Training Guide on Alternatives to Imprisonment IV

Pre-prosecution transaction, Non-custodial sentences, Conditional discharge and Suspended Sentence

SERIES FAZENDO JUSTIÇA | COLLECTION OF PENAL ALTERNATIVES

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BRASÍLIA, 2023

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Presentation

The prison and the socio-educational systems in Brazil have always been marked by serious structural problems, reinforced by diffuse responsibilities and the absence of nationally articulated initiatives based on evidence and good practices. This picture began to change in January 2019, when the National Council of Justice (CNJ) began to lead one of the most ambitious programs ever launched in the country to build possible alternatives to the culture of incarceration, Programme Fazendo Justiça (Doing Justice Program).

This is an unequalled inter-institutional effort, of unprecedented scope, which has only become possible thanks to the partnership with the United Nations Development Programme in the execution of activities on a national scale. The program also counts on the important support of the Ministry of Justice and Public Security, through the National Penitentiary Department.

The publications of the Series Justiça Presente cover topics related to the program involving the criminal justice system, such as detention control hearings, alternatives to imprisonment, electronic monitoring, prison policy, attention to people who have left the prison system, electronic system; and the socio-educational system, consolidating public policies and providing rich material for training and raising awareness among actors.

It is encouraging to see the transformative potential of a work done in a collaborative way, which seeks to focus on the causes instead of insisting on the same and well-known consequences, suffered even more intensely by the most vulnerable classes. When the highest court in the country understands that at least 800,000 Brazilians live in a state of affairs that operates on the margins of our Constitution, we have no other way but to act.

The "Training Guides on Alternatives to Imprisonment" integrate didactic material for training and sensitization of the actors that make up the policy of alternatives to imprisonment in the states and is divided into five publications. Guide I: Postulates, principles and guidelines for the policy of alternatives to imprisonment in Brazil; Guide II: Restorative Justice; Guide III: Pre-trial Non-custodial Measures; Guide IV: Pre-prosecution transaction, Non-custodial sentences, Conditional discharge and Suspended Sentence; Guide V: Restraining orders and other liability actions for men who commit violence against women. With these publications, the National Council of Justice takes an important step towards the qualification of the policy of alternatives to imprisonment and reduction of incarceration in Brazil.

Rosa Weber
President of the Supreme Court and the National Council of Justice

TECHNICAL PRESENTATION

This Guide integrates the didactic material for training and sensitization of the actors that make up the field of alternatives to imprisonment and is the result of a specialized consultancy by the United Nations Development Program - UNDP/UN, in partnership with the General Coordination of Alternatives to Imprisonment - CGAP/DEPEN of the Ministry of Justice and was subsidized by several meetings between experts and public servants working in the field of the Criminal Justice System in Brazil.

In Guide I we present the history of the national policy of alternatives to imprisonment from a critical analysis of incarceration, with conceptual standards of the Management Model in Alternatives to Imprisonment, considering the postulates, principles and guidelines for alternative sentencing in Brazil and the follow-up of alternatives to imprisonment by the Integrated Centre for Alternatives to Imprisonment. In Guide II we present Restorative Justice as a transversal methodology, which should permeate the professionals' outlook in relation to all modalities of alternatives to imprisonment. In Guide III we present the Pree-trial Non-custodial Measures, considering the need to face the disimprisonment of people, considering the abusive number of pre-trial detention in Brazil today.

This Guide IV will present the follow-up methodologies the subsequent modalities of alternatives to imprisonment: pre-prosecution transaction, non-custodial sentences, conditional discharge, and suspended sentence. For all these modalities, concepts, procedures, workflows and working tools will be presented.

The last publication, Guide V, will present the liability measures for men who commit violence against women, with details on the liability services for men, such as the Reflective Practice Groups, as provided by the Maria da Penha Law.

This material systematize the entire Handbook of Alternatives to Imprisonment Management in a didactic format for the proper understanding and dissemination of alternatives to imprisonment in Brazil, with the key objective of contributing to a minimal, decarcerating and restorative penal enforcement in Brazil.

The final result of this work should support the induction role of the National Council of Justice, as well as the Superior Councils of the Public Prosecutor's Office and Public Defender's Office, providing the necessary firmness and alignment so that the federative units and civil society are stimulated, guided and supported for the dissemination and implementation of the policy of alternatives to imprisonment to counteract the growing mass incarceration in Brazil.

We wish everyone a good reading! We hope that the references recorded here will serve as guidelines for the Public Authorities and also a beacon for the actions of control and participation of civil society in the processes of formulation, implementation, monitoring and evaluation of public policies developed in the field of alternatives to imprisonment.

This material was produced from the *Handbook of Alternatives for Imprisonment Management***, published by the National Justice Council in 2020, now systematized here in the format of a Guide for the training and sensitization of all institutions and people who work in the field of alternatives to imprisonment in Brazil. In the Handbook of management, you will find more detail on each of the topics listed in the Guides.**

To access the complete *Handbook of Alternatives for Imprisonment Management* **use the QR Code to the right (clickable on the web version).**

INTRODUCTION

In an international context of prison questioning and firmly linked to humanitarian rights, having as a perspective the implementation of alternatives to imprisonment, during the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, on December 14, 1990, the UN General Assembly adopted the United Nations Standard Minimum Rules on Non-Privative Measures of Imprisonment, calling them the Tokyo Rules.

Brazil became a signatory to the Tokyo Rules, assuming the commitment to change its legislation to adopt the non-custodial measures.

The Tokyo Rules consist of 23 articles divided into 8 sections, and this international document presents the general principles for minimum rules, based on the promotion of non-custodial measures, community participation, and greater rationality in criminal justice policies. The document also presents, in a non-exhaustive manner, the non-custodial measures to be admitted in the various phases of the criminal procedure, in addition to stating that such measures are intended to be used for the following purposes of non-punitive and contributes to the reduction of recidivism in a constructive way.

In 1995 Brazil passed the Federal Law nº 9,099, which deals with the Civil and Criminal Courts, and in 1998 approved the Federal Law nº 9,714, the Alternatives to Imprisonment Law.

The institution of the Special Criminal Courts (JECRIM in brazilian portuguese) was received and defended as a mechanism of differentiated tutelage, with a view to faster access to justice, debureaucratization of the judicial culture, and promotion of the possibility of resolving conflicts without bringing a criminal prosecution, in accordance with the Tokyo Rules.

The article 62 of the Law nº 9,099/1995 states that Special Criminal Courts (JECRIMs) shall observe the principles of openness, informality, procedural economy and celerity, seeking, whenever possible, legal remedies for the damage suffered by the victim and the application of a non-custodial sentence.

Federal Law nº 9,099/1995 promoted the institutionalization of measures considered decriminalizing, whether procedural or criminal, to avoid a custodial sentence. They are: conciliation, pre-prosecution transaction, Legal representation and conditional discharge.

However, not all the measures presented by Law nº 9,099/1995 are decriminalizing. Despite this nomenclature, in many cases what is avoided is incarceration, but non-custodial measures are applied, obliging the person considered a defendant to comply with the law before the due process of law or a criminal conviction.

> *The first is conciliation, which, in the case of minor offenses of private or public initiative, conditioned to representation, and if there is a civil settlement, the agent's punishment is extinguished (art. 74, sole paragraph). The second is the penal transaction that occurs when there is no civil settlement or in cases of unconditioned public criminal action and, in these situations, the law provides for the immediate application of penalties that restrict rights or impose fines (art. 76). The third is the requirement of representation in the crimes of light bodily injury and culpable bodily injury (art. 88). And, finally, the fourth is the conditional discharge, which allows, in crimes whose minimum sentence is no more than one year, the suspension of the lawsuit for a period of two to four years.*
>
> *(MONTENEGRO, 2015, p.80)*

The JECRIMs were originally intended to be an entrance door for the resolution of conflicts, to guarantee the right to access to justice, promoting ways of resolving conflicts, a space that would radicalize the perspective of depenalization and drastic reduction of the penal space.

It is necessary to provide appropriate welcoming and listening to the parties in conflict; to construct solutions that consider legal remedies by the offender; to add the community as part of the solution and, given the volume of cases, to follow up the cases to verify that the conflicts and violence have been repaired and overcome.

For the Special Criminal Courts to be protagonists in reducing the scope of the criminal justice system, in reducing incarceration, and in resolving conflicts, the four levels of change suggested below must be considered.

It is important to note that items 1 and 2 depend on legislative changes. Items 3 and 4, in turn, require adjustments in the *modus operandi* of the Justice System.

In the current Brazilian criminal system, the alternatives to imprisonment are determined in the legislation based on the imposed penalty amount, and this also determines which structures of the judicial system might act on the criminal offences:

1. To enable legislative changes capable of decriminalizing conducts, understanding the possibility that such conflicts can be solved outside the criminal court, such as in community mediation and restorative justice projects;

2. To promote legislative changes aiming, besides decriminalizing minor crimes, to expand the scope of Special Criminal Courts (JECRIMs) to crimes considered to be of medium and major offensive potential;

3. To promote a restructuring in the procedures of JECRIMs in order to accommodate restorative justice practices considering: the creation and respect for methodologies; the continued training of professionals responsible for these approaches; the respect for the time required for each case received; the development of restorative practices outside the judicial environment by qualified teams;

4. To accept the agreements established between the parties, based on restorative practices, as sufficient for not initiating a criminal prosecution, with no application of extra and/or complementary measures/conditions.

i. Crimes with a maximum sentence of up to two years, considered to be of lesser offensive potential, will be received by the Special Criminal Courts (JECRIM), which may apply the pre-prosecution transaction and the conditional discharge.

ii. Crimes with a maximum sentence of up to two years, with or without violence, may receive a suspended sentence.

iii. Crimes with a maximum sentence of up to four years, committed without the use of violence or serious threats, can receive a non-custodial sentence.

1 Pre-prosecution transaction

In its article 60,the Law 9,099/1995 states that the Special Criminal Court (JECRIM) is made up of judges and laymen and women, and has competence for the **conciliation, trial and execution of minor criminal infractions**.

The following are minor criminal infractions, in accordance with article 61 of Law 9,099/1995: the minor crimes and crimes to which the law establishes a maximum sentence of no more than two years, cumulative or not with a fine.

The **pre-prosecution transaction** is foreseen in Law 9,099/1995 from the "consent" of the parties, which means:

Possibility of immediate application of an alternative measure regardless of a criminal conviction, provided the requirements are met determined in the law itself.

The requirements for the pre-prosecution transaction, as set forth in the law, are:

Unconditional public criminal actions, or by legal representation when it is a conditional public criminal action, and when, in both cases, the filing of a detailed report is not appropriate;

The offender has not been sentenced to imprisonment for the commission of a crime;

The agent has not previously benefited from the pre-prosecution transaction within five years;

The antecedents, social conduct and personality of the agent will be observed, and when the motives and circumstances of the crime indicate the application of the measure.

Any person considered capable of exercising the acts of civil life **is authorized to participate in a pre-prosecution transaction**. As a rule, all individuals over the age of 18 or between the ages of 16 and 18, assisted by their legal guardians and in full possession of their faculties (not incapacitated), are considered capable of participating in a pre-prosecution transaction.

A pre-prosecution transaction is:

i

very personal

Because it is an act in which only the defendant can accept the measure;

ii

volunteer

Because it presupposes the free will of the plaintiff to compromise;

iii

formal

Respecting fundamental acts, such as the pre-prosecution transaction being formalized before a judge and with a defense attorney;

iv

technically assisted

Respecting the competencies and presence of the prosecutor, the judge, and the defense as determined by law, in the constituent stages of the pre-prosecution transaction.

The pre-prosecution transaction includes both the civil legal remedy and the acceptance of the proposal for immediate application of a non-custodial measure by the person considered to be a possible perpetrator of the offense. It also includes the renunciation by the victim of the right of complaint or representation in the case of offenses considered to be of low offensive potential, in private criminal action or in public criminal action conditioned to representation.

Such an institute relieves the burden on the Judiciary and avoids the statute of limitations, but it can jeopardize many of the fundamental rights of people brought into criminal law, especially the constitutional guarantees of the presumption of innocence, the right to full answer and defense, due process of law, and the individualization of the penalty.

It is fundamental to guarantee adequate knowledge to the parties about the pre-prosecution transaction, so that adherence to it is of their own free will, without any kind of coercion.

The pre-prosecution transaction does not mean that the person has assumed criminal responsibility for the offense, but it does create an impediment to a new agreement within five years.

In case of non-compliance with the transaction, there is also controversy about the consequences, since the law does not determine anything.

In the case of fines, which are characterized as a debt of value, it is understood that they are subject to be collected as an active debt of the Public Treasury.

As for non-compliance with a non-custodial measure, there are those who understand that the result is to prohibit the offender from entering a pre-prosecution transaction for a period of five years.

The Supreme Court's position is that the previously signed agreement is not valid, and the Public Prosecutor's Office can only offer a formal accusation. To do so, there must be a court decision that allows the defense to be heard before the pre-prosecution transaction is declared null and void.

In any case, non-compliance with a criminal agreement can never give rise to a custodial sentence, since the deal generates an obligation of a procedural nature, which does not entail any type of penalty aggravation for the parties, generating only a return to the legal situation prior to the execution of the agreement.

The pre-prosecution transaction is instituted as a first phase for crimes of unconditional public criminal prosecution, since for these the law does not allow conciliation.

For the crimes of public criminal action conditioned to representation, pre-prosecution transactionis possible if conciliation has been frustrated.

In private criminal actions, since the law makes no express mention of the possibility of a pre-prosecution transaction, there is divergence in understanding, but the STF jurisprudence is favorable.

The competence to propose a pre-prosecution transaction lies with the Public Prosecutor's Office and does not depend on the consent of the victim, except for cases related to private criminal actions. Once the requirements established by law, as outlined above, have been met, the Public Prosecutor's Office must make the proposal, which, if accepted, is ratified by the judge.

In the pre-prosecution transaction, the types of measures that can be agreed upon coincide with those provided for in the legal system as non-custodial measures, with the exception that the measures applied through the pre-prosecution transaction have the character of an agreement and, if duly fulfilled, do not generate a criminal record. In cases where no agreement is reached through a pre-prosecution transaction, a criminal conviction and the application of non-custodial sentence may be imposed. The types of penalties or measures will be detailed in the next topic.

2 Non-custodial sentences

Federal Law nº 9,714/1998 regulates the non-custodial sentences, broadening the range of measures provided for in the Brazilian legal system. Article 44 of the Brazilian Criminal Procedure Code (CPP) sets out the criteria to be observed in the application of non-custodial sentences.

It is necessary to differentiate between substitute and alternative sentencing. The substitute, which is a non-custodial sentence, has a substitutive nature and is related to the application of a custodial sentence.

The alternative, on the other hand, may be applied as the main penalty from the beginning, and has a depenalizing character.

The non-custodial sentences are foreseen in articles 43 to 48 of the Brazilian Criminal Procedure Code (CPP) are autonomous and substitutive penalties, and should be applied after the determination of the custodial penalty and if the requirements established by law are met.

According to article 43 of the Brazilian Criminal Procedure Code (CPP), the non-custodial sentences are:

I) pecuniary benefit;

II) loss of property and valuables;

III) house arrest;

IV) providing services to the community or public entities;

V) interdiction of rights;

VI) weekend limitation.

Art. 44. The non-custodial sentences are autonomous and replace those involving deprivation of liberty when:

I) A sentence of imprisonment of not more than four years is imposed and the crime is not committed with violence or serious threat to a person or, whatever the sentence imposed, if the crime is culpable;

II) the defendant is not a repeat offender;

III) the convicted person's guilt, background, social conduct and personality, as well as the motives and circumstances indicate that this substitution is sufficient;

§ 1º. vetoed.

§ 2º. In case of conviction of one year or less, substitution may be made by a fine or by a non-custodial sentence; if mor than one year, the sentence involving deprivation of liberty may be substituted by non-custodial sentence and a fine, or by two non-custodial sentences.

§ 3º. If the offender is a repeat offender, the judge may apply substitution, provided that, in view of previous convictions, the measure is socially recommendable and the recidivism did not occur as a result of committing the same crime.

§ 4º. A non-custodial sentence shall be converted into a custodial penalty when there is unjustified non-compliance with the restriction imposed. In calculating the custodial penalty to be enforced, the time served of the non-custodial sentence shall be deducted, subject to the minimum balance of thirty days of detention or imprisonment.

§ 5º. Upon conviction to a penalty involving deprivation of liberty for another crime, the criminal enforcement judge shall decide on the conversion, and may not apply it if the convicted offender is able to serve the previous substitute penalty.

2.1. Cash benefit

Article 43, section I, and article 45, paragraph 1, of the Brazilian Penal Code states that the fine must be paid in cash to the victim, his or her dependents, or to a public or private organization with a social purpose. It is worth noting that the penalty of cash benefit is different from the penalty of fine, since the former has a reparatory nature and the latter, in turn, is merely retributive.

Applying a monetary penalty to a person who is economically vulnerable may mean compromising the subsistence of this person and his or her family members. Thus, the judge must consider the modalities that best meet the socioeconomic conditions of the person.

The second paragraph of article 45 states that if the person agrees, the financial benefit may consist of another type of benefit, known as an innominate benefit, consisting of the delivery of foodstuffs (food baskets), clothing, securities, etc., and may be paid in cash or in installments. If the person does not pay the imposed installment, the judge must analyze the reasons, and may convert it into another form or readjust the payment conditions.

To impose a monetary penalty on a person who is economically vulnerable can mean compromising the livelihood of that person and his or her family.

2.2. Loss of property and valuables

This modality is provided in articles 43, item II, and 45, §3º of the Penal Code, and in article 5, item XLVI, paragraph b, of the Brazilian Federal Constitution.

The confiscation of goods and valuables takes place through a confiscation order for the goods, both movable and immovable, and for the valuables belonging to the convicted person.

The amount will be capped, whichever is greater, at the amount of the damage caused or the income obtained by the agent or third party because of the commission of the crime.

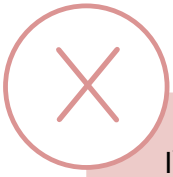
The goods will be reverted to the National Penitentiary Fund, (Funpen).

No penalty may extend beyond the convicted person to the property of a third party, in respect for article 5, item XLV, of the Brazilian Federal Constitution.

It is also necessary to apply it sparingly, only in offenses where the damage caused or the profit obtained from the criminal practice is proven.

2.3. Temporary Restriction of Rights

Article 47 of the CPPsets out all the modalities of temporary restriction of rights, being:



I) prohibition from exercising public office, function, or activity, as well as from holding an elective office;

II) prohibition to exercise a profession, activity or trade that depends on special qualification, license or authorization from the public authorities;

III) suspension of authorization or license to drive a vehicle;

IV) prohibition to go to certain places;

V) prohibition from registering for public tender, evaluations, or examinations.

Items I, II and III were brought into Federal Law nº 7,209 of 1984, of 1984. The prohibition to frequent certain places was included in Law 9,714/1998. The prohibition to take public tenders and exams was only inserted by Federal Law nº 11,250/2011. The penalties provided for in items I and II may only be imposed on activities that are directly related to the offence committed. Finally, the suspension provided for in item III is restricted to culpable traffic offenses.

– Prohibition from exercising public office, function or activity, as well as from holding elective office:

This prohibition refers to crimes committed in the regular exercise of public office, function or activity, as well as in the exercise of an elective office. It is not necessary for a crime to have been committed against the public administration for this modality to be applied; it is sufficient that the agent violates any of the duties imposed by the function of public service. This loss is temporary and should not be confused with the definitive loss of office, public function or elective mandate provided for in article 92, item I of the CP. The perpetrator may exercise his or her functions normally after serving the sentence if there is no administrative impediment.

– Prohibition to exercise a profession, activity or trade that depends on special qualification, license or authorization from the public authorities:

This second modality is established by the temporary inability to exercise certain professions or trades that require some type of qualification or public self-regulation, besides being directly related to the offence committed, such as the professions of medicine, law, psychology, engineering, among others. The application of this penalty does not prevent the application of other administrative and extra-penal sanctions, such as suspension of the activity by the competent registration body, such as the Council of Medicine and

the Bar Association. It is worth noting that its application should be weighed with parsimony and should observe the principles of proportionality, normality, and suitability, ensuring that it keeps to the minimum useful and necessary. The unjustified application of this type of non-custodial sentence may violate the constitutional right to work, with dissocializing and marginalizing effects for the person subjected to the measure, who may be deprived of his or her livelihood and that of his or her family.

- ### Suspension of authorization or license to drive vehicles:

  This prohibition may be applied in traffic crimes that are considered intentional. This modality should be differentiated from the sanction provided in article 92, III, of the Brazilian Criminal Procedure Code (CPP) which provides for conviction in cases where the driver's license is used for intentional crimes. It is also important to differentiate this temporary restriction from the suspension or prohibition provided in article 292 of the Brazilian Traffic Code (CTB). The prohibition provided for in article 47, item III, refers to a driver who is already licensed, whereas the prohibition provided for in the CTB refers to a driver who has already been licensed. In the case of professional motorists, the judge should preferably opt for another form of restriction, since the suspension of the authorization or license would also mean the prohibition of the exercise of the profession, affecting the person's subsistence.

- ### Prohibition from going to certain places:

  Although the legislator did not specify the places, the judge is responsible for defining exactly the prohibited places and the justification for such a determination, and such places must correspond to those involved in the commission of the crimes. This type of prohibition is also considered a condition of the special parole, provided for in art. 78, §2º, line a, of the Criminal Code. Since it affects a person's right to come and go, it must be applied sparingly, with an exact description of the places and a plausible justification, considering the minimum necessary. The prohibition of frequenting certain places should not have a moralizing meaning that is disassociated from the corresponding offence, as is the case with the prohibition of frequenting bars and other leisure areas, when applied indiscriminately.

Despite the non-specification of places by the legislator, it is up to the judge to define exactly the prohibited places and the justification for such a determination.

– Prohibition to enroll in a public tender, evaluation or examination:

This prohibition is limited and temporary, referring specifically to the prohibition of enrollment in public tenders, evaluations or examinations, and may not be extended to other types of selection processes. The application of this penalty must be weighed with parsimony and in compliance with the principles of proportionality, normality and suitability, ensuring that it keeps to the minimum useful and necessary. The unjustified application of this type of penalty may violate the constitutional right to work, with dissocializing and marginalizing effects for the person subjected to the measure, who may be deprived of his or her livelihood and that of his or her family.

2.4. Weekend Limitation

The weekend limitation is provided for in articles 43, item VI, and 48 of the Brazilian Penal Code, and in articles 151, 152 and 153 of Law 7,210/1984, the Law of Criminal Executions. This restriction consists in placing the person in a home or other appropriate establishment for five hours a day on Saturdays and Sundays.

This kind of restriction is a penalty of deprivation of liberty to be served on weekends, and it is characterized as a discontinuous imprisonment, since the convicted person remains deprived of his or her liberty during the period it remains in execution.

In practice, it has been a penalty that has been little applied since its origin, due to the almost complete inexistence of halfway houses in Brazil, due to the cost of structuring such units and the inefficiency of a restrictive penalty away from the community.

It is worth noting that the judge, considering the direction taken by the policy of alternatives to imprisonment in Brazil, which has centered on the structuring of the Integrated Centers for Alternatives to Imprisonment, in a pattern that is different from the shelters, should pay attention to this reality, principally by understanding the conditions of execution in each district, seeking to apply a penalty or measure based on the reality of each person. In this sense, the measure should be adapted to the type of crime, the conditions under which the person is serving it, as well as the spaces/institutions suitable for receiving the person and the possibilities of execution.

In line with the policy of alternatives to imprisonment, it is recommended that judges consider the space of the Integrated Centres for Alternatives to Imprisonment as suitable for receiving people to follow-up a sentence or a non-custodial measure, and apply one of the modalities of restriction on which the Center monitors, to the detriment of this modality. The Integrated Centers for Alternatives to Imprisonment are not involved in the reception and follow-up of this measure of weekend limitation.

2.5. Community service

Community service is the type of penalty most applied by judges in Brazil and consists of assigning tasks and services free of charge to charities, hospitals, schools, orphanages and other similar establishments, in community or state's programs.

The law states that this modality can only be applied in cases where the imposed imprisonment is longer than six months.

The services provided are of a free nature and, therefore, should be provided for the benefit of the community.

The services rendered are of a gratuitous nature and, therefore, must be rendered for the benefit of the community, for eight hours a week, at a time that does not interfere with the person's workday.

These hours may be distributed over more than one day of the week, if this is more suitable for the person doing the work. The proportion of one hour's benefit for each day of conviction must also be respected.

In cases where the substituted custodial penalty is longer than one year, the person may optionally serve the substituted sentence within shorter time, but never less than half of the fixed sentence of deprivation of liberty.

The judge must apply the type of sentence and time, but must refer to the Integrated Centers as it is their competence, the details of the compliance, mainly as to the following elements:

- ### Institution where the service will be performed:

  The Integrated Centre's team should consider the distance between the person's home and the institution, since the transportation cost may make compliance difficult. However, there are people who choose to serve their sentence in an institution near their work, or there are other cases in which, for safety reasons, it is more appropriate to serve the sentence in a different neighborhood from their home;

- ### Abilities and/or limitations of the person:

  The team must elaborate with the person the activity to be developed, seeking to link the service to an activity that values his/her potentialities. Degrading activities are unconstitutional, and activities that stimulate the creative/social/community potential of the person should be promoted, so that the activity is relevant both to the institution and to the person who must perform it, stimulating self-esteem, social participation, affective bonding, restoration, and resignification of the conflicts/violence experienced;

- ### Compliance schedule

  The team must verify, for the sentence ser-

ving, a compatible time that does not compromise the person's formal or informal work, as well as other relevant social commitments, such as religious beliefs, family relations, among others. By law, the entity receiving the service is responsible for sending the person's signature sheet monthly and must report absences and other incidents that could compromise compliance.

By law, the entity receiving the service is responsible for sending the person's signature sheet monthly and must report absences and other incidents that could compromise compliance.

The legal system also provides in some specific legislation for the possibility of determining the provision of services to the community or public entities, in particular nº 9,605/1998 - The Environmental Crimes Law, and Law nº 11,343/2006, The New Law of Drugs. In these cases, the fluxes and procedures for applying and monitoring the measures should follow, where applicable, the provisions of the Penal Alternatives Management Manual.

2.6. Participation in thematic or reflective practice groups

In many districts, judges apply participation in thematic or reflective practice groups as a type of community service or weekend limitation. The execution of these groups can be done by the Centre or by an institution of the network that develops projects with this objective.

In cases related to domestic or family violence against women, Guide V presents specific group methodology, according to The Maria da Penha Law.

The thematic groups make possible a more effective dialogue with people in alternative sanctions, working on aspects related to violence that has been practiced and/or suffered, criminalization processes, social and family violence, use of psychoactive substances and its implications, community ties, among other themes that people and the team see as relevant.

The group must be constituted in a dialogical and interactive way, with qualified listening to the person, resulting in greater bonding and meaning for the participants.

The groups may be community or government-initiated. It is best if, even when dealing with the execution of sentences, the groups are held outside the judicial environment, which is a space where power structures are very marked and relationships tend to be hierarchical, making it difficult to break down resistance and build relationships of trust with the people in the groups. For the realization of the thematic groups, the

Center will be able to develop partnerships with public and private institutions, especially on issues related to drugs, gender, and the environment.

The Centre should present the project in advance to the Judiciary, as a modality in detriment of the other restrictive measures. For participation in drug groups, it is recommended that participation should not occur automatically in relation to the type of crime, but only if the person is interested in joining this type of group. The best thing to do is for the Center staff to request the conversion of the measure initially applied for participation in a group when the person manifests a commitment to drug use and an interest in this type of participation.

The meetings work on different aspects, such as information, orientation, accountability, and thought in the form of dialogues and group dynamics. The Center or partner entity that conducts the group must register the attendance, with the signature of the person at each meeting, so that this proof can be added to the records later.

The groups must have methodological supervision by professionals specialized in the highlighted areas, as well as conduct studies of cases for greater capacity to act and qualified answers.

As for the number of meetings, the principle of the minimum penalty must be considered, with the Integrated Center and the Judiciary agreeing on this alignment, so that the participation can be recorded in the minutes or in the sentence, with the total number of hours to be completed. The Center may also request that the measure be altered, justifying the reasons for each case.

It is appropriate that the participation should take place in weekly meetings, with each meeting lasting two hours, for the time established by the court. There are experiences of groups related to the themes of drugs and the environment with an average of five meetings. In the case of groups for men who commit violence against women, the number of meetings, as well as the methodology to be applied, demands different approaches, which are contained in Guide V, as well as in the Handbook of Alternatives to Imprisonment Management.

It is considered adequate to conduct groups with a minimum of 8 (eight) members and a maximum of 20 (twenty), so that there is a greater capacity for interactivity and effective

Facilitator

It is the person who conducts group, and this terminology marks a less hierarchical position of this professional in the meeting. The group does not have a lecture, training, class, therapy, assistance, or punishment format. Thus, the facilitator should not assume the position of a teacher, pedagogue, therapist, or other postures that crystallize a distance marked by power relations, but should have the ability to promote dialogic circles, with a reflective character. Ideally, the groups should have the facilitation of 2 (two) professionals.

participation of all members.

The groups may preferably be open, receiving new participants as they are referred by the Judiciary and welcomed at the Center, since this approach promotes a welcome by the old participants, who are already less resistant, to the new members, in addition to facilitating the management of the meetings and not generating interruptions.

If there are incidents of non-compliance, the facilitators should try to resume compliance, or if there is a third unjustified failure to comply, return the case to the Judiciary.

The last meeting in the group should be a moment of evaluation of the person with the participants, which requires the facilitators to be attentive to the end of the fulfillment of each of the participants, promoting this disconnection rite.

A person serving a sentence may express interest in continuing in the group after it has been fully served. It is up to the Centre to evaluate this possibility, safeguarding the voluntary nature of the permanence.

In the evaluation, one must stick to objective information regarding compliance or dropout, without breaking confidentiality about the issues

shared by each person in the group.

2.7. Types of measures and follow-up of pre-prosecution transaction and Non-custodial sentences by the Integrated Center for Alternatives to Imprisonment

Cash benefit	We must consider the definitions provided in Resolution nº 154 of the National Council of Justice (CNJ), especially building between the Judiciary and the Center the objective criteria for funding projects with the Network partner in the serving of alternative sentences. It is possible for the Center to build with the Judiciary a model of a standardized form/project in a simple format, to request the cash benefit, aiming at greater transparency about the destination, as well as control over the rotation of the benefits and equity in the destination. People who have received a monetary penalty will be referred to the Center for psychosocial assistance, guidance on how to comply with the measure, and referrals to the network, if necessary. The Center may request the execution judge to convert the measure to another type, if the person claims economic inability to pay for the measure.
Loss of property and valuables	This type of sentence that restricts the rights of the offender does not require monitoring by the Center, and the procedures must be carried out directly at the Court of Criminal Execution.
Community Service	The execution follow-up should correspond to the methodological procedures described throughout this document.
Temporary restriction of rights	This type of sentence that restricts the rights of the offender does not require monitoring by the Center, and the procedures must be carried out directly at the Court of Criminal Execution.
Weekend Limitation	It is suggested that other modalities of alternative sentencing, capable of being followed up by the Center be prioritized over this one.

3 Conditional discharge

Conditional discharge suspends the criminal prosecution for a period of 2 to 4 years

Another innovation of Federal Law nº 9,099/1995 was the conditional discharge (art. 89), which establishes a suspension of criminal proceedings for a period of 2 (two) to 4 (four) years, when the minimum sentence is equal to or less than one year and when the defendant has not been convicted of any other crime, in addition to the other requirements of article 77 of the CPP. The law also establishes the conditions for a probationary period and revocation for reasons expressed in the law.

Criminal liability will be extinguished without judgment on its merits if it is not revoked during the suspension period.

The person will continue to be exempt from criminal records, and there will be no impediment to being able to access again any of the institutes of Law 9.099/95.

If the defendant does not accept the proposal for a conditional discharge, the criminal procedure continues.

If the requirements of the conditional discharge are not met, the criminal procedure that

These are criteria defined by law, for **the application of conditional discharge:**

i) receipt of the accusation;;

ii) not being prosecuted for another crime;

iii) not have been convicted of another crime;

iv) requirements provided in art. 59 of the CPP.

was suspended is resumed.

The conditional discharge is not a discussion of guilt and criminal responsibility, nor is instruction and sentencing. It does not impose a sentence, but conditions to be fulfilled if accepted by the person.

When the conditions are met, the judge must declare the criminal liability extinct, exempting the person from criminal records. This is considered a subjective right of the accused, since once the legal conditions are met, the Public Prosecutor's Office is responsible for proposing it, and it is not a mere faculty of the Public Prosecutor's Office.

As for the optional conditions, their setting should consider the criminal offense, the possibility of building solutions that also consider the victim and his or her needs, and the particular situations of the defendant, in accordance with the postulates, principles, and guidelines established for alternatives to imprisonment, in particular: the encouragement of community and victim participation in the resolution of conflicts; the search for accountability and the maintenance of community ties, with the guarantee of individual and social rights; and the restoration of social relations, when possible and desirable by the people.

Another important element to be considered is the need to propose to the defendant, first, a pre-prosecution transaction, when possible, before proposing the conditional discharge, since the former is more beneficial to the person than the latter. In any case, it is a bilateral act, in which the Public Prosecutor proposes the institute and

According to art. 89 of Federal Law n° 9,099/1995:

§ 1°. Once the accused and his defense have accepted the proposal, in the presence of the Judge, the latter, receiving the accusation, may suspend the prosecution, subjecting the accused to probation, under the following conditions:

I) reparation for the damage, unless it is impossible to do so;

II) prohibition to frequent certain places;

III) prohibition to leave the district where he/she resides, without authorization from the judge;

IV) compulsory personal appearance in court, on a monthly basis, to inform and justify his/her activities.

§ 2°. The judge may specify other conditions to which the agreement is subject, as long as they are appropriate to the fact and the personal situation of the defendant.

it is up to the defendant to accept it or not.

3.1. Types of measures and follow-up by the Center

Damage Repair, unless it is impossible to do so	This measure is a modality to be considered, especially from methodologies such as restorative justice practices, as reparation to the person who has suffered some damage. It should not be confused with or reverted to a fine for the state or pecuniary compensation for institutions. In case of partial reparation, if the inability to fully repair is proven, it is suggested that the reparation be recognized, since the interest and action for the reparation has been demonstrated. Redress must take place during the probationary period and not prior to the conditional discharge. Once the impossibility of full compliance with the reparation is verified, as established as a condition for the suspension, the accused must prove the inability, under the risk of revoking the institute and continuing the prosecution. Compliance with this conditionality must be verified by the judge. The Center can make voluntary referrals based on social demands presented by the person or family members.
Prohibition to go to certain places	It is suggested that other measures be prioritized over this one, since it is characterized as a limitation of the constitutional right to the freedom to come and go, meaning a type of precautionary segregation. It is recommended that the judge determine exactly which places the person is prevented from attending, avoiding the application of generic locations. This measure can be applied if in direct relation to the circumstances of the act considered illicit. The Center has no competence to do on-site inspection. The Center will be able to provide other psychosocial assistance and referrals based on the social demands perceived during the assistance.
Prohibition to leave the district where he/she resides, without authorization from the judge	The intention of this measure is to create an obligation for the person to observe the conditionalities of the lawsuit, giving the magistrate the supervision of the obligations to be fulfilled, since the person must ask the judge for authorization if he/she wants to leave the county. The Center can perform other psychosocial services and make referrals based on the social demands perceived during the service. The Center has no competence to conduct on-site inspections.
Compulsory personal appearance in court, monthly, to inform and justify his/her activities	The appearance may take place at the Integrated Centre for Alternatives to Imprisonment, as per prior agreement with the Judiciary, with individual attendance or in the format of reflective practice groups previously agreed upon with the Court, at the time of signing, seeking qualified listening and making new social referrals, if necessary. The Center can make other referrals based on the social demands perceived during the service.

4
Suspended Sentence

The conditional discharge differs from the suspended sentence, provided in art. 77 of the Brazilian Criminal Procedure Code (CPP). In the suspended sentence, there is a criminal prosecution, with procedural instruction and sentencing. Once the defendant has been convicted, the sentence can be suspended, during which time the offender must comply with certain conditions and, after this period, which is considered probationary, criminal liability is extinguished, as if the sentence had been served.

According to art. 77 of the CPP:

The execution of a custodial sentence not exceeding two years may be suspended for two to four years, provided that:

I) the convicted person is not a repeat offender;

II) the guilt, background, social conduct and personality of the agent, as well as the motives and circumstances authorize the granting of the benefit;

III) the substitution provided in art. 44 of this code is not indicated or applicable.

§1º. Previous conviction to a fine does not impede the granting of the benefit.

§2º. The execution of a penalty involving deprivation of liberty, not exceeding four years, may be suspended, for 4 (four) to 6 (six) years, provided the convict is over 70 (seventy) years of age.

Art. 78 establishes the suspension conditions:

During the term of the suspension, the defendant will be subject to observation and compliance with the conditions set by the judge.

§1. During the first year of the term, the offender must render community service (art. 46) or submit to weekend limitation (art. 48).

§2. If the offender has repaired the damage, unless it is impossible to do so, and if the circumstances of art. 59 of this Code are entirely favorable to him/her, the judge may substitute the requirement of the previous paragraph by one or more of the following conditions:

a) Prohibition to go to certain places;

b) Prohibition to leave the co-brand where he resides, without authorization from the judge;

c) Personal and compulsory attendance in court, monthly, to inform and justify his activities.

The conditional discharge differs from the suspended sentence, provided in art. 77 of the Criminal Code (CP)

The law also establishes, in art. 79, that other conditions to which suspension is subject may be specified, if they are appropriate to the fact and to the personal situation of the convict.

Art. 80 states that the suspension does not extend to non-custodial sentences or fines.

The suspension of the sentence may be revoked if the person: is convicted of an unappealable sentence for intentional crimes; although solvent, frustrates the execution of the fine penalty or does not repair the damage without justifiable reason; does not comply with the condition of §1º of art. 78. The judge may also revoke the suspension if the convicted person does not comply with the condition of §1º of art. 78. precludes any other imposed condition or is irrevocably sentenced, for a felony or minor crime, to a custodial or non-custodial sentence.

When revocation is optional, the judge may extend the probation period up to the maximum, if it is not the maximum fixed, instead of revoking the suspension. The suspension period is extended if the convicted person is being tried for another crime or minor crime, until final judgment.

Finally, article 82 establishes that the custodial sentence is considered extinguished if the term has expired without any revocation having taken place.

4.1. Types of measures and follow-up by the Central Office

Community service	The same procedures should be followed as those described in the pre-prosecution transactionand in the conditional discharge.
Prohibition to go to certain places	
Prohibition to leave the district where he/she resides, without authorization from the judge	
Compulsory personal appearance in court, monthly, to inform and justify its activities	

5
Follow-up methodology by the Center

The follow-up by the Integrated Center for Alternatives to Imprisonment to the different modalities of alternative sentencing, whose list includes pre-prosecution transaction, non-custodial sentences, Conditional discharge and Suspended Sentence, must consider, besides the peculiarities already presented in this document in their respective items, the procedures detailed below:

I) Referral by the Judiciary;
II) Human Resources, reception and elaboration of the measure;
III) Referrals for compliance with the alternative to imprisonment;
IV) Referrals for access to rights;
V) Returns/Routine assistance Routine returns/services;
VI) Follow-up by criminal offence;
VII) Case studies;
VIII) Relationship with the Judiciary;
IX) Incidents of compliance;
X) Non-compliance;
XI) Information management;
XII) Respect for autonomy and diversity.

I – Referral by the Judiciary

In the decision, the judge will determine the person's appearance at the center, setting out the conditions for this follow-up in accordance with the type of alternative to imprisonment determined. The measure must also establish the deadline by which the person must report to the center and the address of the headquarters. As stated in Guide I, a Term of Technical Cooperation must be signed between the Executive Branch, responsible for the Center, and the Justice System.

II – Human Resources, reception and elaboration of the measure

The person arrives at the Center after being oriented at a hearing, presenting a copy of the document that states that he or she must appear at the Center. The Central's technical staff is made up of a multidisciplinary team with interdisciplinary action, composed of professionals from the social and human sciences, necessarily including psychologists, social workers, and lawyers.

During this first visit, the person will be welcomed by the psychosocial sector. This is a space for listening, where factors such as: physical and psychological situation, understanding of the context of the judicial determination, housing, available time, abilities, demands for inclusion in social protection policies, or specific treatments are evaluated.

This information should be included in a standard form for the first consultation and is important for the follow-up and success in complying with the court order the measure, as well as for the referral to the network according to the demands presented by the person.

It is common for people to arrive at this first meeting with legal doubts and resistance. It is important that this first meeting be a space for listening and not only for orientation, since the person's perception as to the capacity to be heard by the team may determine the construction of a positive bond. If there are emergency demands regarding legal aspects, the person may be referred to the professional responsible for legal clarifications and guidance and, if the need and interest in legal technical defense is perceived, the person must be referred to the Public Defender's Office. Legal guidance can also be provided in Groups.

III – Referrals for compliance with the alternative to imprisonment

The team at the Integrated Center for Alternatives to Imprisonment must ascertain, based on the person's attendance, if the modality is an assignment that considered the full capacity and conditions of execution by the person, besides the time, among other relevant elements (aspects related to religious belief, non-degrading sentences, etc.).

If incompatibilities are perceived, the team must request the Judiciary to adjust the person's compliance capacity, presenting the necessary justifications for such a request.

As already stated, in the case of PSC, in districts where there are Integrated Centers, the judge is responsible for specifying details related to the type of service provided, the institution of the network, and the hours of compliance. It is consi-

dered that the Center is the competent institution to delimit these aspects that make up the penal alternative, since they demand qualified attention from the technical team.

IV – Referrals for access to rights

These referrals are made by the team according to the demands presented by the people assisted.

For referrals to the network or in cases where the need for treatment is verified, it is important, besides having normative orientations in this sense, that such referrals are not made as a judicial determination, but through the manifestation and desire of the person assisted, based on their sensitization by the technical team of the Center. In cases of access to rights and treatment, the referral can only occur with the person's consent. As already mentioned, a large part of the public that comes to the Center presents social vulnerabilities and the referrals to the partner network aim at minimizing these vulnerabilities.

After any referral, the team must follow up on the progress: whether the person has accessed the service, the reasons why they did or refused to do so and how they were received.

V – Routine returns/services

The person must return to the center at the intervals previously established in the judicial decision, and the technical team may listen to the person again if there is a need to adapt the serving conditions or new social demands.

VI – Follow-up by criminal offence

The particularity of the follow-up by criminal offence is duly detailed in the specific items.

VII – Case Studies

It is necessary that case studies are conducted by the team on a weekly or biweekly basis, ensuring an interdisciplinary look, seeking to define follow-up strategies, approaches and appropriate referrals. The teams may invite partners from the networks to discuss cases that require specific care/referrals/knowledge and guidance. The Networks may have specific meetings and, in these cases, the Centre must be represented in these routines, strengthening these spaces, the links and the articulations.

VIII – Relationship with the Judiciary

The Center should work with the Judiciary to build agile and swift workflows. Meetings should also be held at reasonable intervals to discuss cases, inviting other actors from the Justice System and the Partner Network for training in the follow-up of alternatives to imprisonment. The Courts and The Integrated Centre and the Network institutions must indicate a reference technician from each organ to facilitate the dialog and procedures.

Every 30 (thirty) days, the court and trial court secretariats should separate copies of each court transcript or decision or create a specific list so that the technical teams at the Center can monitor the presentation of people who have had an alternative to imprisonment sent to the Center. The Center should make a monthly report to the court informing it, based on the list received, of those who have not appeared, for the appropriate measures to be taken.

If there are requests from the courts for following up penalties/measures or conditionalities that the team is not able or competent to follow up, the Center must contact the court immediately, seeking dialogue and building alternative solutions. All the methodologies and fluxes must be previously defined with the Justice System.

The information regarding the alternative sentence serving and conditionalities should be given in the time agreed upon between the Central and the Judge/Courts.

IX – Incidents of compliance

Incidents of enforcement are any situation that interferes with the regular compliance with the established measure, considering irregular compliance, suspension of compliance and non-compliance. We highlight some of the most common cases of incidents and the appropriate procedures:

a

Refusal to sign pledges or participate in a dynamic contained in the alternative measure:

The team must try to sensitize the person through individual assistance and guidance as to the consequences of non-compliance, and if the refusal persists, preventing proper compliance with the alternative, the team must return the case to the Judiciary;

b

Failure to attend meetings on the scheduled date:

The team must make phone contact for three consecutive days. If there is justification and an immediate return, compliance continues without interruption. If phone contact is unsuccessful, the team must send a registered letter. If there is no plausible justification for two continuous absences, a communication will be sent to the court. If there is justification, such as in the case of illness, accident, work-related or other reasons, the justification must be included in the case file and compliance will be resumed;

c

Fouls:

If there are three absences from the compulsory attendance, non-compliance is characterized, and a notification will be made in the criminal case. This number of absences must be agreed upon with the judge and duly informed to the person at the first appearance, as well as re-forced with him/her upon each absence.

X – Information Management

We must always strive to maintain the measure at liberty, building with the person measures that are suitable for compliance and at the same time serve the purpose of the judicial determination applied. In case of non-compliance, the Center must seek immediate compliance adjustment with the person. Once these phases have been completed, if non-compliance persists, the Center must report it to the court. Non-compliance with the measures exclusively leads to immediate communication to the court, and the Center has no power to take any other action. It is important to note that if the case is referred to the judge, it is recommended that a justification hearing be held, to adjust and renegotiate the measure, referring it back to the Integrated Center for compliance.

XI – Information Management

It is essential that the Center's procedures are computerized and periodically updated by the team and that the documents are properly archived, ensuring proper information management. The Center must build efficient methodologies for data collection, lawsuit and analysis.

XII – Respect for autonomy and diversity

i

When building an alternative sentence/measure with the person, it is necessary to ensure greater flexibility and to consider objective dificulties in the conditions under which it is carried out, especially for socially vulnerable groups such as drug users, the elderly, people responsible for dependents, homeless people, and people with mental disorders, in addition to addressing the peculiarities of groups that have historically suffered discrimination and prejudice, such as black people, the LGBTTI population, and Indians, among others;

ii

The Center cannot make referrals/additional conditions to the measures, such as attendance at courses, medical treatment, institutionalization in hostels, attendance at churches, among others that hurt the person's autonomy, culture, values, and religion;

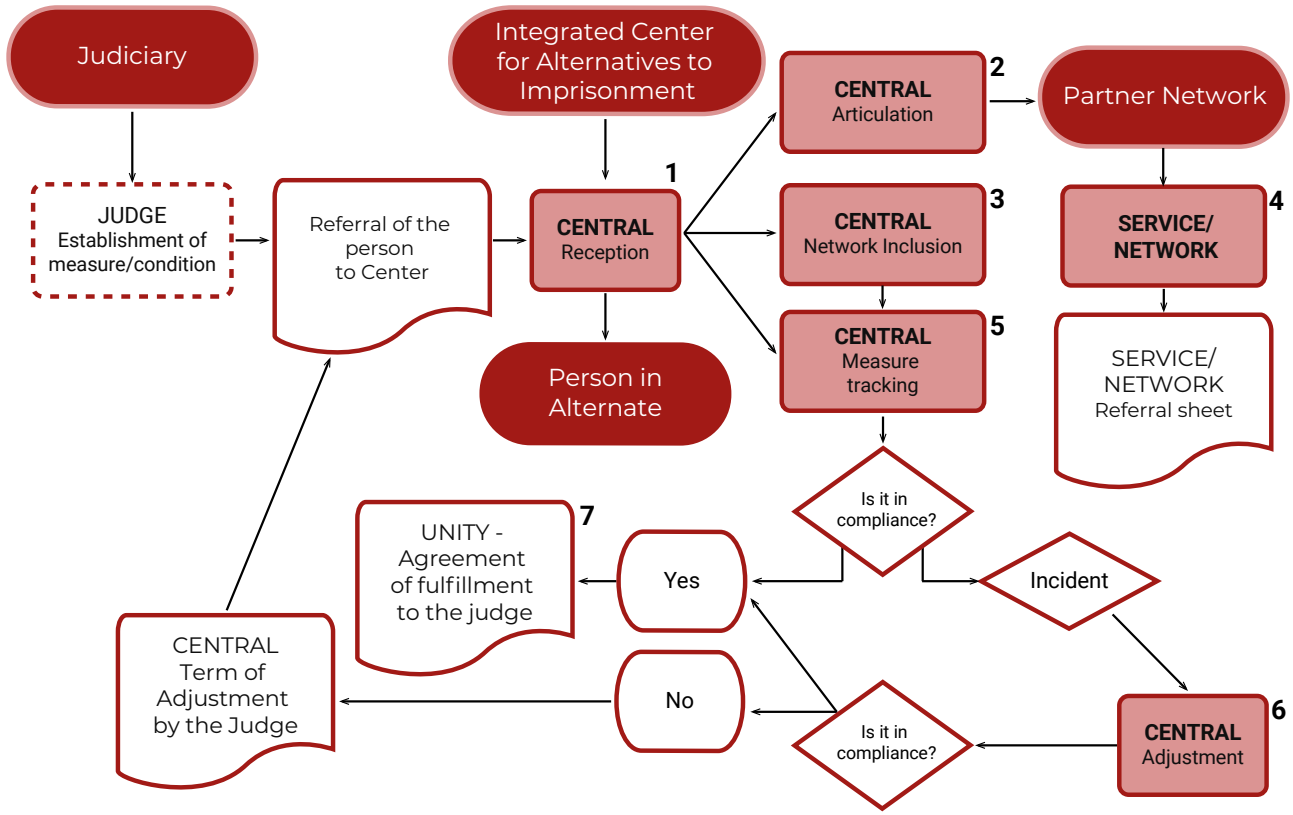
iii

The Center must guarantee the respect for generational, social, ethnical/racial, gender/sexuality, origin and nationality, income and social class, religion, belief, among others, regarding the referrals and compliance of the measure by the person.

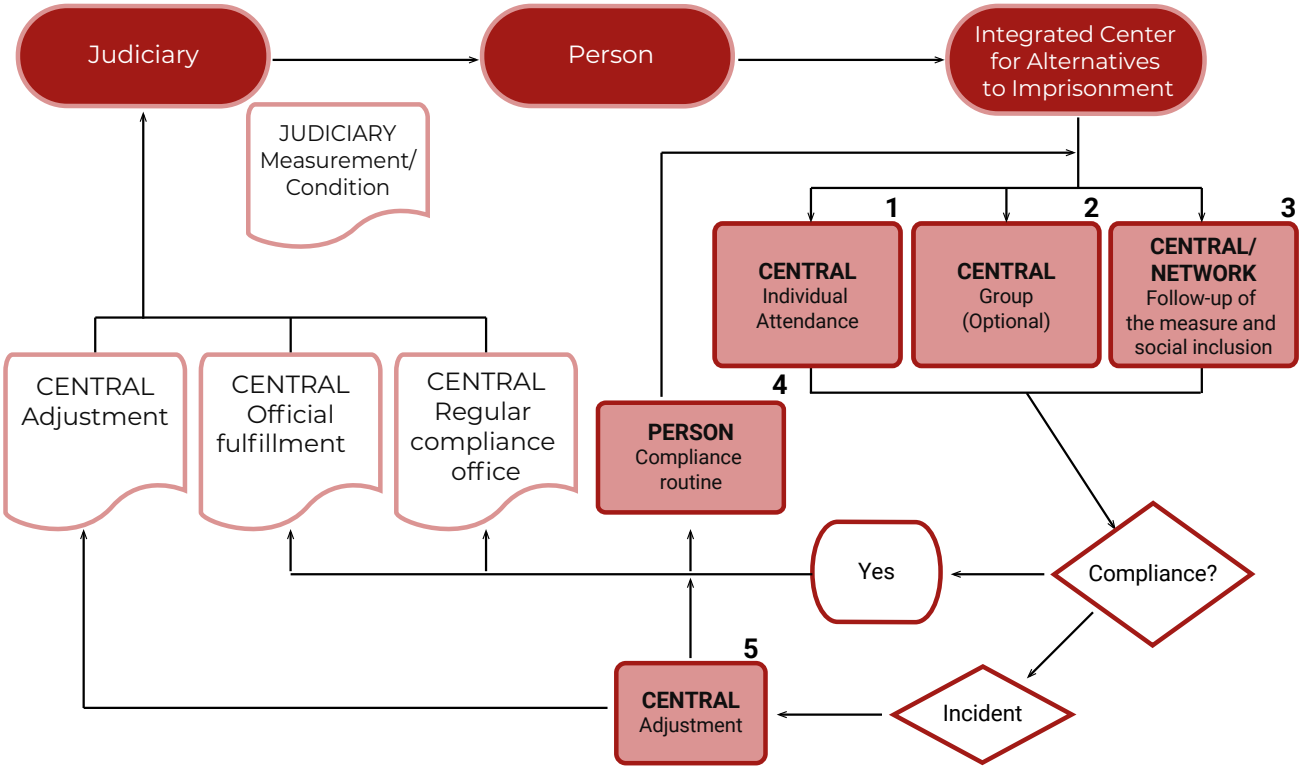
6. PROCEDURE WORKFLOWS

The detailing of each of the procedures highlighted in these flux, as well as the working tools (forms, terms of cooperation, sheets, etc.) for use by the technical team of the Integrated Centre for Alternatives to Imprisonment are fully published in the Handbook of Alternatives to Imprisonment Management.

6.1. General workflow in the Centre

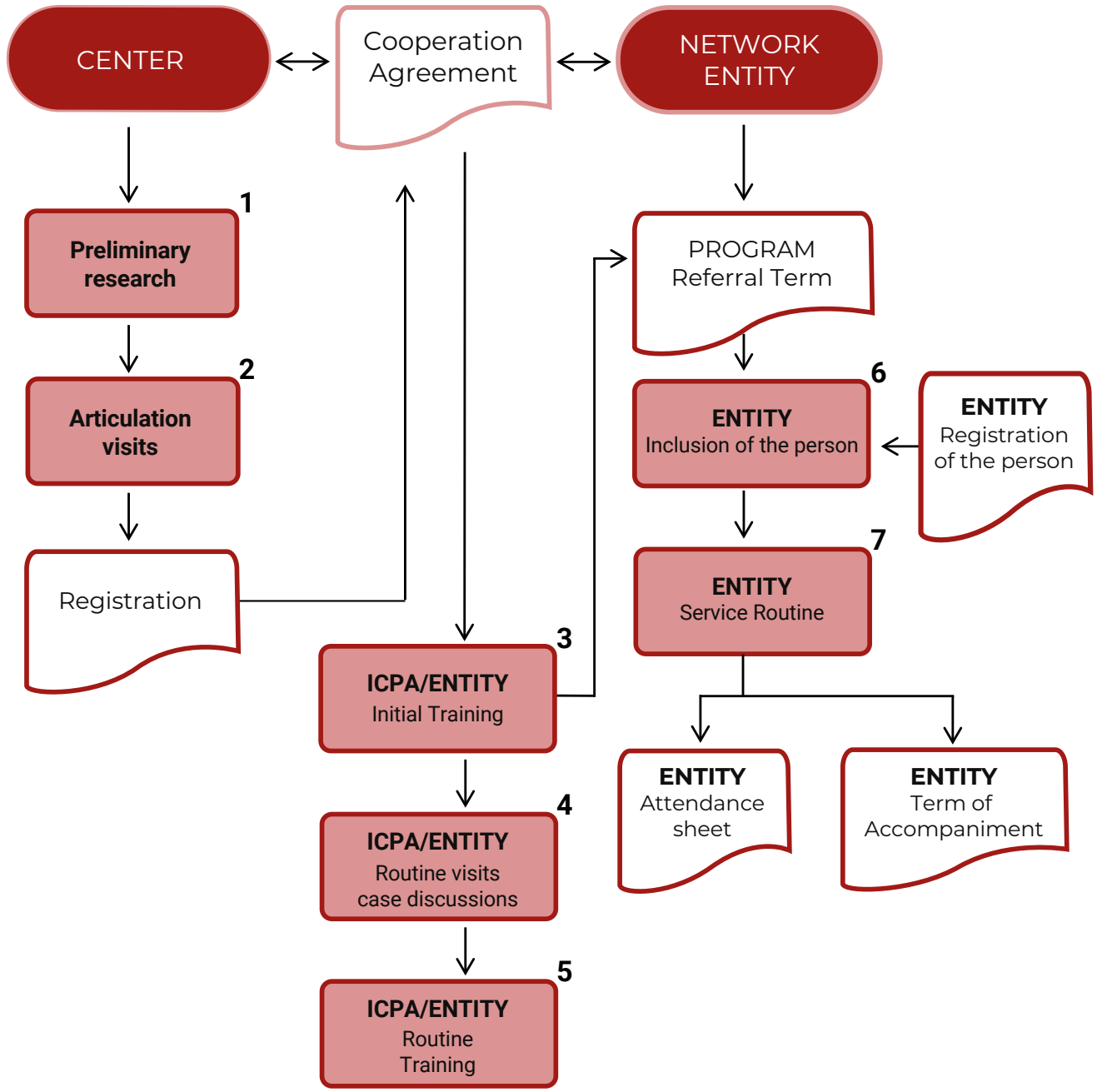


6.2. Follow-up Methodology of the measure/penalty by the Center



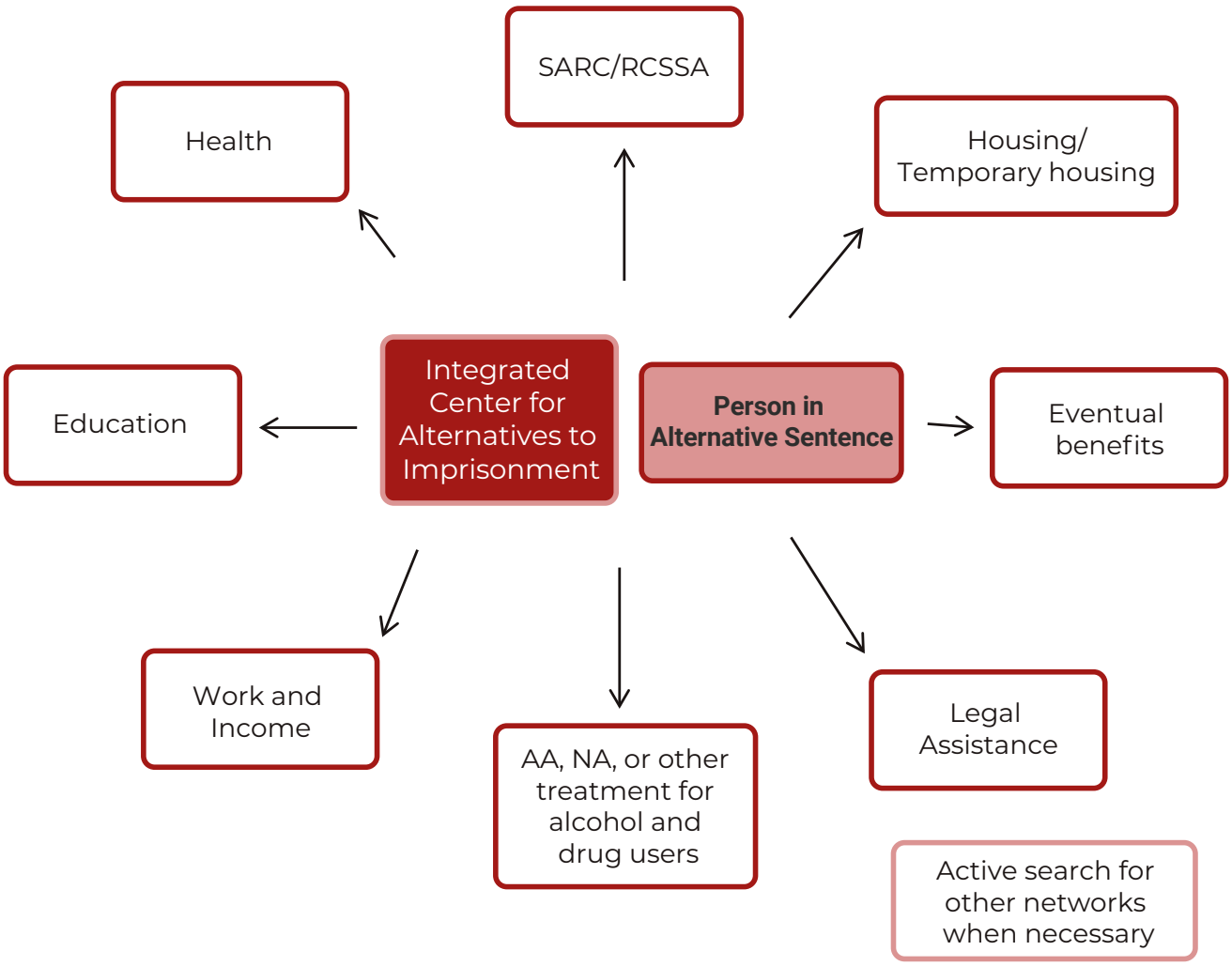
You will find more details about the PARTNER NETWORK in Guide I or in the Handbook of Alternatives to Imprisonment Management.

6.3. Articulation with network entities



ICPA - Integrated Center for Penal Alternatives

6.4. Referrals of the person to the network services



AA Alcoholics Anonymous
SARC - Social Assistance Reference Center
RCSSA Reference Center Specialized in Social Assistance
NA Narcotics Anonymous

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