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Pretrial detention in domestic violence cases: between protecting the victim and violating procedural guarantees.

Pretrial detention in domestic violence cases: between protecting the victim and violating procedural guarantees

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Summary

Domestic violence constitutes a persistent social, cultural, and legal phenomenon that primarily affects women, children, the elderly, and people in vulnerable situations, reflecting structural inequalities and cultural patterns of domination and violence. It is not limited to physical aggression, also encompassing psychological, moral, patrimonial, and sexual forms, with serious consequences for the mental health, well-being, and family structure of the victims. Faced with this complex reality, the penal system is challenged to offer swift and effective responses, guaranteeing immediate protection for the victim and accountability for the aggressor, without compromising procedural guarantees. In this context, preventive detention emerges as the most impactful precautionary measure, being used to safeguard the physical and psychological integrity of the victim, prevent recidivism, and ensure the effectiveness of criminal prosecution. This article proposes a critical analysis of its application in cases of domestic violence, based on the Code of Criminal Procedure and Law No. 11.340/2006 (Maria da Penha Law), in addition to examining doctrines, jurisprudence, and empirical data that reveal both its importance and its risks of trivialization. Finally, it seeks to reflect on legal alternatives and public policies capable of balancing the protection of the victim and the fundamental rights of the accused.

Keywords: Pretrial detention; Domestic violence; Procedural guarantees; Criminal law; Victim protection.

Abstract

Domestic violence constitutes a persistent social, cultural, and legal phenomenon that primarily affects women, children, the elderly, and people in vulnerable situations, reflecting structural inequalities and cultural patterns of domination and violence. It is not limited to physical aggression but also includes psychological, moral, patrimonial, and sexual forms, with serious consequences for the victims' mental health, well-being, and family structure. Given this complex reality, the criminal justice system is challenged to provide swift and effective responses, ensuring the victim's immediate protection and the offender's accountability without compromising procedural guarantees. In this context, preventive detention emerges as the most severe precautionary measure, used to safeguard the victim's physical and psychological integrity, prevent recidivism, and ensure the effectiveness of criminal prosecution. This article proposes a critical analysis of its application in cases of domestic violence, based on the Code of Criminal Procedure and Law No. 11.340/2006 (Maria da Penha Law), while also examining doctrines, jurisprudence, and empirical data that reveal both its importance and the risks of overuse. Finally, it seeks to reflect on legal alternatives and public policies capable of balancing victim protection with the fundamental rights of the accused.



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Introduction

Domestic violence is a deeply rooted structural phenomenon in Brazilian society, disproportionately affecting women, children, the elderly, and individuals in a situation of social vulnerability. This situation reflects historical, cultural and inequalities economic factors that perpetuate patterns of oppression and discrimination, demonstrating that violence Domestic life transcends the private sphere and is embedded in the broader context of power relations and of gender. The problem, therefore, must be understood not only as an isolated act of aggression, but as a manifestation of a system of domination that reproduces itself through practices. Cultural factors, institutional omissions, and gaps in the implementation of public protection policies.

Data from the Brazilian Public Security Forum (2024) indicate that thousands of cases of Domestic violence cases are reported annually in Brazil, with alarming rates of recidivism and A growing number of femicides. This data demonstrates that confronting violence... Domestic violence remains one of the greatest challenges for a democratic state governed by the rule of law, requiring... coordinated and effective responses between public authorities, civil society, and the justice system criminal. Domestic violence, therefore, is not merely an individual matter, but a A social and legal phenomenon of a systemic nature, which demands multidimensional action — preventive, repressive and assistance-based.

In the legal field, Brazil has a relevant regulatory framework aimed at protection of the victims, with particular emphasis on the Maria da Penha Law (Law No. 11.340/2006), considered a landmark in the fight against domestic and family violence against women. This legislation establishes measures protective measures of urgency define assistance mechanisms and impose on the State the duty to prevent and punish and to eradicate violence. Additionally, the Code of Criminal Procedure (Decree-Law No. Law 3.689/1941 provides for preventive detention as an exceptional precautionary measure, the purpose of which is to guarantee public order, criminal investigation and the application of criminal law, and can also be used for to safeguard the physical and psychological integrity of the victim.

In this context, pretrial detention plays a prominent role in combating violence. domestic violence aims to prevent repeat offenses and ensure the effectiveness of criminal prosecution. However, its application raises relevant debates about the balance between protecting the victim and the preservation of the defendant's constitutional guarantees, especially the principle of presumption of innocence. innocence and the right to liberty. The indiscriminate use of this precautionary measure can lead to



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Violation of fundamental rights and the trivialization of pretrial detention, which requires careful analysis of its necessity, suitability and proportionality.

This article aims to critically analyze the application of pretrial detention in cases of domestic violence, examining the legal foundations that support it, its jurisprudential interpretation and its compatibility with the constitutional principles that govern the criminal procedure. It also seeks to understand how the Judiciary has interpreted the Maria da Penha Law. Penha in situations involving risk to the victim's safety and how preventive detention has been used as an instrument of urgent criminal protection.

To achieve this purpose, the study adopts a deductive method and a qualitative approach, with based on bibliographic and documentary research, using contemporary doctrines, jurisprudence from higher courts and official statistical data. The analysis also includes a comparative perspective, considering international experiences in protecting victims of violence. domestic violence and alternative measures to imprisonment adopted in other legal systems.

In addition to normative and practical analysis, the article seeks to discuss the social and psychological impacts and family members resulting from pretrial detention, both for the victims and for the accused, considering the effects that this measure produces on family dynamics and criminal recidivism. Finally, the aim is to present recommendations and proposals for improving public policies and procedural mechanisms, in order to reconcile the immediate protection of victims with respect for fundamental guarantees of the accused.

Thus, the study aims to contribute to the academic and legal debate on the effectiveness and The legitimacy of pretrial detention as a tool for criminal protection in cases of domestic violence. offering a critical and well-founded reflection that acknowledges the complexity of the phenomenon, the The need for proportionate state responses and the importance of integrated public policies that They promote justice and gender equality within the Brazilian penal system.

Domestic violence: concept, impacts and challenges

Domestic violence encompasses a series of repeated acts of coercion and intimidation and control, which manifest themselves in different forms, including physical, psychological, and sexual violence, both financial and moral harm, each with specific characteristics and consequences for the victim. Physical violence involves direct bodily aggression, such as pushing, punching, kicking, and the use of weapons. while psychological violence manifests itself through threats, humiliation, blackmail Emotional factors, social isolation, and manipulation can have a profound impact on mental health. Victim, including anxiety, depression, panic disorder, and post-traumatic stress. The violence

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Sexual abuse involves forcing sexual relations without consent, rape, and sexual abuse.

often accompanied by emotional coercion. Property violence, on the other hand, consists of...

The unauthorized subtraction, destruction, or control of the victim's assets and financial resources, limiting their autonomy and independence. Moral violence, in turn, encompasses defamation, slander, libel, and

Attacks on the victim's reputation, affecting their social and professional image.

The Maria da Penha Law (Law No. 11.340/2006) recognizes and details these modalities.

establishing a set of urgent protective measures with the aim of ensuring the

physical and psychological integrity of victims, preventing the escalation of violence and ensuring effectiveness.

of legal actions. Among these measures, the following stand out: the immediate removal of the aggressor from the home, the

Prohibition of contact with or approach to the victim, suspension of the right to carry weapons, guarantee of

provisional alimony and psychological and social support for the victims (Art. 7, Law No.

11.340/2006). Furthermore, the law establishes mechanisms for monitoring and follow-up.

ongoing judicial review, recognizing that domestic violence is rarely an isolated event, but rather

a pattern of behavior that requires integrated and multidisciplinary interventions, involving

Judiciary, Public Prosecutor's Office, Public Defender's Office, security agencies and assistance services.

social.

Statistical data and critical analysis

Year	Cases of domestic violence	Femicides	Recurrence (%)
2022	180,000	1,350	33
2023	185,000	1,420	35
2024	190,000	1,500	36

Source: Brazilian Forum on Public Security, 2024.

Analysis of data from the Brazilian Public Security Forum reveals that, even with the

implementation of protective measures foreseen in the Maria da Penha Law, the rates of recidivism in

Cases of domestic violence remain high, indicating that such measures, while essential,

These measures are not always sufficient to guarantee the safety of victims. The high number of repeat offenses

This highlights the complexity of the phenomenon and the need for more rigorous and effective strategies.

capable of interrupting the cycle of violence and preventing new episodes. In this context, prison

Preventive measures emerge as a highly relevant tool, especially in situations where there is...

A concrete and imminent risk to the physical and psychological integrity of the victim, when the aggressor presents...



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history of recidivism or when other precautionary measures, such as removal from the home and restriction, are in place. Contact methods are not sufficient to ensure the necessary protection. Furthermore, the use of imprisonment... preventive measures must always be accompanied by detailed legal justification, ensuring that... The measure must be proportionate, exceptional, and respect the procedural guarantees of the accused, balancing the... The need to protect the victim while respecting the constitutional rights of the aggressor. An empirical analysis. It therefore reinforces the idea that pretrial detention, when applied judiciously, can play a role. a decisive role in reducing recidivism, protecting victims, and ensuring the effectiveness of the system. criminal justice.

Social and psychological impacts of violence

Domestic violence produces profound and lasting effects on mental, emotional, and physical health. The social impact on the victims is significant, affecting their quality of life and well-being. Among the impacts... The most common are anxiety disorders, depression, panic disorder, and post-traumatic stress. and persistent feelings of fear and insecurity, which often extend even after the Cessation of violence. Chronic fear leads to hypervigilance and social withdrawal. and difficulty in making decisions, compromising the victim's autonomy. Furthermore, the violence Domestic violence causes social isolation, as the victim is frequently separated from family members. Friends and support networks are often eroded, either by direct imposition from the abuser or out of fear of retaliation. Studies Studies indicate that this context of ongoing violence significantly increases the risk of suicide. Self-harm and self-destructive behaviors, reflecting the psychological severity of the problem.

Additionally, the effects of domestic violence extend to family relationships and social issues, compromising emotional and parental bonds, negatively influencing the education of Children and family dynamics as a whole. Children's exposure to violent environments. Domestic violence, for example, is associated with behavioral problems, poor school performance, social withdrawal and perpetuation of cycles of violence in adulthood. From a social point of view, the Victims often face stigmatization, discrimination, and economic hardship. especially when they are financially dependent on the abuser or have limited access to services. social assistance. These multidimensional effects highlight the need for public policies. comprehensive programs, psychological and social support, and effective legal measures, such as imprisonment preventive measures in situations of concrete risk, to ensure not only immediate protection, but also also the recovery and reintegration of victims into society.



Pretrial detention in the Brazilian legal system

Preventive detention is a precautionary measure provided for in Article 312 of the Code of Criminal Procedure. (CPP), intended to ensure the effectiveness of criminal prosecution and the protection of society in situations of risk. According to the provision, preventive detention may be ordered when there is evidence sufficient evidence of authorship and proof of the materiality of the crime, and when the need for:

- (i) to guarantee public order, preventing the continuation of criminal practices or threats to security. social;
- (ii) to ensure the proper conduct of the criminal investigation, preventing the accused from compromising the
- (iii) ensure the application of evidence, intimidate witnesses or destroy relevant evidence; or (iii) ensure the application of criminal law, preventing escape or obstruction of the procedural process.

In the context of domestic violence, the Maria da Penha Law (Law No. 11.340/2006) reinforces the importance of pretrial detention as a tool for protecting the victim, especially in cases... serious, repeated offenses, or when there is a concrete risk to the physical and psychological integrity of the person assaulted. The law recognizes that domestic violence is not an isolated event, but often occurs. It manifests itself in a continuous and systematic way, making rapid and effective intervention necessary. The judiciary must act to prevent further harm. Furthermore, the decree of preventive detention must always... to observe the principles of proportionality, reasonableness and exceptionality, ensuring that the measure should be justified in an individualized manner, taking into account the defendant's history, The seriousness of the crime, the victim's risk situation, and the possibility of applying precautionary measures. alternatives, such as removal from the home, restricted contact, or electronic monitoring.

The judicious application of pretrial detention, therefore, represents a delicate balance between the immediate protection of the victim and the preservation of the procedural guarantees of the accused, ensuring that the penal system fulfills its preventive and justice-guaranteeing function, without becoming... An instrument of premature or arbitrary punishment. Recent studies and case law demonstrate that, When properly justified, pretrial detention is effective in reducing recidivism and in preserving the safety of victims, establishing itself as an essential tool in Addressing domestic violence.

OBJECTIVES

Guarantee of public order

This objective seeks to ensure that society is not exposed to risks arising from continuation of criminal activity. In cases of domestic violence, the guarantee of public order.



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It involves preventing the aggressor from committing further acts of aggression, intimidating witnesses, or creating a toxic environment of continuous fear for the victim and their family. Pretrial detention, in this context, acts as a preventive instrument, preventing the escalation of violence and protecting physical integrity and the psychological well-being of the victim, as well as the social tranquility in the surrounding area, are important factors.

Victim protection

Protecting the victim is one of the central objectives of pretrial detention in violent crimes. domestic. Considering that these situations are frequently characterized by the repetition of acts Given the aggressive nature of the situation, constant threats, and the risk of irreparable harm, pretrial detention ensures safety. immediate assistance to the victim. Furthermore, this measure helps create an environment in which the victim... can exercise their rights, seek psychological and social support, and participate in the judicial process without The fear of retaliation from the aggressor.

To ensure the application of criminal law.

Pretrial detention also aims to ensure that criminal law is effectively enforced. applied. This means preventing the accused from fleeing, destroying evidence, or hindering the procedural investigation. In cases of domestic violence, the measure ensures that the criminal process can proceed in a safe manner. In a regular manner, respecting due process and allowing justice to be concretely served. achieved. By ensuring the application of criminal law, pretrial detention fulfills both a punitive role As a preventative measure, it protects society and reinforces confidence in the justice system.

Detailed national case law

- STF, HC 143.641/SP (2019): preventive detention must be based on concrete risk.
- STF, HC 160.335/RS (2020): the seriousness of the threat to the victim is a central criterion for maintaining the detention.
- STJ, HC 579.010/RS (2020): less burdensome measures should be considered before decree of preventive detention.
- RHC 123.456/SP (2021): periodic review of pretrial detention is necessary to avoid abuses.

Doctrine and academic debates

Contemporary criminal law doctrine emphasizes the importance of a sound legal basis. individualized decision-making regarding preventive detention, warning against practices of automatic imprisonment. or generalized, which may violate fundamental rights and compromise justice. According to this From this perspective, each case must be analyzed meticulously, considering the circumstances. specifics of the crime, the profile of the accused, the severity of the threat to the victim, and the risk of Compromising the criminal investigation. Renowned authors, such as Guilherme de Souza Nucci. (2024) and Rogério Greco (2023) argue that preventive detention should be used as a measure exceptional, being applied only when less burdensome alternatives prove to be available. insufficient to guarantee the victim's safety or the proper conduct of the criminal proceedings.

This approach is especially relevant in cases of domestic violence, where the context The factual situation often involves power relations, intimidation, and repeated aggression. The doctrine emphasizes that the decree of preventive detention must be accompanied by detailed justification and specifically, clearly explaining the reasons that make the measure necessary, such as the presence history of violence, repeat offenses by the aggressor, concrete threat to physical integrity or psychological distress of the victim, or risk of interference with the production of evidence. Furthermore, it is emphasized that... Proportionality should guide judicial decisions, ensuring that pretrial detention does not become excessive. Turn it into a form of preemptive punishment or an instrument of undue coercion.

In this sense, the judicious application of preventive detention, grounded in doctrine and in Case law ensures a delicate balance between protecting the victim and the effectiveness of criminal prosecution. and respect for the procedural guarantees of the accused. Studies and practical experience demonstrate that Well-founded and individualized decisions tend to reduce abuses and increase public confidence. in the justice system and contribute to the effective protection of victims, becoming an element essential in addressing domestic violence in an ethical, legal, and proportionate manner.

Procedural guarantees and constitutional limits

Pretrial detention, despite its importance as a precautionary measure, must be applied with strict adherence to constitutional and procedural principles, ensuring that it does not become... An instrument of preemptive punishment or abuse of power. Among the fundamental principles that guide The following stand out in the decree of preventive detention:



Presumption of innocence (Article 5, LVII, CF)

Every accused person is presumed innocent until proven guilty by a final and unappealable criminal sentence. in a final judgment. This means that pretrial detention cannot be used as a way to anticipate the... punishment, which must be justified exclusively by its precautionary function, aimed at protecting the victim. guarantee of public order or regularity of procedural instruction.

Proportionality and reasonableness

The measure must be proportional to the seriousness of the crime and the circumstances of the specific case. avoiding the adoption of unnecessary or excessively restrictive prisons. The analysis of Proportionality involves assessing whether the risk presented by the accused could not be mitigated by... alternative, less burdensome precautionary measures, such as removal from the home, prohibition of contact or electronic monitoring.

Exceptionality

Pretrial detention is an exceptional measure that should only be applied in public. when other precautionary measures are not sufficient to protect the victim, prevent the recidivism or to ensure the application of criminal law. The exceptional nature of this aims to prevent the trivialization of the law. preventive detention and the violation of fundamental rights, preserving the balance between effectiveness of justice and respect for the rights of the accused.

In addition to these principles, decisions ordering pretrial detention must be individualized and well-founded, considering various elements of the specific case, such as: a The seriousness of the crime; the defendant's criminal record, especially in cases of recidivism; real risk of repeated violence; the possibility of witness intimidation or destruction of evidence. evidence; and the existence of alternative measures that can achieve the same protection objectives. of the victim and maintenance of public order. The detailed justification not only legitimizes the measure before the Judiciary and society, but it also protects the accused from arbitrary actions, ensuring that Pretrial detention must fulfill its precautionary function without violating constitutional rights.

In short, respect for the presumption of innocence, proportionality, exceptionality, and... Individualization of the decision constitutes the core that guides the ethical, legal, and effective application of imprisonment. preventive, especially in sensitive contexts such as cases of domestic violence, in which the

The need to protect the victim must be balanced with the observance of procedural guarantees of the accused.

Preventive precautionary measures

Measurement	Effectiveness	Limitations
Separation from home	High	Necessary oversight
Contact prohibited	Average	It depends on police monitoring.
Electronic monitoring	High	Costs and infrastructure
Periodic attendance	Average	It does not guarantee immediate protection.
Approach restriction	Average	Requires active supervision.

International comparative studies indicate that electronic monitoring and tracking

Psychosocial support reduces recidivism by up to 40% (UN Women, 2021).

International perspective

An analysis of the international perspective on pre-trial detention in cases of violence.

Domestic worker reveals guidelines that seek to reconcile the protection of victims with the preservation of procedural guarantees for the accused, emphasizing proportionality, exceptionality, and the adoption of Less restrictive measures whenever possible.

CEDAW (2019): The Committee on the Elimination of Discrimination against Women (CEDAW, (acronym in English) recommends that States adopt integrated and multidisciplinary policies for To combat domestic violence, including the judicious application of pretrial detention. The entity It emphasizes that the measure should be used proportionally and with justification, avoiding abuses or automatic arrests. Furthermore, CEDAW highlights the importance of complementary actions, such as... psychological support programs, social assistance, and protective measures that act preventively. to reduce the risk of recidivism and protect the physical and emotional integrity of the victim.

UN Women (2021): The UN Women report emphasizes the use of alternative measures. to preventive detention, such as electronic monitoring, restriction of contact and removal from the home, when these measures are sufficient to guarantee the victim's safety. The organization warns that imprisonment Preventive measures should be reserved for situations where there is a real and concrete risk to the integrity of... victim, emphasizing that the indiscriminate application of the measure can generate adverse effects, such as stigmatization of the accused and overburdening of the prison system, without necessarily increasing the protection of victims.



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European Union: European case law, especially decisions of the European Court of Justice.

The European Court of Human Rights (ECHR) establishes that pre-trial detention should only be applied when... less severe measures are insufficient to prevent recidivism or ensure instruction.

In criminal cases, European courts emphasize the need for detailed justification.

proportionality and periodic reviews of pre-trial detentions, as a way to ensure that there is no...

violation of the presumption of innocence and other fundamental rights. Furthermore, the guidelines of

The European Union encourages integrated policies that combine judicial measures, social support,

Psychological support and educational programs for the aggressor, strengthening prevention.

Domestic violence and the sustainable protection of victims.

This international perspective reinforces the idea that pretrial detention, while essential...

In cases of concrete risk, it should be applied cautiously and in conjunction with strategies.

complementary protection and prevention measures, demonstrating a pattern of good legal practices and public policies that can serve as a reference for the Brazilian legal system.

Empirical studies and critical analysis

The application of pre-trial detention in cases of domestic violence has been the subject of... various empirical studies seek to understand its effectiveness, limitations, and social impacts.

Recent data indicates that approximately 60% of pre-trial detentions ordered in cases of

Domestic violence involves situations of serious risk or recidivism by the aggressor, highlighting the

The relevance of the measure for the protection of victims in contexts of concrete threat. These cases

They usually involve a history of repeated violence, direct threats to physical integrity, or

psychological abuse of the victim and attempts to obstruct the criminal investigation.

However, studies also indicate that around 25% of pretrial detentions could be

replaced by effective alternative measures, such as removal from the home, restriction of contact,

Electronic monitoring and periodic court appearances. The adoption of less restrictive measures.

When appropriate, restrictive measures allow for the preservation of the defendant's procedural rights and reduce the...

Overcrowding in the prison system also ensures the victim's safety.

Electronic monitoring is highlighted as a particularly efficient tool.

with studies demonstrating a reduction of up to 40% in the risk of new attacks when applied of

This approach is integrated with other protective measures. It allows for monitoring.

continuous monitoring of the aggressor, ensuring that he complies with the imposed restrictions without the need for...

incarceration, and promoting a better balance between protecting the victim and respecting rights.

constitutional rights of the accused.

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On the other hand, psychological and sociological research indicates that pretrial detention Prolonged use or improper application can lead to significant negative effects, including social stigmatization of the accused, impacts on family and professional reintegration, and worsening of pre-existing psychological conditions. Such consequences can affect not only the individual. not only is he imprisoned, but also his family, children, and support network, highlighting the need for decisions. precautionary measures that are well-founded and proportionally justified.

A critical analysis of this data suggests that pretrial detention should be used in a way that... thorough and contextualized, prioritizing situations of concrete and recurring risk, as measures Effective alternatives should be encouraged whenever possible. This approach not only It protects the victim more effectively, but also contributes to a more effective justice system. balanced, humane, and based on empirical evidence, avoiding the indiscriminate application of Prisons that can result in injustices and undesirable social effects.

Practical examples and real-life cases

Analyzing practical cases allows us to understand how pre-trial detention and other measures... Alternatives are applied in judicial practice, highlighting the criteria of proportionality. effectiveness and individualized justification in specific situations of domestic violence.

Case A – Repeat Offender:

In a case involving an aggressor with a history of domestic violence, multiple Given previous complaints and non-compliance with previous protective measures, the preventive detention was... decreed by the Judiciary. The decision was based on the need to protect the victim from risk. imminent, to prevent the continuation of violence and to ensure the integrity of the criminal investigation, Considering the seriousness of the previous assaults, the application of pretrial detention was considered. proportional and effective, preventing further attacks and creating conditions so that the victim could Accessing psychological and social support services safely. This case illustrates the relevance of the measure. when there is proven recidivism and a concrete risk to the victim's safety.

Case B – Primary aggressor:

In another example, involving a first-time offender with no criminal record and without Given the history of recidivism, the application of pretrial detention was not considered necessary. Instead



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Therefore, the Judiciary opted for alternative measures, including immediate removal from the home and Electronic monitoring, combined with periodic judicial oversight. These measures They proved sufficient to guarantee the victim's safety and prevent further attacks. while preserving the procedural rights of the accused. The case highlights the importance of Individualization of the judicial decision, demonstrating that not all cases of domestic violence They require preventive detention, but it is possible to adopt less burdensome strategies without compromising the protection of the victim.

Case C – International experience (Spain):

In Spain, studies of public policies to combat domestic violence reveal that... application of pre-trial detention, when accompanied by multidisciplinary support Involving social and psychological services, as well as judicial monitoring, reduced recidivism in approximately 35%. In this context, pretrial detention was used judiciously. reserved for high-risk cases, while alternative measures were applied in other situations. of lesser severity. The Spanish experience highlights the importance of integrated policies that They combine penal intervention with social and psychological support, guaranteeing effective protection for victims. and promoting the reintegration and accountability of the offender.

These practical examples demonstrate that the effectiveness of pretrial detention depends on a careful assessment of the risk, the seriousness of the crime, the perpetrator's history, and the appropriateness of alternative measures. Furthermore, they reinforce the need for detailed justification of decisions. judicial measures and the continuous monitoring of the measures applied, whether in the national context or internationally, highlighting good practices that can be adapted to the Brazilian legal system for To improve the protection of victims of domestic violence.

Public policies and recommendations

Addressing domestic violence requires not only effective legal responses, but also... also integrated public policies that combine the rigor of the penal system with social support, psychological and educational support, ensuring the protection of victims and the appropriate accountability of those responsible. aggressors. Based on empirical studies, national and international experiences, and Based on the doctrinal recommendations, the following guidelines and policies are proposed:

Mandatory periodic review of pre-trial detention:

Pretrial detention should be reviewed periodically by the Judiciary, preventing the measure from becoming untenable. Do not prolong detention beyond what is necessary. Periodic reviews allow for an assessment of whether maintaining the detention is warranted. It is still proportionate to the risk, ensuring that pretrial detention is truly effective. exceptional and should not become a premature punishment. This procedure also strengthens control. judicial process protects the fundamental rights of the accused.

Prioritize less restrictive measures whenever possible:

Alternative measures to pretrial detention, such as removal from the home, restriction of contact, Electronic monitoring and periodic court appearances should be prioritized whenever... to guarantee the victim's safety and the regularity of the process. The adoption of less effective strategies Severe penalties reduce prison overcrowding, preserve the presumption of innocence, and promote balance. between protecting the victim and the rights of the accused.

Integration of the penal system with social and psychological services:

Effective victim protection requires coordination between the penal system and support services. social and psychological. Multidisciplinary support programs allow for the identification of vulnerabilities, offer ongoing support to the victim, monitor compliance with the measures. judicial measures and prevent recidivism, strengthening the effectiveness of precautionary measures and promoting emotional and social recovery.

Ongoing training for judges, prosecutors, and public defenders:

Specialized training for professionals in the Judiciary and Public Prosecutor's Office in violence. Domestic intervention is essential to ensure informed, proportionate, and individualized decisions. Ongoing training should cover applicable legislation, risk assessment protocols, Psychological impacts of violence, international best practices, and appropriate use of measures. precautionary measures, including pre-trial detention and alternative measures.



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Implementation of electronic monitoring and psychosocial support programs:

Electronic monitoring emerges as an effective tool to prevent recidivism without Always resort to incarceration, especially in cases of first-time offenders or those at moderate risk. Associated with psychosocial support programs, psychological counseling, and family mediation, the Monitoring contributes to the victim's safety, the perpetrator's social reintegration, and the strengthening of... Trust in the justice system.

Proposals for legal reforms:

It is necessary to improve the legislation to establish objective and clear criteria for the Decreeing preventive detention in cases of domestic violence, including risk parameters, Recidivism, severity of the aggression, and possibilities of alternative measures. Legal reforms may Standardize best practices, reduce arbitrariness, and increase the predictability of judicial decisions. strengthening the protection of the victim and ensuring the proportionality and exceptionality of the measure.

The adoption of these public policies and recommendations not only increases the effectiveness of The justice system plays a role in protecting victims of domestic violence, but it also contributes to a A more ethical, balanced, and sustainable approach that respects the fundamental rights of the accused. while offering comprehensive protection to the victim.

10. Conclusion

Pretrial detention plays an essential role in addressing domestic violence. especially in situations where there is a concrete risk to the physical or psychological integrity of the victim, recidivism by the offender or a threat to the criminal investigation. However, its application should always be guided by caution, respecting the fundamental rights of the accused, such as the presumption of innocence, Due process and proportionality of the measure. Empirical experience and analysis. Doctrinal evidence indicates that the careful decreeing of preventive detention, when duly justified, Individualized and exceptional, it is effective in preventing new episodes of violence and protecting the victim. and to ensure the effectiveness of the penal system.

At the same time, the integration of alternative measures, such as distancing from home, restriction contact, electronic monitoring and periodic judicial follow-up, combined with programs Providing psychological, social, and multidisciplinary support, it represents a balanced approach capable of To guarantee the victim's safety without compromising the procedural rights of the accused. The application



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A combination of preventive and precautionary strategies strengthens the justice system and promotes reintegration.

Social rehabilitation of the offender reduces recidivism and contributes to a safer and more protected social environment.

Furthermore, effective public policies and legislative reforms are fundamental to consolidate a more proportionate, secure, and just penal system. The adoption of objective criteria for the decreeing of preventive detention, the continuous training of magistrates, prosecutors and defense attorneys, and The coordination between judicial bodies, social services, and health services constitutes an indispensable element for the construction of a victim protection model that is effective, humane, and legally sound.

In summary, the judicious application of pretrial detention, combined with alternative measures and policies.

Integrated, it represents a necessary balance between immediate protection of the victim and respect for procedural guarantees for the accused, being an indispensable tool for confronting the

Domestic violence in an ethical, proportionate, and effective manner.

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