

**LGBTI People in
the Juvenile
Justice System –
Booklet for the
Implementation of
the CNJ Resolution
348/2020**





SERIES FAZENDO JUSTIÇA

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FOREWORD

The National Council of Justice (CNJ), in partnership with the Ministry of Justice and Public Security (MJSP) and the Brazilian office of the United Nations Development Programme (UNDP Brazil), develops the Program Fazendo Justiça (Doing Justice) establishing a significant milestone in the search for innovative solutions in the field of criminal and juvenile justice.

The program works to qualify structures and services, promotes training, supports the drafting of regulations and public policies, and develops informative documents. These materials include guides, manuals, researches and models that combine technical and normative knowledge with the reality experienced in different places across the country. These products identify good practices and offer guidance to facilitate the immediate and effective implementation of interventions.

The program is aligned with the decision of the Supreme Court in the Claim of Non-Compliance with a Fundamental Precept Lawsuit (ADPF) No. 347, which in October 2023, recognized that Brazilian prisons are in an unconstitutional state of affairs and demanded national and local plans to overcome this situation. The program also carries out various actions in the juvenile justice field, following the principle of absolute priority guaranteed to adolescents and young people in the country's norms and laws.

At present, 29 initiatives are being carried out simultaneously, taking into account challenges considering the complete cycle of criminal and juvenile justice, as well as cross-cutting initiatives. Among them is the International Articulation and Protection of Human Rights, which facilitates the exchange of experiences between Brazil and other countries in public policies related to the criminal and juvenile justice cycle.

We recognize that each country faces unique contexts and challenges. We also believe in sharing knowledge and experiences as a tool for collective transformation. To this end, titles selected from the program's different collections have been translated into English and Spanish, such as this publication.

The strategy behind international articulation also includes support for events, courses, and training in collaboration with international partners, as well as the translation into Portuguese of standards and publications aligned with the topics worked on by the program. This promotes a necessary exchange of ideas and practices for a future in which dignity and respect for fundamental rights are common values for all of us.

Luís Roberto Barroso

President of the Supreme Court and the National Council of Justice



INTRODUCTION

INTRODUCTION

On October 13, 2020, the National Council of Justice (CNJ) issued Resolution No. 348, which establishes guidelines and procedures to be followed by the Judiciary in the criminal and juvenile justice fields regarding the treatment of the lesbian, gay, bisexual, transsexual, transvestite, or intersex population who are in custody, accused, defendants, convicted, deprived of liberty, serving alternative penalties, electronically monitored, represented in the process of investigating an infraction, or fulfilling a juvenile justice measure.

Subsequently, the CNJ launched Handbook Resolution No. 348/2020 – Procedures for LGBTI individuals accused, defendants, convicted, or deprived of liberty in the Series *Fazendo Justiça*. This text is based on the aforementioned Resolution and its Handbook, aiming to facilitate its implementation within the juvenile justice system, highlighting the main provisions concerning the guarantee of rights for adolescents who have committed infractions and belong to the LGBTI population.



**IMPORTANT
CONCEPTS**

2. IMPORTANT CONCEPTS¹

The vulnerabilities and risks that LGBTI children and adolescents are frequently exposed are particularly exacerbated by intersecting factors such as gender, race/ethnicity, social class, territory, disability, religion, among others. The responses to these numerous vulnerabilities and risks should be as diverse as the diversities presented.

Understanding some important concepts is the first step towards respect and protection. In this regard, the following concepts are based on CNJ Resolution No. 348/2020 (art. 3) and its handbook.

2.1. Sexual orientation



Gay men and lesbian women are attracted to individuals of the same gender, namely men and women, respectively;



Heterosexual individuals are attracted to people of a different gender than their own;



Bisexual individuals have both romantic and sexual attractions to people of more than one gender.

2.2. Gender identity

It refers to how individuals identify themselves as female, male, or with another gender expression they use.

¹ The following concepts are based on CNJ Resolution No. 348/2020 (art. 3) and its Handbook.



Cisgender: a person whose gender identity aligns with the gender assigned to them at birth.



Transgender: a person who does not identify with the gender assigned to them at birth.



- **Trans women: individuals who identify as women but were assigned male at birth;**
- **Trans men: individuals who identify as men but were assigned female at birth;**
- **Non-binary or gender fluid people: individuals who do not identify exclusively with the binary gender spectrum.**



While some transgender individuals desire to undergo surgeries or hormonal therapy to align their bodies with their gender identity, others do not. The right to self-determination is personal and does not permit public authorities to impose the requirement of bodily interventions or any external criteria on a person's gender identification.

2.3. Intersex individuals

Intersex individuals are born with sexual characteristics that do not align with the typical definitions of male and female, such as their sexual anatomy, reproductive organs, and/or hormonal and/or chromosomal patterns. These characteristics may be visible or not.

There is a variety of acronyms used to encompass the diversity of gender identities and sexual orientations. CNJ Resolution No. 348/2020 has adopted the acronym "LGBTI," which refers to "lesbian, gay, bisexual, transgender, and intersex" individuals, aligning with the definitions of the United Nations.



**AND WHAT ABOUT
THE RIGHTS OF LGBTI
ADOLESCENTS?**

3. AND WHAT ABOUT THE RIGHTS OF LGBTI ADOLESCENTS?

Throughout the entire procedure, from the presentation hearing to the execution and in the programs to juvenile who have served socio-educational measures, it is important to observe the guarantees and rights of LGBTI individuals. We highlighted below the main stages of the procedure in which judges can verify and ensure these rights for LGBTI individuals:

Initial Assistance and Presentation Hearing	Judicial Decision-Making	Execution of the Juvenile Justice Measure
<ul style="list-style-type: none"> • Self-declaration; • Use of social name and civil documentation. 	<ul style="list-style-type: none"> • Determining the place of deprivation of liberty; • Reporting violence or serious threats; • Exceptions in case of pregnancy and motherhood. 	<ul style="list-style-type: none"> • Self-determination of social name; • Civil documentation; • Determining the place of deprivation of liberty; • Exceptions in case of pregnancy and motherhood; • Access to religious assistance; • Reporting violence or serious threats; • Access to healthcare; • Hormone therapy and gender-affirming process; • Access to education, employment, and other social policies; • Right to visitation.

Other regulations that recognize rights for this segment are:

Regulation	Topic
Universal Declaration of the Rights of the Child (1959)	Prohibits distinction or discrimination based on sex (Principle 1).
Yogyakarta Principles (2006)	Principles on the application of international human rights law regarding sexual orientation and gender identity.
Decree No. 8,727/16	Social name and recognition of gender identity for transgender women/travestis and trans men in the federal public administration.
Ministry of Health Ordinance No. 2,836/2011	National Policy on Comprehensive Health Care for Lesbians, Gays, Bisexuals, Travestis, and Transgender Individuals within the scope of the National Health-care System (SUS).
Law No. 12,594/12 - SINASE Law	Establishes the principle of individualization, taking into consideration the age, capabilities, and personal circumstances of adolescents (Article 35, VI), and prohibits discrimination against adolescents, particularly based on ethnicity, gender, nationality, social class, religious, political or sexual orientation, or affiliation or belonging to any minority or status (Article 35, VIII). It also recognizes the right to be respected in their personality, privacy, freedom of thought and religion, and in all rights not expressly limited in the sentence (Article 49, III).

3.1. The impacts of CNJ Resolution No. 348/2020 on the Juvenile Justice System in Initial Assistance and Judicial Decision-Making

Initial Assistance and Presentation Hearing

- Self-declaration;
- Social name and civil documentation.

Judicial Decision-Making

- Determination of the place of incarceration;
- Report of violence or serious threats;
- Exceptionality in the case of pregnancy and motherhood.



3.1.1. Initial Assistance and Presentation Hearing

- **Self-Declaration**

The recognition of adolescents as part of the LGBTI population will be solely based on oral self-declaration, which will be obtained by the judge during a hearing (art. 4 of CNJ Resolution No. 348/2020) at any stage of the process of investigating an infraction or executing a juvenile justice measure.

In cases where the judge becomes aware, through any means, that the adolescent belongs to the LGBTI population, he/she must provide guidance regarding the possibility of self-declaration and the rights and guarantees available to them. This information must be communicated in an accessible and respectful manner (art. 4, sole paragraph, of CNJ Resolution No. 348/2020).



In places of deprivation of liberty, disclosing information about an adolescent's sexual orientation and gender identity may pose risks and difficulties for the person making the declaration. Therefore, such information must be recorded, handled, and protected as sensitive data, respecting their right to privacy and intimacy (art. 5 of CNJ Resolution No. 348/2020). Processes related to adolescents are already confidential. However, extra care must be taken to ensure that this information is only shared when necessary to protect their rights.

The self-declaration must not be used to unnecessarily complicate the identification process or serve as evidence against the person making the declaration. The purpose of the oral self-declaration is to guarantee the rights of individuals belonging to the LGBTI population.

• **Social Name and Civil Documentation**

Transgender, transvestite, and transsexual adolescents must be ensured the possibility of using their social name, defined by CNJ Resolution No. 270/2018 as the name by which they identify and are socially recognized, even if it is different from the name on their civil registration (art. 1, sole paragraph, of CNJ Resolution No. 270/2018 and art. 6 of CNJ Resolution No. 348/2020). This right must also be guaranteed to non-binary or gender-fluid individuals.

The mentioned resolution establishes that, in the case of unemancipated individuals under 18 years of age, the use of the social name must be requested by parents or legal guardians (art. 2, § 2, of CNJ Resolution No. 270/2018). However, this provision must not be interpreted as a prohibition against the adolescent expressing and being respected in their right to be addressed by their social name, as it is a fundamental right linked to the dignity of the human person.

When requested by parents or a legal guardian, by the adolescent themselves, or by their defense in their representation, it is the responsibility of the judge to facilitate the issuance of documents or rectification of the adolescent's civil documentation (art. 6, sole paragraph, of CNJ Resolution No. 340/2020). The rectification of a transgender adolescent's civil documentation currently takes place through a specific judicial process in which the adolescent must be legally represented (up to 16 years old) or assisted (from 16 to incomplete 18 years old) by their legal guardians or by a special curator in case of conflicting interests.

However, regardless of the rectification in the civil documentation, the declared social name must be registered in systems and documentation, and it must be prominently displayed in relation to the name on the civil registration.



3.1.2. Judicial Decision-Making

In relation to cases in the field of juvenile delinquency, CNJ Resolution No. 348/2020 governs three aspects concerning judicial decision-making: i) the determination of the place of deprivation of liberty (art. 7 of CNJ Resolution No. 348/2020); ii) how to act in the face of reports of violence (art. 9 of CNJ Resolution No. 348/2020); iii) the utmost exceptionality of deprivation of liberty in cases of pregnancy and motherhood (art. 10 of CNJ Resolution No. 348/2020).

• **Determination of the Place of Deprivation of Liberty**

Firstly, it is important to emphasize the exceptional nature of depriving adolescents of their liberty. The Child and Adolescent Statute (ECA) and the Law of the National Juvenile Justice Assistance System (SINASE) establish that priority must always be given to measures that strengthen family and community ties. In the case of LGBTI adolescents, the exceptional nature of the deprivation of liberty measure must be even more pronounced, considering the vulnerability to which adolescents whose sexuality does not conform to the heteronormative standard may be subjected in these facilities.

If provisional detention or the juvenile justice measures of deprivation of liberty or semi-liberty are determined, the decision on which unit an LGBTI adolescent will serve the measure must be made with great caution.

Regarding this issue, Advisory Opinion No. 29 (OC No. 29) of the Inter-American Court of Human Rights (IACHR) established that the placement of an LGBTI person within an institution of deprivation of liberty must be determined by state authorities in accordance with the specific circumstances and risks of each person, always considering the guiding principles of respect for gender identity and expression, the participation of the interested person, and protection against any form of violence, ensuring that the measures taken do not result in isolation or lack of communication, treatment inferior to that provided to other detainees, or exclusion from activities.

To facilitate the determination of the place of deprivation of liberty, art. 13 of CNJ Resolution No. 348/2020 stipulates that the court must maintain a register with information regarding the existence of specific units, wings, or dormitories for the LGBTI population, in order to guide the magistrates in the implementation of art. 7.

CNJ Resolution No. 348/2020 aligns with the best international practices, which indicate that self-identified LGBTI individuals must be properly informed about the different scenarios in each of the units and then consulted about their preferred unit.

What information must the judge explain to the adolescent?



- **The structure of the available facilities in the respective area.**
- **The location of male and female units.**
- **The existence of specific wings or accommodations for the LGBTI population**
- **The implications of their choice on coexistence and the exercise of rights (art.8, I, of CNJ Resolution No. 348/2020), which must not imply the exclusion of access to rights granted to other individuals in the same facility.**

This inquiry must be carried out whenever necessary during the process of investigating an infraction or executing a juvenile justice measure, and it must be possible to change the custody location at any time. However, such a change must never be imposed as a punishment.

This inquiry is especially relevant during:

- **(i) The initial presentation hearing, if provisional internment is determined;**

- **(ii) The continuation hearing, if provisional interment or measure of interment or semi-liberty measures are determined.**
- **(iii) The hearing to ratify the Individual Care Plan, which takes place during the execution process of the juvenile justice measure.**
- **(iv) The hearing for the reevaluation of a measure.**
- **(v) Concentrated hearings for the reevaluation of a measure.**

The preference expressed by the adolescent must be formally included in the decision or judgment (art. 8, §§ 1 and 2 of CNJ Resolution No. 348/2020). The handbook on the mentioned resolution highlights that this definition refers to “the most appropriate and suitable place for the gender identity of the detained person and/or the place that will provide him/her with greater security” (BRAZIL, 2021, p. 30).

ADPF 527

Regarding this aspect, the custody location for transgender women and transvestites is the subject of ADPF 527 DF, filed on June 25, 2018. On June 26, 2019, the Reporting Minister partially granted the interim measure to determine that transgender women be transferred to female prisons. Thus, CNJ Resolution No. 348/2020 was issued under the terms of the aforementioned interim measure. However, after the resolution was issued, the interim measure was adjusted to grant transgender women and transvestites with female gender identity the right to choose where to serve their sentence: (i) in a female prison facility; or (ii) in a male prison facility, but in a reserved area that guarantees their safety.

Therefore, the current interim measure recognizes the right to choose between a female prison facility or a reserved area in a male prison facility for both transgender women and transvestites. According to the principle of non-discrimination and the prohibition of treatment more severe than that given to adults, this determination must also be observed for transgender and transvestite adolescents.

The judgment on the merits of ADPF 527 DF is suspended, and therefore, compliance with the terms of the current precautionary measure must be observed.

In this way, self-declared transgender adolescents and transvestites, who self-identify as men or women, must be questioned about their preference for custody in a female, male, or specific unit, if available in the region. Once the unit is determined, they can express their opinion regarding their preference for staying in the general population or in specific wings or quarters, where applicable.

Similarly, self-declared adolescents who are part of the gay, lesbian, bisexual, and intersex population must be asked about their preference for custody in the general population or in specific wings or cells.

• **Reports of violence or serious threats**

Advisory Opinion No. 29 of the Inter-American Court of Human Rights emphasizes the obligation to adequately register and collect data on situations of violence against LGBTI individuals deprived of liberty. In terms of prevention, measures must be taken, such as training of staff, providing the possibility for transgender individuals to choose the gender of personnel conducting strip searches (which must always be exceptional), establishing reporting mechanisms, and ensuring external and independent monitoring of places of deprivation of liberty. The Court also reinforces the duty to investigate and, when appropriate, punish those responsible for violence against LGBTI individuals.

When faced with a report of violence suffered by an LGBTI self-declared adolescent, all necessary measures must be taken to cease the violence and fully repair the harm suffered. Resolution No. 348/2020 of the National Council of Justice specifies that, if requested and with the testimony of the interested adolescent, the analysis of a possible request for transfer to another facility must be prioritized (art. 9). It must be noted that a possible transfer cannot be carried out as a sanction, punishment or retribution (art. 11, VII, "a," of Resolution No. 348/2020).

Whenever any person who is deprived of liberty is a victim of any type of violence, they must immediately receive medical, psychological, and social assistance, as well as any other necessary measures. It is essential to ensure that these reports are also protected by the principle of judicial confidentiality.

It is worth noting that Resolution No. 414/2021 of the National Council of Justice applies to adolescents in cases of indications of torture.

• **Maximum exceptionality of deprivation of liberty in case of pregnancy and motherhood**

In the Collective Habeas Corpus No. 143,641/SP, the Supreme Court (STF) established the prohibition of pre-trial detention and provisional internment for pregnant women, postpartum women, mothers of young children, or people with disabilities, allowing such measures only in cases of acts committed with violence or serious threats, or against their descendants, or in exceptional circumstances.

Later, the Code of Criminal Procedure consolidated the requirements for pre-trial detention. In view of the prohibition of more severe treatment, it is necessary to analyze the requirements currently observed in criminal proceedings to avoid the provisional internment of adolescents in situations where the deprivation of liberty of an adult would not be possible.

Therefore, in order to avoid more severe treatment, in cases of pregnant adolescents or those who are mothers or caregivers of children or persons with disabilities, provisional internment can only be ordered if the infraction was committed with violence or serious threat, or if it was committed against their child or dependent.

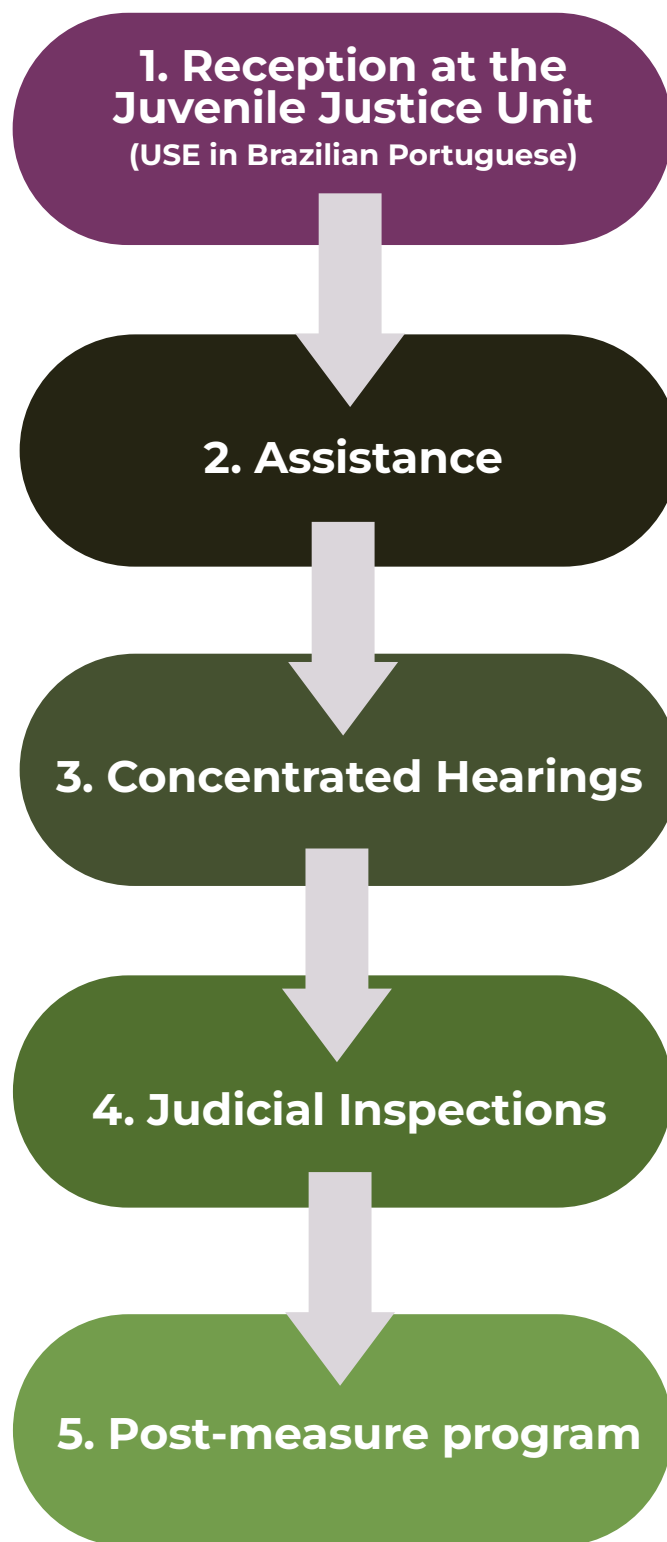
CNJ Resolution No. 348/2020, in art. 10, establishes that these rules must be observed in the case of lesbian, transgender, and transsexual women, as well as transgender men. It also determines that the progression of the regime must be observed in accordance with art. 112, § 3, of the Penitentiary Law. Obviously, the execution of juvenile justice measures is not guided by the progression of the regime, but this rule must be interpreted to minimize the deprivation of liberty as much as possible in the aforementioned cases.

It is also worth mentioning the extension of the effects of Habeas Corpus No. 143,641/SP to also determine the substitution of pre-trial detention for parents and guardians of children and persons with disabilities, observing the exceptions that would authorize the deprivation of liberty (Habeas Corpus No. 165,704/DF), which also requires attention in the context of the provisional detention of LGBTI adolescents.

3.2. The impacts of CNJ Resolution No. 348/2020 on the Juvenile Justice System in the Execution of Juvenile Justice Measures

What are the main precautions we must take regarding self-declared LGBTI adolescents at all stages of the execution of juvenile justice measures within the scope of the Judiciary's actions?

Throughout the stage of complying with the juvenile justice measure, whether it involves restriction or deprivation of liberty or in open regime, and during the post-compliance stage of the juvenile justice measure, the right to life, physical and mental integrity of the LGBTI adolescent must be guaranteed. This includes his/her sexual integrity, bodily security, freedom of expression of gender identity, and sexual orientation (art. 2, I, of CNJ Resolution No. 348/2020).





3.2.1. Reception at the Juvenile Justice Unit

- **Self-determination:** the recognition of the right to self-determination of gender and sexuality of LGBTI adolescents can take place at any stage of the initial care and implementation of juvenile justice measures. Therefore, upon the arrival of the adolescents at the facility, it is the responsibility of the team to welcome them, clarify their rights, and respectfully and confidentially inquire, using accessible language, about their sexual orientation and gender identity (art. 2, II, of CNJ Resolution No. 348/2020).
- **Use of social name:** the self-declared LGBTI adolescent must be addressed by his/her social name, according to his/her gender identity (art. 6 of CNJ Resolution No. 348/2020), including in all registers, systems, and databases of institutions that make up the System of Guaranteeing Rights.
- **Location of deprivation and restriction of liberty:** the adolescent must be assigned to the juvenile justice unit determined by a court decision. Therefore, the judge, during the initial assessment of the adolescent who has committed an infraction and self-declared as LGBTI, must consult him/her about his/her preferred unit. To ensure that the adolescent's choice is informed and to guarantee his/her safety, the adolescent must be properly informed about the different scenarios in each of the units. It is important to note that the designated location may be changed at any time in order to ensure the general objectives of CNJ Resolution No. 348/2020 (art. 7 of CNJ Resolution No. 348/2020).



The allocation of self-declared LGBTI adolescents to juvenile justice facilities, determined by a judge after hearing the interested person, must not result in the loss of any rights, especially regarding access to work, education, healthcare, food, material assistance, and others (art. 7, § 3).

- **In case of violations:** any person deprived and restricted of liberty, victimized by any form of violence, must promptly receive medical, psychological, and social assistance, as well as other necessary measures, such as inclusion in protection programs and referral to the health and social protection network (CNJ, 2021, p. 33). It is important to emphasize that confidentiality when reporting abuses must be respected and supported by professionals in contact with the LGBTI adolescent, whether they are from juvenile justice facilities or actors within the Justice System (art. 5 of CNJ Resolution No. 348/2020).



3.2.2. Assistance

- **Use of social name:** self-identified LGBTI adolescents must be addressed by their preferred name throughout the entire process of juvenile justice assistance, in accordance with their gender identity (art. 6 of CNJ Resolution No. 348/2020), including in all registers, systems, and databases of the institutions that make up the Rights Guarantee System.
- **Access to correction of civil documentation:** when requested by the self-identified LGBTI adolescent, the necessary steps must be taken to issue documents or correct civil documentation (art. 6, sole paragraph, of CNJ Resolution No. 348/2020). The detailed procedure to access this right was explained in the section “1. Initial Assistance and Presentation Hearing” and is reiterated here.

- **Identity and dignity:** adolescents must have the right to express their gender identity through clothing, accessories, and secondary characteristics that align with their identity, including intersex individuals (art. 11, IV, of CNJ Resolution No. 348/2020). Examples of such clothing or secondary characteristics that must be guaranteed include maintaining long hair for female transgender adolescents and using chest compression accessories for male transgender adolescents.
- **Access to healthcare:** the self-identified LGBTI adolescent must have access to healthcare services specified in the National Policy for Integral Health and the National Policy for Integral Healthcare for Adolescents in Conflict with the Law, in the context of Detention; Provisional detention; and Semi-Liberty (PNAISARI). The following aspects are particularly important: i) ensuring testing for infectious diseases such as HIV/TB and co-infections, as well as other chronic, infectious, and disabling conditions; ii) providing psychological and psychiatric support, with a focus on suicide prevention; iii) guaranteeing specialized gynecological, urological, and endocrinological treatment for transgender, transvestite, and intersex individuals throughout their period of detention; iv) safeguarding the confidentiality of information and diagnoses in medical registers, among other measures (art. 11 of CNJ Resolution No. 348/2020).

It is essential that psychological and psychiatric care provided in juvenile justice facilities for self-identified LGBTI individuals focuses on mental health support, particularly addressing the prejudice and discrimination they experience, as well as other subjective issues they may face. Under no circumstances this care must pathologize the sexuality of the LGBTI population, as stated in IACHR Opinion No. 29. In other words, these services must never determine a person's sexual orientation or gender identity, nor promote practices that violate human rights, such as so-called "gay conversion therapy," with the intention of reversing self-identification or affirmation of gender identity or sexual orientation.

Transsexualizing process: the self-identified transgender young person, who is over 18 years old and deprived of liberty, must be guaranteed hormonal treatment and its maintenance. The gender affirmation surgical procedure, on the other hand, can be initiated from 21 years of age (art. 13, § 2, I and II of Ordinance No. 2,803/2013). It is worth noting that CFM Resolution No. 2,265/2019 establishes different ages for the stages of the transgender process.²



Not all transgender, transvestite and intersex adolescents, over 18 years of age, wish to carry out hormonal treatment or other body interventions, with gender identity being solely personal and independent of external validation. However, the possibility of access to the procedure must be guaranteed for those who want it (CNJ, 2021, p. 39).

When freely chosen, medical treatments to affirm gender identity enable the proper development of personality and contribute to the physical and emotional well-being of transgender individuals, as established by the Inter-American Court of Human Rights in OC No. 29. In this sense, making these treatments available to transgender individuals deprived of liberty is a state obligation to recognize the gender identity of all individuals.

The LGBTI population undergoing juvenile justice measures is granted access to the National Policy on Integral Health for Lesbians, Gays, Bisexuals, Transvestites, and Transsexuals – LGBT, as provided for in Ministry of Health Ordinance No. 2,836/2011, in accordance with the Policy on Integral Health Care for Adolescents in Conflict with the Law – PNAISARI (Ordinance GM No. 1,082/2014). It is essential to safeguard the confidentiality of data related to medical and outpatient care, especially for people living with STIs/HIV/AIDS.

² CFM Resolution No. 2,265/2019 establishes that hormone therapy can begin at the age of 16 (art. 9), while gender affirmation surgical procedures can be performed from the age of 18 (art. 11). Available at: <https://www.in.gov.br/en/web/dou/-/resolucao-n-2.265-de-20-de-setembro-de-2019-237203294>.

Psychological, socio-assistance, psychiatric, gynecological, urological, endocrinological, and other specialized support must also be ensured for LGBTI adolescents throughout the fulfillment of juvenile justice measures.

Health teams must guarantee the necessary referrals to the entire healthcare system, including procedures of medium and high complexity or hospital care.

- **Access to religious assistance:** self-identified LGBTI adolescents must have access to religious assistance and their choice to not receive visits from any representative or participate in religious worship must be respected if they desire. This access must be conditioned upon their explicit consent (art. 11, II, b, of CNJ Resolution No. 348/2020). It is important to note that this right must be observed from the moment the adolescent enters the juvenile justice system.
- **Right to visitation:** social visits to the LGBTI adolescent must be conducted in appropriate spaces, ensuring respect for the privacy and integrity of individuals, and without discrimination against self-declared LGBTI visitors. Regarding intimate visits, if allowed in accordance with art. 68 of Law No. 12,594/2012, they must be carried out under equal conditions for the self-declared LGBTI adolescent, in comparison to other adolescents who are deprived of liberty (art. 11, V, of CNJ Resolution No. 348/2020).



Specific living spaces intended for self-declared LGBTI adolescents must not be used for disciplinary sanctions or any form of punishment (art. 11, VI, a). Moreover, the compulsory transfer of an adolescent between environments as a means of sanction or punishment due to his/her self-identified LGBTI status is prohibited. Such actions must be considered inhumane and degrading treatment (art. 11, VII, a).

Furthermore, the strip search of visitors must not be vexatious, and no differentiated procedure must be carried out based on their relationship with the LGBTI population. Special attention must be given to strengthening the family and community bonds of LGBTI adolescents.

- **In case of violations:** self-identified LGBTI adolescents who are in deprivation and restriction of liberty must have the option of confidentiality when reporting abuses, especially sexual ones, in juvenile justice institutions. This provision can be found in art. 5 of CNJ Resolution No. 348/2020. It is important to emphasize that any person deprived of liberty and victimized by any form of violence must promptly receive assistance and support (CNJ, 2021, p. 33).

Occurrences of violence must prompt case studies and analysis by the technical team regarding the need for inclusion in protective measures.

Adolescents who are victims of physical and sexual violence will have access to interdisciplinary care, including specialized listening and assistance in the healthcare and juvenile justice system, without prejudice to other measures provided for in Law No. 13,431 of April 4, 2017, and Decree No. 9,603 of December 10, 2018.



The indication of humiliating educational and learning actions based on gender identity and/or sexual orientation for adolescents is prohibited (art. 11, III, c of CNJ Resolution No. 348/2020). Furthermore, there must be no discrimination based on sexual orientation or gender identity in the provision of educational activities.

In cases of violence or serious threats to self-declared LGBTI adolescents who are deprived of liberty, judges must prioritize the analysis of transfer requests to another facility, subject to prior application by the interested party (art. 9 of CNJ Resolution No. 348/2020) or, upon reassessment of the case, if possible, consider replacing the juvenile justice measure of deprivation of liberty with an alternative in an open regime (art. 122, § 2 of the ECA/1990).

The rights guaranteed to cisgender adolescents must be extended to lesbian, transgender, and transsexual adolescents, as well as transgender men, as applicable. This is especially relevant regarding the exceptionality of the juvenile justice measure for pregnant adolescents, breastfeeding mothers, mothers and caregivers of children under 12 years old, or persons with disabilities (art. 10 of CNJ Resolution No. 348/2020).



3.2.3. Concentrated Hearings

Recognizing that female adolescents, as well as those who identify as LGBTI, are subject to specific forms of rights violations, the judge, during the concentrated hearings, must pay attention to whether there is discrimination in the service unit, whether treatments and services are equally provided to these groups, and whether their gender identities and sexual orientations are respected (CNJ, 2021, p.35). Additionally, considering the multiple vulnerabilities³ to which LGBTI self-identified adolescents, who are restricted or deprived of liberty, are exposed, it is important to strongly consider the brevity and exceptionality of the juvenile justice measure when conducting concentrated hearings.

Juvenile justice concentrated hearings must take place while respecting the principle of non-discrimination against the adolescent, particularly based on ethnicity, gender, nationality, social class, religious, political, or sexual orientation, or association or affiliation with any minority (art. 2, I and XI, of CNJ Recommendation No. 98/2021). If any abuses or violations against LGBTI adolescents are identified during the concentrated hearings, appropriate measures must be taken, including avoiding any form of retaliation and, if necessary, temporarily removing the agent involved.

The judge responsible for the execution of the juvenile justice measure must consider reports of violence for the reassessment of the measure, taking into account the possible application, termination, or substitution with a less severe measure, due to the gravity of the effects of violence based on sexual orientation or gender identity on the adolescents.

³ "In 2015, the United Nations Subcommittee on Prevention of Torture (SPT) reported that it had received numerous complaints of beatings, sexual violence, isolation, and targeted forms of violence from prison facilities. These included the so-called 'corrective rapes' of lesbian women and intentional beatings of the breasts and faces (cheeks) of transgender women, with the aim of rupturing implants and releasing toxic substances" (CNJ, 2021, p. 32). Unfortunately, this reality is not exclusive to the prison system.

The judge must determine protective measures, including specific actions to prevent any form of retaliation against adolescents who report cases of sexual and/or physical violence. This may include the temporary removal of the accused public agent from any position in a juvenile justice unit that requires direct contact with adolescents.



3.2.4. Judicial Inspections

In juvenile justice institutions where there is an LGBTIQ adolescent deprived of his/her liberty, the judges competent in the matter of the execution of juvenile justice measures, within the scope of their supervisory authority (CNJ Resolution No. 77/2009), must ensure that material, health, legal, educational, social, and religious assistance is provided without any form of discrimination based on sexual orientation or gender identity to the adolescents (art. 11 of CNJ Resolution No. 348/2020).

If, during judicial inspections, any abuses or violations against an LGBTIQ adolescent are identified, appropriate measures must be taken, as previously listed in the “assistance” stage.



3.2.5. Post-measure

The guidelines and procedures to be observed regarding the care and treatment of LGBTI adolescents who are deprived of liberty must also be extended to the adolescent after completing the juvenile justice measure.



Some states already have their own regulations or technical guidelines that detail the rights of LGBTI adolescents who are deprived and restricted of liberty. Examples of these states include Minas Gerais⁴, Paraná, Bahia, and the Federal District. These guidelines serve as examples of how these legal guarantees can be implemented at a regional level.

4 i) Minas Gerais: http://www.seguranca.mg.gov.br/images/2018/ABRIL/Resolu%C3%A7%C3%A3o_SESP_n%C2%BA_18.pdf;
ii) Paraná: http://www.justica.pr.gov.br/sites/default/arquivos_restritos/files/migrados/File/caderno_DIVERSIDADE.pdf;
iii) Bahia: <http://www.fundac.ba.gov.br/wp-content/uploads/2019/09/pt351.18.pdf>;
iv) Distrito Federal: <https://g1.globo.com/df/distrito-federal/noticia/2020/01/28/gdf-define-regras-para-tratamento-de-jovens-lgbti-em-unidades-de-internacao.ghtml>.



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