

## Assessing in Custody

**Authors:** Jane Vadivalo (Psychologist, Tangentyere Council); Dr Dan Ewald

**Topic Reviewers:** Bernard Egan (RAN, Bulman Clinic); Robyn Dixson and staff (Yirrkala Clinic)

### Importance of the topic

High rates of incarceration in the NT and in Indigenous populations  
'Despite the Royal Commission into Aboriginal Deaths in Custody's (RCADIC) 339 recommendations, Indigenous people are still 14 times more likely to be imprisoned than non-Indigenous Australians. In the Northern Territory, 72.8 per cent of the prison population is Indigenous' (ATSIC website).

Features which make this topic important for the CARPA STM are:

- Lack of a remote prison/police health service, so regular health service staff are often called on to assess and treat people in police custody
- High rates of morbidity among prisoners, mental health, drug and alcohol problems, petrol sniffing
- Fear amongst practitioners about this sort of work, particularly if they are not used to it: violent patients, family pressures within the community, fear of payback, staff out of their 'comfort zone'
- High rates of death in custody for Indigenous people

Though the Royal Commission into Aboriginal Deaths In Custody directed many of its recommendations to the police and correctional services, there are a number of areas that are of interest to health service staff, particularly in remote communities where they are the only source of health expertise available. The extracts from the RCADIC report included here serve to highlight the seriousness of the issues and some of the points at which health care and assessment of those in custody is likely to break down or fail.

Also see separate topics on assessing self-harm and suicide risk, petrol and solvent sniffing, alcohol abuse, depression, anxiety in the CARPA STM and in this reference book.

### Background

The Royal Commission into Aboriginal Deaths In Custody found the following:

The cases involving deaths in police custody have clearly highlighted past inadequacies in relation to the assessment of whether prisoners and detainees were at risk either through illness, injury or self-harm, both at the time of reception at the watch-house and generally throughout the period of custody. Both the instructions to police and the training of the officers who were responsible for the care and safekeeping of prisoners were found to be seriously deficient.

'During the year ended 30 June 1997, 15 Indigenous people were reported to have died in all forms of custody in Australia. Thirteen of those deaths were of Aboriginal people and two were of

Torres Strait Islanders. This was the first time over the 17 year period for which data are available (since 1980) that any Torres Strait Islander person was reported as having died in custody. Eighty non-Indigenous deaths in custody occurred.’ (RCADIC 5 Year Report 1996/97)

Health service staff do not need to feel responsible for all the recommendations reproduced here. Ultimately, a prisoner’s welfare is the responsibility of the agency that is holding the person in custody. Cooperation and communication between police and health services will be important to adequately assess people in custody.

Involving an Aboriginal health worker in the assessment is likely to help identify important social, psychological and health issues that might otherwise be missed. The request for an assessment of a prisoner will probably be directed to a nurse or doctor, but this should not prevent a health worker being involved.

While there is a body of literature on health in prisons, there is little evidence base to guide the approach to attending prisoners in remote communities.

### **Tips and approach**

In general terms practitioners should try to ensure that prisoners receive high quality health care. The legal detention is not intended to deprive them of access to health care. A person recently detained in a remote community is likely to be in a highly stressed state that may exacerbate any existing physical or mental health problem. Be particularly alert to drug and alcohol issues, mental health issues and how these may complicate or exacerbate their health or risk of harm.

### **Royal Commission into the Aboriginal Deaths in Custody**

The following extracts from the overview and recommendations are from the Report by Commissioner Elliott Johnston QC, AGPS, Canberra, 1991. Recommendations of particular relevance to health services have been selected by CARPA authors/editor.

#### *Recommendation 127*

That Police Services should move immediately in negotiation with Aboriginal Health Services and government health and medical agencies to examine the delivery of medical services to persons in police custody. Such examination should include, but not be limited to, the following:

- a. The introduction of a regular medical or nursing presence in all principal watch-houses in capital cities and in such other major centres as have substantial numbers detained;
- b. In other locations, the establishment of arrangements to have medical practitioners or trained nurses readily available to attend police watch-houses for the purpose of identifying those prisoners who are at risk through illness, injury or self-harm at the time of reception;
- c. The involvement of Aboriginal Health Services in the provision of health and medical advice, assistance and care with respect to Aboriginal detainees and the funding arrangements necessary for them to facilitate their greater involvement;
- d. The establishment of locally based protocols between police, medical and para-medical agencies to facilitate the provision of medical assistance to all persons in police custody where the need arises;
- e. The establishment of proper systems of liaison between Aboriginal Health Services and police so as to ensure the transfer of information relevant to the health, medical needs and risk status of Aboriginal persons taken into police custody; and

- f. The development of protocols for the care and management of Aboriginal prisoners at risk, with attention to be given to the specific action to be taken by officers with respect to the management of:
  - i. intoxicated persons;
  - ii. persons who are known to suffer from illnesses such as epilepsy, diabetes or heart disease or other serious medical conditions;
  - iii. persons who make any attempt to harm themselves or who exhibit a tendency to violent, irrational or potentially self-injurious behaviour;
  - iv. persons with an impaired state of consciousness;
  - v. angry, aggressive or otherwise disturbed persons;
  - vi. persons suffering from mental illness;
  - vii. other serious medical conditions;
  - viii. persons in possession of, or requiring access to, medication; and
  - ix. such other persons or situations as agreed.

*Recommendation 128*

That where persons are held in police watch-houses on behalf of a Corrective Services authority, that authority arrange, in consultation with Police Services, for medical services (and as far as possible other services) to be provided not less adequate than those that are provided in correctional institutions.

*Recommendation 129*

That the use of breath analysis equipment to test the blood alcohol levels at the time of reception of persons taken into custody be thoroughly evaluated by Police Services in consultation with Aboriginal Legal Services, Aboriginal Health Services, health departments and relevant agencies.

*Recommendation 130*

That:

- a. Protocols be established for the transfer between Police and Corrective Services of information about the physical or mental condition of an Aboriginal person which may create or increase the risks of death or injury to that person when in custody;
- b. In developing such protocols, Police Services, Corrective Services and health authorities with Aboriginal Legal Services and Aboriginal Health Services should establish procedures for the transfer of such information and establish necessary safe-guards to protect the rights of privacy and confidentiality of individual prisoners to the extent compatible with adequate care; and
- c. Such protocols should be subject to relevant ministerial approval.

*Recommendation 131*

That where police officers in charge of prisoners acquire information relating to the medical condition of a prisoner, either because they observe that condition or because the information is voluntarily disclosed to them, such information should be recorded where it may be accessed by any other police officer charged with the supervision of that prisoner. Such information should be added to the screening form referred to in Recommendation 126 or filed in association with it.

*Recommendation 132*

That:

- a. Police instructions should require that the officer in charge of an outgoing shift draw to the attention of the officer in charge of the incoming shift any information relating to the well being of any prisoner or detainee and, in particular, any medical attention required by any prisoner or detainee;

- b. A written check list should be devised setting out those matters which should be addressed, both in writing and orally, at the time of any such handover of shift; and
- c. Police services should assess the need for an appropriate form or process of record keeping to be devised to ensure adequate and appropriate notation of such matters.

*Recommendation 133*

That:

- a. All police officers should receive training at both recruit and in-service levels to enable them to identify persons in distress or at risk of death or injury through illness, injury or self-harm;
- b. Such training should include information as to the general health status of the Aboriginal population, the dangers and misconceptions associated with intoxication, the dangers associated with detaining unconscious or semi-rousable persons and the specific action to be taken by officers in relation to those matters which are to be the subject of protocols referred to in Recommendation 127;
- c. In designing and delivering such training programs, custodial authorities should seek the advice and assistance of Aboriginal Health Services and Aboriginal Legal Services; and
- d. Where a police officer or other person is designated or recognised by a police service as being a person whose work is dedicated wholly or substantially to cell guard duties then such person should receive a more intensive and specialised training than would be appropriate for other officers.

*Recommendation 134*

That police instructions should require that, at all times, police should interact with detainees in a manner which is both humane and courteous. Police authorities should regard it as a serious breach of discipline for an officer to speak to a detainee in a deliberately hurtful or provocative manner.

*Recommendation 135*

In no case should a person be transported by police to a watch-house when that person is either unconscious or not easily roused. Such persons must be immediately taken to a hospital or medical practitioner or, if neither is available, to a nurse or other person qualified to assess their health.

*Recommendation 136*

That a person found to be unconscious or not easily rousable whilst in a watch-house or cell must be immediately conveyed to a hospital, medical practitioner or a nurse. (Where quicker medical aid can be summoned to the watch-house or cell or there are reasons for believing that movement may be dangerous for the health of the detainee, such medical attendance should be sought.)

*Recommendation 137*

That:

- a. Police instructions and training should require that regular, careful and thorough checks of all detainees in police custody be made;
- b. During the first two hours of detention, a detainee should be checked at intervals of not greater than fifteen minutes and that thereafter checks should be conducted at intervals of no greater than one hour;
- c. Notwithstanding the provision of electronic surveillance equipment, the monitoring of such persons in the periods described above should at all times be made in person. Where a detainee is awake, the check should involve conversation with that person. Where the person is sleeping the officer checking should ensure that the person is breathing comfortably and is in a safe posture and otherwise appears not to be at risk. Where there is any reason for the inspecting

officer to be concerned about the physical or mental condition of a detainee, that person should be woken and checked; and

- d. Where any detainee has been identified as, or is suspected to be, a prisoner at risk then the prisoner or detainee should be subject to checking which is closer and more frequent than the standard.

*Recommendation 138*

That police instructions should require the adequate recording, in relevant journals, of observations and information regarding complaints, requests or behaviour relating to mental or physical health, medical attention offered and/or provided to detainees and any other matters relating to the well being of detainees. Instructions should also require the recording of all cell checks conducted.

*Recommendation 144*

That in all cases, unless there are substantial grounds for believing that the well being of the detainee or other persons detained would be prejudiced, an Aboriginal detainee should not be placed alone in a police cell. Wherever possible an Aboriginal detainee should be accommodated with another Aboriginal person. The views of the Aboriginal detainee and such other detainee as may be affected should be sought. Where placement in a cell alone is the only alternative the detainee should thereafter be treated as a person who requires careful surveillance.

*Recommendation 147*

That police instructions should be amended to make it mandatory for police to immediately notify the relatives of a detainee who is regarded as being 'at risk', or who has been transferred to hospital.

*Recommendation 150*

That the health care available to persons in correctional institutions should be of an equivalent standard to that available to the general public. Services provided to inmates of correctional institutions should include medical, dental, mental health, drug and alcohol services provided either within the correctional institution or made available by ready access to community facilities and services. Health services provided within correctional institutions should be adequately resourced and be staffed by appropriately qualified and competent personnel. Such services should be both accessible and appropriate to Aboriginal prisoners. Correctional institutions should provide 24 hour a day access to medical practitioners and nursing staff who are either available on the premises, or on call.

*Recommendation 151*

That, wherever possible, Aboriginal prisoners or detainees requiring psychiatric assessment or treatment should be referred to a psychiatrist with knowledge and experience of Aboriginal persons. The Commission recognises that there are limited numbers of psychiatrists with such experience. The Commission notes that, in many instances, medical practitioners who are or have been employed by Aboriginal Health Services are not specialists in psychiatry, but have experience and knowledge which would benefit inmates requiring psychiatric assessment or care.

*Recommendation 152*

- g. The development of protocols detailing the specific action to be taken by officers with respect to the care and management of:
- i. persons identified at the screening assessment on reception as being at risk or requiring any special consideration for whatever reason;
  - ii. intoxicated or drug affected persons, or persons with drug or alcohol related conditions;
  - iii. persons who are known to suffer from any serious illnesses or conditions such as epilepsy, diabetes or heart disease;

- iv. persons who have made any attempt to harm themselves or who exhibit, or are believed to have exhibited, a tendency to violent, irrational or potentially self-injurious behaviour;
- v. apparently angry, aggressive or disturbed persons;
- vi. persons suffering from mental illness;
- vii. other serious medical conditions;
- viii. persons on medication; and
- ix. such other persons or situations as agreed.

#### Recommendation 156

That upon initial reception at a prison all Aboriginal prisoners should be subject to a thorough medical assessment with a view to determining whether the prisoner is at risk of injury, illness or self-harm. Such assessment on initial reception should be provided, wherever possible, by a medical practitioner. Where this is not possible, it should be performed within 24 hours by a medical practitioner or trained nurse. Where such assessment is performed by a trained nurse rather than a medical practitioner then examination by a medical practitioner should be provided within 72 hours of reception or at such earlier time as is requested by the trained nurse who performed such earlier assessment, or by the prisoner. Where upon assessment by a medical practitioner, trained nurse or such-other person as performs an assessment within 72 hours of a prisoner's reception it is believed that psychiatric assessment is required then the Prison Medical Service should ensure that the prisoner is examined by a psychiatrist at the earliest possible opportunity. In this case, the matters referred to in Recommendation 151 should be taken into account.