the trial, Criminal Procedure and Evidence Code, Ch. 8:01, § 161(D) (Malawi) (allowing compliance with pretrial detention time limits before a sentence is set). Therefore, extended or delayed trials will technically comply with the time limit but could result in actual pretrial detention times extending to months or years.

¹²² Human Rights Comm., General Comment No. 35, Art. 9 (Liberty and security of person), ¶ 38, CCPR/C/GC/35 (Dec. 16, 2014) (“Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.”); see CRC General Comment 10, *supra* note 3, ¶ 83.



5.1 General good practices

- » **Strict statutory time limits:** States should set a child-specific time limit of 30 days in pretrial detention with limited and narrowly defined exceptions. A suggested statutory standard is presented in Section 6 below.
- » **Clear definition of pretrial detention period:** States should clearly define that the pretrial detention period begins at the moment of initial detention, usually either at the moment of arrest or at the initial detention hearing, and that it terminates once the sentence is set. Some states’ pretrial detention time limits are set based on unclear procedural markers.¹²¹
- » **Enforcement of statutory limits:** The justice system in general, and the courts in particular should enforce statutory time limits. In order to effectively monitor and enforce time limits, the justice system must also track this information and provide it to the court in a timely manner.
- » **Automatic review of pretrial detention:** Courts should automatically review all cases of children in pretrial detention every 14 days. Such reviews should not be limited to cursory reviews to confirm the legality of the detention. Rather, pretrial detention reviews should be individualized to determine if non-detention measures could be



used, if diversion measures or other alternative case resolution mechanisms could be applied, and if the time period granted by the court is still justified or if it could be shortened.¹²² The automatic judicial review of pretrial detention should not be used to lengthen the time of pretrial detention without an articulated justification (*see Section 6*).¹²³

- » **Prioritize cases of children in pretrial detention:** All justice sector actors, including courts, prosecutors, public defenders, probation offices and auxiliary agencies such as evidence labs, should prioritize cases of children who are detained awaiting trial. This should include allocating more resources to these cases when necessary and setting calendars that take into account the pretrial detention or release status of children.¹²⁴

- » **Alternatives to pretrial detention:** Implementing alternatives to pretrial detention that allow children to remain in their communities during the legal process benefits children and can reduce the burden on the detention system. If courts are also prioritizing cases of children in detention, utilizing pretrial release will result in a reduced burden on the court system as fewer cases will need to be prioritized on the court's calendar freeing up resources to focus on the remaining cases in detention.¹²⁵ These alternatives should be applied as early in the legal process as possible, preferably within days of arrest.

- » **Alternative case resolution mechanisms:** International bodies have long recommended that child justice systems utilize alternative mechanisms, such as diversion and

¹²³ See, e.g., CRIMINAL PROCEDURE CODE, art. 59(3) (requiring 14-day review for pretrial detention but permitting unlimited extensions) (Eth.).

¹²⁴ See, e.g., Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes [LNSIJPA], art. 123, Diario Oficial de la Federación [DOF] 16-06-2016 (Mex.) (including a general requirement that the prosecutor's office prioritize cases of children who are detained awaiting trial, "Article 123: Highest priority in effectively advancing processes when the adolescent is detained—With the goal that pretrial detention be as short as possible, the Public Minister and Judicial Organs should consider the effective processing of cases for adolescents who are subject to this pretrial measure the highest priority . . ."). See also, the much more specific example of Baltimore *supra* Part IIb, where the state requires that in cases of juvenile pre-trial detention an "emergency arraignment" and detention hearing be held on the "next court date" and the adjudicatory hearing, or trial, be held within 30 days.

¹²⁵ See G.A. Res 45/110, United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) § 6.1 (Dec. 14, 1990) (“Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.”); *id.* at § 6.2 (“Alternatives to pre-trial detention shall be employed at as early a stage as possible.”); CRC, *supra* note 2, at art. 37(b) (“The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”); Comm. on the Rights of the Child, Sixty-Eighth Session, Concluding Observations on the Combined Third to Fifth Periodic Reports of the Uruguay, ¶ 72, U.N. Doc. CRC/C/URY/CO/3-5 (Mar. 5, 2015); Comm. on the Rights of the Child, Sixty-Sixth Session, Concluding Observations on the Combined Third and Fourth Periodic Reports of Indonesia, ¶ 78, U.N. Doc. CRC/C/IDN/CO/3-4 (July 10, 2014); Comm. on the Rights of the

restorative justice, among others, citing the benefits of reduced stigmatization and better long-term outcomes for children. These mechanisms also can reduce the case load burden on justice systems, avoiding long and costly trials. As a result, justice sector agencies can devote more resources to processing cases of children in pretrial detention more efficiently.¹²⁶

» **Adequately resource child justice systems:** Courts, prosecutors’ offices, public defenders’ offices, and auxiliary agencies should be adequately resourced in order to reduce and eliminate case backlogs that slow down case processing for children in detention.¹²⁷

» **Ensuring timely first-appearances that set pretrial conditions:** Children should be brought before the court for a detention hearing in a timely manner and without delay so that the legality of detention can be reviewed, and the court can set pretrial measures. Bail or pretrial conditions hearings should be set as soon as possible after arrest and preferably during the first court appearance.

» **End trying children in adult court:** Children should not be tried in adult courts. In countries where children can be tried in adult courts, the legal process can be much longer than in the child justice system. The process of moving a case to adult court can result in lengthy proceedings and appeals. Furthermore, adult courts often do not have the same time constraints as those of the child justice system when the defendant is detained awaiting trial.¹²⁸





Child, Fifty-Ninth Session, Consideration of Reports Submitted by State Parties Under Article 44 of the Convention, Concluding Observations: Thailand, ¶ 80, U.N. Doc. CRC/C/THA/CO/3-4 (Feb. 17, 2012); Comm. on the Rights of the Child, Fifty-Seventh Session, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Concluding Observations: Cambodia, ¶ 77, U.N. Doc. CRC/C/KHM/CO/2-3 (Aug. 3, 2011); Comm. on the Rights of the Child, Fifty-Second Session, Consideration of Reports Submitted by State Parties Under Article 44 of the Convention, Concluding Observations: The Plurinational State of Bolivia, ¶ 82, U.N. Doc. CRC/C/BOL/CO/4 (Oct. 16, 2009).”).

¹²⁶ See, e.g., Comm. on the Rights of the Child, Sixty-Eighth Session, Concluding Observations on the Combined Third to Fifth Periodic Reports of the Uruguay, ¶ 72(b), U.N. Doc. CRC/C/URY/CO/3-5 (Mar. 5, 2015) (“Promote alternative measures to detention, such as diversion, probation, mediation, counselling or community service, wherever possible . . .”).

5.2 Interagency task force to eliminate unnecessary delays¹²⁹

In most jurisdictions, creating an interagency task force with the mandate to reduce the time in pretrial detention for children by eliminating unnecessary delays is a step that does not require additional resources or changes to statutes.¹³⁰ It is a step that civil society can begin immediately. The purpose of an interagency task force is to unite all the agencies and actors responsible for case processing in the child justice system around the goal of reducing unnecessary delays in case processing for children awaiting trial in detention. Each agency involved—the court, prosecutors, public defenders, probation, pretrial services, auxiliary services (such as evidence labs), and civil society—should assign one or more representatives, ideally individuals who have the authority to make decisions and implement any agreed upon changes, to the Task Force.

The first and most important goal of the Task Force is to forge an agreement on the need to reduce the duration of pretrial detention. All members should have a clear understanding of the negative impacts of detention on children and commit to seeking to reduce the number of days children spend in pretrial detention. In jurisdictions that have strict time limits, the Task Force can serve to compel agencies and actors to adhere to those mandated time limits. In jurisdictions in which time limits are not mandated or which are complying with the legal limits, the Task Force has an important role as an advocate to limit pretrial detention periods. Often, even defense attorneys fail to recognize the need to reduce

time in pretrial detention, asking for continuances or extensions as a blanket policy, and showing little regard for or awareness of the damaging effects that detention has on their child clients. Establishing and maintaining a strong justification for the work of the Task Force is critical, even as the team works through specific issues.

The second goal of the Task Force is to identify unnecessary delays in the legal process that prolong pretrial detention. To do this, the Task Force will need to collect data, including:

1. Determining the average and median length of child pretrial detention. The average time of pretrial detention will inform the team how long on average a child spends in pretrial detention. Determining the median length will help isolate the impact of the outlier cases, those that are extremely short or extremely long for particular reasons. Whenever possible, this data should be disaggregated by crime, type of case resolution mechanisms utilized, gender, race, ethnicity, and judicial district.
2. Case process mapping, where the Task Force collects data on each step in the legal process and determines the average length that each step or phase takes, will help the Task Force identify specific stages where excessive delays cause the time in pretrial detention to become excessive.¹³¹

Collecting this data establishes a base line and will be critical in identifying

¹²⁷ *E.g.*, Rep. of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in South Sudan (Advance Unedited Version), ¶ 51-58, U.N. Doc. A/HRC/27/74 (Sept. 19, 2014) (noting that “[p]rolonged pre-trial detention has been a widespread problem in South Sudan due to the lack of resources that would be required to process cases efficiently and effectively through the statutory criminal justice system,” and indicating a need for, among other improvements, a sufficient number of public prosecutors and public defenders, increased transportation to transfer detainees, and enough social workers for children).

¹²⁸ See Section 4.2 The case study on Baltimore City, United States.

¹²⁹ For a detailed guide in setting up such a task force and collecting the critical data, see Lubow, *supra* note 16, at 34, 41–42.

where unnecessary delays are taking place. Once armed with this information, the Task Force should discuss what specific steps or processes underlie the data they have collected. This will help to determine the strategy the Task Force should implement. Some possible approaches the Task Force may take include:

- » **Automatic scheduling:** Courts, prosecutors, and public defenders could agree to setting automatic dates for specific hearings or procedural milestones. For example, the initial detention, arraignment, or bail hearings could be automatically scheduled for within one day of arrest; pretrial conferences for parties to seek negotiated settlements could be automatically scheduled for five days after arrest; and the date for intermediate hearings could also be automatically set to appropriate timeframes.¹³²
- » **Daily or weekly pretrial detention population report:** Distributed to all Task Force members and officials in the corresponding agencies (trial court judges, appeals court judges, prosecutors, public defenders and probation or pretrial services), the Pretrial Detention Population Report lists each child in pretrial detention ranked by the length of time, includes the stage in the legal process, and any necessary comments on their case. The Pretrial Detention Population Report helps all parties identify cases and prioritize resources, focus on the longest cases, and helps to prevent individual cases from falling through procedural cracks.¹³³
- » **Assign a case expeditor:** Each judicial district or courthouse could assign a specific person to act as

a Case Expediter. First, the Case Expediter would be responsible for maintaining and distributing the Pretrial Detention Population Report. Second, the Case Expediter would monitor individual cases, determine if cases are being delayed at specific stages of the process, and raise case processing issues in specific cases with relevant officials and agencies (i.e. make prosecutors aware the cases are approaching time limits or contact forensic departments to prioritize cases that are taking long to process).¹³⁴

- » **Identify causes of backlogs and redirect resources:** Using the data collected, identify specific choke-points, issues that cause backlogs, and redirect resources to troubled spots in the process. For example, evidence labs that hold cases for too long, prosecutors' offices that wait to file cases or complete investigations, public defenders who, as policy, file for extensions whether necessary or not, or clerical issues such as counting business days rather than actual days. Once identified, the Task Force should seek to create interagency agreements, such as:
 - Obtain agreements to limit unnecessary postponements.
 - Set clear policies and notification systems for legal parties.
 - Set standards for timeliness of psychological evaluations, pretrial service risk assessments, and other support agency protocols that may cause delays in the process.
 - Schedule the negotiation meeting at the initial hearing so parties can begin seeking a resolution through an alternative mechanism immediately.

¹³⁰ See e.g. example of Baltimore City, U.S. *supra* Part IIb (creating new case processing protocols requiring cooperation from various agencies).

¹³¹ See e.g. 2001 Baltimore Case Processing Study, *supra* note 112, at 3; Baltimore Case Processing Study: 2004 Follow up *supra* note 113, at 3 (providing examples of how data collection informs stakeholders of the impact of processing reforms).

¹³² See Baltimore City example *supra* Part IIb for an example of the success of automatic scheduling in reducing case processing delays.

¹³³ See Baltimore City example *supra* Part IIb: data collection through the Juvenile Court Information System allowed stakeholders to understand and reduce delays in the judicial system.

¹³⁴ Lubow, *supra* note 16, at 25.

- Identifying populations at high risk of extended periods of pretrial detention, such as children with language barriers, parents who cannot appear at court due to economic or distance issues, or children without immigration status.

If the Task Force membership includes key stakeholders, is fully committed to the goal of reducing the number of days children are detained, and has reliable data on existing case processing practices, it will develop its own specific diagnosis of the problem and solutions that can be evaluated over time.

5.3 Addressing objections from justice sector officials

Implementing reforms on the local level requires collaboration, coordination and a shared purpose by civil society and government actors. However, it is common that justice sector officials will be resistant to efforts to speed up case processing times and limit pretrial detention durations. These objections can come from surprising places, as actors that are traditionally supportive of improving conditions or promoting community-based alternatives may be reluctant to examining their role or changing their institution's practices. Examples of stakeholders and their possible rationale for withholding support for these reforms follows.

Judges:

Judges are concerned with due process, the orderly administration of their court and court calendar, and adhering

to the law. There may be concerns that efforts to “speed up” trials could trample on due process rights. If judges are generally following statutory limits for pretrial detention, efforts to further reduce pretrial detention durations by implementing good practices may be met with resistance because they are already complying with the law.

Prosecutors:

Prosecutors are concerned with collecting adequate evidence and securing convictions. If there is a plea bargain process, prosecutors may view pretrial detention as a valuable tool in convincing victims that justice is being done, and convincing defendants that they should acquiesce to a negotiated settlement.

Defense attorneys:

Defense attorneys and public defenders in some systems may be accustomed to using delay tactics to achieve strategic advantages or better prepare their cases. Unfortunately, in some cases private defense attorneys may also be delaying in order to pressure defendants to pay lawyer fees.

Responding to objections:

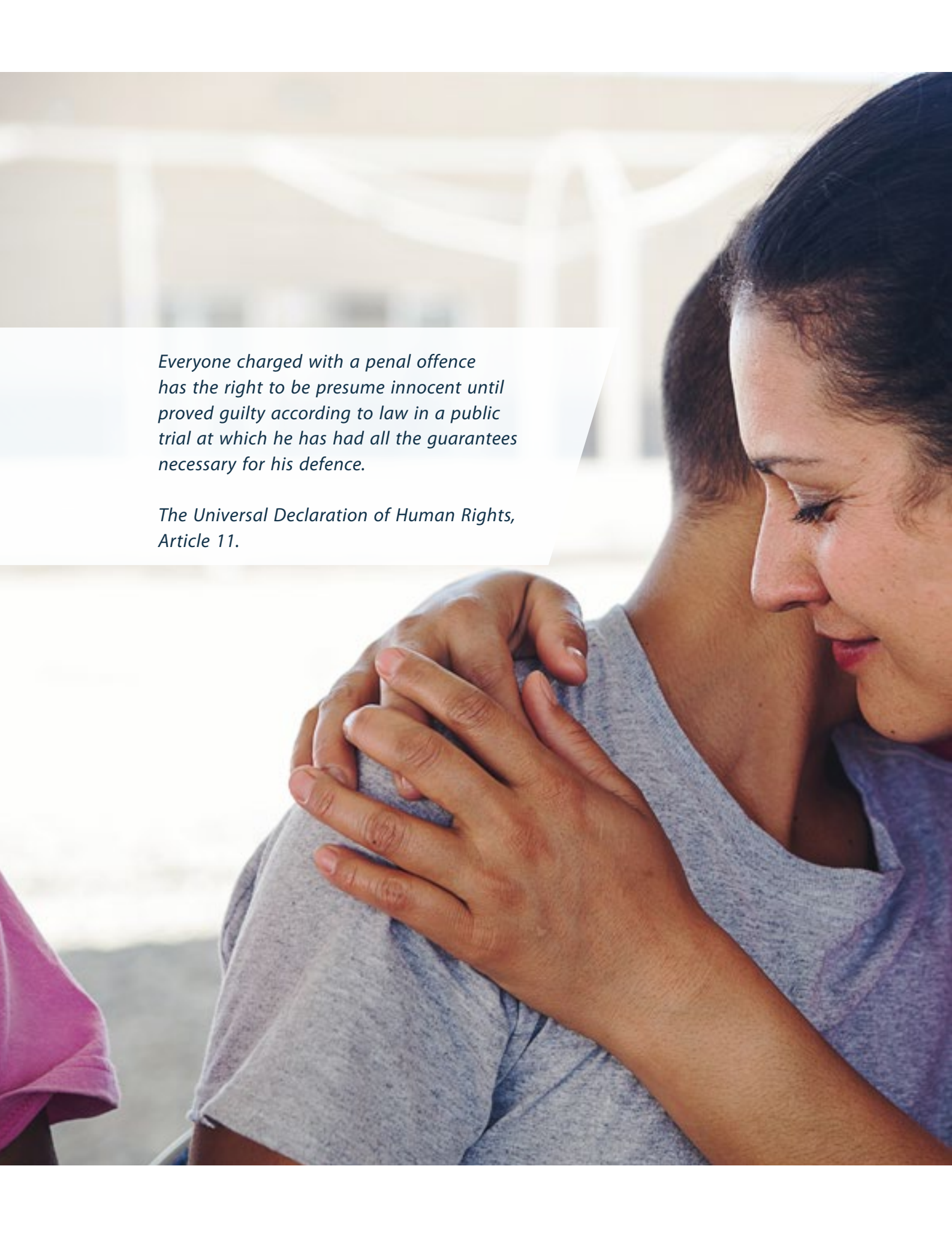
It is important that judges, prosecutors, and defense attorneys understand that reducing pretrial detention times cannot come at the cost of other important procedural rights. Describing reform efforts as reducing “unnecessary” case processing delays may achieve a better reception. Collecting data and justifying interventions based on actual practices will secure buy in for the need for change.



In situations prosecutors or defense attorneys are concerned with having adequate time to prepare their cases, if the statutes use language that allow for extensions based on procedural necessity, it may help practitioners view extensions as a safety valve for the rare complicated case that truly needs more time. Parties must also have a clear understanding of the purpose of pretrial detention and that it is not a tool to leverage more favorable plea bargains from child defendants. They also must understand the impact that pretrial detention can have on children, especially to avoid the child's own defense from causing unnecessary delays.

By adopting and implementing these emerging good practices, states can significantly reduce the harm to

children. Even small decreases in the duration of pretrial detention can significantly reduce overcrowding of facilities, freeing resources for those remaining in detention. Shortening the legal process can also have benefits for children on pretrial release, as violations of pretrial release conditions are less likely if children await trial for shorter periods of time, which in turn will increase capacity of alternative to detention programs. Finally, by engaging a broader range of stakeholders beyond just prison officials to include judges, prosecutors, and defense attorneys, local justice systems can create a shared sense of responsibility for the well-being of children in detention and the need to reduce the time children spend behind bars.

A close-up photograph of a woman with dark hair, wearing a grey t-shirt, looking down with a somber expression. Her face is partially in shadow. Two hands are gently holding her shoulders from behind, providing comfort. The background is a blurred outdoor setting with white structural elements.

Everyone charged with a penal offence has the right to be presume innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

*The Universal Declaration of Human Rights,
Article 11.*

A close-up photograph of a person's ear and dark hair, partially obscured by a blue triangular graphic element that serves as a background for the title.

6. Recommendations for stronger international standards

In reducing the time that children spend in pretrial detention, it is necessary to leverage the unique role that international human rights bodies have in setting standards and recommendations for states to follow. The following are proposed international standards to limiting the time children are allowed to spend in pretrial detention:

6.1 Recommendation: Clarify the purpose of the length pretrial detention

Pretrial detention, like all forms of deprivation of liberty, must be used as a last resort, in exceptional circumstances, and for the shortest period of time possible.¹³⁵ However, according to the CRC, pretrial detention is specifically meant to safeguard the legal process, not for punishment or rehabilitation.¹³⁶ This means that pretrial detention decision should never be based solely on the crime charged, as this violates the presumption of innocence. Any pretrial measure, including pretrial detention, must be based on the procedural risks—risk of flight, risk to the victim and the risk of the obstruction of justice—and the pretrial measure must be proportional to the procedural risk.¹³⁷

While the decision between pretrial detention and pretrial release must be based on procedural necessity, human rights bodies rarely specifically addressed the basis for the *duration* of pretrial detention. When they do, as the European Court of Human Rights has, the justification for extending the time is vague “public interest.”¹³⁸ As a result, as seen in Section 3, some countries adopt pretrial detention durations based on the crime charged, the age of the child, or the length of the eventual sentence.

¹³⁵ CRC, *supra* note 2, art. 40(3)(b); CRC General Comment 10, *supra* note 3, ¶¶ 23–25, 28; Beijing Rules, *supra* note 45, ¶¶ 11, 18.

¹³⁶ CRC General Comment 10, *supra* note 3, at ¶ 80.

¹³⁷ *Id.*; Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II., Doc. 34, ¶ 393 (June 28, 2007); Juvenile Justice and Human Rights in the Americas, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II., Doc. 78, ¶ 281 (July 13, 2011).

¹³⁸ *Smirnova v. Russia*, App. Nos. 46133/99 and 48183/99, Eur. Ct. H.R. (2003).

Human rights bodies should clarify that the duration of pretrial detention must be justified based on the procedural need of the case at hand, just like the decision on whether to detain awaiting trial or not. Decisions regarding the duration of pretrial detention should be individualized decisions based on the procedural requirements of the case at hand and any extension of that time should also be justified on the procedural need. Basing the duration of pretrial detention solely on the crime charged, age of the child, or even public security erodes the presumption of innocence.

6.2 Recommendation: New international standard on child pretrial detention

Without international guidance on acceptable time limits for child pretrial detention, it is unreasonable to conclude that countries will enact a ceiling that is compatible with international principles. Not only is it imperative for human rights bodies to adopt specific standards, including absolute ceilings on pretrial detention, but they should also recommend these specific good practices to countries in concluding observations.

1. International, regional, and national human rights bodies should consider that a 30-day maximum for children detained while awaiting trial is in the best interests of the child. Judges should set the time limit in individual cases based on the specific procedural circumstances of the case, which should be shorter than 30 days, whenever possible.

2. The duration of 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 at hand, and upon 1) a request by the defense that justifies the extension; 2) a request by the prosecution and a showing that more time is absolutely essential to secure evidence that is necessary and cannot otherwise be obtained, or; 3) a showing of other exigent circumstances in the present case that justifies the extension. When extending the period of pretrial detention, the judge should limit it to the shortest time that is absolutely necessary, based on the procedural needs of the case and justified by the parties, rather than as a rule to extend the pretrial detention time by 30 days.
3. Children who are in detention for the statutory maximum number of days should be placed in supervised release immediately and not re-detained for that same offence.
4. These standards should be based on the understanding that pretrial detention starts at the moment of arrest or initial detention and ends at the moment that the court establishes a final sentence.

6.3 Recommendation: Collect data and report on pretrial detention times

International, regional, and national human rights bodies should request data from states on how long children spend in pretrial detention. This data should include indicators where children were detained longer than the statutory maximum and provide



explanations as to why. International bodies, such as the UN's Committee on the Rights of the Child, Committee Against Torture, and Human Rights Council, should request this information from states during their periodic reviews.

The UN Sustainable Development Goals should incorporate indicators that will illuminate the use of child pretrial detention. Specifically, goal 16.3, which is to “promote the rule of law at the national and international levels and ensure equal access to justice for all” includes indicator 16.3.2, which refers to unsentenced detainees as a proportion of overall prison population. This indicator should be disaggregated by adults and children.

The Global Study on Children Deprived of Liberty (GSCDL), previously approved by the UN General Assembly, should include indicators on children in pretrial detention and the amount of time they are detained awaiting trial.¹³⁹

It is critical that international human rights bodies adopt stricter guidelines on child pretrial detention time limits. Such guidance can have an immediate impact for hundreds of thousands of children. It will encourage state legislatures to adopt better statutory limits, give additional advocacy tools to local human rights bodies and civil society, and influence national constitutional courts as they review pretrial detention limits and speedy trial guarantees.

¹³⁹ G.A. Res. 69/157, ¶ 52(d) (Feb. 3, 2015).



A black and white photograph showing a window with a brick wall and a patterned blanket. The window is on the left, and the brick wall is in the center. A patterned blanket is visible at the bottom. A dark blue triangular shape is overlaid on the right side of the image, containing the section header.

7. Additional research recommended

This report is an important step toward improving protections for children deprived of their liberty. At the same time, additional research is needed to gain a more complete understanding of the use and duration of pretrial detention of children. Further research can also determine what additional international standards and recommendations may be needed and highlight other promising practices that exist. The following are some additional areas of research:

- » Collect data on the actual times children spend in pretrial detention. This will help to understand state practices where there are no statutory maximums, if statutory maximums are followed in states that have adopted them, how exceptions to time limits are utilized, and the ways in which significant case backlogs affect pretrial detention times.
- » Research states' handling of appeals and constitutional challenges pending while a child is in pretrial detention and how they impact the duration of pretrial detention.
- » Research the use of police detention of children, both in existing standards and actual state practices, to determine how long children can be and are held prior to the police presenting them to the prosecutor's office or the court.
- » Research standards and state practices related to initial court appearance and determinations of legality of initial detention and judicial control of detention of children.



Conclusion

The right to a fair trial is realized in the process of moving a case from arrest to final resolution and sentence. When courts, prosecutors, public defenders, and the justice system as a whole fail to efficiently and effectively process cases, this right is jeopardized. Children detained awaiting trial are the most at risk when this process breaks down. This results in the suffering of tens, perhaps hundreds of thousands of children in prisons around the world. Every day a child spends behind bars is one less day the child can spend in school, with family, and in his or her community. The international community, international human rights bodies, regional human rights bodies and leading NGOs need to establish stronger standards restricting the time these children will languish in prison awaiting trial.





Appendix 1: Methodology and scope of the global survey

Key Definitions:

Child – Any person under the age of 18. For the purposes of children in conflict with the law, a child is any person who is accused of an offence that occurred before that person turned 18 years of age. The term “youth” may be used interchangeably.

Children in conflict with the law – Any child who comes into contact with the justice system as a result of being suspected or accused of committing an offence.

Pretrial detention – the detention of a person accused of a crime from the time of the initial detention, such as the arrest by police or an order of remand by a judge, until the case is resolved through a trial or alternative mechanism and legal responsibility is assigned, and a sentence is established. Pretrial detention is also referred to as preventative detention or remand detention. It is acknowledged that in some civil law countries this includes appeals to the court of second instance; however, that is not universal. Regarding appeals, for the purposes of this report, the pretrial detention time is defined as each nation’s statute defines it when that information was available. Most statutes did not explicitly include or exclude the appeal process from the pretrial detention period (*see Section 7* recommending additional research into the issue of

how countries account for appeals during pretrial detention).

Methods: This research 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. The list of statutes and sources is available in Appendix 2.

In defining the statutory time period of pretrial detention, when possible, this 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. Cape Verde, for example, orders release from pretrial detention if four months have elapsed without charge, and up to 22 months without a final judgment.¹ Where the statute did not provide a length of days or it was unclear, we left the number of days based on the national law’s definition of pretrial detention (such as in the case of Malawi, where pretrial detention was defined until the commencement of the trial, but there was no statutory limit to how long a trial could last for children in detention;² or case of Mauritius where

¹ Código de Processo Penal [Criminal Procedure Code], Decreto-Legislativo nº2/ 2005, art. 279 (Cape Verde).

² Criminal Procedure and Evidence Code, Ch. 8:01, § 161(D) (Malawi).

pretrial detention time limit appears to apply to periods between court appearances, but is otherwise unlimited).³

The number of days were calculated at 30 days per month when the statute 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, or 180 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, we made that calculation (such as in Cape Verde, which permits extensions for pretrial detention if the crime is punishable by more than eight years of imprisonment).⁴ 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 we added the longest possible number of days allowed 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 (*see Section 7* calling for research into the time held by police before initial hearings).

Most jurisdictions did not indicate any time limit for children in pretrial detention pending appeals. For the sake of uniformity, we only used limits based on pretrial detention before the first adjudication. 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. More research is needed in this area (*see Section 7*).

Scope: The global survey covered 118 jurisdictions. In most cases “jurisdictions” refers to countries or UN Member States but also includes sub-national regions where different criminal procedural laws applied. For example, China and Hong Kong are treated as two jurisdictions or data points because they have different child justice systems; but Greenland and Denmark are treated as one country or data point as they have one child justice system. In the case of the United States, the federal criminal justice code is used for all international comparisons. However, the majority of children are tried within state criminal justice systems. These are not included in the global survey but can be examined in Appendix 4.

In the case of Argentina, which has a federal structure where each province has their own child justice system, the data was insufficient from individual provinces and therefore, this report does not include Argentina. In Australia, only the state of Victoria has a statutory limit for child pretrial detention; Australia was therefore classified as not having a limit.

In the case of countries that were researched but no limit was located in the child justice or criminal procedural statutes, the countries were only included if it could be determined that there was no time limit. If it could not be determined, the country was not included. The global survey includes 118 countries (including Hong Kong) out of 194 UN Member States. Appendix 4 includes all 50 US states plus the District of Columbia

³ Bail Act (Act No. 32/1999) art. 4(6) (Mauritius) (“A defendant or a detainee whose release on bail is refused . . . shall be remanded in custody for a period not exceeding 21 days, after which the defendant or detainee shall be brought again before the Court.”).

⁴ Código de Processo Penal [Criminal Procedure Code], Decreto-Legislativo nº2/ 2005, art. 279 (Cape Verde).

Appendix 2: Relevant international instruments

Name	Relevant Articles
U.N. Convention on the Rights of the Child (Nov. 20, 1989).	<p><i>Article 37</i> States Parties shall ensure that: (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.</p> <p><i>Article 40</i> 1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. 2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;</p>
U.N. Rules for the Protection of Juveniles Deprived of their Liberty (Dec. 14, 1990).	<p><i>Preamble:</i> Aware that juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights...</p> <p>1. Affirms that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period;</p> <p><i>Article 17</i> Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.</p>
United Nations Standard Minimum Rules for the Administration of Juvenile Justice (" The Beijing Rules ") (1985).	<p>13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.</p>
United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (Dec. 14, 1990)	<p>6. <i>Avoidance of pre-trial detention</i></p> <p>6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.</p>
U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988).	<p><i>Principle 37:</i> A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.</p> <p><i>Principle 38:</i> A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.</p>

IV

Name	Relevant Articles
<p>U.N. International Covenant on Civil and Political Rights (Dec. 16, 1966).</p>	<p><i>Article 9</i> 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.</p> <p><i>Article 10</i> 10.2(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.</p>
<p>[European] Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, and 8 which entered into force on 21 September 1970, 20 December 1971 and 1 January 1990 respectively)</p>	<p><i>Article 5: Right to liberty and security</i> 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; ... 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.</p>
<p>Organization of American States, American Convention on Human Rights (Nov. 22, 1969)</p>	<p>Art 5 §5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.</p> <p><i>Article 7. Right to Personal Liberty</i> 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.</p>
<p>African Charter on the Rights and Welfare of the Child (Nov. 29, 1999)</p>	<p><i>Article 17: Administration of Juvenile Justice</i> 2. States Parties to the present Charter shall in particular: (a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment; (b) ensure that children are separated from adults in their place of detention or imprisonment; (c) ensure that every child accused in infringing the penal law: (i) shall be presumed innocent until duly recognized guilty; ... (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal; ...</p>

Appendix 3: List of statutory pretrial detention limits by country

Country	UN Regional Group	Type of Statute	Base Limit	Extension Limit	Child Specific Limit	Explanation of Statutory Limit	Citation
Algeria	Africa	Blanket limit with exceptions	120	485	No	Can extend by four months one time in crimes with imprisonments longer than three years. Can extend by four months two times in some serious criminal matters. Can extend by four months three times in crimes with imprisonments longer than 20 years.	Code of Criminal Procedure: Art. 125
Angola	Africa	(none)	N/A			No statutory limit.	Codigo Processo Penal, art. 310, https://www.legal-tools.org/doc/41fd4d/pdf/ .
Benin	Africa	Blanket limit with exceptions	180	730	No	Can extend by six months in correctional matters. Can extend by six months up to three times in some criminal matters.	Code of Criminal Procedure, Section X, Art. 147, http://acjr.org.za/resource-centre/Benin%20CPC.pdf/view
Botswana	Africa	Blanket	180		No	Maximum 31 days detention between arrest and initial trial. Maximum six months total pretrial detention.	Criminal Procedure and Evidence, ART. 133. https://www.ilo.org/dyn/natlex/docs/ELECTRON-IC/61337/92022/F805974928/BWA61337.pdf
Burkina Faso	Africa	Blanket	180		No	Six-month maximum.	http://www.ohchr.org/Documents/HRBodies/CED/StatesReportsarticle29/CED-C-BFA-1-E.pdf
Burundi	Africa	(none)	N/A			Shortest period of time.	https://www.crin.org/en/docs/burundi0307web.pdf
Cabo Verde	Africa	Procedural	660	1095	No	Maximum pretrial detention: four months until charge, eight months until preliminary hearing, sixteen months until conviction, twenty-two months until final judgement. Exceptions allowable for increase to six, twelve, twenty-four and thirty months respectively based on nature of crime. Absolutely cap of 36 months.	Código de Processo Penal [Criminal Procedure Code], Decreto-Legislativo nº2/ 2005, art. 279 (Cabo Verde).
Cameroon	Africa	Blanket limit with exceptions	180	545	No	General: Six-month maximum, six-month allowable extension for offense, 12-month allowable extension for crime. Juvenile: 12-14-year old's: pretrial detention only in murder or death cases.	Code de Procédure Pénale (Loi No. 2005/007) art. 221 (Cameroon).
Central African Republic	Africa	Varies by violation // VVS	120	485	No	Ages 14 and above may be detained; measure of last resort. Can extend by two months one time. Can extend by four months one time for serious crimes.	Code of Criminal Procedure; Art. 96-98, http://www.ilo.org/dyn/natlex/docs/SE-RIAL/88120/100660/F498635820/CAF-88120.pdf
Congo (Democratic Republic of the)	Africa	Blanket	60		Yes	Juvenile: Two-month maximum.	Loi No. 09/001 du 10 janvier 2009 portant protection de l'enfant, Art. 108, http://www.leganet.cd/Legislation/JO/2009/L.09.001.10.01.09.htm#TIIICIIISII

Country	UN Regional Group	Type of Statute	Base Limit	Extension Limit	Child Specific Limit	Explanation of Statutory Limit	Citation
Congo (The Republic of)	Africa	Varies by age; varies by violation // VVS	30	300	Yes	15 and older: Six-month maximum. 15 and younger: Six-month maximum, one 15-day extension allowable. One four-month extension allowable.	Loi No. 4-2010 du 14 juin 2010 portant protection de l'enfant en République du Congo, Article 74.
Côte d'Ivoire	Africa	Varies by violation // VVS	180	485	No	Correctional: Six-month maximum. Six-month potential sentence or less: extension of five days allowed. All other sentences: extension of four months allowed. Criminal: 18-month maximum.	Code of Criminal Procedure, Art. 138 (LOI N° 98-746 DU 23/12/1998), https://www.unodc.org/res/cld/document/civ/1960/loi-no-60-366-du-14-novembre-1960-portant-code-de-procedure-penale.html/ Cote d'Ivoire Loi No 60-366 du 14 Novembre 1960 portant code de procedure penale.pdf
Djibouti	Africa	Varies by violation // VVS	120	485	No	Correctional and less than one-year potential sentence: One-month maximum. Correctional, two-year potential sentence: Four-month maximum, two-month allowable extension. Correctional: Three five-year potential sentence: Four-month maximum, two four-year allowable extensions. Five-year potential sentence: third four-month extension allowed.	Code of Criminal Procedure, Art. 135-136, http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92316/07449/F-1995265301/DJI-92316.pdf
Egypt	Africa	Blanket limit with exceptions	45	365	No	15-day maximum. Allowable extension to 45-day total. Six-month maximum if accused of crime.	Egyptian Code of Criminal Procedure, Art. 142, https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf
Eritrea	Africa	Blanket limit with exceptions	30	unlimited	No	30-day maximum, may extend as necessary.	Code of Criminal Procedure, Art. 80(7), http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101053/121589/F-308052584/ERI101053%20Eng.pdf
Ethiopia	Africa	Blanket limit with exceptions	14	unlimited	No	14-day maximum, extensions allowable for 14 days at a time.	Criminal Procedure Code, art. 59(3) (Eth.).
Gambia	Africa	Varies by violation // VVS	90	180	Yes	Juvenile: Three-month maximum for crimes, six-month maximum for serious crimes.	Children's Act 2005, Art. 212 (7), http://www.africanchildforum.org/cfr/Legislation%20Per%20Country/Gambia/gambia_children_2005_en.pdf
Ghana	Africa	Blanket limit with exceptions	90	180	Yes	Juvenile: Three-month maximum, extension up to six months allowable for offence punishable by death.	Juvenile Justice Act of 2003 (Act No. 653) § 23 (Ghana), http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88528/101253/F145480142/GHA88528.pdf
Kenya	Africa	Varies by potential sentence // VVS	90	180	Yes	Juvenile: Six months maximum in the case of an offence punishable by death; or three months maximum in the case of any other offence.	The Children Act (2001) Cap. 141 § 194 (Fifth Sched. § 10) (Kenya). http://www.unesco.org/education/edurights/media/docs/f587bfa8b-9536d479977207b897d7a3223f57ed.pdf
Lesotho	Africa	Blanket	90		Yes	At the end of the pretrial detention, the judge may extend the detention once by four months.	Children's Protection and Welfare Act (Act No. 7/2011) § 132 (Lesotho). http://jafbase.fr/docAfrique/Lesotho/children%20act%20lesotho.pdf
Liberia	Africa	(none)	N/A			General: 10-day maximum. Juvenile: Detention as last resort.	Liberia: Criminal Procedure Law, §13.13, http://www.refworld.org/docid/3ae6b5410.html

Country	UN Regional Group	Type of Statute	Base Limit	Extension Limit	Child Specific Limit	Explanation of Statutory Limit	Citation
Libya	Africa	Blanket limit with exceptions	30	unlimited	No	15-day maximum, allowable 30-day extension after hearing.	CODE OF CRIMINAL PROCEDURE arts. 122–23, 318 & 320 (Libya).
Malawi	Africa	Blanket limit with exceptions	30	90	No	30-day maximum (subordinate court and high court). Allowable extension one month.	Criminal Procedure and Evidence Code, Ch. 8:01, § 161(D) (Malawi). http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=90376&p_classification=01.04
Mali	Africa	Blanket limit with exceptions	90	365	Yes	Juveniles over 13: Three-month maximum.	ORDONNANCE N°02-062/P-RM DU 05 JUIN 2002, Art. 108, http://www.unesco.org/education/edurights/media/docs/c1c5d5eb0edb-7d18bb8134184f16acf64533fe9b.pdf
Mauritania	Africa	Blanket limit with exceptions	180	300	Yes	Juveniles: Six month maximum, one four-month extension allowable.	Ordonnance n°2005-015 portant protection pénale de l'enfant, Art. 161, http://www.ilo.org/dyn/natlex/docs/MONO-GRAPH/73641/75348/F518879681/MRT-73641.pdf.%20
Mauritius	Africa	Blanket	21		No	21 day maximum	Bail Act 1999, art. 4-6, http://attorneygeneral.govmu.org/English/Documents/A-2%20Acts/B/Page%201/BAIL1.pdf
Nigeria	Africa	(none)	N/A			No statutory maximum	(Child's Rights Act 2003 (Nigeria) Art. 212 (federal system limits reach of Act).
South Africa	Africa	(none)	N/A			No statutory maximum	Child Justice Act of 2008 (South Africa) Art. 26, http://www.justice.gov.za/legislation/acts/2008-075_childjustice.pdf
Tanzania (United Republic of)	Africa	(none)	N/A			No statutory maximum	Law of the Child, (Tanzania), Art. 29(1).
Tunisia	Africa	(none)	N/A			No detention for children under 15 in correctional facilities. For other juveniles, no statutory maximum.	CODE DE LA PROTECTION DE L'ENFANT (Tunisia), Art. 13 & 94, http://www.e-justice.tn/fileadmin/fichiers_site_francais/codes_juridiques/Code_de_la_protection_de_l_enfant.pdf
Uganda	Africa	Varies by potential sentence // VVS	90	180	Yes	Juvenile: 90 days for serious offenses 180 days for crimes punishable by death.	The Children Act (1997) Cap 59 pending amendment: The Children (Amendment) (No. 2) Bill, 2015, Section 90(5), http://www.icrc.org/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/738fcd999d6976a8c125767e004c5fa6/\$FILE/THE%20CHILDREN%20ACT.pdf
Zimbabwe	Africa	(none)	N/A			No statutory limit	Children's Act, (Zimbabwe), Art. 84, https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/childrens_act.pdf

Country	UN Regional Group	Type of Statute	Base Limit	Extension Limit	Child Specific Limit	Explanation of Statutory Limit	Citation
Afghanistan	Asia-Pacific	Varies by violation // VVS	7	60	No	Misdemeanors: Seven days. Felonies: 15 days.	Criminal Procedure Code (Presidential Decree No. 137 of Feb. 23, 2014) Art. 100 (Afg.), translated in Justice Sector Support Program (Mar. 9, 2014), https://www.unodc.org/res/cld/document/criminal-procedure-code.html/Criminal_Procedure_Code_-_Endorsed_by_President_EN_2014_03_14_with_TOC.pdf
Brunei Darussalam	Asia-Pacific	(none)	N/A			No statutory maximum	Criminal Procedure Code §238(1) and (2), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/155/15/PDF/G1515515.pdf?OpenElement Children and Young Person's Act 2012 (Revised from 2006) Cap. 219 §61-62 "61, http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/73344/115574/F-1341495003/BRN73344%20.pdf
Cambodia	Asia-Pacific	Varies by potential sentence; varies by age // VVS	60	180	Yes	Misdemeanors: Ages 14-15: 60 days Ages 16-18: 120 days Felonies: Ages 14-15: 120 days Ages 16-18: 180 days	Criminal Procedure Code art. 203-204, 213-214 (Cambodia), https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814242.pdf
Hong Kong	Asia-Pacific	(none)	N/A			No statutory maximum	Juvenile Offenders Ordinance, Cap. 226 , § 3E(3) https://www.elegislation.gov.hk/hk/cap226/en
India	Asia-Pacific	Blanket limit with exceptions	120	180	Yes	Juvenile: Inquiry within four months with max two-month extension.	Juvenile Justice (Care and Protection of Children) Act, 2015, art. 12(3), 14(2), & 22, http://www.oit.org/dyn/natlex/docs/ELECTRONIC/103210/125204/F-813530216/IND103210.pdf
Indonesia	Asia-Pacific	Blanket limit with exceptions	10	25	Yes	10-day limit on pretrial detention 15-day extensions allowable at request of judge.	Sistem Peradilan Pidana Anak (Juvenile Criminal Justice System), Undang-Undang Nomor 11 Tahun 2012, art. 35 (Indonesia).
Iran (Islamic Republic of)	Asia-Pacific	(none)	N/A				Iran's Code of Criminal Procedure for Public and Revolutionary Courts: Art 224, http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html
Iraq	Asia-Pacific	(none)	N/A			No statutory maximum	Iraq Juvenile Welfare Act of 1983, Chpt 1, Art 51, http://gipi.org/wp-content/uploads/juvenile-welfare-law-76-of-1983.pdf
Japan	Asia-Pacific	Blanket	60		Yes	Juvenile: Eight week maximum	Juvenile Act, Law: Act No. 168 of 1948, Amendment: Act No. 71 of 2008, Art. 17 (9), http://www.japaneselawtranslation.go.jp/law/detail/?id=1978&vm=02&re=02
Kazakhstan	Asia-Pacific	Blanket limit with exceptions	60	545	No	Juvenile: Two-month maximum. May extend to three-months or nine months for investigation. May extend to 12 months for suspicion of particularly serious crime. May extend to 18 months for exceptional cases and suspicion of serious crime.	Criminal Code of Procedure (Kazakhstan), Art. 147 & 151, http://www.legislationline.org/documents/section/criminal-codes/country/21 UNICEF article "Juvenile Justice in Kazakhstan", at footnote 29, indicates that general criminal law of pretrial detention applies to juveniles https://www.unicef.org/eca/UNICEF_JJ_Kazakhstan_2011.pdf

Country	UN Regional Group	Type of Statute	Base Limit	Extension Limit	Child Specific Limit	Explanation of Statutory Limit	Citation
Kyrgyzstan	Asia-Pacific	Blanket limit with exceptions	60	365	No	Two-month maximum, extension allowable to six months, nine months or one year for investigation.	Code of Criminal Procedure, (Kyrgyzstan), Art. 111 & 114, http://www.legislationline.org/documents/section/criminal-codes/country/20
Lao (People's Republic)	Asia-Pacific	Blanket limit with exceptions	30	270	Yes	Juvenile: one month maximum. May extend one month at a time. May extend up to four months total for major offense and eight months total for capital crime.	Law on Juvenile Criminal Procedure, see https://www.unicef-irc.org/portfolios/documents/404_laos.htm , http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fLAO%2f3-6&Lang=en
Malaysia	Asia-Pacific	(none)	N/A			14-day maximum for offense punishable by death. 7-day maximum crime punishable by 14-year imprisonment.	See https://idosi.org/wasi/wasj35(9)17/17.pdf Criminal Procedure Code, art 117 & 172A, http://ccid.rmp.gov.my/Laws/Act_593_-_Criminal_Procedure_Code_(CPC).pdf ; Child Act (2001), Art 611 Sec 86(2), https://www.unicef.org/malaysia/Child-Act-2001.pdf
Mongolia	Asia-Pacific	Blanket limit with exceptions	730	910	No	24-month maximum, may extend for six additional months.	Bureau of Democracy, Human Rights and Labor, Mongolia 2016 Human Rights Report, 6, U.S. Dep't State (2017), https://www.state.gov/documents/organization/265568.pdf .
Myanmar	Asia-Pacific	(none)	N/A			No pretrial detention for juveniles.	Child Law Chapter X Sec. 41 (c) and (f)
Nepal	Asia-Pacific	Varies by violation; varies by age // VVS	180	unlimited	Yes	General: Maximum pretrial detention is maximum possible term of punishment. Juvenile: Six-month maximum.	Muluki Ain, no 119 of Chapter on Court Management, http://www.lawcommission.gov.np/en/documents/2015/08/muluki-ain-general-code-2020.pdf ; Children's Act, amended in 2000, art. 11, http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=30034&p_country=NPL&p_count=117 , http://www.nepaldemocracy.org/documents/national_laws/children_act.htm
Pakistan	Asia-Pacific	Varies by potential sentence // VVS	120	unlimited	Yes	Juvenile: Four-month maximum. One-year maximum for crime punishable by death. Six-month maximum for crime punishable by imprisonment for life. Four-month maximum for other crimes. Children over 15 years old: court may refuse to grant bail based on seriousness of crime.	Juvenile Justice System Ordinance, Art 4(6) & 10 http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81784/88955/F1964251258/PAK81784.pdf ; Criminal Code of Procedure, Art. 497, https://www.oecd.org/site/adboecdanti-corruptioninitiative/39849781.pdf
Philippines	Asia-Pacific	(none)	N/A			Maximum pretrial detention equals maximum possible imprisonment for crime.	Juvenile Justice and Welfare Act of 2006, Sec. 36 & 65, http://www.congress.gov.ph/legisdocs/ra_13/RA09344.pdf Revised Penal Code, RA 10592, art. 29 http://www.congress.gov.ph/legisdocs/ra_15/RA10592.pdf Speedy Trial Act, Sec. 6, http://www.chanrobles.com/republicactno8493.htm#_Wk0dEiOZPow
Qatar	Asia-Pacific	Blanket	180		No	Six-month maximum.	General Qatari Criminal Procedure of 2004, Art 117, http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91461/106075/F1506630289/QAT91461%20Eng.pdf
Saudi Arabia	Asia-Pacific	Blanket	180		No	Juvenile: Five-day maximum. May extend up to six months.	Saudi Arabia Law of Criminal Procedure, Sec. 1Art. 13 & Sec. 8, Art. 114, http://www.wipo.int/wipolex/en/text.jsp?file_id=239144

Country	UN Regional Group	Type of Statute	Base Limit	Extension Limit	Child Specific Limit	Explanation of Statutory Limit	Citation
Singapore	Asia-Pacific	Blanket	365		No	12-month maximum.	Criminal Law (Temporary Provisions) Act Sec. 30(a), https://sso.agc.gov.sg/Act/CLTPA1955 Children and Young Persons Act Sec. 53(2) & 88(1), https://sso.agc.gov.sg/Act/CYPA1993#pr53-
Sri Lanka	Asia-Pacific	(none)	N/A			No statutory limit.	See UNICEF Juvenile Justice In South Asia, p.108, https://www.unicef.org/rosa/Juvenile_Justice_in_South_Asia.pdf
Tajikistan	Asia-Pacific	Varies by violation // VVS	180		No	Six-month maximum.	6 months max, in principle only for serious crimes https://www.unicef.org/evaldatabase/files/Tajikistan_Juvenile_Justice_Alternative_Project_Evaluation_Report_2014-010.pdf Criminal Code of Procedure available online in Russian here: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=83445&p_classification=01.04
Turkey	Asia-Pacific	Blanket limit with exceptions	365	1095	No	Crimes not under jurisdiction of Court of Assizes: One-year maximum, six-month allowable extension. Crimes under jurisdiction of Court of Assize: two-year maximum, one-year allowable extension.	Ceza Muhakemesi Kanunu [Criminal Procedure Code] art. 102 (Turk.), translated by Feridum Yenisey (2009), https://www.unodc.org/res/cld/document/tur/2005/turkish_criminal_procedure_code_html/2014_Criminal_Procedure_Code.pdf
United Arab Emirates	Asia-Pacific	Blanket limit with exceptions	7	unlimited	Yes	Juvenile: One week maximum.	Federal Law No. (9) of 1976 Concerning Delinquent Juveniles and Homelessness Art. 28/2 (UAE). https://www.dxbpp.gov.ae/pdfs/lv_EN.pdf
Uzbekistan	Asia-Pacific	Blanket limit with exceptions	90	365	No	Three-month maximum. May extend to one-year total.	General Criminal Code of Procedure, Art 245, http://www.legislationline.org/download/action/download/id/1713/file/d6356a54f81eebad3ba253f23eac.htm/preview
Viet Nam	Asia-Pacific	Varies by violation // VVS	90	485	No	General: two months for less serious offenses, may extend by one month. Three months for serious offenses, may extend by two months. Four months for very serious offenses and especially serious offenses, may extend by 12 months.	Criminal Procedure Code, art. 120 &303, https://www.oecd.org/site/adboecdanti-corruptioninitiative/46817432.pdf
Yemen	Asia-Pacific	Blanket limit with exceptions	45	180	No	45-day maximum. May allow by 45 days at a time. Six-month maximum with extensions.	General Criminal Procedure Rule, Art 190 http://www.refworld.org/pdfid/3fc4bc374.pdf
Albania	Eastern Europe	Varies by violation // VVS	180	unlimited	No	Nine-month maximum when proceeding for crimes sentenced with a maximum of up to ten years of imprisonment. 12 months when proceeding for crimes sentenced with a minimum of at least ten years of imprisonment, or life imprisonment. May extend by three months.	Criminal Procedure Code (Law No. 7905) art. 263 (Alb.). http://www.legislationline.org/documents/section/criminal-codes/country/47
Armenia	Eastern Europe	Blanket limit with exceptions	60	365	No	Two-month maximum. May extend up to one year.	Criminal Procedure Code of the Republic of Armenia, Art 138, http://www.parliament.am/legislation.php?sel=show&ID=1450&lang=eng

Country	UN Regional Group	Type of Statute	Base Limit	Extension Limit	Child Specific Limit	Explanation of Statutory Limit	Citation
Azerbaijan	Eastern Europe	Varies by violation // VVS	60	210	No	Two-month maximum for offences which do not pose a major public threat or minor offences. Three-month maximum for "serious and very serious offences."	Code of Criminal Procedure of the Azerbaijan Republic (2000), art 158, http://www.legislationline.org/documents/section/criminal-codes
Bosnia and Herzegovina	Eastern Europe	Blanket limit with exceptions	30	270	Yes	Juvenile: 30-day maximum. May extend by two months. Maximum six months with extensions.	CAH Criminal Procedure Code (2003, amended 2013), art 358, www.ohr.int/ohr-dept/legal/oth-legist/doc/criminal-procedure-code-of-bih.doc http://www.legislationline.org/documents/section/criminal-codes
Bulgaria	Eastern Europe	Varies by violation // VVS	60	730	No	One-year Maximum for major malicious crime Two-year maximum for crime punishable by not less than 15 years of imprisonment or life imprisonment. Two-month maximum in all other cases.	Bulgarian Penal Procedure Code, Art 63, http://www.legislationline.org/documents/section/criminal-codes See Juv. Justice Sys. in Europe vol. 2, p.1748 (2010) (country code "BG")
Croatia	Eastern Europe	Blanket limit with exceptions	30	60	Yes	One-month maximum, with one additional month extension allowed for legitimate reason	Juvenile Courts Act, Art. 73(3), Official Gazette no. 111/1997, http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation/Juvenile-Courts-Act.pdf
Czech Republic	Eastern Europe	Varies by violation // VVS	120	545	Yes	Four-month Maximum for least serious transgressions. May extend by two months. Six-month maximum for most serious transgressions.	Juvenile Justice Act, no. 218/2003, http://www.nsz.cz/index.php/en/the-accused/64
Estonia	Eastern Europe	Blanket limit with exceptions	60	unlimited	Yes	General: Six-month maximum for first degree offense, four-month maximum for second degree offense. Juvenile: Two-month maximum.	Criminal Code of the Republic of Estonia (2001, amended 2017), art. 131, http://www.legislationline.org/documents/section/criminal-codes
Georgia	Eastern Europe	Blanket limit with exceptions	40	180	Yes	Juvenile: 40- day maximum. May extend by 20 days at a time. Six-month maximum with extensions.	Law No 3708-III, Juvenile Justice Code, Art. 64, https://matsne.gov.ge/en/document/download/2877281/0/en/pdf
Hungary	Eastern Europe	Blanket	730		Yes	Juvenile: Two-year maximum, may extend for repeated procedure.	1998. évi XIX. büntetőeljárás törvény (Act XIX of 1998 on Criminal Proceedings) art. 455 (Hung.). http://www.legislationline.org/documents/section/criminal-codes
Macedonia (The former Yugoslav Republic of)	Eastern Europe	Blanket limit with exceptions	30	90	Yes	Juvenile: 30-day maximum, extension allowed on showing of good cause.	Law on Juvenile Justice 2007, art. 104, 106 & 110, http://www.legislationline.org/topics/country/31/topic/8
Montenegro	Eastern Europe	Blanket limit with exceptions	30	60	Yes	General: Detention for length of preliminary proceeding allowed, with review of detention required once every two months. Juvenile: 30-day maximum, 30 days extension allowed for justified reasons.	Law on the Treatment of Juveniles in Criminal Procedure, Art. 61(3) & 61(6)-(7), http://www.pravda.gov.me/en/library/zakoni?sortDirection=Desc
Russian Federation	Eastern Europe	Blanket limit with exceptions	60	545	No	General: Two-month maximum. May extend to six months for investigation. May extend to 12 months for grave and especially grave crimes. May extend to 18 months for exceptional cases of especially grave crimes.	Criminal Procedure Code of the Russian Federation, No. 174-FZ of Dec. 18, 2001, Art. 109, http://www.legislationline.org/documents/section/criminal-codes

Country	UN Regional Group	Type of Statute	Base Limit	Extension Limit	Child Specific Limit	Explanation of Statutory Limit	Citation
Ukraine	Eastern Europe	Blanket limit with exceptions	60	365	No	General: Six-month maximum in criminal proceedings in respect of crimes of small or medium gravity; 12-month maximum in criminal proceedings in respect of grave or especially grave crimes. Juvenile: Detention only in cases of grave or especially grave crime.	Criminal Procedure Code, Art. 197 & 219, http://www.legislationline.org/documents/section/criminal-codes see Juv. Justice Sys. in Europe vol. 2; Juv. Justice Sys. in Europe vol. 4, p.1755 (2010).
Argentina	Latin America and Caribbean	(none)	N/A				Jurisdictional
Bahamas	Latin America and Caribbean	(none)	N/A			Juvenile: No statutory maximum.	Penal Code, Art. 124(7), see also Art. 263, http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1873/1873-0015/PenalCode_1.pdf Child Protection Act 2007, Art. 113(1), http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=75790&p_country=BHS&p_count=145
Barbados	Latin America and Caribbean	(none)	N/A			No statutory maximum.	Juvenile Offenders Act, Sec. 6(1), http://www.easterncaribbeanlaw.com/juvenile-offenders-act-chapter-138/ Constitution, Sec. 13(3)(b), http://www.easterncaribbeanlaw.com/constitution-3/
Belize	Latin America and Caribbean	(none)	N/A			One-month maximum for summary trial. No maximum for trial on indictment.	Juvenile Offenders Act, Chapter 119, § 7. Available at http://www.belizelaw.org/web/lawadmin/index2.html . Crime Control and Criminal Justice Act, Chapter 102, § 16(4). Available at http://www.belizelaw.org/web/lawadmin/index2.html .
Bolivia	Latin America and Caribbean	Procedural	45	180	Yes	45 days without indictment or three months without being sentenced in the court of first instance. The limit is doubled when multiple defendants are charged for a crime.	Ley No 548, 17 July 2014,Codigo Niña, Niño y Adolescente [Childhood and Adolescence Code], book 2, tit 1, ch. 2, Art. 291
Brazil	Latin America and Caribbean	Blanket	45		Yes	45-day maximum.	Estatuto da Criança e do Adolescente, Lei No. 8.069 de 13 de Julho de 1990, art. 108, http://www.planalto.gov.br/Ccivil_03/leis/L8069.htm . For explanation in English, see https://www.loc.gov/law/help/child-rights/brazil.php#f120 .
Chile	Latin America and Caribbean	Blanket limit with exceptions	60	120	Yes	Juveniles: 60-day maximum, may extend by two months.	Cod. Pen. Art. 152). ESTABLECE UN SISTEMA DE RESPONSABILIDAD DE LOS ADOLESCENTES POR INFRACCIONES A LA LEY PENAL, Law No. 20084 arts. 37, 38, Nov. 28, 2005, Diario Oficial [D.O.] (Chile) https://www.leychile.cl/Navegar?idNorma=244803
Colombia	Latin America and Caribbean	Blanket limit with exceptions	120	150	Yes	Four-month maximum, extendable by one more month.	Ley 1098, 8 Nov. 2006, Codigo de la Infancia y la Adolescencia [Code of Children and Juveniles], art. 181, para 2, https://www.unifr.ch/ddp1/derecho-penal/legislacion/l_20101107_01.pdf
Costa Rica	Latin America and Caribbean	Blanket limit with exceptions	60	120	Yes	Two-month maximum, especially for ages 12-15. Can be extended by two months.	Costa Rica: Ley No. 7576 de 1996, Ley de justicia penal juvenil, art. 59 [Costa Rica], 30 April 1996, http://www.refworld.org/docid/3e50ec404.html [accessed 7 June 2016]

Country	UN Regional Group	Type of Statute	Base Limit	Extension Limit	Child Specific Limit	Explanation of Statutory Limit	Citation
Cuba	Latin America and Caribbean	(none)	N/A			60-day maximum, may extend to six months.	Javier Palummo, Justicia Penal Juvenil, Situación y perspectivas en América Latina y el Caribe, UNICEF, Apr. 2014, p. 19. Available at http://www.unicef.org/lac/UNICEF_LACRO_Justicia_Penal_Juvenil_2014.pdf
Dominican Republic	Latin America and Caribbean	Blanket limit with exceptions	60	120	Yes	Two-month maximum, especially for ages 12-15. Can be extended by two months.	Ley de Justicia Penal Juvenil, art. 59 https://www.oas.org/juridico/mla/sp/cpi/sp_cri-int-text-juv.html
Ecuador	Latin America and Caribbean	Blanket	90		Yes	90-day maximum.	Ley No. 2002-100, 10 July 2013, Código de la Niñez y Adolescencia [Code of Children and Adolescence] [Ecuador], art. 331, https://www.mindbank.info/item/3359
El Salvador	Latin America and Caribbean	Blanket limit with exceptions	90	unlimited	Yes	90-day maximum. May extend for investigation.	Decree no. 863 (El Sal.) art. 17, ¶ 4, https://www.oas.org/dil/esp/Ley_Penal_Juvenil_El_Salvador.pdf
Grenada	Latin America and Caribbean	Blanket limit with exceptions	180	unlimited	Yes	Juvenile: Six-month maximum, except for murder, manslaughter or rape charges.	Juvenile Justice Act (Act. No. 24/2012) art. 48 (Gren.). http://www.gov.gd/egov/docs/legislations/Juvenile-Justice-Act.pdf
Guatemala	Latin America and Caribbean	Blanket limit with exceptions	60	120	Yes	Two-month maximum. May extend up to 60 days.	Decree No. 78-96 (Guatemala) Art 209, https://www.mindbank.info/item/3254
Guyana	Latin America and Caribbean	(none)	N/A			No statutory maximum for children.	Juvenile Offenders Act 2007, Art. 8(1), available PDF at https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/72110/73074/F.../GUY72110.pdf
Honduras	Latin America and Caribbean	Blanket limit with exceptions	30	60	Yes	30-day maximum, with 30-day extension available by petition.	Decree No. 73-96 (Hon.) 5 Sep. 1996, Diario Oficial la Gaceta 28,053, Art 237-244, http://www.unicef.org/honduras/codigo_ninez_adolescencia.pdf
Jamaica	Latin America and Caribbean	(none)	N/A			No statutory maximum for children.	Child Care and Protection Act, Section 68(1), http://www.jamaicalawonline.com/revised-laws/alphabetical-list-of-statutes/80-child-care-and-protection-act.html
Mexico	Latin America and Caribbean	Blanket	150	N/A	Yes	No pretrial detention for children under 14. Five-month maximum children 14 and over.	Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes [LNSIPA], art. 122, Diario Oficial de la Federación [DOF] 16-06-2016 (Mex.).
Nicaragua	Latin America and Caribbean	Blanket limit with exceptions	90	unlimited	Yes	Three-month maximum. May extend based on severity of crime or likelihood of evading justice.	Ley No. 287, 24 Mar. 1998, Código de la Niñez y la Adolescencia [Code for Children and Adolescents] tit. III, ch. I, art. 142-44, La Gaceta, Diario Oficial [L.G.], 27 May 1998 (Nicar.).

Country	UN Regional Group	Type of Statute	Base Limit	Extension Limit	Child Specific Limit	Explanation of Statutory Limit	Citation
Panama	Latin America and Caribbean	Blanket	60	N/A	Yes	Juvenile: Two-month maximum. Can extend by one-month for appeal.	Ley No. 40, 26 Aug. 1999, Del Regimen Especial de responsabilidad Penal para la Adolescencia [Regarding the Special Penal Code for Juveniles] tit. III, ch. II, arts. 58-62) http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83733/92690/F334348830/PAN83733.pdf .
Paraguay	Latin America and Caribbean	Blanket	730		No	Two-year maximum.	Ley no 1680,Codigo de la Ninez y de la Adolescencia, art. 167-182, http://www.ilo.org/dyn/travail/docs/1380/Ley%20No.1680%20C%C3%B3digo%20de%20la%20Ni%C3%B1ez%20y%20de%20la%20Adolescencia.pdf Codigo Procesal Penal [Criminal Procedure Code], Ley No.1286/98, art. 236 (Paraguay), https://www.unodc.org/res/cld/document/pry/1997/codigo-procesal-penal-de-la-republica-del-paraguay_html/Codigo_procesal_penal_Paraguay.pdf
Peru	Latin America and Caribbean	(none)	N/A			No statutory maximum.	NA
Saint Lucia	Latin America and Caribbean	(none)	N/A			60-day maximum, may extend upon bail review.	Children and Young Persons Act, Sec. 21(b), http://www.cavehill.uwi.edu/LAWLIBRARY/getattachment/4281dcfd-a304-4678-84bd-458bc99ad417/CHILDREN-AND-YOUNG-PERSONS-ACT.aspx Criminal Procedure Rules 2007, Art. 2, http://www.easterncaribbeanlaw.com/criminal-procedure-rules-2007/
Uruguay	Latin America and Caribbean	Blanket limit with exceptions	60	90	Yes	90-day maximum for grave infractions.	Ley No. 17.823, Mar. 2014, Codigo de la Ninez y la Adoloescencia, [Code of Children and Juveniles] art. 76(5), available at https://parlamento.gub.uy/sites/default/files/CodigoNinezYAdolescente2014-03.pdf?width=800&height=600&hl=en_US1&iframe=true&rel=nofollow
Venezuela	Latin America and Caribbean	Blanket	90		Yes	No statutory Maximum	Ley Organica para la Proteccion del Nino y del Adolescente (LOPNA), Art. 581, available at http://www.unicef.org/venezuela/spanish/LOPNA(1).pdf .
Australia	Western Europe and Others	(none)	N/A				
Canada	Western Europe and Others	(none)	N/A				Youth Criminal Justice Act (S.C. 2002, c. 1) Art. 28, available at http://www.laws-lois.justice.gc.ca/eng/acts/Y-1.5/page-5.html#h-19
Denmark	Western Europe and Others	(none)	N/A			No statutory maximum.	The Criminal Code, Order No. 909, Sept 27, 2005, http://www.legislationline.org/documents/section/criminal-codes see http://www.ejic.org/sites/default/files/volume_i_-_snapshots_from_28_eu_member_states.pdf Juv. Justice Sys. in Europe vol. 4 (p.1741)

Country	UN Regional Group	Type of Statute	Base Limit	Extension Limit	Child Specific Limit	Explanation of Statutory Limit	Citation
Finland	Western Europe and Others	(none)	N/A			No statutory maximum.	Criminal Procedure Act (689/1997; amendments up to 733/2015 included), Section 13 (243/2006) Criminal codes at: http://www.legislationline.org/documents/section/criminal-codes Remand Imprisonment Act (768/2005), Art 5, rikosseuraamus.fi/material/.../Tutkintavankeuslaki_Remand_Imprisonment_Act.pdf Juvenile Justice System in Europe, p.1751, Vol 4 (2010); Juvenile Justice System in Europe, p.438, Vol 1.
France	Western Europe and Others	Varies by age; varies by violation // VVS	180	730	Yes	Juvenile: Criminal: Ages 13-16: Six months renewable by max of further 6 months. Criminal: Ages 16-18: one-year renewable by two additional six-month periods. Correctional: depends on potential sentence. Four months can extend to two-twelve months respectively. Adult: Misdemeanors: Four months for first-time offenders, eight months otherwise. Can be extended up to one year, unless it's an international crime, which is up to two years and four months. Felonies: One year generally, two years if max sentence is 24 years, otherwise three years. Up to four years and four months in extraordinary cases.	Dunkel, Grzywa, Horsfield, Pruin (eds.), Juvenile justice Systems in Europe Vol. 1 537 (2010) Code of Criminal Procedure, Art. 145, http://legislationline.org/documents/section/criminal-codes/
Germany	Western Europe and Others	Blanket limit with exceptions	180	365	No	Juvenile: Six-month maximum. May extend up to one year.	Youth Courts Law, amended in Article 1 of the Act of 8 July 2008, Art. 72(5), https://germanlawarchive.iuscomp.org/?p=756#72 Criminal Procedure Code, amended in Act of 7 September 1998, Sec. 121, http://germanlawarchive.iuscomp.org/?p=754#112 See by Juv. Justice Sys. in Europe vol. 2, p.1749 (2010)
Greece	Western Europe and Others	Blanket limit with exceptions	180	270	Yes	General: One-year maximum for felonies. Six-month maximum for misdemeanors. Juvenile: Every juvenile offense is considered a misdemeanor, may extend for three months.	Greek Constitution, Art. 6, http://www.hri.org/MFA/syntagma/artcl25.html#A6 Greek Penal Code, Art. 18, https://www.unodc.org/res/cld/document/grc/penal_code_excerpts_html/Greece_Criminal_Code_Excerpts.pdf Juv. Justice Sys. in Europe vol. 4 (p.1751) (2010): max. juvenile PTD is 9 months See Code of Criminal Procedure art.287.
Ireland	Western Europe and Others	(none)	N/A				Children Act, 2001, http://www.irishstatutebook.ie/eli/2001/act/24/enacted/en/html Criminal Justice Act 2006, Art. 135, available at http://www.irishstatutebook.ie/eli/2006/act/26/enacted/en/pdf Juv. Justice Sys. in Europe vol. 4, p.1749 (2010): none
Israel	Western Europe and Others	Procedural	60	270	No	Nine-month maximum.	Criminal Procedure Law (Powers of Enforcement – Arrest), 1996, § 59 & 61, http://nolegalfrontiers.org/israeli-domestic-legislation/criminal-procedure/criminal039ed2?lang=en

Country	UN Regional Group	Type of Statute	Base Limit	Extension Limit	Child Specific Limit	Explanation of Statutory Limit	Citation
Netherlands	Western Europe and Others	Blanket limit with exceptions	30	unverified	Yes	30-day maximum until hearing.	Code of Criminal Procedure (as of 2012), § 493(4.), http://www.ejtn.eu/PageFiles/6533/2014%20seminars/Omsenle/WetboekvanStrafvordering_ENG_PV.pdf Juv. Justice Sys. in Europe vol. 4 (p.1741): maximum PTD is 104 days, total
New Zealand	Western Europe and Others	Blanket limit with exceptions	28	unlimited	Yes	Juvenile: 28-day maximum Defendants under 16 must not be imprisoned pending hearing or sentence (in a jail) unless 16-year-old has committed category three or four offense	Oranga Tamariki Act, Art 78, 376 & 377, http://www.legislation.govt.nz/act/public/1989/0024/118.0/DLM147088.html
Norway	Western Europe and Others	Blanket limit with exceptions	30	unlimited	No		General Civil Penal Code, Art 185, http://legislation-line.org/documents/section/criminal-codes
Poland	Western Europe and Others	Blanket limit with exceptions	90	unlimited	Yes		Code of Criminal Procedure, Act of 6 June 1997, art. 27, 263 & 259, http://www.legislationline.org/documents/section/criminal-codes
Portugal	Western Europe and Others	Procedural	90	365	Yes		No. 166/99, aprova a Lei Tutelar Educativa (Educational Guardianship Law), Capítulo I, Seccao III: Medidas cautelares, art. 60 & 61, http://www.oijj.org/sites/default/files/ley_n_166_99_de_14_de_setembro.pdf (in Portuguese, can copy into Google Translate) Juv. Justice Sys. in Europe vol. 4, p.1752 (2010)
Spain	Western Europe and Others	Blanket limit with exceptions	180	270	Yes		Ley Orgánica 8/2006, de 4 de diciembre de 2006, por la que se modifica la Ley Orgánica 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores, art. 2, no. 3 (B.O.E. 2006, 290) available at http://www.boe.es/boe/dias/2006/12/05/pdfs/A42700-42712.pdf Verified by Juv. Justice Sys. in Europe vol. 2, p.1749 (2010)
Sweden	Western Europe and Others	(none)	N/A			No statutory maximum.	Young Offender's Act (LUL), No limit according to a 2016 article available at https://www.fairtrials.org/isolated-before-trial-pre-trial-detention-in-sweden/
Switzerland	Western Europe and Others	(none)	N/A			May not be of longer duration than the anticipated custodial sentence. May extend by three or six months.	Swiss Criminal Procedure Code, of 5 October 2007, art. 212(3), 227(1), (7) (Status as of 1 October 2016), http://www.legislationline.org/documents/section/criminal-codes
United Kingdom	Western Europe and Others	Varies by violation // VVS	70	182	Yes	56, 70, or 182-day maximum depending on possible sentence.	Crime and Disorder Act 1998, s.51A; Firearms Act 1968, s.51 A (1); Violent Crime Reduction Act 2006, s.29 (3).
United States	Western Europe and Others	Blanket limit with exceptions	30	unlimited	Yes	Juvenile: 30-day maximum. Unless transferred to adult court or delayed by juvenile's counsel.	18 U.S.C.A. § 5036

Appendix 4: Summary of U.S. states’ pretrial detention limits for children

States	States with Pretrial Detention Limit		States Without Pretrial Detention Limits	
51	38	75%	13	25%

Figure 10.1: US states with pretrial detention time limits

The United States of America is a federal system with both a federal criminal justice system and state criminal justice systems. The state criminal justice systems process the majority of cases of children in conflict with the law. For purposes of the global survey in Section 3, the pretrial detention limit for children in the federal system was used which is 30 days.

Figure 10.1 shows the number of states (50 states and District of Columbia are

included in all ‘state’ calculations but no other territories are included) and if they have a limit or not. In total, 38 states have a limit and 13 have no pretrial detention limit. Of those states with a pretrial detention limit, all 38 are Child-Specific Limits.

Figure 10.2 shows that the average Base Limit is 44 days and Extended Limit is 86 days. However, only 9 states have an Extended Limit, the remaining have no Extended Limit.

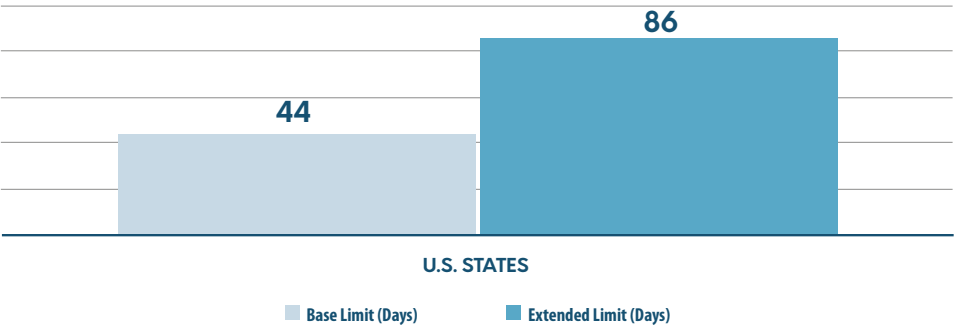


Figure 10.2: Average Base and Extended Limits of U.S. states

Jurisdiction	Type of Statute	Exception Type	Base Limit (Days)	Extended Limit (Days)	Child Specific Limit	Statute
Federal Government	Blanket limit with exceptions	Procedural	30	unlimited	Yes	18 U.S.C.A. § 5036
Alabama	(none)		NA			Alabama Rules Juvenile Procedure Rule 23.
Alaska	(none)		NA			AK Stat. §47.12.110
Arizona	Blanket		45	n/a	Yes	17B A.R.S. 29(B)(1)
Arkansas	Blanket limit with exceptions	For cause; procedural	14	unlimited	Yes	Ark Code 9-27-327(b)
California	Blanket limit with exceptions	For cause; procedural	15	unlimited	Yes	CA Code §657(a)(1)
Colorado	Blanket limit with exceptions	For cause	60	unlimited	Yes	CRS 19-2-509 60
Connecticut	Blanket		15	n/a	Yes	Superior Court Rules of Juvenile Procedure §30-10(b)
D.C.	Blanket limit with exceptions	Varies by violation; for cause	30	60	Yes	D.C. Code § 16-2310 (e)(1)-(2)
Delaware	Blanket limit with exceptions	For cause	30	unlimited	Yes	D.C. 9§1007(f)
Florida	Blanket		90	n/a	Yes	Rules of Juvenile Procedure 8.090
Georgia	Blanket		15	n/a	Yes	SC Rule 6.
Hawaii	(none)		NA			HRS § 571-32.
Idaho	Blanket limit with exceptions	For cause	45	unlimited	Yes	Idaho Juvenile Rule 15(a) (S.C. Rules - Idaho)
Illinois	Blanket limit with exceptions	Varies by violation	45	75	Yes	705 ILCS 405/5-610
Indiana	Blanket limit with exceptions	Procedural	27		Yes	IC 31-37-11-1 & 2
Iowa	Blanket limit with exceptions	Procedural	7	unlimited	Yes	IC §232.44(6)
Kansas	Blanket limit with exceptions	Varies by violation	45	unlimited	Yes	KSA §38-2352-2353
Kentucky	(none)		NA			KRS 635.010; KRS 610.265
Louisiana	Blanket limit with exceptions	For cause	30	80	Yes	CHC §632(A), CHC §659(A)
Maine	(none)		NA			MCC 15 §3203-A(8)
Maryland	Blanket		30	n/a	Yes	MD Court Rules 11-114(b)
Massachusetts	Blanket limit with exceptions	For cause	15	unlimited	Yes	Mass. Gen. Law. XVII §119.68 (ALM GL ch. 119, § 68)
Michigan	Blanket limit with exceptions	Procedural	63	unlimited	Yes	Michigan Supreme Court Rules 3.942
Minnesota	Blanket limit with exceptions	For cause	30	unlimited	Yes	Rules of Juvenile Delinquency Procedure: Rule 5.08
Mississippi	Blanket limit with exceptions	Procedural	21	unlimited	Yes	Uniform Rules of Youth Court Practice, Rule 24
Missouri	(none)		NA			Missouri SC Rule 127.08
Montana	(none)		NA			Youth Court Act 41-5-1502; Mont. Code Ann. § 41-5-1502.
Nebraska	Blanket		180	n/a	Yes	Nebraska Supreme Court Rules 1§6-104(B)
Nevada	Blanket limit with exceptions	For cause; procedural	60	unlimited	Yes	NRS 62D.310
New Hampshire	Blanket limit with exceptions	For cause	21	35	Yes	RSA 169-B
New Jersey	Blanket limit with exceptions	For cause	30	unlimited	Yes	Court Rule 5:21-3, 7; N.J.S.A. 2A:4A-38

Jurisdiction	Type of Statute	Exception Type	Base Limit (Days)	Extended Limit (Days)	Child Specific Limit	Statute
New Mexico	Blanket		60	n/a	Yes	32A-2-16
New York	Blanket		90	n/a	Yes	Uniform Rules for New York State Trial Courts §205.14
North Carolina	(none)		NA			G.S. §7B-2403 "within a reasonable time"
North Dakota	Blanket limit with exceptions	For cause	30		Yes	N.D. Rules of J. Procedure Rule 2(a)(3)
Ohio	Blanket limit with exceptions	Procedural	15	105	Yes	S.C. Rule 29(A)
Oklahoma	Blanket limit with exceptions	Varies by violation	90	180	Yes	O.S.A. 10-7303-4.3 & 10-7303-1.3
Oregon	Blanket limit with exceptions	For cause	28	56	Yes	419C.150
Pennsylvania	Blanket limit with exceptions		10	unlimited	Yes	42 PA CS §6335
Rhode Island	Blanket limit with exceptions	For cause	30	90	Yes	RI Court Rules 14-1-27(a)
South Carolina	Blanket limit with exceptions	Unlimited	40	unlimited	Yes	SC Supreme Court Rule - Family Court Rules, 31
South Dakota	Blanket limit with exceptions	For cause	90		Yes	S.D. Stat §26-8C-9
Tennessee	Blanket limit with exceptions	For cause	30	unlimited	Yes	State Court Rules Article II, Rule 17
Texas	(none)		NA			Juvenile Code §54.01 & 54.03
Utah	(none)		NA			Utah Rules of Juvenile Procedure, Rule 9-11
Vermont	Blanket limit with exceptions	For cause	60	unlimited	Yes	VSA §5513(a) & §5227
Virginia	Blanket limit with exceptions	Procedural	30		Yes	Rules of J.Pro. 27:
Washington	Blanket limit with exceptions	Procedural	30	unlimited	Yes	Washington Juvenile Court Rule 7.8
West Virginia	Blanket limit with exceptions	For cause	30	unlimited	Yes	WV Rules of Juvenile Procedure Rule 27.
Wisconsin	(none)		NA			WI Stat. 938.21, 938.208, 938.21(5m)
Wyoming	Blanket limit with exceptions	For cause	60	90	Yes	Wyoming Code, §14-6-226



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