

TRANSGENDER PERSONS IN PRISON



CPT

EUROPEAN COMMITTEE
FOR THE PREVENTION OF
TORTURE AND INHUMAN OR
DEGRADING TREATMENT OR
PUNISHMENT

PRISON STANDARD

Extract from the 33rd General Report
CPT/Inf (2024) 16 - part

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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Cover design, layout and photos:
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TRANSGENDER PERSONS: CORE PRINCIPLES TO ENSURE THEIR RESPECTFUL AND DECENT TREATMENT IN PRISON

PRELIMINARY REMARKS

In this brief section, the CPT has decided to set out its thinking and standards on the treatment of transgender persons in prisons.¹

It should be underlined that this important topic is reflective of a dynamic and evolving social reality within European countries, with the Committee increasingly meeting transgender persons held in prisons. The principles set out below are by no means exhaustive and have evolved as the Committee addresses various recurrent issues encountered during its visits to many countries within the Council of Europe area. They are primarily framed through the lens of the CPT's mandate, namely the prevention of ill-treatment. The Committee would welcome the comments and practical suggestions of all those stakeholders with experience of prisons on how best to ensure the securing and protection of transgender persons' rights in prison.

||| The treatment of transgender people in prison reflects society's attitudes towards gender diversity

Prisons are a microcosm of society, often with amplified issues given their smaller, confined settings. Hence, the treatment of transgender persons living in prisons mirrors broader societal attitudes to persons who do not fall into historical understandings of gender.

Prison managers can promote the respectful treatment of transgender persons living in prisons by adopting an inter-disciplinary approach, taking into account the possible legal, medical and social ramifications of their actions. Appropriately tailored safeguards against abuse and ill-treatment may be necessary, and careful consideration should be given to the manner in which a broad spectrum of prison policies designed with cisgender prisoners in mind could adversely affect the lives of transgender persons living in prisons. If insufficient thought is given to these considerations, it heightens the risk that transgender persons living in prison may be subjected to inhuman or degrading treatment.

1. Commonly used terms and definitions can be found, *inter alia*, in the reports of the United Nations Independent Expert on sexual orientation and gender identity including 'the Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: The law of inclusion', 3 June 2021; Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity: Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, 12 July 2018 the [Yogyakartaprinciples.org](https://www.yogyakartaprinciples.org) – [The Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity](https://www.yogyakartaprinciples.org) and Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles (YP+10); the European Commission against Racism and Intolerance (ECRI) General Policy [Recommendation No. 17 on combating intolerance and discrimination against LGBTI persons](#).



Regrettably, discrimination, transphobia and mistreatment on the ground of gender identity remain rife in the Council of Europe area

Transgender persons living in prisons can experience an amplification of pre-existing trauma, underpinned at least in certain Council of Europe member states, by the lack of legal gender recognition and/or an inability formally to affirm their gender identity. Regrettably, discrimination, transphobia and mistreatment on the ground of gender identity remain rife in the Council of Europe area and regressive attitudes of this nature may be mirrored in prisons, on occasion leading to violence against transgender prisoners by other prisoners or even by prison staff. In the CPT's experience, few countries have been able to meet fully the needs of transgender persons in prison. The following principles aim to support prisons to manage, protect and ensure adequate and decent treatment for this vulnerable segment of the prison population.

The CPT is fully aware of the different policies, practices and debates about the placement of transgender persons in female or male sections or even in dedicated specific parts of prisons. Across the Council of Europe region, it has seen widely divergent approaches to the placement and treatment of transgender prisoners. Given the relative paucity of specific international standards and the increasing frequency with which the CPT meets transgender persons in prisons during country visits, the Committee considers that it is an apposite moment to set out its standards. While certain key principles could also apply to other places of deprivation of liberty, the CPT wishes primarily to focus on transgender persons in prison settings.

OVERARCHING / GENERAL PRINCIPLE

Transgender persons held in detention can be in a situation of vulnerability, at heightened risk of intimidation and abuse

Within the framework of the prevention of ill-treatment, the CPT underlines that transgender persons, as well as any LGBTI persons, held in detention can be in a situation of vulnerability, at heightened risk of intimidation and abuse. As such, the Committee endorses the existing international norms that emphasise the obligations of states to put in place safeguards to protect transgender persons in detention, including the Yogyakarta Principles and Additional Principles on the application of international human rights law in relation to sexual orientation and gender identity, notably Principles 5, 9 and 10.

It also underlines and agrees with the case law of the European Court of Human Rights and the decisions of the European Committee of Social Rights, highlighting that national legislation should provide for recognition of persons of a gender other than that assigned at birth and should not include any requirement as a pre-condition to legal gender recognition such as gender-affirming surgery.² The CPT recognises that not all transgender persons wish to proceed to gender-affirming surgery and treatment in a prison context. Such surgery should not be a condition to recognition. The Committee considers that if a person self-identifies as transgender during the prison admission procedure, then this should be sufficient *per se* for the prison to treat the person as such in all decisions taken concerning that person, including placement decisions (notwithstanding the need to take due account of individual risk assessments (see below)).

PLACEMENT AND PRISON LOCATION DECISIONS

The birth of the concept of the prison considerably predates the comparatively recent evolution of our understanding of gender. Prisons' physical infrastructure and layout, regimes and operation were originally devised around the needs of men, who have always composed the vast majority of prisoners and of persons who work in prisons. The majority of prisons are not recent and have been based or refurbished on designs and spaces often created without regard to the distinctive needs of different categories of prisoners, including transgender prisoners. Carceral spaces premised on a historical understanding of gender inevitably create challenges for prison managers, who must consider where best to accommodate transgender prisoners.

2. See, in this connection, [European Court of Human Rights \(ECtHR\) \(2020\), Gender Identity issues, fact sheet](#); European Court of Human Rights, *A. P., Garçon and Nicot v. France* application nos. 79885/12, 52471/13 and 52596/13, [Judgment \(6.4.2017\)](#); European Committee of Social Rights 2018: [Transgender Europe and ILGA-Europe v. the Czech Republic](#) paragraph 89 and Resolution of the Council of Europe Committee of Ministers [CM/ResChS\(2018\)9](#); see also the UN revised Standard Minimum Rules for the Treatment of Prisoners ([Nelson Mandela Rules](#)), 7(a) and the [Annual report of the Sub-Committee on the Prevention of Torture \(SPT\)](#), March 2015, paragraph 68 and ECRI General Policy [Recommendation No. 17 on combating intolerance and discrimination against LGBTI persons](#), recommendation 25; [ECRI 5th cycle monitoring report on Serbia](#), paragraph 100; [ECRI 6th cycle report on the Czech Republic](#), paragraph 14.



Another challenge is the widely divergent criteria for placement of transgender persons across the Council of Europe region, which varies considerably depending on the individual state's policies. In some states, the criteria for placement is self-identification and declaration, in others it is legal recognition and, in a few, it is gender-affirming surgery (which translates, in the prison placement context, to the default position that, before surgery, transgender prisoners are placed in the section of the sex they were assigned at birth). In some states, it is the sentencing judge who decides on a person's initial placement facility in accordance with legal gender recognition, but there remains a margin for the specific prison administration to decide upon placement depending on various criteria, including gender identity. In other states, placement will be to the prison section with which the transgender person self-identifies upon self-declaration. In all of these cases, the underlying norm is that placement is subject to individual risk assessment. Few states have specific policies and legislation in place to guide prison authorities on placement and often this is done on a case-by-case basis. Instead, many states have developed a practice over time, which provides separate accommodation for transgender prisoners but promotes participation in some activities with other prisoners of the same gender.

Under Article 3 of the European Convention on Human Rights (ECHR), states have a duty of care to ensure the safety of all persons held in prisons

Placement decisions for transgender prisoners can also be a highly-charged politically and socially sensitive topic. Indeed, in a handful of recent unfortunate cases, media and political attention has focused on the placement in women's prison sections of transgender women accused or convicted of sexual offences against women. This placement was despite the fact that prison administrations in many Council of Europe states are already well-versed in making individual risk assessments when persons are committed to prison. Indeed, here

the CPT underlines the fundamental premise of the positive obligation on states under Article 3 of the European Convention on Human Rights (ECHR) to fulfil their duty of care to ensure all persons held in prisons are kept safe.

In the view of the CPT, there is no valid security reason why, in principle, a balanced individual risk assessment carried out when a transgender person is admitted to prison should differ from that which is carried out on the committal of a cisgender person. In both cases, the dual objective should be the same: to make a placement decision that will most effectively protect the person being committed from others who may wish to cause them harm, and to limit the risk that they may be placed in a location in which they may cause harm to others. The CPT would also note, in this regard, that while inter-prisoner violence between cisgender persons living in prisons remains a very significant issue in many member states, it is never suggested that this security issue is best viewed through a gender lens.


Equally, as broadly reflected in the Yogyakarta Principles, risk management in prisons should not operate under the false stereotype that suppressing or ignoring transgender persons' characteristics and needs will reduce the risk of violence in prisons. In practice, the CPT has seen that in many states, transgender persons are initially allocated to a prison based on their legal gender, and usually not allocated to an establishment purely based on their gender identity, as opposed to their sex assigned at birth (although occasionally this has been seen). Often, transgender women prisoners are placed in male sections of prisons,³ and sometimes on specific (male) segregation wings for protection for particularly vulnerable prisoners. In some cases, they have been prevented from wearing women's clothes and made to wear men's clothes. In other cases, the male protection units where they have been placed also house men accused of or sentenced for sexual crimes.

The international norms referred to above indicate that national authorities should adopt legislation explicitly regulating the change of name and gender marker for transgender persons and establish clear guidelines for gender-affirming procedures and their official recognition. Such legislation should guarantee the full legal recognition of a person's gender identity and allow gender marker changes to be made in personal documents, in a quick, transparent and accessible way, without for example the requirement for gender-affirming surgery. Moreover, the CPT underlines the emphasis that Rule 7a of the Nelson Mandela Rules places on prisoners' admission records and the prison file management system needing to include "precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender".

As a matter of principle, transgender persons should be accommodated in the prison section corresponding to the gender with which they identify

3. The CPT notes that while there are transgender men in prisons across the Council of Europe region, the majority of persons with whom the CPT has met during its visits across the Council of Europe region have been transgender women.

In line with the above precepts and international norms, the CPT considers that, as a matter of principle, transgender persons should be accommodated in the prison section corresponding to the gender with which they identify. If, after an individualised risk assessment, there are exceptional security or other reasons to accommodate them elsewhere, those reasons should be clearly documented, and subject to regular review. In any case, just as for cisgender persons living in prisons, transgender prisoners should always be held in locations that best afford their safety and that of others. If they are held, even briefly, in any form of separate or dedicated section of a prison, they should be offered activities and association time with other prisoners of the gender with which they identify.



Transgender persons should be proactively consulted in their initial entry needs before placement decisions are made

Moreover, the CPT considers that transgender persons should also be proactively consulted in their initial entry needs and risk assessment procedures before placement decisions are made, as well as given the option that their gender identity be kept confidential if they so wish.

Segregation / isolation

As mentioned above, transgender persons might be placed in a situation where they are separated from the mainstream prison population for protection purposes; this might be with certain other categories of vulnerable persons or it may be alone. Given that it is widely recognised that isolation or segregation can have long-term negative consequences on an individual, especially if it is prolonged or indefinite, such placement can only be justified in exceptional circumstances, in the short-term, and with the proper safeguards in place.⁴ The CPT considers that all newly admitted prisoners should be allocated to ordinary accommodation units as soon as possible after an individual risk and needs assessment has taken place upon admission. Moreover, conditions for all prisoners, including newly arrived and/or transgender prisoners, should not amount to a solitary confinement type regime.

4. See [Rule 53A of the European Prison Rules 2020](#).



RISK OF ILL-TREATMENT AND VERBAL ABUSE BY STAFF & INTER-PRISONER VIOLENCE AND INTIMIDATION

The placement of a transgender person in a prison section accommodating people of a different gender from that with which they identify inherently heightens the risk of violence and intimidation

It is well recognised that transgender – as well as all LGBTI persons in detention – are in an overall situation of vulnerability, at the risk of potential intimidation and abuse by other detained persons, as well as by prison staff.⁵ The placement of a transgender person in a prison section accommodating persons of a different gender from that with which they identify also inherently heightens the risk of violence and intimidation directed towards that individual.

The Committee wishes for situations to be avoided where transgender persons feel that they need to suppress their identity and try to be invisible due to the lack of protection afforded by the prison.

The CPT has repeatedly met transgender women prisoners held in male sections of prisons who stated that they did not feel safe

5. See, for example, Recommendation 4 in [Recommendation CM/Rec\(2010\)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity \(Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies\)](#).

In several states, the CPT has repeatedly met transgender women prisoners held in male sections of prisons who stated that they did not feel safe. In some cases, transgender women alleged that they had been sexually abused and assaulted by other prisoners. It has also met many (mostly women) transgender prisoners who had been verbally abused by staff. In most of these cases, those transgender persons were not getting any specific support following these traumatic events.

The CPT has also seen some good practice recently where transgender women prisoners, who had self-identified as such, were held in the female section

During other visits, transgender women prisoners held in all-male settings reported that they were not systematically allowed different shower times, that they felt unsafe and were humiliated by constantly being referred to by their male names (see below). In some instances, they were also prohibited from wearing female clothing and generally prevented from expressing their identity as women. In contrast, the CPT has also seen some good practice recently where transgender women prisoners, who had self-identified as such, were held in the female section of the prison and were allowed to shower at different times, wear female clothing and be addressed by staff by their chosen names.

The CPT considers that national authorities should pay particular attention to the risks of discrimination and exclusion faced by transgender persons in closed institutions. They should ensure that policies include strategies to combat ill-treatment by prison staff as well as strategies to reduce any incidences of inter-prisoner violence and intimidation directed against transgender prisoners. Such a strategy should include preventive and corrective measures, including the systematic recording and reporting of all such incidents and investigation into all allegations of targeted bullying of, or violence against, transgender prisoners.

Prison authorities must protect prisoners in a proactive manner to prevent violence and bullying of prisoners, especially of those who might be considered more vulnerable in a prison setting, such as transgender prisoners

Overall, the CPT wishes to emphasise that the duty of care which is owed by the prison authorities to persons in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The prison authorities must act generally to protect prisoners, as well as in a proactive manner to prevent violence and bullying of prisoners by other prisoners, and especially of those who might be considered more vulnerable in a prison setting, such as transgender prisoners.

REGIME, CONDITIONS & STAFFING

The CPT has found various instances in which transgender women prisoners were held in male units of prisons where there were no female custodial officers present on the section and daily oversight was carried out by male custodial officers. The CPT considers that this is not appropriate. All prison units should be staffed by male and female custodial officers. If exceptionally for a short period it is necessary to place a transgender woman on a male unit, steps must be taken to ensure that there is always at least one female custodial officer on duty at all times.

The CPT has also seen poor and inappropriate regimes and material conditions in transgender units. In one instance, the transgender unit was an extension of the disciplinary unit, where the transgender women prisoners had no access to any purposeful activities or space outside of their unit and lived in poor and dilapidated conditions. The CPT requested the swift transfer of the transgender women to alternative accommodation; this was done shortly after the visit, with the transgender women transferred to a designated small unit within a women's prison.

Prison management and custodial staff should enable transgender prisoners to dress in the clothes associated with the self-identified gender and should address them by their chosen names

Further, the CPT considers that prison management and custodial staff should enable transgender prisoners to dress in the clothes associated with the self-identified gender and should address them by their chosen names. Prison authorities should allow for the use of preferred names, titles and pronouns, in all verbal and written communication, irrespective of official documents. Respectful language and terms should always be used when discussing or referring to all individuals, regardless of gender. Custodial staff should be reminded of their duty to respect the gender identity of transgender prisoners, in particular in terms of accommodation, clothing and the use of their chosen name. Any use of derogatory, demeaning and stigmatising language should be prohibited.

Prison staff should receive regular awareness courses to ensure they understand and address the special needs of transgender people living in prison

Moreover, national and prison authorities should ensure that all prison staff receive regular awareness courses to ensure they understand and address the special needs of transgender persons living in prison. Training should be designed to empower prison staff in preventing,



identifying and responding to bullying, harassment and discrimination on the grounds of sex, sexual orientation, gender identity, gender expression and sex characteristics. Initial and regular ongoing training should support staff in their daily interactions with transgender prisoners and involve external experts with relevant practical experience as well as peer counselling. The CPT considers that member states' authorities should draw up a clear policy and guidelines for the management of transgender prisoners guaranteeing that their specific needs are met.

BODY SEARCHES

The Committee has seen that the issue of body searches for security reasons can be a notably sensitive issue. During one CPT visit, transgender women prisoners stated that they had been subjected to a strip search upon their admission to the prison, as well as at other times during their sentence, which had entailed them removing all their clothes and standing naked while male officers examined whether they were concealing any forbidden items. The CPT underlines that such a procedure is totally inappropriate and was rightly perceived as degrading by the women concerned.

A strip search is a very invasive and potentially degrading measure, and can magnify the risk of humiliation. These should only occur when absolutely necessary and based on a justifiable risk. When carrying out such a search, every reasonable effort should be made to minimise embarrassment and maintain as much dignity as possible; persons who are searched, transgender as well as cisgender, should not be required to remove all their clothing at the same time, for example, a person should be allowed to remove clothes above the waist and to put those clothes back on before removing further clothing. In addition, ordinarily the search should be carried out by a custodial officer of the same gender as that with which the person being searched has self-identified and, as a rule, a second officer of the same gender should also be present during any strip search as a protection for detained persons and staff alike.

During another visit, the CPT noted that female prison officers were uncomfortable with searching transgender women and had refused to perform the searches, and that the transgender women prisoners whom the CPT had met had been searched either by male officers, or by both female and male officers (female officer on their upper body and a male officer on their lower body).

Overall, in the case of prisoners who identify as transgender, admissions staff should discuss with them during the initial admissions process the gender of the officer who would conduct rub down and strip searches, in line with the transgender person's identity and preference. The prisoner's search choice must be recorded. The prisoner should be advised that this does not allow them to choose the staff members who search them. If the prisoner refuses to select a search preference, they should in principle be searched in line with their gender identity. Moreover, staff should receive training on how to carry out searches in a professional and respectful manner.

TRANSPORT / TRANSFERS

Prison authorities should ensure that policies and practices for escorting prisoners remain sensitive to the marginalisation and stigmatisation of, and discrimination against, transgender persons. On various visits, the CPT has recommended that the authorities take decisive steps to prevent violence, intimidation, and/or thefts perpetrated by detained persons against their fellow passengers and that appropriate measures should be taken to prevent prisoners being subjected to intimidation and verbal abuse by fellow prisoners. In particular, female prisoners (including transgender women prisoners) should not be transferred together with male prisoners in the same secure vehicle.

ACCESS TO HEALTHCARE

At a minimum, national authorities should ensure that access to health services and standards of care in prisons and other closed settings are at least equivalent to those available in the community.



There may be an increased risk of self-harm or suicide for many transgender persons in prison

Prevention of self-harm and suicide

The CPT notes that there may be an increased risk of self-harm or suicide and/or violence-related psycho-trauma for many transgender persons in prisons, in line with the similarly high risks found outside prisons. Studies indicate that self-harm or suicide risk factors may include discrimination, family rejection and internalised (or externalised) transphobia. It is



therefore important to assess the risk of suicide among transgender persons in prison and discuss any past experiences of prejudice or mistreatment to prevent further victimisation.⁶

The CPT considers that national authorities should take the necessary steps to ensure that transgender persons in prisons (and, where appropriate, in other closed institutions) have access to assessment and treatment in the same conditions as in the community, including regular access to mental healthcare services and psychosocial support (see below).

Access to mental healthcare services and psychosocial support

Transgender persons may become vulnerable in prison. As such, prison authorities should facilitate their access to psychosocial support through multidisciplinary case management approaches, with the meaningful engagement of the person concerned. Additional psychological support should be provided, including special counselling for those victimised prior to incarceration.

The CPT has observed differing levels of access to psychologists across various member states, ranging from regular access to almost no access at all. Access to counselling and psychological support should be systematically offered to all transgender persons in prisons upon admission and throughout their time in prison.

Access to hormone treatment and gender-affirming surgery

When visiting prisons across the Council of Europe region, the CPT has had an opportunity to examine whether gender affirming procedures such as hormone treatment and

6. See, for example, Newcomb, M. E., Hill, R., Buehler, K., Ryan, D. T., Whitton, S. W., & Mustanski, B. (2020). [High Burden of Mental Health Problems, Substance Use, Violence, and Related Psychosocial Factors in Transgender, Non-Binary, and Gender Diverse Youth and Young Adults](#). *Archives of sexual behaviour*, 49(2), 645–659. and Narang, P., Sarai, S. K., Aldrin, S., & Lippmann, S. (2018). [Suicide Among Transgender and Gender-Nonconforming People](#). *The primary care companion for CNS disorders*, 20(3), 18nr02273.; '[mapping of good practices for the management of transgender prisoners](#)'; [Association for the Prevention of Torture \(APT\)'s Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide](#); [Personnes LGBTIQ+ | CSCSP](#).

surgery, together with psychological support, are available to transgender persons living in prisons, and whether there are procedures in place for changing the name and sex marker of a transgender person on identity cards and other official documents. In several countries visited, the CPT has seen that transgender women were able to continue or start hormonal treatment while in prison, however, surgical interventions had to be deferred until after release.

Prison authorities should allow access to gender-affirming treatments and surgery for transgender prisoners, for those who so wish. Ideally, where such health services are included in national health insurance schemes, the cost should be absorbed at an equal rate as that for transgender persons living in the community. This must be done based on a careful and comprehensive risk assessment involving medical doctors, psychologists and social workers.

Persons deprived of their liberty should not be excluded from treatments and legal procedures provided for by law for transgender persons. National authorities should act to ensure that transgender persons in prisons have access to gender affirming surgery, if they so wish.

In the CPT's view, persons deprived of their liberty should not be excluded from benefiting from these treatments and legal procedures provided for by law for transgender persons. National authorities should act to ensure that transgender persons in prisons (and, where appropriate, in other closed institutions) have access to assessment and treatment and, if they so wish, to gender affirming surgery.

Specific training for healthcare staff

The CPT endorses the global standards established by the World Professional Association for Transgender Health (WPATH) to improve healthcare for transgender individuals. In general, most care can be provided by primary care physicians, although access to some specialised services is necessary. Education on transgender health is essential for healthcare professionals.

General healthcare screening

As transgender persons are among the vulnerable groups at risk of various health problems, it is important to conduct thorough medical screenings during the healthcare admission process and, as required, at regular intervals during their imprisonment, both as a general healthcare measure, and to safeguard their own health.

“NO ONE SHALL BE SUBJECTED TO TORTURE OR TO INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT”

Article 3 of the European Convention on Human Rights

Established in 1989 by the Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the CPT's aim is to strengthen the protection of persons deprived of their liberty through the organisation of regular visits to places of detention.

— The Committee is an independent, non-judicial preventive mechanism, complementing the work of the European Court of Human Rights. It monitors the treatment of persons deprived of their liberty by visiting places such as prisons, juvenile detention centres, police stations, immigration detention facilities, psychiatric hospitals and social care homes. CPT delegations have unrestricted access to places of detention, and the right to interview, in private, persons deprived of their liberty. They may access all the information necessary to carry out their work, including any administrative and medical documents.

— The CPT plays an essential role in promoting decency in detention, through the development of minimum standards and good practice for states parties, as well as through coordination with other international bodies. The implementation of its recommendations has a significant impact on the development of human rights in Council of Europe member states and influences the policies, legislation and practices of national authorities regarding detention.



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