

With the participation of



Consensus conference

**Doctors' attendance on detainees
in police custody**

2-3 December 2004
Paris, France

About these guidelines¹

This consensus conference was held on 2-3 December 2004 at the *Ministère des Solidarités, de la Santé et de la Famille*, Paris, France. It was conducted in accordance with the method recommended by the *Agence nationale de l'Accréditation et de l'Évaluation en Santé (ANAES)*². The conclusions and guidelines were drawn up by an independent conference jury. ANAES is not responsible for their content. Names of sponsors are given in the Acknowledgements section.

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¹ The guidelines are taken from a full-length report in French available from the *Haute Autorité de santé* (French National Authority for Health) website: www.has-sante.fr.

² Since January 2005, ANAES has become part of the *Haute Autorité de santé* (HAS).

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Key points

- The **health, integrity and dignity** of detainees must be safeguarded.
- **Independence and competence:** Whenever possible, police officers should call on doctors meeting the criteria of independence and competence whose names appear on a list drawn up by the Public Prosecutor and who are called on in turn.
- **Medical examination premises:** The examination should take place in the police station so that the doctor can assess the conditions in which the detainee is being held. If the minimum conditions needed for a medical examination are not available, the doctor may refuse to express an opinion as to whether the detainee is fit to be held in custody and/or may ask for the detainee to be examined in a hospital.
- **Request forms:** Officers should use standard request forms, requesting at the very least:
 - an assessment of whether the detainee's state of health is compatible with detention in a police³ station, with 3 options. The detainee:
 - i. may continue to be held without any special conditions;
 - ii. may continue to be held under certain conditions;
 - iii. may not continue to be held in a police station.
 - a record of any lesions or injuries;
 - an indication of whether the detainee is fit for interview.

The jury emphasised that the option of detention under certain conditions (e.g. time limit on custody, need for another examination, giving medical care in the police station or in hospital, special conditions for custody) can often be used to reconcile medical needs with those of the investigation.

- **Doctors' duties:** The doctor is subject to a **duty of care** and prevention even if they are not the detainee's usual doctor. They should prescribe - and ensure that the detainee will receive - any ongoing treatment which needs to be continued, as well as any emergency treatment required.

The doctor should give detainees full information and obtain their informed consent. The jury emphasised that the doctor should provide the detainee with full precise information on the context of their attendance and on its possible consequences.

The examination should attempt to identify the main risks, i.e. suicide, mental disorder, addictive behaviour, risk of infection, diseases entailing high risks for decompensation (asthma, diabetes etc.).

Great caution should be taken when making psychiatric assessments, estimating age, and interpreting observations thereof.

The doctor should advise the detainee each time when confidentiality cannot be fully guaranteed, notably when administering medicines.

- **Custody officers** may monitor the detainee and administer medication. However, their role should not be expected to exceed that required of the detainee's family under normal circumstances and must be specified in writing on the medical certificate.
- **Doctor's opinion:** It should be given in a two-part proposed national standard document:
 - a medical certificate to be returned to the authority issuing the request;
 - a confidential medical record, which is not sent to the authority issuing the request.If the doctor considers that the custody conditions are deplorable, he or she may report their observations in the custody register, refuse to express an opinion as to whether the detainee's is fit for custody or inform the Public Prosecutor in writing of situations that constitute an offence or compromise human dignity.

³ This term will be used hereafter as a generic term for all police forces empowered to hold a person in custody. The French police comprises two main forces, both with a general competence and a national reach: the *Police nationale* (PN) which has a civil status and the *Gendarmerie nationale* (GN) which has a military status. The main attributions of GN in peace time are, however, of a policing nature.

QUESTIONS PUT TO THE JURY

- Question 1. What is the doctor's mandate, what is its scope and which doctor is mandated?
- Question 2. Where is a detainee examined? Under what conditions? What is the outcome?
- Question 3. How may custody conditions affect doctors' attendance and co-operation?
- Question 4. What are the features specific to medical management of detainees?
- Question 5. What should the medical certificate and record contain? The doctor's duty of confidentiality and responsibility.

Introduction

Safeguarding the health, integrity and dignity of all detainees remanded in police custody is a duty. This applies whether they are guilty or not, and regardless of the seriousness of the offence which they may have committed. Since 1993, the rules governing police custody in France have been clearly established by law. Medical care must be provided by a doctor at the request of the detainee, a friend or relative of the detainee, or the authorities detaining the individual.

The jury recommended that the detainee's lawyer should also be able to ask for a medical examination (guideline aimed at the legislator).

QUESTION 1 - What is the doctor's mandate, what is its scope and which doctor is mandated?

The doctor has three missions:

- to protect the detainee's health, physical and mental integrity, and dignity;
- to provide an expert-like assessment at the request of the judicial authority;
- to act as an expert (occasionally).

In practice, these missions overlap somewhat, mainly because the same doctor is expected to perform all three.

1.1. Medical attention to be provided

- ***Assessment of fitness for detention***

The doctor decides whether the detainee's state of health is compatible with detention in a police station (the most common case). The doctor has no legal capacity to decide whether the detainee should be released from custody.

The doctor may certify that the detainee i) may continue to be held in a police station without any special conditions, ii) may continue to be held under certain conditions, iii) may not continue to be held.

The jury recommended that the doctor should also indicate whether the detainee is fit to be interviewed. Fitness for interview may be impaired by intoxication (with alcohol, illegal drugs and/or medicines), by the prescription of sedatives, particularly in the case of agitated subjects, by pre-existing illness, or by a state of mental shock due to custody.

- ***Describing lesions***

With the detainee's consent, the doctor may produce a certificate that

- records injuries relating to the detainee's complaints,
- describes the marks of physical or psychological trauma (indicating the duration of the resulting total disablement⁴ if this has been formally requested),
- states whether the lesions observed are compatible with the detainee's account.

- ***Providing an expert-like opinion***

Doctors may be asked to collect samples, estimate the detainee's age, detect foreign bodies within the detainee's body and/or provide an expert psychiatric assessment.

- ***Scope of medical care and attendance***

Doctors are subject to a duty of care and prevention and must give the detainee full information and obtain their informed consent.

The doctor should prescribe - and ensure that the detainee will receive - any ongoing treatment which needs to be continued, as well as any emergency treatment needed. He or she should advise the detainee on any further medical treatment they may require.

Medical care in police custody is an isolated event in a patient's health care history. Unless there is an emergency, it should not be considered the right moment to start new treatment. However, it may be one of the rare occasions for a deprived or poorly integrated detainee to see a doctor. The doctor should therefore make good use of the situation.

The jury recommended that the examination should attempt to identify the main risks, i.e. suicide, addictive behaviour, risk of infection, mental disorder, diseases entailing high risks for decompensation (asthma, diabetes etc.).

If the detainee is released, the doctor may, with their consent, ask for a letter or a copy of their confidential medical record to be given to them in a sealed envelope on their release. With the explicit consent of the detainee, medical information may be included in their personal electronic medical file (when the system becomes operational in France).

If the detainee is imprisoned, any medical notes (correspondence, confidential medical record, access to the personal electronic medical file) should be sent, confidentially and with the detainee's consent, to the chief medical officer in the Consultation and Outpatient Care Unit at the correctional establishment.

1.2 Recommendations concerning information for detainees

The jury stressed that the doctor should explain to the detainee the context of their medical attendance and any consequences, in detail. In particular, the doctor should specify which information must be disclosed to the authority that requested medical attendance and which must remain subject to medical confidentiality. The doctor should:

- explain to the detainee that they have been formally asked to attend in order to give their opinion on whether the detainee's state of health is compatible with being held in custody

⁴ Total disablement stands for *Incapacité totale de travail (ITT)* which, in French criminal law, is a formal criterion discriminating between minor or more serious assaults.

in a police station, and that they must give this opinion even if their attendance was solicited by the detainee himself;

- explain that they will produce a certificate after the medical examination which assesses the detainee's fitness for detention and records any lesions, and that this certificate will be given to the police officer;
- inform the detainee of any other formal requests made to them;
- specify, that, apart from these restrictions, they are acting independently and remain subject to professional secrecy.

Only once he or she has received the above information, can the detainee give or refuse their informed consent both to the medical examination and to any observations or samples that may be required.

1.3 Recommendations on standard medical attention request forms

The jury recommended that standard forms should be devised requesting the following information:

- a statement on whether the detainee's state of health is compatible with their being remanded in custody in a police station;
- a record of any lesions or injuries that could have resulted from acts of violence or blows, in three parts:
 - i. what complaints the detainee is making,
 - ii. what injuries or lesions were observed (site, description, when did they occur),
 - iii. whether the observations fit the facts described by the detainee.
- an indication of the detainee's fitness for interview.

Additional information may be requested in these standard forms depending on the context.

Any request to set the period of total disablement is left to the discretion of the police officer.

1.4 Which doctor is mandated?

The jury issued guidelines on the requisite medical skills and arrangements for attendance on detainees as, currently, various categories of medical practitioner are contracted in France. French law leaves the choice of doctor to the discretion of police officers or the Public Prosecutor. In order to make competent and independent professionals available to the requesting authority and to detainees, the jury recommended giving preference to doctors meeting two criteria:

- i. *independence*. The doctor should not have any kind of special relationship with either the requesting authority or the detainee. For an independent and impartial service, he or she should preferably belong to a network of hospital or independent doctors, with links to a reference forensic medical unit and involvement in forensic practice. The use of this type of network tends to give the practitioner greater freedom of opinion.
- ii. *professional knowledge*. The doctor should be knowledgeable in both clinical and forensic practice, undergo validated initial and ongoing training, and attend detainees on a regular basis.

Doctors should be listed on the initiative of the Public Prosecutor and called on in turn. The jury acknowledged that, in some emergency situations or remote police stations, the doctor called upon may not meet the above criteria in every respect. However, it called attention to the legal obligation that a doctor has to comply with the request (with the exception of the cases specified in Section 5.5 "Responsibility and custody").

QUESTION 2 – Where is the detainee examined? Under what conditions? What is the outcome?

2.1. Where the medical examination takes place

The jury recommended that doctors should perform the medical examination in a police station whenever possible, in order to assess the conditions of detention and of co-operation with the police.

Most current facilities in France are not suitable for carrying out medical examinations. The *Ministre de l'Intérieur, de la sécurité et des libertés locales* - aware of this state of affairs - set up an *ad hoc* mission and instituted (11 March 2003) a programme of bringing facilities up to standard. The jury asked for the budget for this programme to be made public and for details of the timetable for its implementation.

The facilities made available to the doctor should be adequate for carrying out a medical examination (see next section) but will not be appropriate for advanced medical care such as aseptic suturing or inspection of body cavities.

If the minimum conditions needed for a medical examination are not available, the doctor may refuse to express an opinion as to whether the detainee is fit to be held in custody and/or may ask for the detainee to be examined in a hospital.

The jury expressed unqualified support for the proposed medium-term plan for custody facilities in large conurbations, where all detainees are brought together under a single roof in premises that are appropriate for their purpose, under the surveillance of specially trained staff.

2.2 Conditions of the medical examination

The interview between doctor and detainee should meet the following conditions:

- *Understanding*. The interview should be conducted in a language and words that both understand. An interpreter - or any service or equipment needed for communication (including communication with persons with impaired hearing) - should be available when the doctor arrives.
- *Privacy*. The examination should be performed where it cannot be seen or overheard by any third party, to preserve the detainee's dignity and the doctor's duty of confidentiality.
- *Trust*. The detainee should not be restrained in any way, except in exceptional circumstances, when the examination is performed. At the beginning of the interview the doctor should state the circumstances and aims of the medical examination.
- *Safety*. An alarm button should be available to ensure safety. The doctor may discuss with the security forces the best conditions under which to conduct the medical examination, particularly when the detainee is sufficiently dangerous to warrant precautions being taken. The doctor ultimately decides the conditions under which the medical examination will take place. The security forces should consult the competent authority when it is impossible to provide these conditions.

Medical attention should be given as soon as possible. On calling a doctor, and in order to make him as knowledgeable as possible, the requesting authority should provide information about the detainee's condition and any restrictions imposed by the investigation.

2.3 What is the outcome?

Once the first medical examination has been completed, one of three situations may arise:

- The detainee's state of health is found to be compatible with their being remanded in custody without any special conditions. The doctor consents to a period of custody not exceeding 24 hours as the law states that if custody is extended, a second examination may be requested.

- The certificate of fitness is subject to certain conditions. The jury noted that, in practice, this option can often help reconcile the interests of and constraints on each party, and strongly recommended that it be used. The conditions may be:
 - complying with a deadline for custody in the police station,
 - a need for a second examination after a period set by the doctor,
 - giving medical care in the police station (e.g. continuing ongoing treatment or special surveillance of the detainee) or in hospital (e.g. injection of insulin, or eating a balanced meal in the case of an insulin-dependent diabetic),
 - special remand conditions (for holding the detainee and conducting the interview);
- The detainee's state of health is not compatible with being held in custody in a police station because:
 - further tests or a hospital assessment are needed, after which the detainee's fitness for detention will be reassessed,
 - medical care is needed which cannot be given in the police station and which requires admission to hospital.

Detainees are generally transferred to a forensic unit or an emergency department. In the event of a life-threatening or otherwise serious emergency, the emergency services (*Service d'Aide Médicale d'Urgence*) should be called. The jury emphasised that hospital admission is not a right, and that the hospital doctor has to confirm the decision to admit the detainee. If they fail to do so, and the detainee is not fit to be detained in the police station, the judicial authority or the police officer has to take the responsibility of finding suitable accommodation or releasing the detainee from custody.

At the end of the detention period, if the detainee is tried and imprisoned, the jury recommended that all medical information (letter, confidential medical record) and prescriptions should accompany the detainee as part of their personal effects and be given, confidentially and with the detainee's consent, to the doctor in the Consultations and Outpatient Care Unit at the correctional establishment, who carries out the medical consultation on admission.

A task force is studying how to detect suicide risk during detention, under the aegis of the prison service. The jury strongly recommended that clear instructions be produced rapidly to target risk factors.

QUESTION 3 – How do custody conditions affect doctors' attendance and co-operation?

Many of the experts informed the jury that custody conditions in French police stations are often demeaning and a number of sources have confirmed this. Doctors attending detainees are witness to this poor state of affairs which, by virtue of article 10 of the Code of Medical Ethics, they can but condemn. The jury issued guidelines to help doctors deal with such a situation:

- If the detainee has a health problem which is incompatible with detention in the police station because of the physical conditions in that police station, the jury recommended that the medical certificate of fitness for detention should be issued on condition that certain improvements be made, or that the detainee be transferred to facilities where such improvements can be made. The jury emphasised that hospital admission is not a right; the hospital is not obliged to admit the detainee unless their medical condition warrants admission.
- If the detainee does not have a health problem but the doctor considers the custody conditions to be deplorable, the jury noted that the doctor may:

- report his or her observations about custody conditions to the police officer or custody officer and have them noted on the custody register;
- refuse to make any statement on the detainee's fitness for detention in accordance with article 10 of the Code of Medical Ethics. This refusal may be recorded in the custody register. The doctor should state on the certificate they issue that the detainee's fitness to be held in custody cannot be ascertained because of the poor conditions of custody. The jury emphasised that the doctor must always visit the place of custody;
- inform the Public Prosecutor in writing of situations which constitute an offence or, more generally, of all situations which infringe the dignity of detainees.

QUESTION 4 – What are the features specific to the medical management of detainees?

4.1 Specific features of medical examinations in police stations

Medical practice in police stations has highly specific features: the doctor may encounter context-related difficulties in the detainee's recall of their medical history, and a risk of false allegations and of concealed disease. Moreover, custody entails risks of decompensation in certain diseases.

The doctor should:

- record the patient's complaints. The jury recommended that a distinction be made between medical and non-medical complaints;
- detect specific diseases. Medical attendance on detainees therefore includes diagnosis, which may involve not only a clinical examination but also tests, possibly in a hospital. The doctor may also ask for a specialist's opinion, e.g. a psychiatrist;
- propose appropriate clinical treatment;
- ensure continuity of care. The doctor should continue any ongoing treatment. This may mean contacting the patient's doctor or family. He or she should also ensure continuity of subsequent care and, in particular, transmit information to the prison service, the patient's doctor, or the hospital doctor. The jury considered that detention in a police station is not the right time to begin new, non-urgent treatment, except in special cases.

Despite the setting, the clinical examination should be thorough and should include:

- a medical history focusing on diseases that cause problems in custody (asthma, epilepsy, diabetes, heart disease, addictions, contagious diseases, mental disorders);
- detecting signs of intoxication with psycho-active substances and withdrawal syndrome;
- looking for any signs of pregnancy;
- detecting abnormal cardiopulmonary clinical signs;
- detecting signs of neurological deficit and brain function disorders.

If there are any complaints of violence or suspicion of physical abuse, even if the person being examined has not expressed a grievance, the skin should be examined carefully. This involves the undressing of the person.

Further tests may be necessary at the hospital if:

- conditions are not suitable for performing an acceptable examination;
- an opinion, further tests or treatment in a hospital environment are necessary.

The doctor may prescribe reassessment of the detainee's state of health whenever they consider this to be necessary.

4.2 Looking after detainees and the role of the police

Medical management of detainees requires their guardians to provide specific services (surveillance, administering medication) as part of their duty of protection. These services should not go beyond those expected of a family in normal circumstances. The doctor should specify in writing, on the medical certificate, the details of the medical surveillance required for the detainee to remain in custody.

The jury recommended that staff responsible for detainees should receive ongoing training in first-aid.

The attending doctor should warn police staff if there is any risk of sudden deterioration in the detainee's state of health, even though they are fit for detention at the time of examination. In high-risk situations, they should contact the doctor in charge at the emergency medical service (*Centre 15*) in order to organise care and transfer in advance.

In practice, some detainees are left with no surveillance at all, especially at night. The jury considered this unacceptable. Under such circumstances, the doctor can rightly decide that the conditions are not sufficiently safe for them to remain in custody, irrespective of their state of health.

4.3 Specific diseases and situations

These are described in the full text of the jury's recommendations (Annex 1).

QUESTION 5 - What should the medical certificate and record contain? The doctor's duty of confidentiality and liability

5.1 Format of the doctor's opinion

The jury recommended that the doctor's opinion should take the form of a two-part national document.

- i. The first part should be a standard medical certificate to be sent to the authority who requested the doctor's attendance. Three copies should be made: one for the requesting authority, one for the doctor, and one for the detainee (which is given to the detainee at the end of custody or sent, with the detainee's consent, to the doctor responsible for their further treatment (hospital or prison doctor));
- ii. The second part, which is not sent to the requesting authority, is the confidential medical record. Two copies should be made: one should be kept by the doctor, the other may be sent, in a sealed envelope, to the detainee at the end of detention or sent with the detainee's consent to the doctor in charge of their further treatment (hospital or prison doctor). The medical information may be included in the detainee's personal electronic medical file once this is operational.

Model documents are provided in Annex 2. The jury recommended that the model medical certificate should be circulated in printed form throughout France and be accessible to all doctors attending detainees remanded in police custody. Until an official standard form is available, the jury recommended that all doctors should adopt the principles on which this certificate is based.

5.2 Estimating the detainee's age

Currently, age is estimated by combining 4 elements: the Greulich-Pyle system (comparing an anterior-posterior radiograph of hand and wrist with those in a reference atlas), dental development, general clinical examination and the age the adolescent claims to be.

All these methods have their limitations and margins of error. The doctor must mention these in their report and provide, for example, an estimated age range. Generally, these methods do not enable a doctor to state with confidence if the detainee is a minor or not.

Examinations should never be performed without the consent of the person concerned. If consent is refused, it is not possible to estimate age. The report must note this refusal and the impossibility of determining the detainee's age.

The jury recommended that this type of examination should be resorted to and interpreted with particular caution, even if this means that it is not possible to establish with confidence that the detainee is over 18.

5.3 Psychiatric assessment

In certain cases, the law allows for a psychiatric assessment of a detainee remanded in custody. It is compulsory before the trial of a person suspected of sexual assault, and should be ordered in custody if the detainee is to be referred for immediate trial. It should be a proper forensic assessment informing the court about the detainee's psychopathological status and level of responsibility, and their receptivity to punishment or care orders (Law No. 2003-239 of 18/03/2003, Law No. 2004-204 of 9/03/2004).

There should be a clear distinction between this type of psychiatric assessment and an emergency psychiatric examination, which may be required when there are doubts about the detainee's mental health. This distinction applies when determining whether their mental health is compatible with being held in custody or simply in a care perspective.

There was no consensus among experts on whether a high-quality in-depth psychiatric assessment is possible under custodial conditions. However, there was a consensus on the necessary caution in presenting the conclusions of an examination performed under such conditions. The jury emphasised the limitations of a psychiatric assessment of a detainee remanded in custody and recommended great interpretative caution because of the possibly very serious implications of any ensuing legal decisions.

5.4 Medical secrecy and administering medication

The following principles should be complied with, as far as possible, when administering medication: 1) the detainee's right of access to medical care, 2) the doctor's duty of confidentiality, 3) and the responsibility of pharmacists and custody officers.

- *If the detainee has their own supply of medication*, or if their family can bring them their medication, the jury recommended that the doctor split up the pack into individual sealed envelopes marked with the detainee's name and time of administration. The custody officers can thus deliver medication and comply with the duty of confidentiality. The jury also recommended that police officers who apprehend suspects in their home pick up any necessary prescriptions and medication.
- *If medication is not available*, there is no solution that complies with all the above principles. The jury considered that it was acceptable for custody officers to go to the pharmacy with a prescription made out by the doctor called upon and deliver the medicines directly to the detainee, if this is done in the detainee's interests and with their consent, and if the detainee has either a health care card, is entitled to free health care, or has any means of payment available. In exceptional circumstances, the doctor may make use of hospital services (delivery by the hospital pharmacy or hospital admission).

If medication is not available and there is no way of paying the pharmacist for prescribed medicines, the use of hospital services is the only solution.

The jury regretted that current legislation does not allow the pharmacist to remove medicines from their pack. It wanted appropriate changes in legislation to be made so that the duty of confidentiality could be complied with, following the example of the changes that have taken place in correctional establishments since the introduction of the 1994 law.

The jury recommended that the doctor should advise the detainee whenever total confidentiality was not possible.

The jury issued a reminder of prescription rules during custody:

- the doctor should avoid initiating new treatment unless this is to treat an isolated symptom or an acute disease requiring immediate management;
- in an emergency the doctor should administer any drugs required (intravenously or orally);
- injections for long-term treatment (insulin, low molecular weight heparin) should be given in a hospital;
- if the detainee refuses treatment and that refusal compromises their short-term health, hospital admission should be considered.

5.5 Liability and custody

The doctor must comply with a request to attend. A refusal to comply is liable to a fine of €3,750 (Public Health Code). However, a doctor need not comply:

- if they are the patient's own doctor (unless they are the only doctor available). This is because the Code of Medical Ethics prohibits doctors from acting both as a patient's GP and as an expert. However, it should be noted that this provision infringes the principle of free choice of doctor, which the Committee for the Prevention of Torture of the Council of Europe has brought to France's attention several times;
- if they are not well enough to exercise their profession;
- if they are incapacitated;
- if they consider that the competence required exceeds their own. In this event they may not refuse unless the questions put to them require specialist skills.

The jury also re-emphasised that when a doctor considers that the conditions for examination are not acceptable or that custody conditions infringe human dignity, they may, in accordance with the Code of Medical Ethics, issue a certificate in which they refuse to assess the detainee's fitness for detention.

A doctor's liability when attending a detainee in custody is assumed in conditions which are not fundamentally different from those when attending a patient in normal circumstances:

- criminal liability: doctors have a criminal liability if a violation of the law has been committed (e.g. homicide or involuntary injuries caused by carelessness, failure to give assistance to a person in danger);
- administrative and civil liability: when attending a detainee upon legal request, doctors act as an occasional subcontractor to the public service of justice. Consequently, the State may be sued for liability in an administrative court. However, they do not have any personal civil liability unless it is established that they have committed a fault for which the public services are not liable;
- they can be indicted by the Council of the Medical Association for failing to comply with ethical rules.

To establish whether a doctor is at fault, the courts should judge the doctor's behaviour according to available scientific evidence and the prevailing state-of-the-art. They should allow for any problematic circumstances under which the examination was performed and should ascertain whether, with respect to the specific nature of the examination, the doctor

took the appropriate precautions and gave the appropriate instructions. The conditions under which the examination was performed do not relieve the doctor of their professional obligations and their ensuing responsibility.

6. Recommendations for future action

The jury looked forward to the relevant government department setting up a task force devoted to the collection of data about demographics, health, detention conditions and legal outcomes of police custody.

Acknowledgements

Sponsors

Collégiale des médecins légistes hospitaliers et hospitalo-universitaires; Société de médecine légale et de criminologie de France.

Co-sponsors

Association des professionnels de santé intervenant en milieu pénitentiaire; Centre de documentation et de recherche en médecine générale; Conférence des bâtonniers; Conseil national de l'ordre des médecins; Direction de l'hospitalisation et de l'organisation des soins; Direction des affaires criminelles et des grâces; Direction générale de la Gendarmerie nationale; Direction générale de la Police nationale – Inspection générale de la Police nationale; Direction générale de la santé; Fédération française d'addictologie; Fédération française de psychiatrie; Fédération hospitalière de France; Ligue des droits de l'Homme; Mission interministérielle de lutte contre la drogue et la toxicomanie; Société française d'alcoologie; Société française de santé publique; Société francophone de médecine d'urgence; SOS-médecins France.

Supporting organisations

Ministère de l'Intérieur, de la Sécurité intérieure et des Libertés locales; Ministère des Solidarités, de la Santé et de la Famille; Ministère de la Défense; Ministère de la Justice.

Annex 1. Specific diseases and situations

Asthma

Detainees often claim to have asthma. To diagnose asthma, the jury recommended:

- a clinical examination;
- if the clinical examination reveals no symptoms indicating asthma, questions on relevant details of the disease;
- routine use of a peak flow meter.

Most deaths from asthma occur in patients with severe, poorly controlled disease, and whose condition deteriorates over several days. In this situation, a single additional aggravating factor can lead to death. Sudden untimely withdrawal of treatment, even in a patient who has been stabilised, exposes the patient to a potentially serious attack. In addition, there is a type of asthma known as hyperacute asthma, in which the onset of signs and symptoms is very sudden and which can lead to acute respiratory insufficiency and death.

During custody, stress, environmental factors and withdrawal of treatment may contribute to onset of asthma symptoms. A diagnosis of asthma therefore calls for:

- treatment, i.e. long-term therapy (if necessary) and provision of rapid acting bronchodilators in case of an attack;
- appropriate surveillance. As clinical presentation varies considerably, the doctor should re-assess at appropriate intervals even patients with apparently well-controlled asthma;
- transfer of an asthmatic patient with dyspnoea to hospital.

Diabetes

Detention in police custody is often combined with an extended period of stress, which may lead to poor control of diabetes. The doctor must be particularly vigilant when encountering any recent clinical signs which might be associated with diabetes.

For insulin-dependent diabetes:

- capillary blood glucose should be measured as a matter of routine;
- **insulin should be injected in a hospital environment** or in the presence of a doctor or nurse if this is not possible, e.g. if the hospital is too far away;
- the doctor should ensure that appropriate meals are available at set times;
- **the doctor should make specific recommendations for night-time monitoring; this may require admission to hospital.**

For non insulin-dependent diabetes:

- treatment should be continued on condition that meals are suitable and served at regular times;
- clinical observations and capillary blood glucose measurements indicating poor disease control may call for a hospital consultation and surveillance in a hospital during custody.

Heart disease and hypertension

• Chest pain

Chest pain even in a young subject may be the only warning sign of serious disease. If there is no sign of trauma, the emergency services should be called immediately for a medical assessment and treatment.

- **Hypertension**

Normal blood pressure values are based on standardised measurements made under conditions of calm and rest, which are not the normal conditions of police custody. Blood pressure values taken during detention are therefore difficult to interpret.

It is important to distinguish between:

- a rise in blood pressure, which is commonplace and which requires no particular treatment, but for which trigger factors should be sought (sudden treatment discontinuation, pain, stress, etc.);
- an emergency where antihypertensive treatment must be initiated without delay and the patient must be admitted to hospital. It is characterised by signs of visceral pain.

Like any long-term treatment, ongoing antihypertensive treatment should be pursued. Such treatment should not, however, be initiated during police custody.

- **Vitamin K antagonists**

The risk of under- or overdose and need for monitoring prothrombin time (International Normalized ratio – INR) in the case of vitamin K antagonist treatment mean that a prescription giving the current dose and a recent INR result must be available. If there is any doubt, a hospital assessment must be obtained and INR determined.

Mental disorders

As there is a disproportionately high prevalence of mental disorders in prisons, particular attention must be paid to mental disorders during police custody. Any doubt should lead to the immediate intervention of a psychiatrist to assess suicide risk or a behavioural disorder.

Under no circumstance can a psychiatric opinion on fitness to be held in custody be considered a pre-trial expert's report (even if the observations made may later prove useful to a psychiatric expert in the course of the proceedings).

The jury proposed the following formal contraindications to detention in a police station:

- imminent risk of suicide as defined in the French consensus conference on “Suicidal crisis: recognition and management” (October 2000);
- acute psychosis and an episode of delusions in chronic psychosis;
- agitation with delirium;
- confusion (which is a medical emergency).

The jury emphasised that the doctor should avoid initiating any new treatment with the exception of one-off administration of symptomatic medication. A high degree of caution was advocated in relation to the use of psychotropic drugs which, even in the case of a single administration, can alter the detainee's vigilance and ability to understand and respond to police interrogation.

Addictive behaviours

Detainees should undergo routine questioning about their consumption of tobacco, alcohol and other psycho-active substances. Simple questions should be asked in order to detect signs of acute intoxication or withdrawal and to provide public health education.

Withdrawal while in police custody entails a risk that the detainee will be unable to express and defend themselves normally during police interview.

- **Acute alcohol intoxication**

The jury emphasised that acute alcoholisation – i.e. acute intoxication by ethanol - should be regarded as any other acute intoxication.

Being taken to a police station to sober up for being drunk and disorderly is legally not the same as being held in police custody. It puts the detainee at higher risk since the physical conditions of detention are the same as those for police custody, but there is no appropriate surveillance. This situation was not covered by the consensus conference but the jury recommended that the competent authorities examine the issue promptly.

Acute alcohol intoxication may reduce pain and/or mask serious concomitant disease. The jury emphasised that detainees should undergo a thorough examination, despite their possible reluctance, and a capillary blood glucose test.

Complicated drunkenness requires hospital admission in accordance with the French consensus conference guidelines on "Acute alcohol intoxication in the emergency department" (April 1992).

Measuring ethanol levels only confirms that a toxic substance is present in the body and is not needed to diagnose isolated and non-complicated cases of acute alcohol intoxication. However, if the results of questioning and clinical examination are inconsistent, or the clinical course is unusual, alcohol levels should be measured. Another diagnosis must be sought whatever the level of alcohol and especially if it is nil. The jury emphasised that if blood alcohol is measured in order to assess a potential medium term deterioration, at least 2 tests should be performed.

- **Alcohol dependence**

The course of alcohol withdrawal syndrome is unpredictable and sometimes fatal. The jury recommended routine screening for alcohol dependence in order to prevent withdrawal syndrome. The French "DETA" test is generally used and corresponds to the CAGE questionnaire (Cutting down, Annoyance by criticism, Guilty feeling and Eye-openers. (i) Have you ever felt you should cut down on your drinking? (ii) Have people annoyed you by criticising your drinking? (iii) Have you ever felt bad or guilty about your drinking? (iv) Have you ever had a drink first thing in the morning to steady your nerves or to get rid of a hangover?). Questions on recent alcohol consumption may follow (questionnaire not validated):]

- do you drink alcohol?
- if yes, every day?
- if yes, since when?
- how many glasses on average?
- do you shake when you get up in the morning?
- have you drunk any alcohol during the last 24 hours?
- if yes, how much and when was your last glass?

The severity of withdrawal syndrome may be assessed using the score proposed by Cushman.

- **Drug abuse (illegal drugs)**

This most often relates to young individuals who present with multiple drug abuse or who, at the very least, consume several psycho-active substances (opiates, stimulants, benzodiazepines, alcohol).

The risks related to acute intoxication should be assessed first. Because of the problems of disorders of consciousness or agitation, detainees should be transferred to hospital for close clinical surveillance if there are any doubts.

Detainees receiving opiate replacement therapy should be able to benefit from continuity of care in accordance with the French consensus conference guidelines on "Therapeutic approach to individuals dependent on opiates; role of opiate replacement therapy" (June 2004). The doctor must check that the detainee is really being treated and find out what treatment they are receiving by contacting the patient's CSST (Specialist Centre for Drug Addicts) if possible, or the prescribing doctor. In some cases CSST members may be

admitted to attend during police custody. If there is any doubt, as withdrawal symptoms do not appear for some time (often after 24 hours (methadone) or 48 hours (buprenorphine)), the decision may be deferred. A second visit will then be necessary.

- Buprenorphine is relatively safe (no risk of overdose, or slight risk only) and therefore quite easy to use in cases of signs of withdrawal. It is wise for doctors attending detainees to carry buprenorphine in their case.
- With methadone, the normal dose should be prescribed if withdrawal signs are present and the timing of the last dose is known. If there is any doubt, or if the dose exceeds 40 mg, the risk of overdose means that a hospital consultation is required.

The jury emphasised that police custody is not the time to initiate opiate replacement therapy, in accordance with the above consensus conference guidelines (June 2004).

Benzodiazepines should always be prescribed with caution and in limited amounts (risk of overdose, cognitive impairment, paradoxical effects).

Risk of infection

Both detainees and custody officers are at risk of infection. The risk is reduced by applying standard rules of hygiene (this is contingent on the physical conditions of custody). The jury recommended that anyone involved with a detainee should have access to gloves, alcohol-based chlorhexidine gel and suitable washing facilities.

The main risks of infection should be assessed according to the situation and body fluids in question.

When accidental exposure to blood occurs, a reference centre should be contacted. The jury recommended that all police custody premises should have these centres' contact details.

In the jury's opinion, police custody is not an appropriate time to screen for transmissible diseases, except when screening might protect a potential victim. If the patient is incarcerated, any useful information should be sent to the prison doctor.

Problems specific to women detainees

Women are rarely held in police custody but, when they are, they should be kept separate from men.

- **Pregnancy**

Being 8 months pregnant is a contraindication to being remanded in custody in police stations, even if the clinical examination is normal, as the woman could deliver at any time. A pregnancy test must be performed if there is any discrepancy between the woman's assertions of pregnancy and the results of a clinical examination.

If pelvic pain or abnormal bleeding is noted during the general clinical examination, the detainee must be transferred to hospital.

In very exceptional cases when a detainee is remanded in custody when an abortion has been scheduled and the legal deadline of 14 weeks after the last menstrual period is approaching, the doctor examining the patient may assess her to be unfit and have her admitted to the hospital where the procedure is to take place.

- **Menstrual cycle**

All women on oral contraceptives must be able to obtain them easily (personal effects, family). Otherwise the doctor should propose that she uses a substitute method and if she refuses, inform her of the risks involved.

With regard to personal hygiene, toilets should be provided where the woman's privacy can be respected and sanitary towels should be made available if needed.

Minors held in police custody

- **Vulnerability**

Even if minors are generally in good health, they may be mentally vulnerable with a substantial risk of loss of control and acting out.

There are no detailed data on the state of health of minors held in police custody. The data available on incarcerated juveniles suggest that many are in a very precarious situation; two-thirds have never received regular medical care. Among adolescents, one in two girls and one in four boys has a sexually transmitted disease. A large number of isolated foreign minors are also held in police custody and are particularly difficult to examine.

Special care is therefore needed when dealing with minors.

- **Legal situation**

A minor aged between 10 and 13 may not be remanded in custody, but may be held for a period not exceeding 12 hours. This can only exceptionally be extended for a further 12 hours. A medical examination must be performed at the beginning of detention and at the beginning of any extension.

For minors aged between 13 and 16, a medical examination must be performed at the beginning of police custody and at the time of any extension.

The jury considered that this obligation should be extended to minors aged between 16 and 18 (guideline intended for the legislator).

- **Medical examination**

Like adults, minors may refuse a medical examination. If the doctor cannot convince the minor to agree, their refusal should be noted on the medical certificate.

Generally, the medical examination of a minor is the same as for an adult. However, the doctor is not bound by the duty of confidentiality when making observations which lead him/her to suspect that a physical, sexual or mental assault has been committed. The doctor must report these facts to the Public Prosecutor without having to obtain the minor's consent.

Murder or sexual assault

The seriousness of the alleged offence should not affect a doctor's neutrality in carrying out their mission (article 7 of the Code of Medical Ethics).

If the individual was caught in the act, mental shock should be taken into account when assessing their fitness for custody in a police station.

Although there is a legal requirement to carry out blood tests to detect sexually transmitted disease in individuals thought to have perpetrated sexual assault (article 706-47-1 of the Code of Criminal Procedure), the doctor must obtain the detainee's consent (article 36 of the Code of Medical Ethics). The jury recommended that the doctor should be the person who advises the detainee of the legal consequences of any refusal. A doctor who orders a test for sexually transmitted disease should ensure that the results are sent to the subject (with a follow-up appointment) and also sent to the detainee's doctor or the Consultation and Outpatient Care Unit, if necessary. Follow-up for the victim should be arranged in a reference centre or forensic unit.

Concealing illegal drugs inside the body

There are three common situations:

- "body packers" who swallow packages of illegal drugs for transport;
- concealment in body cavities for transport;

- “body stuffers” who swallow drug packages if arrested unexpectedly.

Positive diagnosis is made by X-ray. Caution should be exercised if a women is pregnant or likely to be pregnant.

Appropriate questioning of the detainee may help to assess the gravity of the situation (substance, origin, quantity, quality of packaging).

The jury recommended that the greatest care should be taken when performing a pelvic examination (risk of breaking the packet). Such an examination is not compulsory and must be performed in a hospital environment.

If there are clear signs of intoxication or of the risk of intoxication – i.e. if poor quality packaging may break -, the detainee should immediately be transferred to hospital in an ambulance for specialist tests and treatment.

Death in police custody

Death in police custody raises the question of the liability of an institution which has decided to deprive a person of their freedom and which is responsible for their surveillance. The results of investigations conducted by the competent authorities to determine the causes and circumstances of such deaths should be published, while complying with legal provisions relating to the confidentiality of the investigation and judicial inquiry.

Death in police custody is a dramatic event, which causes deep distress to family and friends and always raises major problems relating to the responsibility of the various parties involved. When a death occurs in police custody, psychological care should be provided for both the family and the professionals involved.

Medical examination of a detainee in custody
Certificate produced on formal request

Certificate sent to requesting authority

Reference: Consensus Conference, 2-3 December 2004

I, the undersigned, Doctor of Medicine, acting at the request of
Mr. (Mrs.), police officer on duty at certify that on/...../.....,
at hours I examined at a police station in hospital elsewhere:
a person who stated that his/her name was:

Surname: **First name:**

and that he/she was born on // Sex: F / M

for the purpose of: assessing whether their state of health made them fit to be held in custody in the police station.

..... (other mission)

..... (other mission)

The person concerned, having been informed of my missions, gave their consent to them: yes/no

Complaints of the person examined:

.....
.....
.....

Clinical examination: performed not performed (give reason:.....)

Recent, traumatic lesions visible: yes/no

Was a certificate describing the injuries produced?: yes/no

Treatment decisions:

- Medication given directly to the person examined: yes/no

- Medication given to police officer in a sealed envelope for delivery later: yes/no

To be given to the patient at the following times:.....

- Prescription given to the police officer: yes/no

- Special surveillance during detention:

.....
.....

Conclusions (tick one of the 5 options)

State of health compatible with detention in the police station for 24 hours.

State of health compatible with detention in the police station, **provided the following conditions are met**

.....
.....

State of health not compatible with detention in a police station:

Transfer to hospital and fitness for detention reassessed by hospital doctor on completion of examination

Admission to hospital

Assessment of fitness for detention requires a specialist opinion in the police station (give details):

Refusal to assess the detainee's fitness for detention:

because of the conditions for examining the detainee

because of the conditions in which the detainee was being held

Information on the fitness of the person examined for interview:

.....
.....

Comments:.....

.....
.....
..... **Signature:**

Medical examination of a detainee in custody
Confidential medical record

Confidential medical section not sent to requesting authority
2004

Reference: Consensus Conference, 2-3 December 2004

1. Previous medical and surgical history

- Asthma: yes/no Diabetes: yes/no Epilepsy: yes/no Heart disease: yes/no Hypertension: yes/no
 Previous suicide attempts: yes/no Mental disorders: yes/no Infectious diseases: yes/no
 Addiction:
 Alcohol: yes/no Illegal drugs: yes/no Psycho-active medicines: yes/no
 Current pregnancy: yes/no Current contraception: yes/no Other history: yes/no
 If yes, give details:

.....
.....
.....

Treatments (specify time last taken):

.....
.....

2. Custody conditions

.....
.....

3. Clinical examination

.....
.....
.....

4. Further tests, if applicable - results

Capillary blood glucose:

Peak expiratory flow rate:

Blood sample:

Urine sample:

Radiographs:

Others:

5. Treatment decisions

Medication given directly to the person examined (nature and time):

.....
Treatment given to a police officer in a sealed envelope for delivery later (nature and time):

.....
Prescription given to a police officer (nature of medicines and time to be given to the patient):

.....
Surveillance during detention:

.....
Request for a specialist opinion:

Admission to hospital (specify reasons):

Comments:

.....
.....Signature:.....

