International Conventions

At the universal level, the main protections are contained in:

- International Covenant on Civil and Political Rights
- UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol
- UN Convention for the Protection of All Persons from Enforced Disappearance
- UN Convention on the Rights of the Child
- UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment
- UN Standard Minimum Rules for the Treatment of Prisoners
- UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules').
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules")
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- UN Standard Minimum Rules for Non-custodial Measures (the 'Tokyo Rules').

As an illustration, the provisions of UN Standard Minimum Rules on Treatment of Prisoners and American Bar Association Criminal Justice Treatment of Prisoners Standards are mentioned.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

Rule 5

1. The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.
2. Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

Rule 25

1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.

Rule 31

The physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed. All medical examinations shall be undertaken in full confidentiality.

Rule 38
2. For prisoners who are, or have been, separated, the prison administration shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison.

Rule 45
2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice,2 continues to apply.

Rule 46
2. Health-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.
3. Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.

B. Prisoners with mental disabilities and/or health conditions

Rule 109
1. Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.
2. If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.
3. The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

Rule 110
It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare.

ABA Standards for Criminal Justice Treatment of Prisoners

Standard 23-6.11 Services for prisoners with mental disabilities

(a) A correctional facility should provide appropriate and individualized mental health care treatment and habilitation services to prisoners with mental illness, mental retardation, or other cognitive impairments.

(b) Correctional officials should implement a protocol for identifying and managing prisoners whose behavior is indicative of mental illness, mental retardation, or other cognitive impairments. In addition to implementing the mental health screening required in Standard 23-2.1 and mental health assessment required in Standard

23-2.5, this protocol should require that the signs and symptoms of mental illness or other cognitive impairments be documented and that a prisoner with such signs and symptoms be promptly referred to a qualified mental health professional for evaluation and treatment.

(c) A correctional facility should provide prisoners diagnosed with mental illness, mental retardation, or other cognitive impairments appropriate housing assignments and programming opportunities in accordance with their diagnoses, vulnerabilities, functional impairments, and treatment or habilitation plans. A correctional agency should develop a range of housing options for such prisoners, including high security housing; residential housing with various privilege levels dependent upon treatment and security assessments; and transition housing to facilitate placement in general population or release from custody.

(d) When appropriate for purposes of evaluation or treatment, correctional authorities should be permitted to separate from the general population prisoners diagnosed with mental illness, mental retardation, or other cognitive impairments who have difficulty conforming to the expectations of behavior for general population prisoners. However, prisoners diagnosed with serious mental illness should not be housed in settings that may exacerbate their mental illness or suicide risk, particularly in settings involving sensory deprivation or isolation.

Standard 23-6.15 Involuntary mental health treatment and transfer

(a) Involuntary mental health treatment of a prisoner should be permitted only if the prisoner is suffering from a serious mental illness, non-treatment poses a significant risk of serious harm to the prisoner or others, and no less intrusive alternative is reasonably available.

(b) Prior to long-term involuntary transfer of a prisoner with a serious mental illness to a dedicated mental health facility, the prisoner should be afforded, at a minimum, the following procedural protections:

(i) at least [3 days] in advance of the hearing, written, and effective notice of the fact that involuntary transfer is being proposed, the basis for the transfer, and the prisoner's rights under this Standard;

(ii) decision-making by a judicial or administrative hearing officer independent of the correctional agency, or by an independent committee that does not include any health care professional responsible for treating or referring the prisoner for transfer or any other correctional staff but does include at least one qualified mental health professional;

(iii) a hearing at which the prisoner may be heard in person and, absent an individualized determination of good cause, present testimony of available witnesses, including the prisoner's treating mental health professional, and documentary and physical evidence;

(iv) absent an individualized determination of good cause, opportunity for the prisoner to confront and cross-examine witnesses or, if good cause to limit such confrontation is found, to propound questions to be relayed to the witnesses;

(v) an interpreter, if necessary for the prisoner to understand or participate in the proceedings;

(vi) counsel, or some other advocate with appropriate mental health care training;

(vii) a written statement setting forth in detail the evidence relied on and the reasons for a decision to transfer;

(viii) an opportunity for the prisoner to appeal to a mental health care review panel or to a judicial officer; and

(ix) a de novo hearing held every [6 months], with the same procedural protections as here provided, to decide if involuntary placement in the mental health facility remains necessary.

(c) In an emergency situation requiring the immediate involuntary transfer of a prisoner with serious mental illness to a dedicated mental health facility because of a serious and imminent risk to the safety of the prisoner or others, the chief executive of a correctional facility should be authorized to order such a transfer, but the procedural protections set out in subdivision (b) of this Standard should be provided within [7 days] after the transfer.

(d) Prior to involuntary mental health treatment of a prisoner with a serious mental illness, the prisoner should be afforded, at a minimum, the procedural protections specified in subdivision (b) of this Standard for involuntary mental health transfers, except that:

(i) decision-making in the first instance and on appeal should be by a judicial or administrative hearing officer independent of the correctional agency, or by an neutral committee that includes at least one qualified mental health professional and that may include appropriate correctional agency staff, but does not include any health care professional responsible for treating or referring the prisoner for transfer;

(ii) the notice should set forth the mental health staff's diagnosis and basis for the proposed treatment, a

description of the proposed treatment—including, where relevant, the medication name and dosage—and

the less-intrusive alternatives considered and rejected; and

(iii) the de novo hearing held every [6 months] should decide whether to continue or modify any involuntary

treatment, and in reaching that decision should consider, in addition to other relevant evidence, evidence of side effects.

(e) In an emergency situation requiring the immediate involuntary medication of a prisoner with serious mental illness, an exception to the procedural requirements described in subdivision (d) of this Standard should be permitted, provided that the medication is administered by a qualified health care professional and that it is discontinued within 72 hours unless the requirements in subdivision (d) of this Standard are met.

(f) N otwithstanding a finding pursuant to subdivision (d) of this Standard that involuntary treatment is appropriate, mental health care staff should continue attempting to elicit the prisoner's consent to treatment.

Standard 23-7.2 Prisoners with disabilities and other special needs

(a) If a prisoner with a disability is otherwise qualified to use a correctional facility, program, service, or activity, correctional authorities should provide such a prisoner ready access to and use of the facility, program, service, or activity, and should make reasonable modifications to existing policies, procedures, and facilities if such modifications are necessary. Modifications are not required if they would pose an undue burden to the facility, cause a fundamental alteration to a program, or pose a direct threat of substantial harm to the health and safety of the prisoner or others. Disabled prisoners' access to facilities, programs, services, or activities should be provided in the most integrated setting appropriate.

(b) To the extent practicable, a prisoner who does not have a disability but does have special needs that affect the prisoner's ability to participate in a prison program, service, or activity should receive programs, services, and activities comparable to those available to other prisoners. Correctional authorities should assess and make appropriate accommodations in housing placement, medical services, work assignments, food services, and treatment, exercise, and rehabilitation programs for such a prisoner.

(c) A prisoner has the right to refuse proffered accommodations related to a disability or other special needs, provided that the refusal does not pose a security or safety risk.

(d) T here should be no adverse consequences, such as loss of sentencing credit for good conduct, discipline, or denial of parole, for a prisoner who is unable to participate in employment, educational opportunities, or programming due to a disability or other special needs that cannot be accommodated. Such a prisoner should have the opportunity to earn an equal amount of good conduct time credit for participating in alternative activities.

(e) Correctional authorities should communicate effectively with prisoners who have disabling speech, hearing, or vision impairments by providing, at a minimum:

(i) hearing and communication devices, or qualified sign language interpretation by a non-prisoner, or other communication services, as needed, including for disciplinary proceedings or other hearings, processes by which a prisoner may make requests or lodge a complaint, and during provision of programming and health care;

(ii) closed captioning on any televisions accessible to prisoners with hearing impairments;

(iii) readers, taped texts, Braille or large print materials, or other necessary assistance for effective written communication between correctional authorities and prisoners with vision impairments, and when a prisoner with a vision impairment is permitted to review prison records, as in preparation for a disciplinary or other hearing; and

(iv) fire alarms and other forms of emergency notification that communicate effectively with prisoners with hearing or vision impairments.

(f) Correctional authorities should make reasonable attempts to communicate effectively with prisoners who do not read, speak, or understand English. This requirement includes:

(i) to the extent practicable, the translation of official documents typically provided to prisoners into a language understood by each prisoner who receives them;

(ii) staff who can interpret at all times in any language understood by a significant number of non-Englishspeaking prisoners; and

(iii) necessary interpretive services during disciplinary proceedings or other hearings, for processes by which a prisoner may lodge a complaint about staff misconduct or concerns about safety, and during provision of health care.