

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/how-will-a-new-law-affect-south-africas-pretrial-population>

Public Facing Advocacy Writing

Twelve years after Veras pretrial services [demonstration project](#) in South Africa concluded, the situation regarding remand detaineespersons held in jail awaiting trial and/or sentencinghas finally made it back on the governments official radar. Action by the South African government was overdue. From 1995 to 2000, the number of remand detainees skyrocketed by 164 percent, to 64,000 people. Since 2000 this population has remained relatively stable, but still high, at approximately 47,000, or 30 percent of all inmates.

By enacting the Correctional Matters Amendment (CMA) Act 5 of 2011, the government formally acknowledged the care and administration of remand detainees as a purpose of South Africas correctional system. The statute is two-pronged. First, it seeks to improve access to programs and services for remand detaineeswho, up to this point, have been living in conditions described as [shockingly inhumane](#). Second, it proposes reducing the remand population by limiting how long the Department of Correctional Services can hold a person awaiting trial.

Although the CMA may help improve conditions, it remains unclear how the time limits imposed by the law will reduce the remand population. The CMA limits pretrial incarceration to two years after initial admission, without such matter having been brought before the attention of the court. South African prisons are now required to notify the National Prosecuting Authority twice a year about cases involving remand detainees who have been held for successive six-month periods. When individuals continue to be detained, their cases are referred to a court for annual review. Although the new law describes a procedure by which detainees will appear before a court, it does not explain what the court must do. Nothing in the provision prevents a court, for example, from postponing a case for an additional six months without investigating the reasons for the delay, an option permissible under section 342A of the Criminal Procedure Act.

There is also a risk that these limits could be used merely as a benchmark for the maximum time it should take to conclude a caseor what a judge considers a reasonable period of incarceration awaiting trial. The use of such thresholds is already part of judicial practice in South Africa. In the Cape High Court, for example, the judge in the 2008 case *S v Jackson* used a table listing the average number of days it takes to reach various pretrial and trial stages to decide whether the delays in the case were unreasonable. He determined that because the delay fell slightly below the reported average1,330 days from crime to sentence, or 1,132 days from first appearance to sentencethe delay was not unreasonable. (By contrast, in New York City the time from arrest to arraignment is typically 24 hours and roughly half of all cases are resolved at that stage.)

Even if the CMA signals a shift in the South African governments attitudes toward remand detention, two years is a very long time to be held before trial. Without additional reformsor a substantive amendment to the Criminal Procedure Act to reduce the time a person may be detained while awaiting trialthe CMA may not make much headway toward solving the problem.

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