PROCEDURAL EFFICIENCY AND THE PROTECTION OF VICTIMS AND WITNESSES IN BRAZIL: CHALLENGES IN THE FACE OF ORGANIZED CRIME

EFICIÊNCIA PROCESSUAL E PROTEÇÃO A VÍTIMAS E TESTEMUNHAS NO BRASIL: DESAFIOS FRENTE À CRIMINALIDADE ORGANIZADA

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Eloisa de Sousa Arruda[1] *– https://orcid.org/0000-0002-1680-4236*

Abstract

The article analyzes Law No. 9,807/1999, which established Brazil's Federal Program for the Protection of Threatened Victims and Witnesses (PROVITA), situating it within the broader context of the expansion of organized crime and the need for effective mechanisms to safeguard individuals at risk due to their cooperation with the criminal justice system. The central research problem lies in understanding how the protection of threatened victims and witnesses can be reconciled with the pursuit of procedural efficiency in cases of macro-criminality. The study is based on the hypothesis that the institutional strengthening of PROVITA is essential to balance the protection of fundamental rights with the effective production of criminal evidence. It adopts a qualitative, juridical-dogmatic method, complemented by indirect empirical observation derived from the author's experience as Director of the São Paulo State Program for the Protection of Victims and Witnesses (2011–2014). The analysis of doctrine, case law, and institutional data demonstrates that PROVITA remains an indispensable instrument for ensuring the integrity of deponents and the efficiency of criminal proceedings. It concludes that the program's institutional and budgetary strengthening is imperative for the consolidation of a balanced and democratic system of criminal justice.

Keywords: Witness protection. Criminal procedure. Law No. 9,807/1999. Organized crime. Criminal justice effectiveness. Protective measures.

Resumo

O artigo analisa a Lei nº 9.807/1999, que instituiu o Programa Federal de Proteção a Vítimas e Testemunhas Ameaçadas (PROVITA), inserindo-a no contexto da expansão da criminalidade organizada e da necessidade de instrumentos eficazes para salvaguardar pessoas em risco por colaborarem com a justiça penal. O problema central da pesquisa consiste em compreender de que modo a proteção a vítimas e testemunhas

[1] Ph.D. and LL.M. in Criminal Law and Criminal Procedure from the Pontifical Catholic University of São Paulo (PUC-SP). Professor of Undergraduate and Graduate Law at PUC-SP, and of Postgraduate Courses at the Escola Paulista da Magistratura (EPM) and the Escola Superior do Ministério Público (ESMP).Retired State Prosecutor.Former Secretary of Justice for the State of São Paulo and Municipal Secretary for Human Rights in São Paulo, Brazil.E-mail: esarruda@pucsp.br | ORCID: https://orcid.org/0000-0002-1680-4236 | ZIP 05014-901

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ameaçadas pode ser compatibilizada com a busca por eficiência processual em casos de macrocriminalidade. Parte-se da hipótese de que o fortalecimento institucional do PROVITA é condição essencial para equilibrar a proteção de direitos fundamentais e a produção eficaz da prova penal. O estudo adota método qualitativo, de natureza jurídico-dogmática, complementado por observação empírica indireta derivada da experiência da autora na direção do Programa Estadual de Proteção a Vítimas e Testemunhas de São Paulo (2011–2014). A análise da doutrina, jurisprudência e dados institucionais demonstra que o PROVITA permanece instrumento indispensável à integridade de depoentes e à eficiência do processo penal. Conclui-se que seu fortalecimento institucional e orçamentário é imprescindível à consolidação de uma justiça penal equilibrada e democrática.

Palavras-chave: Proteção a testemunhas. Processo penal. Lei nº 9.807/1999. Criminalidade organizada. Eficiência da justiça penal. Medidas protetivas.

1 INTRODUCTION

Law No. 9,807, enacted on July 13, 1999, established in Brazil the norms for organizing and maintaining special programs to protect victims and threatened witnesses, and also provided protection for defendants or convicts who have voluntarily offered effective cooperation to criminal investigations and proceedings. Enacted amid profound social and legal transformations, the statute responded to two emergent realities in Brazil throughout the 1980s and 1990s that required specific legislative solutions.

The first was the rise of organized crime, associated with the spread of violent practices such as drug trafficking, the jogo do bicho, and robberies of financial institutions, alongside the formation and consolidation of criminal factions—among them the Comando Vermelho, the Primeiro Comando da Capital (PCC), and paramilitary groups (milícias)—frequently composed of civilians and agents of public security forces. The second was the absence of normative instruments capable of ensuring protection for threatened victims and witnesses, many of whom, fearing reprisals, were prevented from fulfilling the legal duty to appear in court and report crimes they had suffered or of which they had knowledge.

Against this backdrop, the present study examines Law No. 9,807/1999 from the perspective of its contribution to criminal procedure efficiency in cases involving organized crime and macro-criminality, investigating how the protection afforded to victims, witnesses, and cooperating defendants can make evidentiary collection feasible without compromising fundamental rights. The central research problem consists in understanding how to reconcile the protection of the physical and psychological integrity of procedural subjects with the pursuit of celerity and effectiveness in criminal prosecution.

The study is grounded in the hypothesis that the existence of a state-run protection scheme, based on a clear legal framework and integrated action, constitutes one of the pillars of a balanced and efficient criminal process, especially in contexts marked by intimidation, retaliation, and silencing. The research method is qualitative, juridical-dogmatic in nature, supported by the normative analysis of Law No. 9,807/1999 and its dialogue with constitutional and infra-constitutional provisions. The investigation is complemented by indirect empirical observation arising from the author's institutional experience as Secretary of Justice and Citizenship of the State of São Paulo (2011–2014), a period during which she directed the São Paulo State Program for the Protection of Victims and Witnesses (PROVITA-SP).

The methodological procedures comprised the examination of official data and a critical review of Brazilian doctrine and case law, allowing the identification of the main bottlenecks and advances of the national protection system. The results show that, although the number of beneficiaries has remained relatively stable since the program's inception, PROVITA is an essential instrument for preserving the physical and psychological integrity of victims and witnesses and for evidentiary production in highly complex criminal actions. The article concludes by advocating institutional and budgetary strengthening of the program, as well as improvements to its access, follow-up, and federative coordination mechanisms; it also suggests further comparative studies to identify good practices in international protection systems.

2 ORGANIZED CRIME AND THE RIGHT TO PROTECTION WHEN TESTIFYING

The enactment of Law No. 9,807/1999 marked a milestone in the consolidation of public policies aimed at protecting individuals in situations of vulnerability within the context of criminal proceedings. Prior to its promulgation, Brazil lacked a structured normative framework capable of ensuring the safety of threatened victims and witnesses. Isolated measures were common—such as ad hoc protection ordered by judges, prosecutors, or police authorities, including the provision of escorts on hearing days—and, in many cases, the solidary intervention of civil-society organizations to provide shelter and material support.

This institutional fragility became even more alarming as organized crime expanded territorially and economically throughout the 1980s and 1990s, imposing the so-called "law of silence" upon those who dared to cooperate with justice. Fear of reprisals and the social isolation of victims and witnesses reduced the effectiveness of criminal prosecution, compromising evidence collection and the accountability of perpetrators of serious crimes. In this context, the emergence of a state-run protection program proved indispensable to breaking the cycle of intimidation and ensuring the fundamental right to personal security in the exercise of the civic duty to testify.

The absence of permanent institutional mechanisms was particularly alarming in light of episodes of national repercussion—such as the Candelária Church massacre, which occurred in Rio de Janeiro in 1993, when eight homeless children and adolescents were executed by gunfire. The testimony of one survivor,

struck by four bullets, was decisive in identifying the perpetrators, including former military police officers and milicianos, who were later convicted by the courts. However, in the absence of institutional protection, the adolescent suffered another attack and, with the support of Amnesty International, was transferred to Switzerland, where he remained until the conclusion of the judicial proceedings[2].

In response to demands from the justice system and civil society, a series of legislative initiatives were set in motion, culminating in the enactment of Law No. 9,807/1999[3].

The statute emerged in a context of consolidating the foundations of citizenship, marked by the pressing need for effective measures of protection and assistance for victims and witnesses—particularly in the face of the advance of organized crime, which enforces silence upon those who suffer or possess knowledge of criminal acts.

Many end up remaining silent, driven by the instinct of survival, since those who dare to challenge such power are often eliminated—either as punishment or as an example to others[4].

As noted by Everton Luiz Zanella, in cases involving organized crime, the collection and production of evidence is indisputably more complex than in cases of ordinary criminality, due to its multifaceted nature. Traditional evidentiary mechanisms established by the Brazilian Code of Criminal Procedure—enacted in 1941—have proven inadequate over time, having been designed for a different historical and cultural setting, one unconcerned with this type of criminality[5].

In this context, while the Brazilian Federal Constitution enshrines the principle of freedom of evidence—prohibiting only that which is obtained unlawfully (Art. 5, LVI)—it is also essential that those involved in the evidentiary process be assured of their right to testify freely, safely, and without coercion. The production of evidence must not come at the expense of other individual and social rights guaranteed by Articles 5 and 6 of the Constitution, including life, liberty, and personal security. These rights must be safeguarded by the State so that they are not violated or restricted.

In defining "rights to protection," Robert Alexy explains that these pertain to the obligation of the State to shield the holders of fundamental rights from third--party interference. Protection may occur through criminal or procedural law, civil liability norms, administrative acts, or practical actions. He further asserts:

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2 CHADE, Jamil, *Sobrevivente vai contar em livro a chacina da Candelária* [Survivor to tell in a book the story of the Candelária massacre], *O Estado de São Paulo*, São Paulo, 10 Feb. 2008, *Metrópole* section, p. C7, available at <https://www2.senado.leg.br/bdsf/bitstream/handle/id/333874/noticia.htm?sequence=1>, accessed on 22 July 2025.

3 BRAZIL**.** *Law No. 9,807, of 13 July 1999.* Establishes the Federal Programme for the Protection of Threatened Victims and Witnesses and provides other measures. Available at: <https://www.planalto.gov.br/ccivil_03/LEIS/L9807.htm>. Accessed on: 22 July 2025.

4 MIGUEL, Alexandre, *Comentários à Lei de Proteção às vítimas, testemunhas e réus colaboradores*, São Paulo: Revista dos Tribunais, v. 89, n.773, 2000, pp. 425 - 443.

5 ZANELLA, Everton Luiz, Infiltração de agentes e o combate ao crime organizado: análise do mecanismo probatório sob o enfoque da eficiência e do garantismo, Curitiba: Juruá, 2020, p. 135

> *What all these forms have in common is that rights to protection are constitutional subjective rights to factual or normative positive actions by the State, whose object is to demarcate the spheres of equally ranked legal subjects, as well as to ensure the enforceability and realization of such demarcation*[6].

The State's duty to protect the exercise of essential human rights—such as life, liberty, and equality—is intrinsic to the modern concept of the State. As João Santa Terra Júnior observes:

> *Such a conclusion derives directly from the text of the Constitution, for it would be futile, unreasonable, and irrational to establish sovereignty, citizenship, human dignity, political pluralism, the social value of work and free enterprise as constitutional foundations—and to proclaim the inviolability of the rights to life, liberty, equality, security, and property—without guaranteeing their protection and safety*[7].

It is in this vein that Goal 16 (e) of the United Nations Programme on Crime Prevention and Criminal Justice calls upon States to promote "a more efficient and effective administration of justice, with due respect for the human rights of all those affected by crime and of all persons involved in the criminal justice system"[8].

In defining an efficient criminal process, Antônio Scarance Fernandes concludes:

> *If criminal procedure aims both to ensure the right of defense for the accused and to protect the State's interest in punishing offenders, then an efficient criminal process is one that, in a global sense, maximizes both objectives*[9].

Under this perspective, procedural efficiency should not be confused with speed or with the simplification of procedural steps. Rather, it refers to the ability of the criminal justice system to fulfill its constitutional purposes: to ensure the adversarial principle, the right to a full defense, and the equality of arms, without neglecting the protection of victims, witnesses, and collaborators whose participation enables the reconstruction of procedural truth.

The model enshrined in Law No. 9,807/1999 fits precisely within this paradigm — that of a truly efficient criminal justice system, not because it accelerates proceedings, but because it renders them viable, fair, and humanized in contexts of high danger and coercion.

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6 ALEXY, Robert, *Teoria dos direitos fundamentais*, 2. ed. Tradução de Virgílio Afonso da Silva, São Paulo: Malheiros, 2014, pp. 450-451.

7 SANTA TERRA JÚNIOR, João, PCC a organização criminosa primeiro comando da capital: dos aspectos criminológicos, constitucionais e político-criminais à análise dogmático-penal da responsabilidade dos integrantes e colaboradores, Belo Horizonte: Editora Dialética, 2021, pp. 184-185

8 UNITED NATIONS, *United Nations Standards and Norms in Crime Prevention and Criminal Justice*, p. 206. Available at: <https://www.unodc.org/documents/justice-and-prison-reform/projects/UN_Standards_and_Norms_CPCJ_-_Portuguese1.pdf>. Accessed on: 12 July 2025.

9 FERNANDES, Antônio Scarance, "O equilíbrio na repressão ao crime organizado", *in*: _____; ALMEIDA, José Raul Gavião de; MORAIS, Mauricio Zanoide de. (Coords.), *Crime organizado: aspectos processuais,* São Paulo: Revista dos Tribunais, 2009, pp. 10-11.

3 PROTECTION SYSTEM UNDER LAW NO. 9.807/1999: ACCESS REQUIREMENTS, CONDITIONS FOR REMAINING IN THE PROGRAM, AND GROUNDS FOR EXCLUSION

Law No. 9,807/1999 establishes a specific legal framework for the protection of victims, witnesses, and cooperating defendants who are threatened due to their testimony during criminal proceedings. The following section analyzes, in a systematic manner, the main normative and operational aspects of the law, focusing on the criteria for inclusion, conditions for remaining in the program, applicable protective measures, and grounds for the exclusion of victims, witnesses, and collaborators under threat.

3.1 Protected Subjects: Victim, Witness, Collaborator, and Their Dependents

According to Article 1 of Law No. 9,807/1999, protection may be granted to victims or witnesses of crimes who are coerced or exposed to serious threats as a result of cooperating with a criminal investigation or proceeding.

The victim and the witness are recognized as forms of evidence within the structure of the Brazilian Code of Criminal Procedure (CPP) in different chapters.

A *victim* is the passive subject, the holder of the legal interest threatened or directly protected by the criminal norm. In short, the victim is the one who suffers the violation of the criminal norm[10]. The term *offended party* is also used to refer to the person affected or harmed by the criminal act[11].

Concern for the protection and safeguarding of victims' rights is relatively recent within criminal justice systems, having gained relevance only after the Second World War. Traditionally, criminal proceedings were understood as a mechanism for pursuing the liability of the perpetrator and applying punishment—in other words, as the materialization of the State's *ius puniendi*. Within this perspective, the other side of the criminal offense, that of the victim, was either absent[12] or, when present in court, merely acted as a qualified witness, testifying as part of the prosecution's strategy[13].

This perspective has been revisited to ensure that criminal procedure is considered both as a mechanism for safeguarding the rights of the accused—who may only be convicted within due process and when no reasonable doubt remains as to their criminal responsibility—and for protecting the rights of crime victims—since it is also the role of criminal prosecution to safeguard and uphold their

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10 TOURINHO FILHO, Fernando da Costa, *Processo Penal*, v. III, São Paulo: Saraiva, 34 ed, 2012, p. 327.

11 BORGES DA ROSA, Inocêncio, *Processo Penal Brasileiro*, v. II, Porto Alegre: Livraria do Globo, 1942, p. 31.

12 BURGORGUE-LARSEN, Lurence, *Las víctimas del delito en el proceso penal internacional: el ejemplo de la Corte Penal Internacional*, Revista Jurídica Universidad Autónoma de Madrid, v. 12, Madrid, 2016, pp. 10-11.

13 GARIJO, Fernando Val, *Redressing victims of international crimes: the International Criminal Court and the Trust Fund for Victims,* Revista Internacional de Trabajo Social y Ciencias Sociales, vol. 2, Madrid, julio-2011, p. 86.

interests[14]. While this view may appear dichotomous, there is a clear concern with maintaining a balance between the rights of the offender and those of the offended party.

Victims may not refuse to appear in court when summoned, under penalty of coercive enforcement as provided in Article 201, §1 of the CPP. That is, even if under threat or feeling intimidated, they are, in principle, legally required to appear. By analogy to Article 217 of the CPP, they may request to testify outside the presence of the accused. However, the right to remain silent, guaranteed to the defendant, does not extend to the victim.

Unlike witnesses, victims are not required to take an oath to tell the truth, as provided in Article 203 of the CPP. This does not mean, however, that they may lie, conceal the truth, or deny it. Although not subject to criminal liability for perjury (Article 342 of the Penal Code), victims may still be held criminally liable for *false accusation* (Article 339 of the Penal Code) or *false report of a crime* (Article 340 of the Penal Code)[15].

To preserve privacy, intimacy, honor, and image, the judge may adopt special measures, including sealing of the court record (*segredo de justiça*) regarding data, testimonies, and other information concerning the victim, to prevent their exposure, pursuant to Article 201, §6 of the CPP.

This constitutes a partial judicial confidentiality, intended to prevent exposure in the media and to restrict access to case information by individuals who are not parties to the proceedings. Therefore, no secrecy applies to the parties themselves, whether prosecution or defense[16].

It is worth highlighting that, under the definition of *victim* in Bill No. 3,890/2020, which aims to establish a Victims' Statute, the term includes any natural person who has suffered harm or injury to their person or property, including physical or psychological harm, emotional damage, or economic loss directly caused by a criminal act or public calamity[17].

A *witness* is a person who, before a judge, reports what they know about the facts under dispute in a criminal proceeding—in other words, someone called to testify based on their sensory perceptions regarding the facts attributed to the defendant[18]. Thus, not being a party or an interested subject in proceeding, the witness relates past events that are relevant to the case and that they have perceived through their senses[19].

In Brazil, any person may be a witness. Once listed by one of the parties, a witness is generally required to testify, pursuant to Article 206 of the Brazilian Code

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14 ROMANÍ, Carlos Fernández de Casadevante, *Las víctimas y el derecho internacional.* Anuario Español de Derecho Internacional, v. XXV, Navarra, 2009, pp. 5, 8-9.

15 BAQUEIRO, Fernanda Ravazzano Lopes, SILVA, Thomas Bacellar da, *Código de Processo Penal comentado*, Coord. Denise Hammerschmidt. 3. ed., Curitiba: Juruá, 2023, p. 535.

16 LOPES JR, Aury, *Direto Processual Penal,* São Paulo: Saraiva, 2018, p. 456.

17 BRAZIL, *Bill No. 3,890/2020*, Chamber of Deputies. Available at: <https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1915623>. Accessed on: 10 June 2025.

18 MIRABETE, Júlio Fabrini, *Processo Penal*, 18ª ed., São Paulo: Atlas, 2006*,* p. 318.

19 BADARÓ, Gustavo Henrique, Processo *Penal***,** 5 ed. amp. rev., São Paulo: Revista dos Tribunais, São Paulo: Revista dos Tribunais, 2017, p. 475.

of Criminal Procedure (CPP). Some individuals, however, may be exempted from this duty, while others are prohibited from testifying.

Those exempt from testifying are listed in the second part of Article 206 of the CPP: they include the defendant's family members—ascendants, descendants, and direct-line in-laws. These individuals may testify if they choose, except in situations where no other means exist to obtain or supplement the evidence (Article 206, *in fine*, CPP). Such witnesses are not required to take the oath to tell the truth (Article 208, *in fine*, CPP).

Those who are prohibited from testifying are listed in Article 207 of the CPP. These include individuals who became aware of the facts due to their function, ministry, office, or profession.

All witnesses subpoenaed by the court are legally obligated to appear. Failure to do so may result in coercive enforcement (Article 218, CPP), liability for the costs of the proceeding, and even criminal liability for contempt of court (Article 219, CPP).

If a witness is unable to travel, they may be heard at their location (Article 220, CPP).

A relevant issue concerns experts and interpreters when called to testify as witnesses. Although not expressly mentioned in Law No. 9,807/1999, their inclusion seems entirely plausible given the valuable contribution they may provide in clarifying the facts. On this matter, José Carlos de Oliveira Robaldo asserts:

> *An extensive interpretation in such cases—especially regarding experts, interpreters, and law enforcement officers responsible for the investigation—seeks to prevent potential harm to the evidence, which may occur in practice due to serious threats or psychological coercion directed at these professionals*[20].

If the purpose is to protect witnesses, victims, and cooperating defendants from any form of threat or coercion that may affect the integrity of the evidentiary process, the inclusion of experts and interpreters within the scope of the law's protection appears to be both reasonable and essential.

A *cooperating defendant* is an individual who, when interrogated, makes a statement in court or before the police authority narrating the unlawful acts in which they participated and which are directly related to the facts under investigation.

A fundamental element of cooperation is the confession—whether full or partial—of the criminal offense. As a result, the cooperating defendant cannot be considered a witness with regard to the portion of their statement that constitutes the *plea bargain* or *delation*, since they do not take an oath to tell the truth. Accordingly, they cannot be prosecuted for perjury (*falso testemunho*), cannot be cross-examined, and cannot be listed as a witness by the parties[21].

The confession made by the cooperating defendant must be voluntary and supported by the evidentiary material contained in the case records.

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[20] ROBALDO, José Carlos de Oliveira, "Proteção a vítimas e testemunhas – Lei 9.807/99", *in* GOMES, Luiz Flávio, CUNHA, Rogério Sanches (Coord), *Legislação Criminal Especial: coleção ciências criminais*, 2 ed., São Paulo: Revista dos Tribunais, 2010, p. 986.

[21] BADARÓ, Gustavo Henrique, Op. Cit., p. 458.

The cooperating defendant is legally protected under Law No. 9,807/1999, which, already in its preamble, provides safeguards for defendants or convicts who voluntarily and effectively assist criminal investigations or prosecutions. Article 15 of the Law provides for special security measures and protection of their physical integrity, whether in custody or at liberty, in cases involving actual or potential threats or coercion.

In addition to victims, witnesses, and cooperating defendants, Article 2, § 1 of Law No. 9,807/1999 authorizes the extension of protective measures to spouses or partners, ascendants, descendants, and dependents who live regularly with the protected person, as specifically required in each case.

This provision is essential, as the target of threats or intimidation is often not the direct witness or victim, but rather their relatives or close associates.

Moreover, some protective measures impose drastic changes on the lives of those under threat. Therefore, it would be unreasonable to require the individual to abandon their immediate family or support network in order to benefit from the protection program.

3.2 Individuals Excluded from Protection

According to Article 2, § 2 of Law No. 9,807/1999, individuals are excluded from the protective framework provided by the statute if their personality or behavior is incompatible with the behavioral restrictions required by the program; if they are convicted persons currently serving a sentence; or if they are indicted or accused individuals held in pretrial detention, in any of its forms.

This exclusion is based on the fact that protective measures always impose restrictions on the full liberty of the protected person and may reach the highest degree of stringency—such as relocation, changes to civil identity, and a complete prohibition on communication with family and friends. In other words, if there are indications that the person applying for protection is unable or unwilling to comply with these requirements, inclusion in the program does not take place. Program administrators cannot be expected to assume the responsibility of protecting those who either refuse protection or are predisposed to violating its terms.

As for incarcerated individuals, their exclusion from the protection programs stems from the fact that security within the prison system is the responsibility of public safety agencies operating within correctional facilities. These agencies are tasked with safeguarding the physical integrity of individuals in custody.

A particular case arises with cooperating defendants who, as discussed earlier, may receive special safety measures and protection for their physical integrity in light of actual or potential threats or coercion, as provided in Article 15 of Law No. 9,807/1999, which will be further examined.

3.3 Institutional Competence and Criteria for Inclusion in the Protection Program

Although it concerns a matter related to criminal procedure—the protected hearing of victims, witnesses, and cooperating defendants—it must be clarified that, in Brazil, all programs covered by Law No. 9,807/1999 are implemented and managed by the Executive Branch at the federal, state, and Federal District levels.

Jurisdiction is determined by the subject matter: if the case falls within the federal sphere, it is the responsibility of the Union to include the individual in the protection program; if the case pertains to the State or the Federal District, the responsibility lies with those entities[22].

To carry out protection programs, Article 1, § 1 of Law No. 9,807/1999 authorizes the establishment of agreements, partnerships, or cooperative arrangements between governmental and/or non-governmental entities.

Given the importance of the testimony provided by the victim or witness for uncovering the truth within criminal proceedings—and the real possibility of interference, threats, or coercion—the State must act to ensure their effective protection.

However, certain conditions must be met for inclusion in the protective program: the severity of the coercion or threat; the difficulty of preventing harm through conventional means; and the importance of the testimony for evidentiary purposes (Article 2, caput, of Law No. 9,807/1999).

The coercion or threat must represent a real risk situation, effectively intimidating the individual to the point of preventing or hindering their testimony and thereby impairing the clarification of the crime. Generic claims of fear are insufficient; there must be concrete circumstances of physical or psychological constraint that instill fear regarding the act of testifying. The existence of danger may be evidenced by documents or by statements from the victim or other persons with knowledge of the threat or coercion.

Obviously, it is preferable to use other precautionary actions, rather than enrolling individuals in protection programs. These are referred to by the law as "conventional means." Among them are: the imposition of pretrial detention (whether in flagrante delicto, temporary, or preventive) of the individual making the threat or coercion (whether as perpetrator or accomplice); escorting the victim or witness under police protection to testify; conducting the hearing in the absence of the defendant (Articles 201, § 4 and 217 of the Code of Criminal Procedure); early deposition (Article 225 of the Code); restricting public access to judicial proceedings (Article 201, § 6 of the Code), among others.

In the case of women victims of domestic or family violence, the conventional means that may suffice to avoid recourse to the protection programs under Law No. 9,807/1999 include emergency protective measures imposed by a judge during the investigation or trial. These are provided in Articles 22 (which impose obligations on the aggressor) and Articles 23 and 24 (which provide assistance to the victim) of Law No. 11,340/2006 (Maria da Penha Law)[23].

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22 NUCCI, Guilherme de Souza, *Leis penais e processuais penais comentadas*, vol. I, São Paulo: Revista dos Tribunais, 2013, p. 544.

23 With regard to the emergency protective measures established by Law No. 11.340/2006 (Maria da Penha Law), see Article 22, which lists actions directed at the aggressor, such as removal from the home and prohibition of contact with the victim; Article 23, which provides for referring the victim to protection programs, relocation to her home, and other forms of assistance; and Article 24, which establishes measures for the protection of the woman's property in situations of domestic violence. The full text of these provisions is available at: <http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2006/lei/l11340.htm>. Accessed: 24 July 2025.

It should be emphasized that all the conventional measures mentioned above may be applied without the need to formally include the threatened person—along with all the resulting restrictions—in a protection program managed by the Executive Branch, which operates outside the scope of the Judiciary.

Before considering the activation of protection programs, it is reasonable to assess the relevance of the testimony. It may be deemed unnecessary if found to be of limited evidentiary value or irrelevant to the clarification of the criminal event[24]. If it is possible to form the judge's conviction through other means of proof without endangering lives, it would be unreasonable to insist on such testimony at the cost of subjecting individuals to severe restrictions on their freedom of movement, in addition to the potential psychological and social burdens. This is not to mention the considerable public expenditure required to sustain protection programs.

The conditions listed in the law are cumulative. The statute contains no language suggesting that the criteria may be applied alternatively. Thus, all conditions must be met jointly: the threat or coercion must be severe; conventional means must be insufficient to guarantee safety; and the testimony must be indispensable to clarifying the criminal act.

Inclusion in the protection program requires an express manifestation of will by the interested party or their legal representative, pursuant to Article 2, § 3 of Law No. 9,807/1999, since, upon admission, the individual becomes bound to comply with the imposed conditions.

As we shall see, the rules governing protection programs can be quite restrictive and may persist over an extended period. It is therefore necessary that the protected person be fully aware of the seriousness of the measures to be adopted, so that they may consent to them under penalty of exclusion from the program.

According to Article 3 of Law No. 9,807/1999, even when there is consent from the interested party, admission to or exclusion from the program must be preceded by consultation with the Public Prosecutor's Office regarding the prerequisites outlined in Article 2 and must be communicated to the competent police authority or judge.

Guilherme de Souza Nucci disagrees with the exclusivity granted to the Public Prosecutor's Office in assessing eligibility for admission, arguing that the police authority and the judge should also be consulted, given that the Public Prosecutor is already represented on the Deliberative Council of the protection programs[25].

We understand that the legislator's intention in assigning this initial review to the Public Prosecutor's Office is linked to its constitutional role as the holder of public criminal action, as established in Article 129, I of the Federal Constitution. This is particularly relevant for the most serious criminal offenses typified in criminal law--precisely those involving organized crime or violent criminality.

Accordingly, when presenting the initial accusatory petition, it is the responsibility of the Public Prosecutor to indicate the evidence they intend to produce during trial to support their request for conviction. Thus, the evaluation of

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24 NUCCI, Guilherme de Souza, Op. cit., p. 545.

25 NUCCI, Guilherme de Souza, Op. cit., p. 547.

the seriousness of the threats and the indispensability of the testimony lies with the Prosecutor at this initial stage. If it is determined that other evidence suffices to support the accusation, there will be no need to summon the threatened person to testify. Consequently, there will be no need for their inclusion in the protection program.

This reasoning also applies to threatened victims, as the Code of Criminal Procedure provides that their testimony shall be taken "whenever possible" (Article 201, caput). The Prosecutor may point out the impossibility of safely taking the victim's statement and the lack of necessity for their testimony considering other evidence in the case records. In this scenario, they may request the waiver of the deposition and, as a result, the victim's exclusion from the protection program.

Moreover, always considering the parameters set forth in Article 2 of Law No. 9,807/1999, the Prosecutor may, when filing the indictment, suggest other conventional means of protecting victims and witnesses without subjecting them to the formal constraints of protection programs.

To ensure success and effectiveness of the protection measures, confidentiality is essential. As provided in Article 2, § 5 of Law No. 9,807/1999, secrecy must be maintained by both the protected persons and the agents involved in the execution of the program[26].

For protection measures to be effective, confidentiality—as provided for in Article 2, § 5 of Law No. 9,807/1999—is essential and must be observed by both the beneficiaries and the implementing agents.

However, its application must respect the principle of the sharing of evidence (communion of proof) and the guarantee of full defense, ensuring that information produced under protection does not become the exclusive property of the prosecution.

The balance between protective secrecy and procedural transparency thus constitutes a requirement of legitimacy in criminal prosecution, especially in contexts of risk and intimidation.

3.4 Activation and Oversight Mechanisms of the Protection Programs

According to Article 5 of Law No. 9,807/1999, requests for inclusion in the protection program may be submitted to the Deliberative Council by: (a) the interested party themselves; (b) a representative of the Public Prosecutor's Office; (c) the police authority conducting the criminal investigation; (d) the judge responsible for conducting the criminal proceedings; or (e) public agencies and entities with a mandate to defend human rights.

It is rare for individuals themselves to directly contact the executive bodies of the protection programs. On the one hand, this is due to a general lack of awareness about this procedural route—unless the person has legal counsel who can provide

[26] BRAZIL. *Supreme Federal Court.* Habeas Corpus No. 90.321-SP, rapporteur: Judge Ellen Gracie, 2nd Panel, *Electronic Justice Gazette*, Sept. 26, 2008. The Court upheld the legitimacy of preserving the identity of a witness due to risks to their safety, allowing personal data to be recorded outside the case file with restricted access, in accordance with Law No. 9,807/99, considering the severity of the crimes charged against the defendant.

guidance. On the other hand, when threatened, victims usually seek help first at a police station, as it represents the most familiar and accessible path. In most cases, it is from such reports that the police authority initiates the request for inclusion.

Threats, moreover, may arise after testimony has been given at the police level, requiring the police authority, the Public Prosecutor's Office, or the judge—upon learning of the situation—to request that the Executive branch initiate the inclusion process.

The request must be accompanied by the personal details and background information of the individual to be protected, as well as data concerning the crime, the coercion or threat that gave rise to the request, and any other elements necessary to verify the legal prerequisites (Article 5, §1, of Law No. 9,807/1999). These details aim to assess the compatibility of the threatened person with the program's requirements. Where protection must be extended to relatives or dependents, corresponding information about them must also be provided.

Article 4 of Law No. 9,807/1999 establishes that each protection program shall be administered by a Deliberative Council composed of representatives from the Public Prosecutor's Office, the Judiciary, public security agencies, and human rights organizations. This provision applies to both the federal program and the state and district programs.

The Deliberative Council serves as the decision-making core of the system, entrusted not only with approving the inclusion and exclusion of beneficiaries (Article 6, I) but also with ensuring interinstitutional coordination among justice and security bodies and civil society entities engaged in human rights protection[27].

3.5 Applicable Protective Measures: Instruments and Limits of Protection

The protective measures established under Law No. 9,807/1999 constitute instruments designed to ensure the safety of beneficiaries and may be applied individually or cumulatively, depending on the seriousness of the threat, the profile of the persons to be protected, and their ability to comply with the restrictions imposed.

The list set forth in Article 7 is merely illustrative, allowing for other measures compatible with the purposes of the law. Among these, residential security stands out, which may include telecommunications monitoring. In this modality, the threatened victim or witness remains in their residence, which becomes subject to a security system through on-site surveillance or electronic monitoring. Control may extend to telephone, internet, and social media communications, and in extreme cases, may result in a total prohibition of communication.

As a logical consequence, escort and security during movements are also provided, whether for work or for giving testimony. Surveillance must be continuous, as any negligence may compromise not only the safety of the protected person but also that of the agents involved in implementing the measures[28].

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[27] SILVEIRA, José Braz da, *A proteção à testemunha e o crime organizado no Brasil,* 3 ed. Curitiba: Juruá, 2014, p. 79.

[28] SILVEIRA, José Braz da, Op. cit., p. 96.

Relocation is permitted, provided it is adequate to ensure protection. The new address remains confidential and is known only to the entity responsible for implementing and supervising the measure. The preservation of identity, image, and personal data may entail making public or private information inaccessible, thereby ensuring the anonymity of the protected person and their family members[29].

Financial assistance is provided when the beneficiary is unable to work, ensuring their subsistence and that of their family, within the limits set by the Deliberative Council. Temporary suspension of public servants' duties is also allowed, without loss of remuneration.

Social, medical, and psychological assistance assumes special relevance given the drastic changes imposed by inclusion in the program and must also extend to family members[30].

The confidentiality of actions taken under the protection regime is essential for the effective implementation of measures. This duty of secrecy applies to both the protected people and the agents involved in the program. Violations of confidentiality represent one of the most critical challenges to the effectiveness of protection programs, given that restrictions on communication and social interaction often become highly burdensome for those enrolled.

The executing body must adopt measures to ensure compliance with civil and administrative obligations without undue exposure of the protected person. In exceptional circumstances, the Deliberative Council may request that the competent judge authorize a change in the beneficiary's civil name (Article 9), a measure that may be extended to family members and reversed once the threat ceases.

The law also devotes a special chapter to the cooperating defendant (Article 15), guaranteeing protective measures within or outside prison, including separate custody, cell change, or transfer to another facility. Article 19 further authorizes the creation of exclusive detention centers for collaborators. Law No. 12,850/2013[31] reinforces this protection by providing, in Articles 5 and 6(V), for the extension of such measures to collaborators and their family members, as well as to undercover agents, who may have their identities changed under the terms of Article 9 of Law No. 9,807/1999.

As can be seen, protective measures, though indispensable for safeguarding life and physical integrity, impose severe restrictions on personal freedom and social

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29 BRAZIL. Superior Court of Justice (STJ). *Aggravated Appeal in Ordinary Habeas Corpus No. 152.215-CE*, rapporteur: Judge Reynaldo Soares da Fonseca, 5th Panel, Electronic Justice Gazette, Oct. 25, 2021. The STJ upheld the legitimacy of concealing the identity of a witness included in a protection program, in view of concrete threats stemming from crimes committed by a criminal organization. Pursuant to Article 7, IV, of Law No. 9,807/1999, the Court accepted the use of data confidentiality during the investigative phase, provided that the defense is granted access to the protected information during the trial hearing, thereby preserving the rights to adversarial proceedings and full defense.

30 ROBALDO, José Carlos de Oliveira, Op. cit., p. 995.

31 BRAZIL, *Law No. 12,850 of 2 August 2013*, defines criminal organization and provides for criminal investigation, the means of obtaining evidence, related penal offenses and criminal proceedings; amends Decree-Law No. 2,848 of 7 December 1940 (Penal Code); repeals Law No. 9,034 of 3 May 1995; and further provisions, available at <https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12850.htm>, accessed on 28.jul.2025.

interaction. Therefore, the beneficiary must be previously informed that their daily life, and often that of their family, will be profoundly altered. Simply being a witness to a crime, particularly when such crimes are committed by organized groups, may place the individual at risk of retaliation or intimidation[32]. And once they agree to enter the protection program, they will inevitably face limitations on their full freedom of movement and personal autonomy.

3.6 Judicial and Administrative Measures to Guarantee Protection: from Urgent to Structural Responses

Law No. 12,483/2011 added Article 19-A to Law No. 9,807/1999, establishing the priority processing of investigations and criminal proceedings involving victims, witnesses, or cooperating defendants under protection programs.

In addition, it imposed on the judge—regardless of the applicable criminal procedure—that after the defendant's summons, the deposition of protected individuals must be taken in advance. Any failure to do so, or any claim that such early testimony would prejudice the criminal investigation, must be duly justified by the judge.

This legal amendment responded to a recurring problem observed in complex criminal cases, whether due to the multiplicity of crimes or the large number of defendants: victims and witnesses under threat, already included in protection programs, were often forced to remain in such programs for unnecessarily long periods while waiting to testify. In several cases, the protection period expired before the deposition was collected.

In parallel, Article 5, §3 of Law No. 9,807/1999 provides that in exceptional circumstances—where urgency and imminent threat are present—the executing agency may provisionally place the victim or witness under police custody, prior to the decision of the deliberative council, with immediate notice to its members and to the Public Prosecutor's Office.

In such cases, it is recommended that the deliberative council convene an extraordinary session to decide whether to formally include the threatened individual in the protection program and to determine which protective measures should be adopted.

Moreover, when a case presented to the deliberative council reveals the need to impose precautionary measures directly or indirectly related to the effectiveness of the protection, a request may be addressed to the Public Prosecutor's Office to petition the judge during the investigation or trial phase (Article 8 of Law No. 9,807/1999).

There are restrictions that pertain to the person of the suspect or defendant that can only be imposed by judicial order, as required by the Federal Constitution (Article 5, item LXI). These include the issuance of temporary arrest warrants

[32] SILVEIRA, José Braz da. Op. cit., p. 142.

(Article 2 of Law No. 7,960/1989), pretrial detention (Articles 311 and 312 of the Code of Criminal Procedure), or house arrest (Article 317 of the Code of Criminal Procedure). Likewise, precautionary measures alternative to imprisonment are within the exclusive jurisdiction of the judiciary (Article 319 of the Code of Criminal Procedure).

It is also important to consider the full set of protective measures that may be urgently ordered by a judge to safeguard women victims of domestic or family violence, as provided in Articles 22, 23, and 24 of Law No. 11,340/2006, as previously mentioned.

All proposed measures must meet the general requirements of precaution, i.e., there must be sufficient evidence that a threat or coercion against the victim or witness is either ongoing or imminent, and that there is a concrete risk of its materialization[33].

It is possible that the mere application of conventional protective measures may be enough to deter the perpetrator of the threat, and the deliberative council must assess whether inclusion in the protection program—given the significant restrictions it entails—is necessary under the circumstances.

Once urgent issues have been addressed, it is the responsibility of the deliberative council to implement the necessary actions for the execution of the protection program. Decisions are made by an absolute majority of its members.

However, the implementation of protective measures is subject to budgetary availability, as is the case for all public expenditures, provided they are included in the previous annual budget of the Union, the States, or the Federal District.

Alexandre Miguel offers a critique, stating that it is unacceptable for urgent social situations requiring immediate protection of victims and witnesses to become formalized merely to remain shelved within bureaucratic procedures while awaiting future budget availability[34].

We partially agree with this critique. Budget forecasting is an essential component of public policy and, as such, must be planned and debated during the previous fiscal year. Nonetheless, even with such forecasting, based on current and past demand, it is not always possible to anticipate sudden surges in requests for protection. In such cases, the public administrator must either wait for the next budget cycle or proceed with budgetary reallocation to meet the new demand.

There is no impediment to more than one governmental body being responsible for the implementation of protective measures, with the specific distribution of duties depending on the legislative provisions set forth in the federal, state, and district-level programs.

It is also possible for state and federal programs to cooperate with each other in carrying out protective measures. For instance, a protected individual's relocation to a different state within the federation may be carried out with the support of the local protection program.

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33 ARRUDA, Eloisa de Sousa, LAPORTE, Brunna, MARTINS, Lisandra Moreira, ROSA, Moisés. *Código de Processo Penal comentado*, Coord. Denise Hammerschmidt, 3. ed. Curitiba: Juruá, 2023, pp. 809–810.

34 MIGUEL, Alexandre, Op. cit., pp. 425-443.

Once an individual is admitted into the program, the maximum duration of protection is two years, which may be extended to exceptional circumstances, provided the underlying threats remain (Article 11 of Law No. 9,807/1999). This possibility of extension is salutary, provided it is exercised reasonably. In other words, once members of the justice system become aware that individuals are included in protection programs, they must make every effort to investigate the facts and resolve the criminal case with a swift yet thorough decision on the merits.

3.7 Procedure for Exclusion from the Protection Program

The grounds for exclusion from the protection program are provided in Article 10 of Law No. 9,807/1999. The request may be submitted by the protected person themself or may result from a decision by the deliberative council due to the cessation of the circumstances that justified the protection, or because of conduct deemed incompatible with the program's rules.

There are cases in which the individual, unable to endure the constraints imposed by the protection program, requests to withdraw. This is a particularly sensitive situation, as withdrawal from the program extinguishes the executive body's responsibility to ensure that individual's safety. For this reason, the person must be thoroughly informed of the risks associated with their exclusion. The application of conventional protective measures, as referred to in item 6, may still be possible. However, such measures are limited to actions within the judicial and police spheres and do not encompass the full array of protections provided under the Law for the Protection of Threatened Victims and Witnesses.

Another possible ground for exclusion is the elimination of the risk factors that initially justified the protections such as the completion of a victim or witness's testimony with appropriate guarantees of confidentiality, thereby removing them from a high-risk situation. Likewise, the conclusion of the criminal proceedings with a final and unappealable sentence, whether acquittal or conviction, may warrant termination. The individual is admitted to the protection program for the purpose of giving testimony safely, whether during the investigation or the trial phase. Once this objective has been achieved, there is no justification for subjecting them to such stringent conditions.

More common, however, are exclusions due to behavior incompatible with the program. As previously mentioned, upon admission into the protection system, the individual commits to full compliance with the rules, under penalty of exclusion (Article 1, §4 of Law No. 9,807/1999).

Nevertheless, the burdens of daily restrictions can become exhausting and, at times, intolerable, leading to infractions of varying severity that may ultimately result in exclusion from the program.

It must be noted that, in today's world—where digital communication and social media are an integral part of global life—placing strict (often absolute) limitations on such tools for protected individuals makes noncompliance likely. This is particularly problematic when young people (whether the protected individual themselves or their family members) are involved, as such restrictions may prove especially challenging for them to follow. This is but one example of conduct that may result in exclusion from the program.

Upon the occurrence of behavior incompatible with protective measures, the implementing agency or operational entity must notify the program's managing council, which will assess the breach of commitment and decide whether the individual may remain in the program. The protected person may be granted another opportunity to remain, with reinforced instructions and warnings about the importance of compliance and the consequences of recurrence.

If the decision is for exclusion, it must be communicated to the competent judicial authority and the police.

Regardless of the ground for exclusion, it must be considered with the utmost caution, as it may result in the abandonment of individuals to their own fate. There is a precedent from the Inter-American Commission on Human Rights in which the Brazilian State was called upon to protect a threatened witness who had been prematurely removed from a protection program against their will[35].

4 PROTECTION IN NUMBERS: NATIONAL COVERAGE AND STRUCTURAL LIMITATIONS

Since the enactment of Law No. 9,807/1999, Brazil has had an essential state instrument to ensure the integrity of individuals exposed to risk for cooperating with criminal prosecution. By the end of the year 2000, the National Protection System was already responsible for the effective protection of 246 individuals across the country, with a total of 328 beneficiaries registered throughout that year[36]. In the following decades, the program consolidated itself as a fundamental pillar in combating macro-criminality, particularly organized crime. According to the most recent data released by the Ministry of Human Rights and Citizenship, as of July 2025, PROVITA had approximately 170 active cases, totaling around 510 protected individuals, a figure that includes both direct beneficiaries and their dependent family members[37]. Although there has not been exponential growth in the number of people assisted, the continuity and stability of this public policy attest to its structural relevance in strengthening the efficiency of the criminal justice system.

In addition to the Federal Program, the protection system is structured across 16 federative units with their own state programs — Acre, Amazonas, Bahia, Ceará, Espírito Santo, Maranhão, Mato Grosso, Minas Gerais, Pará, Paraná, Paraíba, Pernambuco, Rio de Janeiro, Rio Grande do Sul, São Paulo, and Santa Catarina. These states implement PROVITA either through agreements with the federal government or via autonomous state programs, ensuring more localized and context-sensitive operations.

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35 INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Resolution 89/2018 – Precautionary Measure No. 1358-18. Joana D'Arc Mendes regarding Brazil*, 7 December 2018. Available at: <https://www.oas.org/es/cidh/decisiones/pdf/2018/89-18MC1358-18-BR-pt.pdf>. Accessed on: 5 July 2025.

36 PUBLIC PROSECUTOR'S OFFICE OF THE STATE OF AMAZONAS, *National Protection System*, Manaus: MPAM, 2023. Available at: <https://www.mpam.mp.br/cnpcd-sp-1699343267/sistema-nacional-de-protecao. Accessed on: 24 July 2025.

37 BRAZIL, Ministry of Human Rights and Citizenship, *MDHC's Victim and Witness Protection Program assists 510 people nationwide*, Brasília: GOV.BR, 17 July 2025. Available at: <https://www.gov.br/mdh/pt-br/assuntos/noticias/2025/julho/provita-programa-de-protecao-a-testemunhas-de-crimes-do-mdhc-atende-510-pessoas-em-ambito-nacional>. Accessed on: 24 July 2025.

Conversely, 10 federative units still lack state programs and rely exclusively on the federal PROVITA management: Alagoas, Amapá, Goiás, Mato Grosso do Sul, Piauí, Rio Grande do Norte, Roraima, Rondônia, Sergipe, and Tocantins, as well as the Federal District[38].

This institutional gap represents a significant barrier to the effectiveness of the public policy, as states without their own structures remain dependent on centralized administration, which can lead to delays in response, reduced adaptability to local demands, and limited interinstitutional participation.

The absence of specific state programs in 10 federative units undermines the reach and sustainability of protection at the local level, weakening operational capacity in tackling macro-criminality—particularly in regional contexts marked by organized factions and persistent violence.

5 CONCLUSION

The analysis of Law No. 9,807/1999 confirmed the hypothesis that the institutional strengthening of the Program for the Protection of Threatened Victims and Witnesses is an indispensable condition for the efficiency of criminal proceedings. In a context marked by the expansion of organized crime and the intimidation of procedural actors, the existence of a structured state protection system proves essential to ensuring the safe production of evidence and safeguarding the physical and psychological integrity of victims, witnesses, and collaborators.

The findings demonstrated that, although the mechanisms of admission, permanence, and exclusion are delineated by law, operational, budgetary, and federative challenges continue to limit the full effectiveness of protective measures. The institutional experience observed during the administration of PROVITA-SP (2011–2014) empirically showed that procedural efficiency is not limited to procedural speed but depends on the state's ability to guarantee dignity and security to those who cooperate with justice.

It is therefore concluded that the consolidation of a permanent public protection policy requires interinstitutional strengthening, improvement of access criteria, expansion of resources, and greater federative integration. From a theoretical and normative perspective, it reaffirms the need to reconcile the rights of the accused with those of victims and witnesses, in order to promote a truly balanced, efficient, and human rights–oriented criminal justice process.

The analysis of Law No. 9,807/1999 demonstrates that the Witness and Victim Protection Program represents a significant advancement in the Brazilian legal framework by offering concrete mechanisms to safeguard the physical and psychological integrity of procedural subjects exposed to risks due to their cooperation with criminal prosecution. In the fight against organized crime, a phenomenon that often relies on the intimidation and silencing of witnesses, the existence of a structured state protection system directly contributes to the

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[38] BRAZIL, Ministry of Human Rights and Citizenship, *Federal Government allocates approximately BRL 27 million in 2024 to protection programs for threatened victims and witnesses*, Agência Gov, 11 April 2024. Available at: <https://agenciagov.ebc.com.br/noticias/202404/governo-federal-destina-em-2024-cerca-de-r-27-milhoes-para-programas-de-protecao-a-vitimas-e-testemunhas-ameacadas>. Accessed on: 24 July 2025.

effectiveness of criminal proceedings, enabling the secure production of evidence and the truthful clarification of facts.

The study further revealed that, although the mechanisms for admission, continued participation, and removal from the program are reasonably outlined in the legislation, operational and institutional challenges remain that hinder universal access and the full effectiveness of protective measures. Budget constraints, rigid eligibility criteria, lack of uniform implementation across federative entities, and the psychosocial impacts of the restrictions imposed on protected individuals are all factors that demand ongoing reassessment and improvement by the Brazilian State.

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