



EXECUTIVE SUMMARY

Handbook of Social Protection in Detention Control Hearings

SERIES FAZENDO JUSTIÇA
COLLECTION STRENGTHENING THE DETENTION CONTROL HEARING

**EXECUTIVE
SUMMARY**

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Social Protection in
Detention Control
Hearings

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in Detention Control Hearings:
Standards for the Detainee
Social Protection Service**
can be accessed by the QR code.

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Presentation

The Brazilian Constitution underpins our aspirations as a society grounded on the rule of law while promoting social advancement with respect to fundamental rights and human dignity. In this regard, it is the indelible duty of the institutions, especially the judiciary as guardian of our Magna Carta in the last instance, to ensure that our actions point to this civilizing north, not only repelling deviations, but acting already to transform the present that we aim for.

In 2015, the Federal Supreme Court recognized that almost 1 million Brazilians within our prisons live outside the protection that the Constitution provides, with unfortunate effects on the degree of inclusive development to which we commit ourselves through the UN 2030 Sustainable Development Agenda. It is for the definitive overcoming of this scenario that the Programme Fazendo Justiça works, in a partnership between the National Council of Justice (CNJ) and the United Nations Development Programme (UNDP), with the support of the Ministry of Justice and Public Security, represented by the National Penitentiary Department.

Even during the Covid-19 pandemic, the Programme has been carrying out structuring deliverables from collaboration and dialogue between different institutions across the federal level. There are 28 actions developed simultaneously for phases and needs of the criminal cycle and the socio-educational cycle, which include the facilitation of services, strengthening of the normative framework and production and dissemination of knowledge. It is in the context of this latter objective that this publication is inserted, now an integral part of a robust listing that gathers advanced technical knowledge in the field of accountability and guarantee of rights, with practical guidance for immediate application throughout the country.

The volume is part of the collection Strengthening the Detention Control Hearing, prepared by the Criminal Proportionality hub of the Programme Fazendo Justiça (Hub 1) to ground the entry point to the prison system on national and international standards and in light of CNJ Resolution No. 213/2015 and recent changes in the Brazilian Code of Criminal Procedure. Through partnership with UNDP and the United Nations Office on Drugs and Crime (UNODC), the CNJ promotes the legality of detentions, proportionality in criminal responses and social inclusion, aiming at reducing overpopulation and prison overcrowding.

This Executive Summary presents the core of the **Handbook of Social Protection in Detention Control Hearings: Standards for the Detainee Social Protection Service**, published in 2020. The publication seeks to contribute to the full realization of detention control hearings in a global way, with emphasis on the general foundations of social protection in this context, pre-hearing social protection interview, post-hearing social protection interview and monitoring of non-custodial measures determined by the Court with attention to the social circumstances and vulnerability related to the detainees.

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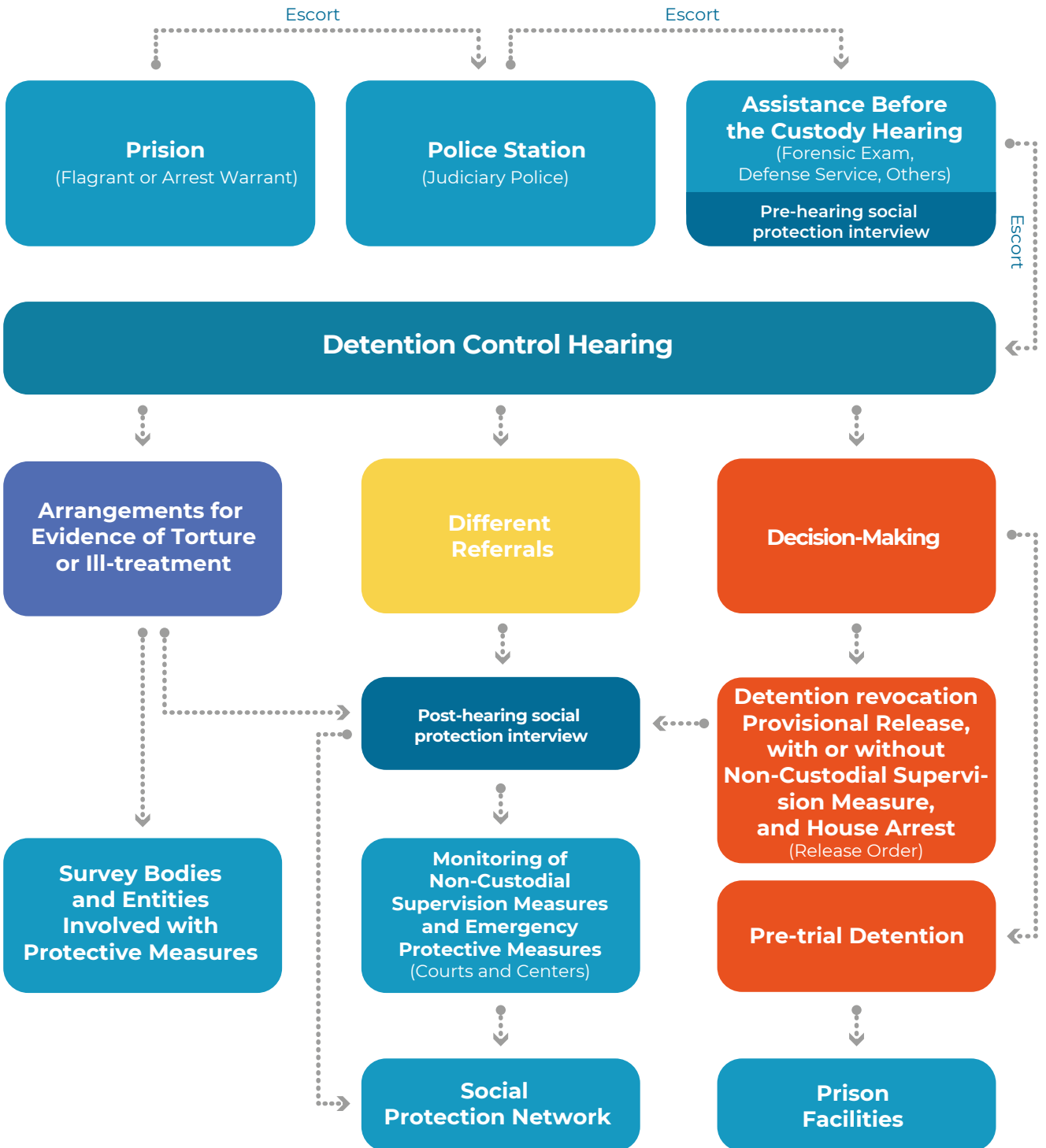
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SUMMARY

INTRODUCTION	9
1. SOCIAL PROTECTION AT THE DETENTION CONTROL HEARING	11
2. DETAINEE SOCIAL PROTECTION SERVICE: GENERAL FOUNDATIONS	14
2.1 Legal and Infralegal Ground.....	15
2.2 Service audience.....	17
2.3 Main duties of the Detainee Social Protection Service.....	18
2.4 Guiding ethical principles for social protection service.....	18
2.5 Active listening and needs assessment.....	19
2.6 Structure, team and organization.....	20
3. PRE-HEARING SOCIAL PROTECTION INTERVIEW	22
3.1 Stages of pre-hearing social protection interview.....	24
4. POST-HEARING SOCIAL PROTECTION INTERVIEW	28
Situation 1.....	29
Situation 2.....	29
4.1 General referrals.....	31
5. REFERRAL FOR MONITORING OF NON-CUSTODIAL MEASURES	34
5.1 Correctional Alternatives Integrated Center (CIAP).....	34
5.2 Electronic Monitoring Centers (CME).....	35
6. INTERSECTORAL NETWORK	36
7. CLOSING REMARKS	38

CENTRAL FLOWCHART OF THE DETENTION CONTROL HEARING



● Judicial and Non-Judicial Measures

● Non-Judicial Measures

● Judicial Decision

INTRODUCTION

This Executive Summary composes a set of actions of the Project Strengthening Detention Control Hearings, implemented by the United Nations Office on Drugs and Crime (UNODC) under the Programme Fazendo Justiça, an initiative of the National Council of Justice of Brazil (CNJ) in partnership with the United Nations Development Programme (UNDP) and the National Penitentiary Department of Brazil (DEPEN). In order to strengthen the detention control hearing, the Programme develops a national action in collaboration with the United Nations Office on Drugs and Crime (UNODC).

Its purpose is to disseminate and disclose nationally and internationally, the content of the **Handbook of Social Protection in Detention Control Hearings: Standards for the Detainee Social Protection Service**¹, from the collection Strengthening the Detention Control Hearing, which systematizes efforts and results of the Programme Justiça Presente, executed between 2019 and 2020 and whose initiatives since then, continue to be developed, expanded and deepened by the Programme Fazendo Justiça, with an important focus on strengthening detention control hearings.

Detention control hearing is the act in which the arrested person is presented before the judge for him/her to decide on the legality of the arrest, the need for non-custodial measures, to collect evidence of torture or ill-treatment committed against the detainee and promote referrals related to social protection. Its rationale goes back to the American Convention on Human Rights (Pact of San José), the Covenant on Civil and Political Rights, the Code of Criminal Procedure and the CNJ resolutions, among which Resolution No. 213/2015 stands out.

The Handbook of Social Protection in Detention Control Hearings is composed of a set of knowledge inputs that constitute highly qualified and updated material, addressing, in a comprehensive and detailed way, the public services and the most relevant topics for the detention control hearing: judicial decision-making, social protection, prevention and fight against torture, and the use of handcuffs and other instruments of restraint, according to national and international standards.

1 https://www.cnj.jus.br/wp-content/uploads/2020/11/Handbook_de_protecao_social-web.pdf

Before the challenges that reality imposes, this Executive Summary is an invitation for the public to know the new standards of the detention control hearing and follow its institutional strengthening and its definitive establishment as an institute capable of guaranteeing the safeguards of due process of law and the rights of persons submitted to State detention.

Thus, this document specifically approaches the guarantee of access to social protection of persons presented in detention control hearings in Brazil and is anchored in the Handbook of Social Protection published in 2020 by the CNJ. These guidelines are decisive for the promotion of social inclusion of detainees, and may contribute to the prevention of new criminal offenses, of future arrests or of the return of persons to the criminal justice system.

Therefore, this Executive Summary is structured to present the most relevant general foundations of this service, the guidelines for pre-hearing and post-hearing social protection interview, as well as the integration flow with the social protection network, the Criminal Alternatives Integrated Centers and the Electronic Monitoring Center.

1. SOCIAL PROTECTION AT THE DETENTION CONTROL HEARING

The continuous growth of the Brazilian imprisoned population has not echoed on the improvement of the population's living conditions and security. The 2019 *Atlas da Violência* points out that in 2017 there were 65,602 homicides in Brazil, which is equivalent to a rate of approximately 31.6 deaths per 100,000 inhabitants - the highest historical level of intentional violent lethality in the country since 2007. In 2016, the homicide rate in Brazil corresponded to 30 times that of Europe, computing 553 thousand people murdered over a period of 10 years (2008-2018).

It turns out that the high economic and social cost of the repressive apparatus and imprisonment has no effect on crime prevention. In contrast, imprisonment strongly marks the trajectory of people arrested and released from prison, as well as stigmatizes and aggravates the conditions of exclusion, with a direct impact on the expansion of organized crime and the deterioration of public safety.

Therefore, in order to improve the entry point to the prison system and strengthen the external control of police action within the legality, the National Council of Justice (CNJ) regulated the detention control hearing ensuring the right to the presumption of innocence, freedom and physical and psychological integrity of persons submitted to State detention.

Detention Control Hearing

Face-to-face presentation of the detained person, within 24 hours of the in flagrante arrest or after the execution of the arrest warrant, in which the prosecutor and defense will debate and the judge will decide on the following matters:

- a) if the arrest is lawful, it must be validated by the judge; if it is not, it must be revoked;
- b) granting of provisional release, with or without application of non-custodial measure rather than detention, through the issuance of a release order;
- c) pre-trial detention order, which may, in certain cases, be converted into house arrest, in which case the person remains detained in the course of the legal proceedings;
- d) adoption of other measures necessary to preserve the rights of the detainee, in addition to measures to ascertain possible police violence or abuse.

Although information on the socioeconomic, health and life conditions of the detainees is within the approach scope of the judge presiding the detention control hearing, this often occurs in a formal environment of uncertainty and tension for these persons, thus presenting barriers to a report that adequately portrays their complex social reality experienced as an individual in conflict with the law.

In this sense, ensuring social protection at the detention control hearing means understanding that **social protection** is a broad concept related to the social policies of the State that builds institutionalized forms of protection of the population against personal and social risks and harms. This concept is based on Article 194 of the Brazilian Constitution, which established social security as an “integrated set of actions carried out by public authorities and society, aimed at ensuring the rights relating to health, social security and social assistance”.

The National Social Assistance Policy (PNAS), which structures and regulates the Unified Social Assistance System (SUAS), defines social protection as “a set of actions, care, attention, benefits and aids offered by SUAS, to reduce and prevent the impact of social and natural hardships on the life cycle, human dignity and the family as a basic core of affective, biological and relational support”.

Detention control hearings can, in turn, become a possible channel of access to these social policies, through out-of-court measures, invariably rooted in voluntariness, self-determination and in the demands of the detainee, without disregarding that, in many cases, the only or first contact that the person has with the State will be through a police approach and arrest, and not through public policies of inclusion and social protection.

Therefore, the assessment of the needs and demands for social protection of the persons presented is the responsibility of the institutions involved in the detention control hearings. The regulation of the CNJ determines not only the holding of detention control hearings but, in an unprecedented way, foresees the assessment and consideration in court of demands related to the social protection of the detainees, with the support of multi-professional teams of the **Detainee Social Protection Service**.

The **Detainee Social Protection Service** takes place at the time of the detention control hearing, by the social service before and after the hearing, of a voluntary nature, and is also located in the scope of alternatives to imprisonment, considering its role in the face of the effective exceptionality of the arrest measure.

The **pre-hearing social protection interview** is based on the restorative perspective and points to the need for action prior to the decision taken at the detention control hearing, considering the subjective and social dimensions present in the life of the detainee and the possibilities of measures that prioritize freedom.

On the other hand, **post-hearing social protection interview** is linked to the need for referrals to the social protection network and guidelines for the alternatives to imprisonment perhaps determined.

Thus, the **Detainee Social Protection Service** seeks to ensure social protection at the detention control hearing by contributing to the proper assessing of the biopsychosocial conditions of the persons presented and thereby supporting the judiciary in making increasingly adequate and proportional decisions, sensitive to the effective exceptionality of the detention and, above all, devoted to individualization.

Likewise, it also provides judges with information that can contribute to the analysis of the possibility of revoking the arrest, granting provisional release with or without a non-custodial measure other than detention and referrals related to the social protection network, appropriate to the life context of the detainee, operating as an auxiliary body of the Justice.

2. DETAINEE SOCIAL PROTECTION SERVICE: GENERAL FOUNDATIONS

The profile of people who go through detention control hearings, as well as of people imprisoned in Brazil, is characterized by a social and racial profiling of the criminal system and it reflects in this context: young people, black and brown, with low education, precarious access to income, mostly without employment ties.

If, on one hand, the criminal justice system is marked by social and racial profiling and the criminalization of poverty, on the other, the pre-trial detention control hearing must act as a mechanism for controlling and mitigating these negative effects.

The penalization of poverty is expressly prohibited in Protocol I of CNJ Resolution No. 213/2015, in its item 2, X: “The situation of social vulnerability of the persons charged and brought to the detention control hearing cannot be a criterion of profiling in their disadvantage in considering the conversion of arrest in flagrante delicto into pre-trial detention [...] social referral should also be guaranteed in a non-mandatory basis whenever necessary, preserving the release and autonomy of the individuals.”

The Detainee Social Protection Service has a valuable role, as it can provide inputs to the decision-making of the court authority, both on the individual situation of each detainee presented to Justice and the social drivers which affect the life of the individual that need to be considered in the delivery of the person to the social protection network, and in the adequacy and real-world conditions of possible application of any non-custodial measure other than detention.

Therefore, it is essential that the team of the Detainee Social Protection Service be sensitive to the dynamics of inequalities and vulnerabilities that affect people in detention control hearings, requiring analysis of the different aspects and scales, such as race, color, national origin, sex, gender identity, sexual orientation, religion or belief, place of residence, labour market, immigration status, age, level of education, and others based on the assumption that the overlap of the deletions and discrimination worsen the psychosocial condition of the individuals.

2.1 LEGAL AND INFRALEGAL GROUND

The Detainee Social Protection Service is a service established within the framework of the Social Protection Network and the policy of correctional alternatives in Brazil. The standards, guidelines and normative basis for this Service come from multiple sources.

Initially, Law No. 12.403/2011, also known as the Non-Custodial Measures Law, introduced important changes in the Code of Criminal Procedure (CCP), especially in Article 282, II, establishing that the court decision on the application of non-custodial measures must observe in addition to the need for the measure, also the **adequacy to the “personal conditions of the defendant or accused”**² in the specific case.

If, in the context of the detention control hearing resulting from arrest in flagrante delicto, pre-trial detention and temporary detention constitute non-custodial measures, the Criminal Procedure Law also provides for a list of non-custodial alternatives less restrictive than detention, and which must be applied by the judge when the specific case demonstrates that such measures are capable of protecting, in an appropriate manner, the legal asset in question.

Such non-custodial measures may be applied, for example, in cases of risk of absconding, intimidation of witnesses or destruction of evidence. In any case, when deciding on the application of an alternative non-custodial measure to detention, the judge must take into account, in the specific case, the principles of the presumption of innocence, the proportionality of the measure applied and its precautionary adequacy to the protection of legal assets potentially affected.

In turn, CNJ Resolution No. 213/2015 regulates that the monitoring of non-custodial measures will be performed by the Criminal Alternatives Integrated Center (CIAP), which has multidisciplinary teams responsible for monitoring compliance with non-custodial measures and necessary referrals to the social protection and health network.

² BRAZIL. Law No. 12.403 of May 4th, 2011. It amends provisions of Decree-Law No. 3.689, of October 3rd, 1941 - Code of Criminal Procedure, relating to procedural arrest, bail, provisional release, other non-custodial measures, and provides other arrangements. Brasília: 2011. Available at: http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2011/Lei/L12403.htm

Code of Criminal Procedure: non-custodial measures alternative to detention

Art. 319. Non-custodial measures other than detention:

- I - Periodic attendance in court, within the term and under the conditions set by the judge, to inform and justify activities;
- II - Prohibition of access or attendance to certain places when, for circumstances related to the fact, the defendant or accused must remain distant from these places to avoid the risk of further infractions;
- III - Prohibition of maintaining contact with a certain person when, due to circumstances related to the fact, the defendant or accused must remain distant from him/her;
- IV - Prohibition to be absent from the district when the stay is convenient or necessary for investigation or evidence gathering;
- V - Home stay at night and on days off when the investigated or accused has fixed residence and work;
- VI - Suspension of the exercise of public function or activity of an economic or financial nature when there is fair fear of its use for the practice of criminal offenses;
- VII - Provisional detention of the accused in cases of crimes committed with violence or serious threat, when the experts conclude that it is not imputable or semi-imputable (art. 26 of the Criminal Code) and there is a risk of reoffending;
- VIII - Bail, in case of offenses that admit it, to ensure the attendance to acts of the legal proceeding, avoid obstruction of its progress or in case of unjustified resistance to the court order;
- IX - Electronic monitoring.

Art. 320. The prohibition of leaving the country will be communicated by the judge to the authorities in charge of supervising the departures of the national territory, summoning the defendant or accused to hand over the passport within 24 (twenty-four) hours.

Bail- Specific rules

Art. 327. The bail taken by term will oblige the secured person to appear before the authority, every time subpoenaed for procedure acts of the investigation and evidence gathering and for the trial. When the defendant does not appear, the bail will be deemed broken.

Art. 328. The secured defendant may not, under penalty of breaking of bail, change residence without prior permission of the suing authority, or be absent for more than 8 (eight) days of his/her residence without communicating to that authority the place where to be found.

It is worth noting that Law No. 12.403/11 also amended the Code of Criminal Procedure, admitting electronic monitoring as a non-custodial measure other than detention. Monitoring is no longer restricted to penalty enforcement, and is provided for as a non-detention measure for defendants or accused persons.

For the electronic monitoring measure, there are Electronic Monitoring Centers, with their own methodologies and regulations. In this sense, the persons who receive the determination of compliance with this measure must necessarily be referred to these centers, among other referrals that might become necessary.

Additionally, the parameters defined in the Handbook of Social Protection are anchored in international standards and guidelines such as the Charter of the United Nations (1945)³, the Nelson Mandela Rules (2015)⁴, the Tokyo Rules (1990)⁵, the Bangkok Rules (2010)⁶, The Pact of San Jose of Costa Rica (1969)⁷ and the International Covenant on Civil and Political Rights (1966)⁸.

Thus, it is recommended that the Detainee Social Protection Service is provided in close coordination with the Social Protection Network, with the Criminal Alternatives Integrated Center and the Electronic Monitoring Centers.

2.2 DETAINEE SOCIAL PROTECTION SERVICE

The Detainee Social Protection Service provides for the detainees, if they so voluntarily agree with, to be heard by a team of professionals dedicated on identifying their specific social, economic and health conditions. This appointment will be offered exclusively to the detainee on the same day of their presentation at the detention control hearing and it is divided in two phases: the pre-hearing social protection interview and, the post-hearing social protection interview for those that are granted provisional release, with or without non-custodial measures.

It is important to highlight the voluntary nature of these services, which means that the person presented to the detention control hearing must be consulted about his/her willingness for the services, as well as for further Detainee Social Protection Service's interventions.

3 http://www.planalto.gov.br/ccivil_03/decreto/1930-1949/d19841.htm

4 <https://www.cnj.jus.br/wp-content/uploads/2019/09/a9426e51735a4d0d8501f06a4ba8b4de.pdf>

5 <https://www.cnj.jus.br/wp-content/uploads/2019/09/6ab7922434499259ffca0729122b2d38-2.pdf>

6 <https://www.cnj.jus.br/wp-content/uploads/2019/09/cd8bc11ffdc397c32eecd40afbb74.pdf>

7 http://www.planalto.gov.br/ccivil_03/decreto/D0678.htm

8 http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0592.htm

2.3 MAIN DUTIES OF THE DETAINEE SOCIAL PROTECTION SERVICE

In order to meet its objectives, the procedures relating to social protection in the framework of detention control hearings depend on:

- (1) specialized service with **welcoming and active listening**;
- (2) **quality of information about the life context of the detainee and the proposal of ways to access the network and public policies aimed at fighting or overcoming the situation of risk or social vulnerability** in which the person possibly finds himself/herself;
- (3) **understanding from the justice system actors that it is possible to meet the social needs of the detainee**;
- (4) **mapping and articulation**, beginning at the hearing, **of intersectoral networks and services** that offer integral care, related to social assistance, health, human rights, work, education and other public policies capable of ensuring the effective exercise of citizenship of detainees who are in situation of social vulnerability.

The social protection interview provided by the Detainee Social Protection Service **does not aim to collect traces or produce evidence for the arrest in flagrant, detention control hearing or for the criminal case**. Its role is to carry out a active listening, identify personal needs and social vulnerabilities, as well as promote guidance and referral to the Social Protection Network, actions that can provide subsidies **specifically for the judicial decision taken at the detention control** hearing.

2.4 GUIDING ETHICAL PRINCIPLES FOR SOCIAL PROTECTION SERVICE

Both the pre-hearing and post-hearing social protection interviews are offered ensuring respect for the **autonomy** of the detainees. Autonomy here is understood as the idea that every human being can decide for himself/herself and in opposition to a paternalistic posture in which people (or even groups) interfere in issues that concern the sphere of the individual⁹.

To ensure respect for autonomy it is essential that the service is offered from the perspective of **voluntariness**. The detainee has the right to accept or not the social

9 SEGRE, Marco; SILVA, Franklin Leopoldo e; SCHRAMM, Fermin R. O contexto histórico, semântico e filosófico do princípio de autonomia. Revista Bioética, v. 6, n. 1. 1998. Available at: https://revistabioetica.cfm.org.br/index.php/revista_bioetica/article/download/321/389

protection service and the proposed interventions, and must be informed about the voluntary nature of these services immediately upon first contact with the team. In both services, before and after the detention control hearing, the recommended approach is to welcome, listen and understand social and health demands, including emergency needs, if the person has an interest in presenting them.

REMINDER

The refusal of the detainee to be covered by the Service may not, under any circumstances, be interpreted in a negative way, nor cause him/her any damage.

The team must respect the interview script presented in the Handbook of Social Protection, as well as inform the detainee beforehand about the sharing of information in the standard informational report to be accessed at the detention control hearing, as mentioned. **The service is confidential, but the informational report of personal and social conditions produced with information contained in this service will be accessed at the detention control hearing**, which should be clear to the person served.

The principle of **non-maleficence**¹⁰, evoked in the field of Bioethics, exposes that medical actions should not cause harm to people. By translating this concept into the Detainee Social Protection Service, it is essential to understand the situations that affect the audience served in detention control hearings and the sealing of conduct that may cause harm or aggravate vulnerabilities of these people.

This ethical guideline is also strongly grounded in the principle of the presumption of innocence, so that no action, approach, analysis or recommendation of referrals can treat the person as guilty. Specifically, this principle is embodied by the **absolute prohibition of recommendations, conclusions or demonstrations in favor of measures of deprivation of liberty or restriction of detainee's rights**.

2.5 ACTIVE LISTENING AND NEEDS ASSESSMENT

The social protection service provided in the context of detention control hearings has an interdisciplinary and intersectoral perspective. Among the different approaches in the field of social protection policies, the concept of “active listening”¹¹ stands out

¹⁰ BEAUCHAMP, T. L.; CHILDRESS, J. F. Principles of Biomedical Ethics. 5th ed. New York: OXFORD University Press. 2001.

¹¹ Active listening is provided for in the National Humanization Policy (PNH) of the Unified Health System (SUS). According to the PNH/SUS, workers and users are active and protagonists of health actions. It starts from the commitment to the individuals and not with the disease

as a practice to be incorporated in the suggested cases (before and after the detention control hearing).

Active listening has a humane perspective of care and seeks to identify and understand the needs of the people served, making subsequent referrals more effective, as well as creating and expanding timely access to social rights, through policies and services available.

Imbued with this logic of humane care and aiming at understanding the needs of individuals, the teams responsible for the social protection of the detainee should guide their actions observing the following questions:

- What are the emergency demands initially assessed?
- What are the demands presented by the person served and/or assessed by the team?
- What are the public policies, services, mechanisms, programmes, projects, benefits and community resources available for the demands presented and assessed?

The active listening performed by the Detainee Social Protection Service allows the multidisciplinary team to identify, from the free report made by the person served and the questions asked, the existence of situations of violations of social rights that occurred during the life trajectory, the existing vulnerabilities, as well as the imminence of a situation of social risk after the detention control hearing.

2.6 STRUCTURE, TEAM AND ORGANIZATION

The physical and human resources allocated must be compatible with the number of people presented daily at the detention control hearings in the locality, in order to ensure adequate time for individual and private social protection interviews with the people presented.

The service requires a structure with one or more rooms that provide privacy for the interview, since sensitive information can be raised. In addition to the physical space, professionals should have a basic structure, with telephones, computers with internet access and printers, so they are able to collect additional information and make contact with social protection network services available.

nor the diagnosis. By recognizing the limits of health knowledge about people's lives, individuals are placed and affirmed as active actors in the care process. (BRAZIL. Ministry of Health. Secretariat of Health Care. National Humanization Policy PNH. Brasilia, 1st ed., 2013. Available at: http://bvsmms.saude.gov.br/bvs/publicacoes/politica_nacional_humanizacao_pnh_folheto.pdf)

The team must be multidisciplinary, composed minimally of professionals from Psychology and Social Work, and may include pedagogues, social educators, outreach workers, among representatives from other areas, preferably who have the capacity to provide humane treatment. It is recommended that the Justice System establishes a partnership with the Administration in the assignment of these professionals, as well as with Universities, other public institutions or civil society organizations.

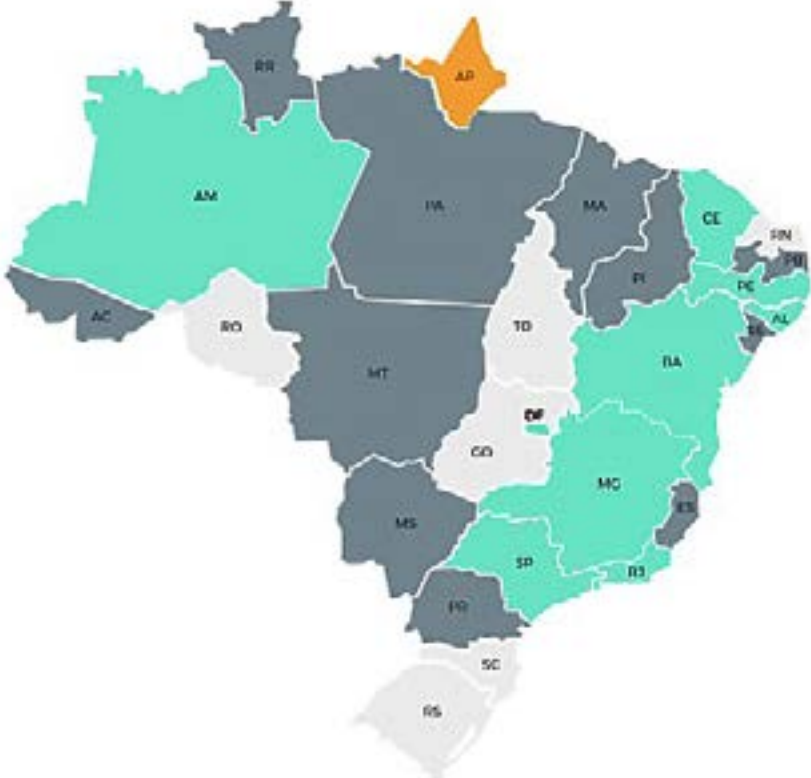
DETENTION CONTROL HEARING

➔ **DETAINEE SOCIAL PROTECTION SERVICE (APEC)**

21 CAPITALS

- Pre and post-hearing Social Protection Interview
- Post-hearing Social Protection Interview
- Pre-hearing Social Protection Interview

- ➔ **FEDERAL JUSTICE:**
TRF-3 (Guarulhos, SP)
Pre-hearing Social Protection Interview
- ➔ **INTERIORIZATION:**
Espírito Santo
Sergipe



3. PRE-HEARING SOCIAL PROTECTION INTERVIEW

Before the detention control hearings, social protection service must be offered to all persons arrested, in flagrante or by judicial warrant, presented to the judge for hearing.

This service should be offered in conditions that minimally provide privacy, voluntariness and **humane welcome**, without the use of handcuffs for instance, and aims to **provide social protection service through active listening paying attention to information related to personal, social and health conditions**.

Among the important psychosocial factors for the understanding of the life context of the detainee, it is possible to highlight: family, socio-community, educational and professional integration, lack of or poor income, and issues related to the work world, career, or historical (intergenerational or not) marked by social exclusion and possible fragility or even absence of public policies, migration, as well as potential damages to the physical and mental health, and also subject to the intersectionality.

In this sense, it is important to consider the individual, social and programmatic dimensions of vulnerabilities, since the information collected will be analyzed from the perspective of referrals to the social protection network upon release.

Pre-hearing social protection interview

Audience: all persons arrested in flagrante (in flagrante em itálico) or by arrest warrant, presented in detention control hearing.

Purpose: to provide social protection services through active listening, considering information related to personal and social conditions, in order to:

- (i) Provide emotional welcoming to the detainee, informing him/her about the nature, procedures and purpose of the hearing;
- (ii) Assess, meet or refer emergency demands of the detainee that, perhaps, have not yet been identified until that moment, such as food, drinking water, clothing, personal hygiene items or assistance to contact family members or another person indicated by the detainee;
- (iii) Assess demands and vulnerabilities regarding the person's specific socioeconomic situation and health conditions, among others;

- (Vi) Recommend referrals, of a voluntary nature, for care upon release with the social protection network and healthcare, according to the needs and vulnerabilities assessed;
- (V) Subsidize the judge with information about the personal and social conditions of the detainee for the detention control hearing exclusively.

Among the personal and social conditions to be observed and assessed during the detention control hearing, it is worth highlighting:

- (i) Elderly people;
- (ii) People with disabilities or living with chronic diseases;
- (iii) People with mental health disorders;
- (iv) People with drug use disorders;
- (v) Persons living in the streets or in socioeconomic condition that makes it impossible to comply with any non-custodial measure;
- (vi) Women, particularly pregnant women, lactating women, mothers or persons responsible for a child up to 12 years old or for a person with disabilities, living with chronic or serious diseases;
- (vii) Person from the LGBTQI+¹² population and who, for some reason, is subject to social risk or vulnerability due to their orientation and/or gender identity or who needs the guarantee of the right to use a social name in the hearing, for example;
- (viii) Indigenous persons or members of other traditional communities; and
- (ix) Persons with status of migrants

The pre-hearing social protection interview does not replace or overlap with the duties performed by the Public Defender or private lawyer. The Detainee Social Protection Service is not provided for the technical-legal defense of the detainee, but strictly for the survey of psychosocial aspects and proposals for interventions and referrals, so that, **under no circumstances, should this assistance be confused, replace or overlap that of the defense.**

It is recommended that this prior social protection interview be carried out without the presence of third parties, in view of the nature of the listening to be offered, and the interventions carried out by the Service professionals.

¹² LGBTQI+: (Lesbian, gay, bisexual, transgender, transvestite, transsexuals, questioning or queer, intersex, agender, asexual and more). GAYLATINO NETWORK; LGBTI NATIONAL ALLIANCE. LGBTI + Handbook of communication. Núcleo de Estudos Afro-Brasileiros da Universidade Federal do Paraná; SOMOSGAY, [s. d.]. E-book. Available at: <https://unaids.org.br/wp-content/uploads/2018/05/Handbook-comunicacao-LGBTI.pdf>

3.1 STAGES OF PRE-HEARING SOCIAL PROTECTION INTERVIEW

The organization of the pre-hearing social protection interview agenda will require an understanding of the entire flow prior to the arrival of the detainee to the space of the interview, as well as a coordination effort with the different actors involved in this flow and schedules. This service includes three distinct moments: (1) *first contact*; (2) *interview*; and (3) *report preparation*.

The **first contact** with the detainee is a fundamental moment of care. The professional must show respect and empathy, treat the person from the perspective of the presumption of innocence, inform what the service is, what are the objectives, which is voluntary in nature, as well as explain that it is aimed at protection and social insertion. He/she shall identify demands for interpreters or translators, for urgent health conditions, as well as to provide emergency supplies such as drinking water, food, and intimate pads, among others.

The **interview** should allow to sketch a general overview of the social conditions in which the detainee lives, identify demands and possibilities of referral within the scope of social protection. It should include questions about documentation, housing, family, work, income and social benefit, education, health, among others.

The **preparation of the Informational Report of Personal and Social Conditions** should be standardized, with information entered objectively. It is noteworthy that this report is not characterized as an account or social opinion and does not issue any guidance on the application of measures that will be adopted by court decision during the detention control hearing, but rather relevant information as support for judicial decision-making.

Relevant information is considered, in this sense: place of housing - street situation or extreme vulnerability; mobility conditions, that is, the person's ability to move to comply with judicial orders; working hours and conditions, indicating peculiarities that if not observed could generate risks to the person's subsistence conditions; care for children, elderly and other dependents; persons living in the streets, to whom it is not recommend cross compliances that are impossible to be fulfilled within this context; among others.



See more by accessing pages 160 and 168 of the Handbook of Social Protection.

The same informational report should be consolidated and inserted in a simple local information system, it is recommended that a module within SISTAC¹³ be used as a priority, and shared exclusively with the judge and the parties at the time of the detention control hearing.

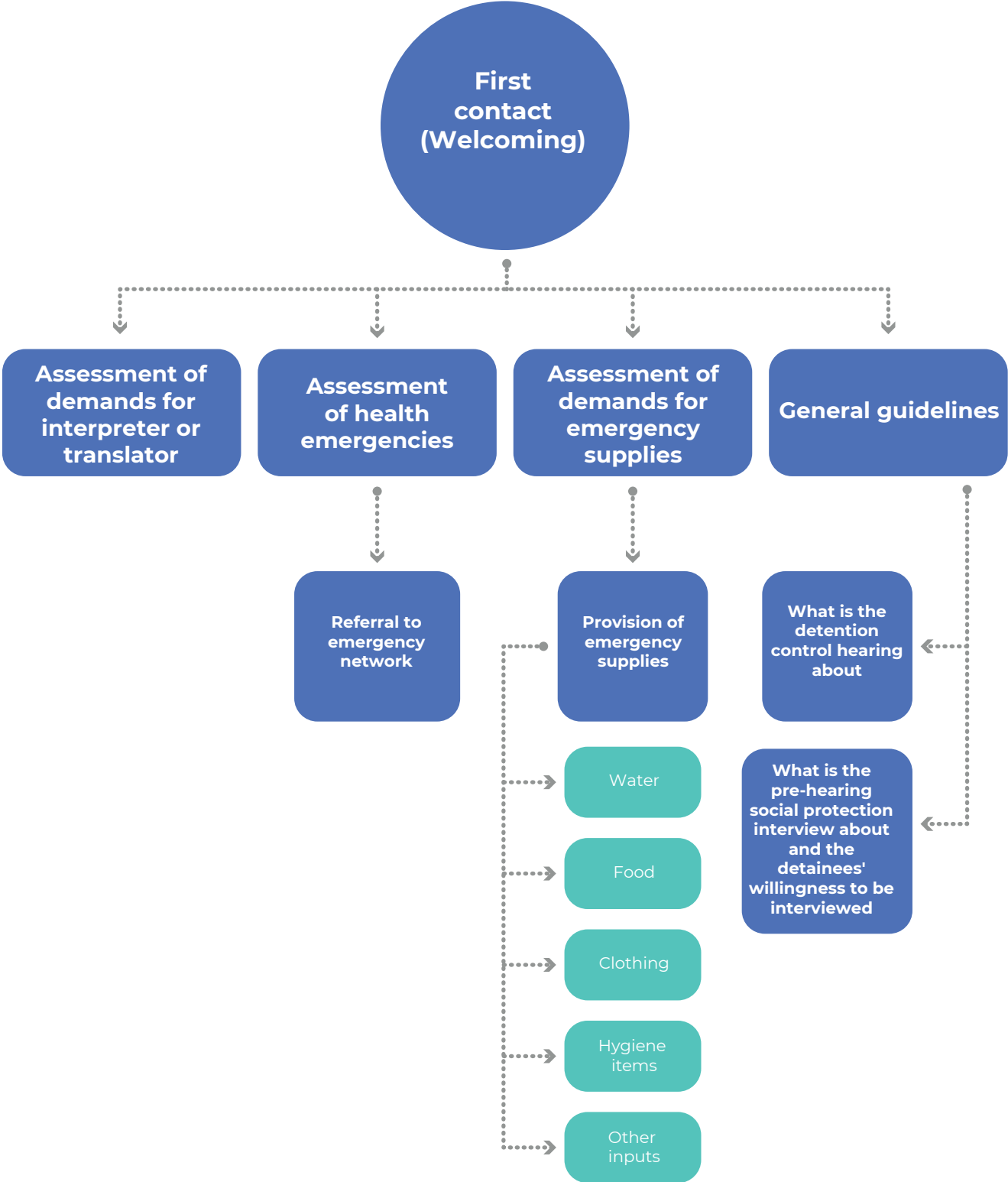
Professionals responsible for the post-hearing social protection interview may also have access to the report so that they can make referrals to people released with or without non-custodial measures. Specific guides will be used for referrals and the report produced shall not be made available for any institution and purposes other than those related to the detention control hearing.

REPORT VALIDITY

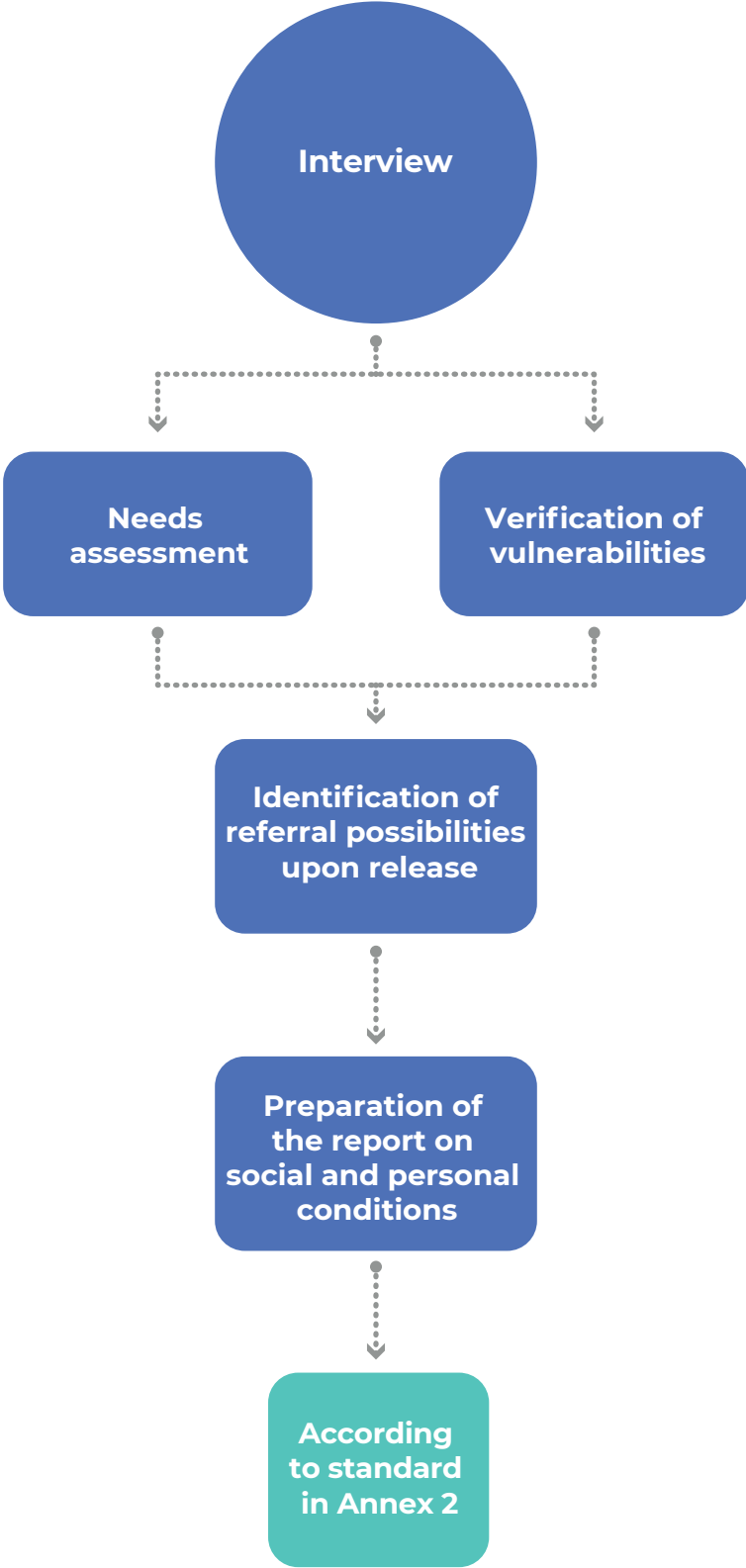
The Informational Report of Personal and Social Conditions has specific validity for the time of the detention control hearing. The report **CANNOT** be attached with the Arrest in Flagrante Record (AFR) for distribution, nor be added to the criminal process. It **CANNOT** be sent to any institution, since for social referrals there is a model form in the annex of the Handbook of Social Protection. Thus, **it WILL NOT be valid after the detention control hearing**. If the person served, in the future, attends again to a Detention Control Hearing, he/she will be guaranteed new pre-hearing social protection interview, with the creation of a new report. This measure respects the dynamics and variations inherent to the life context of each individual over time.

13 Detention Control Hearing System. For more information access: <https://www.cnj.jus.br/sistema-carcerario/audiencia-de-custodia/sistac/>

PRE-HEARING SOCIAL PROTECTION INTERVIEW - STEP 1



PRE-HEARING SOCIAL PROTECTION INTERVIEW - STEP 2 AND 3



4. POST-HEARING SOCIAL PROTECTION INTERVIEW

The post-hearing social protection interview should take place immediately after the hearing. The key objective of this interview is to develop strategies that contribute to social insertion and clarify the next developments for the life of the person in relation to Justice.

Overcoming the disadvantage of access to the social protection network depends on the ability of the team to conduct work processes that can guide, in the best possible way, paths of access to services and rights aimed at asserting autonomy, citizenship and community participation.

It is also an assignment of the team, at this point, to properly inform the public about the decisions of the detention control hearing, the non-custodial measures determined if any, as well as generate the referrals of the person to the respective criminal services, such as the Criminal Court, the Correctional Alternatives Center or Electronic Monitoring Center, depending on the non-custodial measure **perhaps** ordered.

Post-hearing social protection interview hearing will occur in two situations:

Situation 1

The person whose arrest was revoked or who was granted provisional release without non-custodial measures. In this situation, the team should:

- Identify if there is any demand in the field of social protection or health that has not been informed in the pre-hearing social protection interview;
- When appropriate, provide guidance on legal assistance, especially with the Public Defender's Office;
- Issue a referral, by written means, sending the person to the social protection services network recommended from the pre-hearing social protection interview or assessed in the post-hearing social protection interview, aimed at the initiation or continuity of psychosocial care and the mitigation of vulnerabilities;
- Provide support for the return of the detainee to his/her residence by local public transport, by providing a transport allowance, or other similar instrument available.

Situation 2

The person who was granted release with any non-custodial measure. In this situation, the team should:

- Identify if there is any demand in the field of social protection or health that has not been informed in the pre-hearing social protection interview;
- Provide guidance on the conditions in which he/she must comply with the non-custodial measure ordered and refer him/her to the service in charge of monitoring the non-custodial measure, such as the Correctional Alternatives Integrated Central, Electronic Monitoring Center or competent Court, as the case may be;
- When appropriate, provide guidance on seek legal assistance, especially with the Public Defender's Office;
- Issue a referral, by written means, sending the person to the social protection services network recommended from the pre-hearing social protection interview or assessed in the post-hearing social protection interview, aimed at the initiation or continuity of psychosocial care and the mitigation of vulnerabilities;
- Provide support for the return of the detainee to his/her residence by local public transport, by providing a transport allowance, or other similar instrument available.

Therefore, the social protection team after the detention control hearing is assigned to develop strategies aimed at permanent coordination with the partner network and to stimulate the approximation of these services with the Justice, as summarized below:

Post-hearing social protection interview

Audience: persons who are granted provisional release with or without alternative non-custodial measures to detention or house arrest.

Purpose: to carry out social protection interview aimed at released people, in order to:

- (i) After the decision communicated by the court at the hearing, provide guidance to the person with non-custodial measure(s) order about the conditions of compliance and send he/she to the responsible service according to the type of non-custodial measure applied, as well as to the Court of Justice, the Correctional Alternatives Integrated Center (CIAP) or the Electronic Monitoring Center;
- (ii) Carry out referral of the released person with or without non-custodial measure to the social protection network, from the prior care or assessed at a later time, according to the needs observed, aiming at the reduction of vulnerabilities, as well as the beginning or continuity of psychosocial care, if the person served agrees;
- (iii) Where appropriate, provide guidance on full and free legal assistance through the Public Defender's Office or private advocacy; and
- (iv) Develop a continuous coordinating strategy with the intersectoral network, stimulating the voluntary rapprochement of these services with the Justice System.

Below are listed attributions that are **NOT** the responsibility of the Detainee Social Protection Service. Thus, the Service:

- **Does not survey** social and psychological conditions, nor does it prepare forensic reports;
- **Does not perform diagnostics;**
- **Does not monitor the judicial orders** after the detention control hearing, which is up to the competent courts in collaboration with the Centers;
- **Does not communicate the victim of domestic and family violence against the woman who is not present at the hearing**, in cases where the accused is released (art. 8th, § 6th of CNJ resolution No. 213/2015¹⁴), such function being performed by the Court official, rather than the team of the Detainee Social Protection Service
- **Does not replace private interview with the defense** (Public Defender or private lawyer) before the detention control hearing;
- **Does not replace the services of the social protection network;**
- **Does not make any kind of value judgment**, in order to exercise welcoming care in its greatest potential, nor to perform religious activities or orientation;
- **It does not access information about criminal background.**

¹⁴ NATIONAL COUNCIL OF JUSTICE. CNJ Resolution No. 213 of December 15th, 2015. It provides for the presentation of any person arrested to the judge within 24 hours. DJe/CNJ No. 1, from 01/08/2016, p. 2-13. Brasília: 2015. Available at: <https://atos.cnj.jus.br/atos/detalhar/atos-normativos?documento=2234>

4.1 GENERAL REFERRALS

The work of the Detainee Social Protection Service teams is supported by CNJ Resolution No. 288/2019, which advocates the responsibility of the judiciary in relation to services and public policies in the field of social protection and psychosocial protection of those people undergone criminal justice¹⁵.

In order for the multidisciplinary team to act effectively in the perspective of inclusion and access to rights, it is necessary to develop skills and abilities so that professional practices become more reflective, effective and capable of dealing with diverse and different contexts and life stories.

Thus, referrals in the field of social protection should not be provided from any kind of judgments. It is expected that relationships of care permeated by mutual respect to be established, including with the partners of the social protection network.

Decisions regarding the procedures in this process of acceptance, listening and referrals must occur in a democratic and agreed manner with the service user. It is important that the person, when receiving the referral and when the social protection interview is completed, is also verbally guided in accessible language, about the content of the document, so that he/she can understand its purpose and use.

How to deal with torture or ill-treatment report in the social protection interview?

In cases of torture, it will be up to the team to show empathy with the person and to inform him/her, in a careful manner, that his/her statement about torture or ill-treatment will be gathered at the time of the detention control hearing by the judge. It is recommended that the team does not dig deeper into the aspects of this report, since it is up to the judge to ask, record and take the necessary steps in cases of torture.

Exposing the person to make two reports about torture may mean a re-victimization, considering the suffering inherent in the exposure about what happened. In any case, there is a field in the form specific for objective information about having suffered torture, but only the judge is responsible for deepening the registration and proposing procedures for cases of torture.

¹⁵ NATIONAL COUNCIL OF JUSTICE. CNJ Resolution No. 288 from June 25th, 2019. It establishes the institutional policy of the Judiciary Power to promote the application of correctional alternatives, with a restorative focus, rather than deprivation of liberty. DJe/CNJ No. 129/2019, from 6/2/2019. Available at: <https://atos.cnj.jus.br/atos/detalhar/2957>

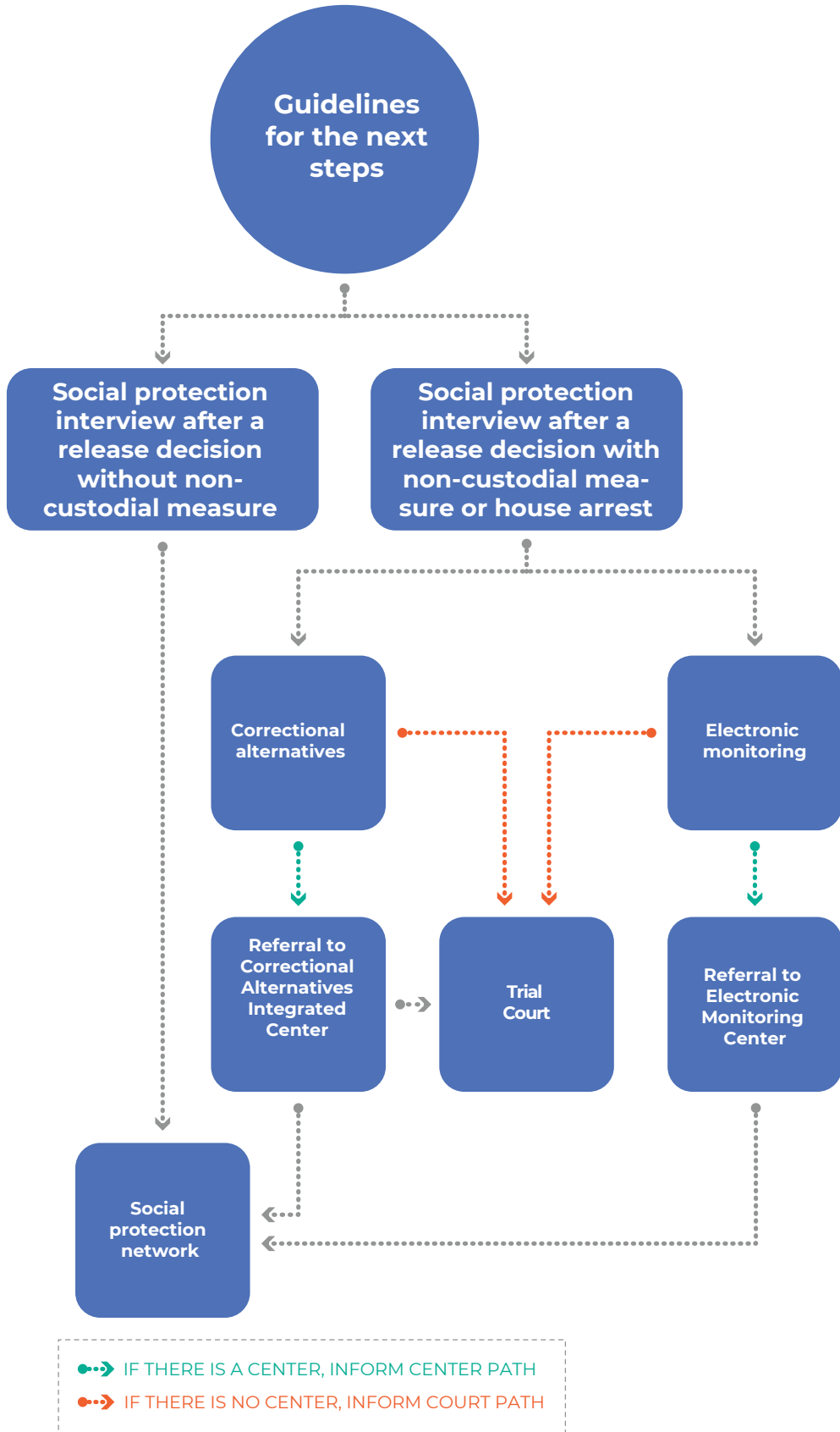
In the case of interviews of men who are perpetrators of domestic and family violence, released with non-custodial measures, the subsequent post-hearing social protection interview and the respective referrals must follow the guidelines and mechanisms already described. Specifically, they can also be referred to reflexive groups, restorative practices or other projects aimed at holding accountable men responsible for violence present in the network, due to judicial orders or spontaneous acceptance, if the team perceives the possibility of agreement of the man served.

If the protective measure of removal from the residence is ordered, the social service after the hearing may make referrals to hostels, if the man does not have another place to reside, in addition to other possibilities of referrals from the demands presented.

Thus, as already mentioned, the following referrals are made by the social protection teams after the detention control hearing:

- Social protection network;
- Correction Alternatives Integrated Center (CIAP), which carries out the monitoring of non-custodial measures, when applied, or to the competent Court, when there is no Correction Alternatives Integrated Center;
- Electronic Monitoring Center, which carries out the of the electronic monitoring measure, when applied.

POST-HEARING SOCIAL PROTECTION INTERVIEW



5. REFERRAL FOR MONITORING OF NON-CUSTODIAL MEASURES

The monitoring of the non-custodial measures applied in detention control hearings, as well as the support for compliance, are activities to be developed by the Criminal Courts and, above all, in partnership with the Correctional Alternatives Integrated Centers (CIAP) and the Electronic Monitoring Centers (CME), according to the types of non-custodial measures ordered.

The Centers are public facilities, managed by the Administration, which work in partnership with the Justice System and have multidisciplinary teams trained for the adequate monitoring of non-detention measures.

5.1 CORRECTIONAL ALTERNATIVES INTEGRATED CENTER (CIAP)

The Correctional Alternatives Integrated Center (CIAP) plays an important role in the development of methodologies and monitoring of compliance with non-custodial measures, as well as in psychosocial monitoring and in the articulation of social protection networks.

The existence of this space as a partner service to the justice system promotes greater quality in the monitoring of the various modalities of correctional alternatives applied, with the development of methodologies capable of promoting accountability, social inclusion of people and, also, contributing to the reduction of incarceration.

Handbook on Alternatives to Imprisonment Management

The methodologies for monitoring non-custodial measures are provided for in the Handbook of Alternatives to Imprisonment Management, published by the National Council of Justice and can be accessed by this link:

https://www.cnj.jus.br/wp-content/uploads/2020/05/Handbook-de-gest%C3%A3o-de-alternativas-Penais_ARTE_web.pdf

5.2 ELECTRONIC MONITORING CENTERS (CME)

The Electronic Monitoring Center consists of the implementation of an electronic device in the body of the individual (investigated, accused or convicted) that begins to have restrictions on his/her freedom, being monitored by a Monitoring Center created and managed by the government of the states, having a multidisciplinary team to track all the people monitored.

Management Model for Electronic Monitoring of Persons

The procedures for supervising and treating incidents related to the electronic monitoring measure are provided for in the Management Model for Electronic Monitoring Policy, which can be accessed by this link:

<http://depen.gov.br/DEPEN/dirpp/monitoracao-eletronica/modelo-de-gestao/modelodegestoparaa-monitoraoeletrnicadepessoas.pdf>

6. INTERSECTORAL NETWORK

There are several national and international guidelines, approaches and evidences that indicate intersectorality and network coordination strategies as something necessary to social attention and protection approaches. However, in daily practice, attention to vulnerable populations does not occur efficiently without the commitment of the management to the construction of intersectoral networks.

In the daily practice of the Detainee Social Protection Service, the mapping and recognition of services, public policies and available community resources are structuring steps in the construction of intersectorality. Therefore, it is essential to articulate with social security (health, social assistance and welfare system), as well as in the possibilities of guarantees of housing, work, education, among other alternatives.

The **Unified Social Assistance System – SUAS** is a public policy managed by the Federal Administration, in cooperation with states and municipalities, which has as its main objective the guarantee of rights and the protection of those who need it through services, benefits, programmes and projects.

The construction and implementation of SUAS in Brazil are structured according to the level of complexity, with basic Social Protection Services, Special Social Protection of Medium and High Complexity, which can be integrated and enabled from the demands in detention control hearings.

The **Unified Health System - SUS** is a public policy of tripartite responsibility, that is, of all Federated Entities (municipalities, States, Federal District and Union), organized in primary, medium and high complexity care. The organizational arrangement of the Health Care Network (RAS) was determined through an ordinance, as a model capable of overcoming the fragmentation between public health policies¹⁶.

It is understood that networking presupposes actions and services for promotion, prevention and recovery at all levels of health. It is, therefore, the integration of health care aimed at long-term care¹⁷, a netting that interconnects and integrates health facilities

16 MENDES, Eugênio Vilaça. *As redes de atenção à saúde*. Brasília. Organização Pan-Americana de Saúde, 2011. Available at:https://bvsmms.saude.gov.br/bvs/publicacoes/redes_de_atencao_saude.pdf

17 BRAZIL. Ministry of Health. Ordinance No. 4.279 of December 30th, 2010. It establishes guidelines for the organization of the Health

and services in a given territory, systematically organizing them so that different levels and technological densities of care are articulated and appropriate for the attendance of persons.



See more by
accessing page 126
of the Handbook of
Social Protection.

In addition to SUS and SUAS, there are other important devices and policies that can contribute effectively to overcoming the challenges inherent in the social insertion of vulnerable populations, especially **social security, housing, work and education**.

Care Network within the Unified Health System (SUS). Brasilia, 2011. Available at: https://bvsmis.saude.gov.br/bvsmis/saudelegis/gm/2010/prt4279_30_12_2010.html

7. CLOSING REMARKS

As observed in the course of the Executive Summary, the Detainee Social Protection Service performs an important role in welcoming and assessing emergency and social demands, before the detention control hearing takes place. It also provides referrals to care and attention in the Social Protection Network, according to the guidance of the professional of the service and the decision of the magistrate in charge.

Furthermore, the service can provide important support after the detention control hearing by referring persons released with or without non-custodial measure in the appropriate services to meet social demands, as well as in the services that will follow the detainee in compliance with the non-custodial measures (Court of Justice, CIAP, CME).

Therefore, the application of the principle of **equity is the key to the effectiveness of the social protection actions offered before, during and after the detention control hearing**. Although it does not end at this moment, the quality of service and care to the detainee is indispensable for the possibility of building a new trajectory and, often, for the equation of the serious social problem of rights violations and violence that affect those who most need a State present for the guarantee of fundamental rights, such as access to health, housing, work and income, education and so many other rights that have been and are constantly denied to them.



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