



PODER JUDICIÁRIO
TRIBUNAL DE JUSTIÇA DO ESTADO DE SÃO PAULO

COMESP
COORDENADORIA ESTADUAL DA MULHER EM SITUAÇÃO DE
VIOLÊNCIA DOMÉSTICA E FAMILIAR

Full Text of the Maria da Penha Law - Law 11.340

Presidency of the Republic
Office of the Chief of Staff
Sub-Office on Legal Affairs

Responsibilities, Attributions and Competences

Creates mechanisms to restrain domestic and family violence against women, in compliance with paragraph 8 of article 226 of the Federal Constitution, the Convention on Elimination of All Forms of Discrimination against Women and the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women; provides for the creation of the Courts of Domestic and Family violence against women; alters the Penal Procedure Code, the Penal Code and the Law of Penal Execution; and establishes other provisions.

The PRESIDENT OF THE REPUBLIC I hereby make it known that the National Congress decrees and I sanction the following Law:

TITLE I
PRELIMINARY PROVISIONS

Article 1. This Law creates mechanisms to restrain and prevent domestic and family violence against women, in compliance with paragraph 8 of article 226 of the Federal Constitution, the Convention on Elimination of All Forms of Discrimination against Women, the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women and other international treaties ratified by the Federative Republic of Brazil; it provides for the creation of the Courts of Domestic and Family Violence against Women; and establishes measures for assistance and protection of women in a situation of domestic and family violence.

Article 2. All women, regardless of class, race, ethnicity, sexual orientation, income, culture, educational level, age and religion, enjoy the basic rights inherent to the human person, and are ensured the opportunities and facilities to live without violence, preserve their physical and mental health and their moral, intellectual and social improvement.

Article 3. Women are ensured the conditions for the effective exercise of the rights to life, security, health, food, education, culture, housing, access justice, sport, leisure, work, 20 citizenship, freedom, dignity, respect and family and community living.

Paragraph 1. The public power shall develop policies aimed at guaranteeing the human rights of women in the scope of the domestic and family relations, with a view to protecting them against all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.



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Paragraph 2. It belongs to the family, society and the public power to create the necessary conditions for the effective exercise of the rights listed in the heading.

Article 4. In the interpretation of this Law, its social purpose and, especially, the peculiar conditions of the woman in a situation of domestic and family violence shall be taken into account.

TITLE II
DOMESTIC AND FAMILY VIOLENCE AGAINST WOMEN
CHAPTER I
GENERAL PROVISIONS

Article 5. For the effect of this Law, domestic and family violence against women is defined as any action or omission based on gender that causes the woman's death, injury, physical, sexual or psychological suffering and moral or patrimonial damage:

I - in the scope of the domestic unit, understood as the permanent space shared by people, with or without family ties, including people sporadically aggregated;

II - in the scope of the family, understood as the community formed by individuals that are or consider themselves related, joined by natural ties, by affinity or by express will;

III - in any intimate relationship of affection, in which the aggressor lives or has lived with the abused woman, regardless of cohabitation.

Sole paragraph. The personal relations listed in this article are independent of sexual orientation.

Article 6. Domestic and family violence against women constitutes one of the forms of human rights violation.

CHAPTER II
FORMS OF DOMESTIC AND FAMILY VIOLENCE AGAINST WOMEN

Article 7. The forms of domestic and family violence against women, are, among others:

I - physical violence, understood as any behavior that offends the woman's bodily integrity or health;²¹



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II - psychological violence, understood as any behavior that causes emotional damage and reduction of self-esteem or that harms and disturbs full development or that aims at degrading or controlling the woman's actions, behaviors, beliefs and decisions, by means of threat, embarrassment, humiliation, manipulation, isolation, constant surveillance, constant pursuit, insult, blackmail, ridiculing, exploitation and limitation of the right to come and go or any another means that causes damage to the woman's psychological health and self-determination;

III - sexual violence, understood as any behavior that forces the woman to witness, maintain or participate in unwanted sexual intercourse, by means of intimidation, threat, coercion or the use of force; that induces the woman to commercialize or to use, in any way, her sexuality, that prevents her from using any contraceptive method or that forces her to marriage, pregnancy, abortion or prostitution, by means of coercion, blackmail, bribe or manipulation; or that limits or annuls the exercise of her sexual and reproductive rights;

IV – patrimonial violence, understood as any behavior that constitutes retention, subtraction, partial or total destruction of the woman's objects, working instruments, personal documents, property, assets and economic rights or resources, including those intended to satisfy her needs;

V - moral violence, understood as any behavior that constitutes slander, defamation or insult.

TITLE III
ASSISTANCE TO THE WOMAN IN A SITUATION OF DOMESTIC AND FAMILY
VIOLENCE

CHAPTER I
INTEGRATED PREVENTION MEASURES

Article 8. The public policy aimed at restraining domestic and family violence against women will be implemented by means of an integrated set of actions by the Federal Union, the States, the Federal District and the Municipalities and nongovernment actions, according to the following guidelines:

I - operational integration of the Judiciary Branch, the Prosecutor's Office and the Public Defender with the areas of public security, social assistance, health, education, work and housing;

II - promotion of studies and research, statistics and other relevant information, with a gender and race or ethnicity perspective, on the causes, consequences and frequency of domestic and family violence against women, for the systematization of data, to be unified nationally, and the regular evaluation of the results of the adopted measures;

III - respect, in the social communication media, for the ethical and social values of the person and the family, avoiding stereotyped roles that legitimize or encourage domestic



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and family violence, in compliance with item III of article 1, item IV of article 3 and item IV of article 221 of the Federal Constitution;22

IV - implementation of specialized police assistance for women, in particular in the Police Offices for Assistance to Women;

V - promotion and holding of educative campaigns to prevent domestic and family violence against women, directed to the school public and society in general, and dissemination of this Law and of the instruments of protection of women's human rights;

VI – establishment of accords, protocols, adjustments, terms or other instruments of promotion of partnership between government bodies or between them and non-government entities, with a view to the implementation of programs to eradicate domestic and family violence against women;

VII - permanent training of the Civil and Military Police, Municipal Guard, Fire Brigade and of the professionals belonging to the agencies and areas listed in item I, on gender and race or ethnicity issues;

VIII - promotion of educational programs that disseminate ethical values of unrestricted respect to the dignity of the human person with a gender and race or ethnicity perspective;

IX - emphasis, in the school syllabus of all levels of education, on contents related to human rights, gender and race or ethnicity equity and the problem of domestic and family violence against women.

CHAPTER II
**ASSISTANCE TO THE WOMAN IN A SITUATION OF DOMESTIC AND FAMILY
VIOLENCE**

Article 9. Assistance to the woman in a situation of domestic and family violence will be provided in an integrated manner and in compliance with the principles and guidelines provided for in the Organic Law of Social Assistance, in the Unified Health System, the Unified Public Security System, among others protection norms and public policies, and on an emergency basis when necessary.

Paragraph 1. The judge shall determine, for a defined period of time, the inclusion of the woman in a situation of domestic and family violence in the registry of assistance programs of the federal, state and municipal government.

Paragraph 2. The judge shall ensure to the woman in a situation of domestic and family violence, to preserve her physical and psychological integrity:



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I - priority access to transfer, when the woman is a civil servant in the direct or indirect administration;

II - maintenance of the working links, when it is necessary to remove her from her place of work, for up to six months.

Paragraph 3. The assistance to the woman in a situation of domestic and family violence will include access to benefits resulting from scientific and technological development, 23 including emergency contraception services, prophylaxis of Sexually Transmitted Diseases (STDs) and of the Acquired Immune-Deficiency Syndrome (AIDS) and other necessary and appropriate medical procedures in the cases of sexual violence.

CHAPTER III
ASSISTANCE BY THE POLICE AUTHORITY

Article 10. In case of imminent or actual domestic and family violence against women, the police authority that learns of the occurrence shall immediately adopt the appropriate legal measures.

Sole paragraph. The provision in the heading of this article applies to failure to comply with urgent protective measure that has been determined.

Article 11. In assisting the woman in a situation of domestic and family violence, the police authority shall, among others measures:

I - guarantee police protection, when necessary, communicating the occurrence immediately to the Prosecutor's Office and the Judiciary Branch;

II - direct the victim to the hospital or health center and to the Legal Medical Institute;

III - provide transport to the victim and her dependents to a shelter or safe place, in case of risk of life;

IV – if necessary, to accompany the victim to assure removal of her belongings from the site of the occurrence or from the family home;

V - inform the victim of the rights conferred to her in this Law and the available services.

Article 12. In all cases of domestic and family violence against women, after registering the occurrence, the police authority shall immediately adopt the following procedures, without loss to those provided for under the Penal Procedure Code:

I - hear the victim, register the police report and take the representation to term, if presented;



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II – collect all the evidence that can serve to clarify the fact and its circumstances;

III - send, within 48 (forty-eight) hours, separate communication to the judge with the victim's request, for the concession of urgent protective measures;

IV - determine the victim's examination of body of the offense and request other necessary expert examinations;

V - hear the aggressor and the witnesses;

VI – command the identification of the aggressor and the addition of the aggressor's criminal record to the judicial proceedings, indicating the existence of arrest warrant or record of other police occurrences against him;

VII - send, within the legal period of time, the judicial proceedings of the police inquiry to the judge and the Prosecutor's Office.²⁴

Paragraph 1. The victim's request shall be taken to term by the police authority and shall contain:

I - qualification of the victim and the aggressor;

II - name and age of the dependents;

III – brief description of the fact and the protective measures requested by the victim.

Paragraph 2. The police authority shall attach to the document referred to in paragraph 1 the police report and copy of all the available documents of the victim.

Paragraph 3. The medical findings or records provided by hospitals and health centers shall be accepted as evidence.

TITLE IV
PROCEDURES

CHAPTER I
GENERAL PROVISIONS

Article 13. The norms of the Codes of Penal Procedure and Civil Procedure and of specific legislation on children, adolescents and elderly people that are not in conflict with the provisions of this Law shall apply to the process, the judgment and the execution of the civil and criminal causes derived from the practice of domestic and family violence against women.

Article 14. The Courts of Domestic and Family Violence against Women, Ordinary Justice bodies with civil and criminal competence, may be created by the Federal



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Union, in the Federal District and the Territories, and by the States, for the process, judgment and execution of causes derived from the practice of domestic and family violence against women.

Sole paragraph. The procedural acts may be carried out at night, as provided for in the norms of judiciary organization.

Article 15. By the victim's choice, for the civil processes ruled by this Law, the following courts are competent:

I – of her domicile or residence;

II - of the place where the fact that generated the claim occurred;

III - of the domicile of the aggressor;

Article 16. In the public penal lawsuits conditional to the representation of the victim provided for in this Law, the renunciation of the representation shall only be admitted 25 before the judge, in a hearing especially assigned for such purpose, before receiving the denunciation and after hearing the Prosecutor's Office.

Article 17. In the cases of domestic and family violence against women, it is forbidden to sentence payment of basic food basket or other pecuniary penalty, as well as substitution of sentence that implies in isolated payment of a fine.

CHAPTER II
URGENT PROTECTIVE MEASURES

SECTION I
GENERAL PROVISIONS

Article 18. Having received the communication with the victim's request, the judge, within the period of 48 (forty-eight) hours, shall:

I - know the communication and the request and decide upon the urgent protective measures;

II - determine that the victim be directed to the judiciary assistance body, when appropriate;

III - communicate to the Prosecutor's Office so that it adopts the appropriate measures.

Article 19. The urgent protective measures may be granted by the judge, upon request by the Prosecutor's Office or by the victim.



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Paragraph 1. The urgent protective measures may be granted immediately, regardless of hearing with the parties and of manifestation of the Prosecutor's Office, the latter being communicated as soon as possible.

Paragraph 2. The urgent protective measures shall be applied isolated or cumulatively, and may be replaced any time by others of greater effectiveness, whenever the rights acknowledged in this Law are threatened or violated.

Paragraph 3. The judge may, upon request by the Prosecutor's Office or by the victim, grant new urgent protective measures or review those already granted, if deemed necessary for the protection of the victim, her family and her property, after hearing the Prosecutor's Office.

Article 20. In any phase of the police inquiry or the criminal instruction, the preventive custody of the aggressor may be decreed by the judge, ex-officio, upon request by the Prosecutor's Office or by means of representation of the police authority.

Sole paragraph. The judge may revoke the preventive custody if, in the course of the 26 process, he or she verifies lack of reason to maintain it, as well as decree it again, if reasons that justify it arise.

Article 21. The victim shall be informed of the procedural acts related to the aggressor, especially those related to entry and exit from prison, without loss to the summon of the constituted lawyer or public defender.

Sole paragraph. The victim may not deliver the summons or notification to the aggressor.

SECTION II
URGENT PROTECTIVE MEASURES THAT COMPEL THE AGGRESSOR

Article 22. Having established the practice of domestic and family violence against a woman, in the terms of this Law, the judge may immediately apply on the aggressor, together or separately, the following urgent protective measures, among others:

I - suspension of ownership of weapon or restriction of weapon carrying license, with communication to the competent agency, in the terms of Law n. 10.826, of December 22, 2003;

II - removal from the home, domicile or place of relationship with the victim;

III – prohibit certain behaviors, among which:

a) approaching the victim, members of her family and the witnesses, establishing a minimum distance between them and the aggressor;



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b) contact with the victim, members of her family and witnesses through any means of communication;

c) going to certain places in order to preserve the physical and psychological integrity of the victim;

IV - restriction or suspension of visits to dependent minors, after hearing the multidisciplinary assistance team or similar service;

V – provision of provisional or temporary alimony

Paragraph 1. The measures referred to in this article do not rule out the application of others provided for under the legislation in force, whenever the safety of the victim or circumstances require so, the measure having to be communicated to the Prosecutor's Office.

Paragraph 2. In the event of application of item I, the aggressor being in the conditions mentioned in the heading and items of Article 6 of Law n. 10.826, of December 22, 2003, the judge shall communicate to the respective agency, corporation or institution the urgent protective measures granted and shall determine the restriction of the weapon-carrying license, the immediate superior of the aggressor being responsible for the fulfillment of the judicial order, otherwise incurring in the crimes of disobedience or prevarication, as the case may be.

Paragraph 3. In order to guarantee the effectiveness of the urgent protective measures, the judge may request, at any time, the aid of the police force.

Paragraph 4. The provisions in the heading and in paragraphs 5 and 6 of Article 461 of Law in. 5.869, of January 11, 1973 (Code of Civil Procedure) apply to the hypotheses foreseen in this article.

SECTION III
URGENT PROTECTIVE MEASURES FOR THE VICTIM

Article 23. The judge may, when necessary, without loss to other measures:

I – direct the victim and her dependents to an official or community program of protection or assistance;

II - determine the return of the victim and her dependents to the respective domicile, after removal of the aggressor;

III - determine the removal of the victim from the home, without loss of rights related to property, custody of the children and alimony;

IV - determine separation from bed and board;



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Article 24. For the patrimonial protection of the property of the conjugal society or of the private property of the woman, the judge may determine, through preliminary order, the following measures, among others:

- I - restitution of property unduly subtracted from the victim by the aggressor;
- II - temporary prohibition to enter acts and contracts of purchase, sale and rent of common property, except in case of express judicial authorization;
- III - suspension of power of attorney conferred by the victim to the aggressor;
- IV – provision of temporary bond, by means of judicial deposit, for material loss and damage resulting from the practice of domestic and family violence against the victim;
Sole paragraph. The judge shall officiate to the competent notary's office for the purposes foreseen in item II and III of this article.

CHAPTER III
ACTION OF THE PROSECUTOR'S OFFICE

Article 25. The Prosecutor's Office shall intervene, when not a party, in the civil and 28 criminal causes resulting from domestic and family violence against women.

Article 26. It shall belong to the Prosecutor's Office, without loss of other attributions, in the cases of domestic and family violence against women, when necessary:

- I - to request police force and public services of health, education, social assistance and security, among others;
- II - to inspect the public and private establishments that provide assistance to women in a situation of domestic and family violence, and to adopt, immediately, the appropriate administrative or judicial measures with regard to any irregularities detected;
- III - to register in a registry the cases of domestic and family violence against women;

CHAPTER IV
JUDICIARY ASSISTANCE

Article 27. In all procedural acts, civil and criminal, the woman in a situation of domestic and family violence shall be accompanied by a lawyer, except as provided for in Article 19 of this Law.

Article 28. Every woman in a situation of domestic and family violence is assured access to the services of Public Defense or Free Judiciary Assistance, in the terms of



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the law, at police and judicial headquarters, through specific and humanized assistance.

TITLE V
MULTIDISCIPLINARY ASSISTANCE TEAM

Article 29. The Courts of Domestic and Family Violence against Women that are created may rely on a multidisciplinary assistance team made up of professionals specialized in the psychosocial, legal and health areas.

Article 30. It belongs to the multidisciplinary assistance team, among other attributions reserved to it by the local legislation, to provide inputs in writing to the judge, the Prosecutor's Office and the Public Defense, by means of expert written opinions or verbally in hearing, and to develop guidance, forwarding, prevention activities and other measures directed to the victim, the aggressor and the family members, with special attention to the children and the adolescents.

Article 31. When the complexity of the case requires more in-depth evaluation, the judge may determine the manifestation of a specialized professional, upon indication by the multidisciplinary assistance team.

Article 32. The Judiciary Branch, in the elaboration of its budget proposal, may provide 29 for resources for the creation and maintenance of the multidisciplinary assistance team, in the terms of the Law of Budgetary Guidelines.

TITLE VI
TRANSIENT PROVISIONS

Article 33. While the Courts of Domestic and Family Violence against Women are not structured, the criminal courts shall accumulate the civil and criminal competences of knowing and judging the causes resulting from the practice of domestic and family violence against women, observing the provisions of Title IV of this Law, with inputs from the pertinent procedural legislation.

Sole paragraph. The right of preference shall be guaranteed, in the criminal courts, for the process and judgment of the causes related in the heading.

TITLE VII
FINAL PROVISIONS

Article 34. The Courts of Domestic and Family Violence against Women may be instituted together with the establishment of the necessary curatorship and judiciary assistance service.

Article 35. The Federal Union, the Federal District, the States and the Municipalities may create and promote, within the limits of their respective competences:



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I - centers of comprehensive and multidisciplinary assistance to women and their dependents in a situation of domestic and family violence;

II - home-shelters for women and respective minor dependents in a situation of domestic and family violence;

III - police offices, public defense offices, health services and medical-legal examination centers specialized in assistance to women in a situation of domestic and family violence;

IV - programs and campaigns to fight domestic and family violence;

V - education and rehabilitation centers for the aggressors;

Article 36. The Federal Union, the States, the Federal District and the Municipalities shall promote the adaptation of their agencies and programs to the guidelines and principles of this Law.

Article 37. The defense of the trans-individual interests and rights foreseen in this Law may be exercised, concurrently, by the Prosecutor's Office and by association active in the area, regularly constituted for at least one year, in the terms of the civil legislation.³⁰

Sole paragraph. The requirement of pre-constitution may be waived by the judge if it is found that there is no other entity with appropriate representation to file the collective demand.

Article 38. The statistics on domestic and family violence against women shall be included in the databases of the official agencies of the Justice and Security System in order to provide inputs to the national system of data and information on women.

Sole paragraph. The Public Security Secretariats of the States and the Federal District may send their criminal information to the database of the Ministry of Justice.

Article 39. The Federal Union, the States, the Federal District and the Municipalities, within the limits of their competences and in the terms of their respective laws of budgetary guidelines, may establish specific budgetary allocations, in each fiscal year, for the implementation of the measures established in this Law.

Article 40. The obligations provided for in this Law do not exclude others derived from the principles adopted by it.

Article 41. Law n. 9.099, of September 26, 1995, does not apply to crimes practiced with domestic and family violence against women, regardless of the penalty provided.



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Article 42. Article 313 of Decree n. 3.689, of October 3, 1941 (Code of Penal Procedure), enters into force with the addition of the following item IV:

“Article 313.....

IV – if the crime involves domestic and family violence against women, in the terms of the specific law, to guarantee the execution of the urgent protective measures.” (New Language)

Article 43. Line f of item II of Article 61 of Decree n. 2.848, of December 7, 1940 (Criminal Code), enters into force with the following language:

“Article 61.....

II -.....

f) with abuse of authority or taking advantage of domestic relations, cohabitation or hospitality, or with violence against the woman in the form of the specific law; “ (New Language)

Article 44. Article 129 of Decree n. 2.848, of December 7, 1940 (Criminal Code), enters into force with the following alterations:

“Article 129.....

Paragraph 9. If the injury is practiced against ascendant, descendant, sibling, spouse or partner, or someone with whom the agent has or had a relationship, or if the agent has taken advantage of domestic relations, cohabitation or hospitality: Sentence - detention, 3 (three) months to 3 (three) years.

Paragraph 11. In the event of paragraph 9 of this article, the sentence shall be increased by one third if the crime is committed against a person with special needs.” (New Language)

Article 45. Article 152 of Law n. 7.210, of July 11, 1984 (Law of Penal Execution), enters into force with the following language:

“Article 152.....

Sole paragraph. In the cases of domestic violence against women, the judge may determine the obligatory attendance of the aggressor in recovery and re-education programs.” (New Language)

Article 46. This Law shall enter into force 45 (forty-five five) days after its publication.

Brasilia, August 7, 2006; 185th day of the Independence and 118th day of the Republic.

LUIZ INÁCIO LULA DA SILVA
Dilma Rousseff