



## **ANNUAL REPORT ON THE PROFILE OF DEFENDANTS ASSISTED AT CUSTODY HEARINGS**

### **Presentation**

A year after the implementation of the custody hearings in the State of Rio de Janeiro, the Public Defender's Office presents to society a report on the interviews conducted by the public defenders with 5,319 custodees, between September 18th, 2015 and September 18th, 2016.

The study – one of its kind so far carried out by a public institution in Brazil – is part of a broad project to formulate public policies on access to justice based on data collection and analysis, which began in 2015 upon the establishment of the Division of Studies and Research on Access to Justice.

Field research, structuring and data analysis, outlining social and economic profiles of the custodees, as well as the precautionary measures handed down by the judges allowed the Rio de Janeiro State Public Defender's Office to plan the creation of four institutions and elaborate a performance protocol for public defenders assigned to custody hearings, thus institutionalizing successful practices through Resolution 801/2015 within Deliberation 107/2015.

Inspired by the American Convention on Human Rights, the custody hearing is a daring project led by the National Council of Justice (NCJ) and the Ministry of Justice, which has brought great advances to the society of Rio de Janeiro and to the justice system.

By complying with the country's commitments to the Convention against Torture, the custody hearing is an effective instrument for torture control practiced by public officials, insofar as *corpus delicti* exam is carried out at the Court of Justice headquarters. In addition, it collaborates to avoid the enactment of unlawful or unnecessary imprisonment in our State.

It also allowed – and this is, perhaps, the main advance resulting from custody hearings – that the custodee, in less than 24 hours, be interviewed by a public defender, occasion in which he/she will become fully acquainted of his/her legal situation and may appoint relatives and witnesses, thus having secured to him/her and to the Public Defender's Office the full exercise of the defense.



I could not, in delivering this document to the society of Rio de Janeiro, fail to thank the Criminal Defense Coordination staff, the Coordination of the Custody Hearing Center, the public defenders who interviewed and worked for the 5,319 people over a year and the staff of the Division of Studies and Research on Access to Justice.

**André Luís Machado de Castro  
General Public Defender of the State of Rio de Janeiro**

### **1. Introduction:**

Article 7 of the American Convention on Human Rights, ratified by Brazil in 1992, provides that “Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings”.

In face of such provision, the NCJ, together with the São Paulo Court of Justice and the Ministry of Justice, among other entities, initiated a project to ensure that individuals caught in flagrante delicto be presented to a judge within a maximum period of 24 hours, based on Article 306, §1 of the Code of Criminal Procedure, which mentions this time limit for appraisal of the indictment of the in flagrante arrest by the judge. During the hearing, the judge examines the arrest under the legality aspect, evaluating whether or not to keep the prisoner in custody or if it is a case of granting provisional release, with or without the imposition of other precautionary measures. It is also possible to evaluate possible incidents of torture or ill-treatment, among other irregularities, in addition to allowing the defendant to have access to the defender as quickly as possible, effectively ensuring the ample defense.

Since the establishment of the Custody Hearing Center by the Rio de Janeiro Court of Justice, regulated by Resolution 29, from August 24, 2015, and having promoted the first hearings on September 18, 2015, public defenders complete an assistance questionnaire, and perform daily monitoring of the hearings. From such questionnaires, it is possible to draw the profile of the defendants assisted by the Rio de Janeiro State Public Defender's Office, as well as indicate the result of the analysis of the imprisonment made by the judge.

The first questionnaires' analysis report was delivered in November, 2015, containing the profile of the defendants who participated in the custody hearings



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between September 18 and October 13, 2015. The second report contained the profile of the prisoners who were assisted by the Public Defender's Office for a longer period, from October 14, 2015 to January 15, 2016. The third report also contained a three-month review, compiling data from cases assisted between January 18 (Monday), and April 2016. As of these dates, data began to be collected in order to be part of an annual report covering custody hearings held between September 18, 2015 and September 18, 2016.

The report reflects the structuring of the data provided by defenders on the questionnaire. The Rio de Janeiro Court of Justice's web page was only consulted for the verification of the date of the custody hearings, when not provided by the defender, because without such information it would be impossible to establish the time span adopted for its elaboration. In addition, the consultation allowed verification of the outcome of the custody hearing, also when not provided by the defender, as well as if a private lawyer was present and the specification of the criminal offense committed by the defendant. Further data were provided only by the defenders upon completing the questionnaire and were not checked in the Court of Justice's consultation system.

In some occasions, the case number was not included in the questionnaire and, for such, consultation on the Court of Justice's system was done by the defendant's name. Often, however, such information is insufficient and the process is not found by the search engine. These situations were computed as "cases without information".

### **2. Profile of the defendants interviewed by the Public Defender's Office:**

The interviews carried out by the public defenders allow the establishment of both the defendants' social profile and additional information which might help in the elaboration of the defense strategy throughout the proceedings course. Between September 18, 2015 and September 18, 2016, 5,319 custodees were interviewed, and in 04 (four) cases there is information that the defendant was released during extraordinary court system working shifts, in 01 (one) case the defendant was hospitalized and in 12 (twelve) cases no custody hearings were performed, totaling 5,302 custody hearings.

In 55 cases, the date of the custody hearing was not found, which represents only 1% of the total. Considering the total number of days analyzed (236), an average of 22 custody hearings per day was performed.



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Month	Custody hearings/month
Sept/15 (18 to 30)	61
Oct/15	242
Nov/15	243
Dec/15	302
Jan/16	426
Feb/16	531
Mar/16	423
Apr/16	366
May/16	553
Jun/16	614
Jul/16	550
Aug/16	586
Sept/16 (01 to 18)	350
No data	55
Total	5,302

The increase in the number of hearings from January can be explained by the fact that the total number of police stations participating in the project has increased progressively.

As a rule, the public defender interviews the detainee and completes the questionnaire before the start of the session, but a lawyer may attend the hearing. In such cases, the defender makes an observation in the completed form that a private lawyer acted in favor of defendant. In addition to this information, it is verified in the Rio de Janeiro Court of Justice's consultation page if a private lawyer is listed as the defendant's representative. A total of 339 cases fit in one of the two aforementioned situations, which means a 6.39% private attorney representation.

Of the 5,302 total cases, provisional release was granted in 1,710 and in 82 of them relaxation of the in flagrante arrest was granted, that is, 33.8% of the cases resulted in a release, as pointed out in the table below. It is important to note that in both the first and second reports, such rate reached 40%, falling to 29% in the third report.



<b>Release granted after the hearing?</b>	
Yes	1,792
No	3,421
No info	89
Total	5,302

Of the total cases examined in custody hearings in one year (5,302), only 142 defendants attended a second custody hearing after being heard for a first time, that is, only 2.8% of the total with information about the grant or not of provisional release (5,059). From the total, cases without information (89) and cases with more than one hearing for the same defendant (154) are excluded.

Two defendants attended the custody hearing four times, eight defendants attended the custody hearing three times and 132 attended the custody hearing only once.

In 92 cases of that total of 142 defendants who returned to the custody hearing, provisional release was granted at the first hearing and in three cases the imprisonment was relaxed. In flagrante arrest was converted into precautionary in 46 cases and in one case house arrest was granted.

Of the total of 142 cases, in 80 of them the defendants committed theft the first time, two of them being combined with article 307 of the Penal Code (CP), two with article 244 B of the Statute of the Child and Adolescent (ECA), one combined with attempted burglary and one with articles 329 of the CP and 244 B of the ECA; in 24 of the cases the first crime was robbery, one of them being combined with article 303 of the Brazilian Traffic Code (CTB), one with article 244 B of the ECA, one with articles 180 of the CP and 244 B of the ECA and one with articles 288 of the CP and 244 B of the ECA; in seven cases the first crime was the handling of stolen goods, being one combined with article 14 of Law 10,826/2003 (Statute of Disarmament), one with article 244 B of the ECA and one with article 288 of the CP; in 26 cases the crime committed was provided for in Law 11,343/2006 (Drug Act), 13 of which in article 33, two in articles 33 and 35, one in articles 33 and 35 combined with article 16 of Law 10,826/2003 and two in article 33 combined with articles 12 and 16 of Law 10,826/2003 each, one in articles 33 and 40, six in article 35 and one in articles 35 and 40 combined with article 329 of the CP; in two cases the crime committed was provided in article 14 of Law 10,826/2003; in one case the crime was provided for in article 278



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of the CP; and one in the articles 307 and 308 of the CP. In one case the crime committed was not identified.

1st crime committed by defendants returning to hearings		
Theft	80	Crimes against property 78,2%
Robbery	24	
Handling of Stolen Goods	7	
Drug Act	26	
Others	5	
Total	142	

According to the table below, in 34.22% of the cases with information, defendants had already been previously convicted. In 1,068 of them, in flagrante arrest had been converted into preventive detention, that is, 34.11% of the total cases with information (4,211).

Defendant with previous conviction?	
Yes	1,441
No	2,770
No data	1,091
Total	5,302

Regarding the Juvenile Court, 894 people stated having been involved in criminal occurrences and 2,652 stated never having been involved, representing 25% of the total with information (3,546).

Occurrences on the jurisprudence of the Juvenile Court?	
Yes	894
No	2,652
No data	1,756
Total	5,302

Only 18.22% of the total defendants of cases with information stated they were enjoying criminal execution benefit (2,349).



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<b>Defendant enjoying criminal execution benefits?</b>	
Yes	428
No	1,921
No data	2,953
Total	5,302

As for the typification by the police authority, the table below shows the most common criminal types, demonstrating that 66% of the defendants are accused of crimes against property:

<b>Typification</b>	
Theft (art. 155, CP)	1,227
Robbery (art. 157, CP)	1,467
Other crimes against property (arts. 163, 171, 180, CP)	200
Crimes against property combined with other crimes, including against property	603
Drug Act (Lei 11.343/2006)	693
Drug Act combined with crimes of within the same Drug Act	279
Drug Act combined with other crimes, except with crimes against property	234
Statute of Disarmament (Law 10,826/2003)	265
Brazilian Traffic Code	34
Other crimes	157
No data	143
Total	5,302

Regarding the number of releases and maintained incarcerations, out of the total cases with information, in 67.41% of the theft occurrences, defendants were released, while in the robbery occurrences the percentage was of 7.31%. As for the criminal types within the Drug Act, if not combined with other crimes, release was granted in 41.61% of the cases. In combination with other crimes, percentage drops to 15.95%.



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Crime	Granted releases	Maintained incarcerations	No data	Total
Theft (art. 155, CP)	821 (67.41%)	397	9	1,227
Robbery (art. 157, CP)	106 (7.31%)	1,344	17	1,467
Other crimes against property (arts. 163, 171 and 180, CP)	146 (74.11%)	51	3	200
Crimes against property combined with other crimes	204 (34.4%)	389	10	603
Drug Act (Law 11,343/2006)	285 (41.6%)	400	8	693
Drug Act combined with crimes within the same Drug Act	53 (41.61%)	224	2	279
Drug Act combined with other crimes	28 (15.95%)	203	3	234
Statute of Disarmament (Law 10,826/2003)	72 (27.8%)	187	6	265
Brazilian Traffic Code	31 (94%)	2	1	34
Other Crimes	75 (48%)	81	1	157
Subtotal	1,821	3,278	60	
No data				143
Total				5,302

The tables below point out the cases in which the defendant reported having suffered some kind of police violence, being photographed by military police officers in situations other than for identification at the police station, being tortured or suffering aggression at the time of the arrest.



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Defendant suffered police violence upon arrest?	
Yes	1,573
No	3,024
No data	705
Total	5,302

Some 34% of the total defendants stated having suffered police assault. When asked if they could identify the perpetrator, 1,573 defendants answered "yes", mentioning civil police officers, military police officers, municipal guards, private security guards, people in general, militia members, Traffic Department (DETRAN) officers, Lapa Presente Operation officers, among others.

Defendant declared ability to identify perpetrator?	
Military Police	853
Military Police and Other	50
Civil Police	85
Civil Police and Others	15
Municipal Guard	39
Municipal Guard and Others	4
People in general	259
People in general and Other	19
Private Security	43
Victim	5
Others	201
Total	1,573

Defendant was photographed by police officers?	
Yes	2,239
No	1,184
No data	1,879
Total	5,302

Although the Rio de Janeiro Court of Justice has complied with a request from the Public Defender's Office in a public civil action to prohibit the disclosure of in



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flagrante detainees' photographs, 65.41% of the defendants stated they were photographed at the time of arrest, in situations other than identification at the police station.

Finally, in 4.37% of the cases with information, the defendants stated they had been tortured.

Defendant reported torture?	
Yes	134
No	2,927
No data	2,241
Total	5,302

### 2.1 Social profile of the defendants interviewed by the Public Defender's Office:

Regarding the defendants' social profile, the following data were included in the questionnaires:

State of Birth		
North	01 AC; 04 AM; 23 PA; 01 RO	29
Northeast	08 AL; 67 BA; 36 CE; 16 MA; 46 PB; 28 PE; 02 PI; 06 RN; 10 SE	219
Center-West	02 DF; 03 GO; 01 MS; 01 MT	7
Southeast, except RJ	18 ES; 73 MG; 59 SP	150
Rio de Janeiro		2,285
South	09 PR; 06 RS; 03 SC	18
Foreigners	02 ARGENTINA; 01 BOLIVIA; 10 CHILE; 09 COLOMBIA; 01 COSTA RICA; 01 USA; 01 LEBANON; 01 NIGERIA; 09 PERU; 02 PORTUGAL; 06 VENEZUELA	43
No data		2,551
Total		5,302



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Self-declaration of Race	
Asian	14
White	1,183
Native Brazilian	5
Black/Brown	3,356
No data	744
Total	5,302

Black/brown defendants represent 73.63% of those who attended the custody hearing and declared their race (4,558), while the white ones represent 25.95%.

Considering the higher incidence cases of race self-declaration, black/brown and white, it is possible to calculate the proportion of releases granted in each of them. In 449 cases, provisional release was granted to whites, that is, 37.95%, in 1,069 of the total of 3,356 cases, provisional release was granted to blacks, which corresponds to 31.85%.

The following table shows that 68.17% of the defendants assisted by the Custody Hearing Center have only elementary education.

Education	
Elementary/Middle School	3,195
High School	1,384
University	87
No education	21
No data	615
Total	5,302

As for the year of birth, most of the defendants are between 18 and 36 years old (83.58% of the total reported cases).



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<b>Year of birth</b>	
Between 1996 and 1999	686
Between 1991 and 1995	923
Between 1986 and 1990	488
Between 1981 and 1985	326
Between 1976 and 1980	210
Between 1971 and 1975	111
Between 1966 and 1970	71
Before 1965	83
No data	2,403
Less than 18 years of age	1
<b>Total</b>	<b>5,302</b>

<b>Defendants reported having children?</b>	
Yes	2,792
No	1,925
Pregnant wife/partner	237
No data	348
<b>Total</b>	<b>5,302</b>

<b>Defendant reported being employed before the arrest?</b>	
Yes	3,526
No	737
No data	1,039
<b>Total</b>	<b>5,302</b>

Of the 3,526 defendants who reported being employed prior to the arrest, 418 reported being formally employed.

Out of the total of 5,302 defendants, 37 provided their social names when they answered the questionnaire, in addition to their names in the civil registry. Lastly, 1,360 defendants reported carrying a disease.



**2.2 Profile of the women interviewed by the Public Defender's Office:**

Out of the total of 5,302 interviewees, 378 are female, which represents only 7.13%. These women's profiles are outlined below:

<b>Release granted after the hearing?</b>	
Yes	252
No	118
No data	8
Total	378

A total of 68.11% of the women were released after the custody hearing.

<b>Typification</b>	
Theft (art. 155, CP)	146
Robbery (art. 157, CP)	44
Other crimes against property (arts. 163, 171, 180, CP)	4
Crimes against property combined with other crimes, including against property	35
Drug Act (Law 11,343/2006)	73
Drug Act combined with other crimes within the same Drug Act	27
Drug Act combined with other crimes, except with crimes against property	9
Statute of Disarmament (Law 10,826/2003)	9
Brazilian Traffic Code	1
Other crimes	16
NO data	14
Total	378

Most women have committed a crime against property (229 cases), but theft is the most commonly practiced crime, followed by the criminal types of the Drug Act.



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### Women defendants reported having children?

Yes	284
No	73
No data	21
Total	378

### Women defendants reported being pregnant?

Yes	41
No	199
No data	130
Suspected Pregnancy	8
Total	378

Of the 49 pregnant women (including the eight cases of suspected pregnancy), 27 were released after the custody hearing.

### Self-declaration of Race

Asian	1
White	101
Native Brazilian	1
Black/Brown	209
No data	66
Total	378

### Marital Status

Married/Common-law Marriage	14/39 = 53
Singles	190
Widow	1
Divorced	6
No data	128
Total	378



<b>Education</b>	
Elementary/Middle School	219
High School	90
University	17
No education	2
No data	50
Total	378

<b>Defendant reported being employed before the arrest?</b>	
Yes	199
No	113
No data	66
Total	378

### 3. Conclusion:

After a year of monitoring custody hearings in Rio de Janeiro by completing questionnaires that identify the profile of defendants assisted by the Public Defender's Office, it is possible to note that the project is consolidated and should be expanded beyond the state's capital. In this sense, defendants' release rate stands out, at 34.38%. The rate of return to custody hearings was of 2.76%.

It is worth noticing that in the first report a comparison was made between a month prior to the custody hearings and the period in which they were already being held, and the detentions registered in the same police stations which were part of the initial project were analyzed. The result of such analysis showed that, with the project implementation, approximately two detainees per day have not entered the prison system, which corresponds to 18%. That is to say that, although the release rate has decreased between reports, it is still significant that the defendant is able to appear before the judge so that the maintenance of his/her detention is evaluated.

The questionnaires also allowed, besides the mapping of the defendant's legal situation, the analysis of the social profile of those assisted by the Public Defender's Office. In most cases they are blacks/browns, with low education level, who work in the



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informal market and have committed crimes against property or provided for in the Drugs Act.

It is not by chance that only 6.39% are represented by private attorneys, most of them being attended by a public defender.

The number of temporary detainees, which already makes up 40% of the total number of detainees in Rio de Janeiro's prison system, still stumbles upon the legal requirements, since, indirectly, the Code of Criminal Procedure determines, to ensure the convenience of criminal investigation, that the defendant has permanent residence and formal employment.

Finally, it is important to mention the effort implemented by the Public Defender's Office to produce data that contribute to the analysis and improvement of public policies implemented by the public power, contributing to the transparency of the sullen judicial power. The work of the public defender acting in custody hearings is even regulated by a decision of the Superior Council of the Public Defender's Office.

This is the first annual report submitted by a public institution, which demonstrates its commitment not only to the project of the custody hearings, but also to its target public, insofar as the possibility of a closer analysis of the situation of the defendant caught in flagrante is the first step to quell the negative effects of over-incarceration.