



MINISTÉRIO DA JUSTIÇA  
E SEGURANÇA PÚBLICA  
Assessoria Especial Internacional

# TRADUÇÃO DE LEGISLAÇÃO BRASILEIRA RELACIONADA À ÁREA DE JUSTIÇA E SEGURANÇA PÚBLICA PARA O INGLÊS E O ESPANHOL

**Lei nº 13.869, de 05 de setembro de 2019.**

Dispõe sobre os crimes de abuso de autoridade; altera a Lei nº 7.960, de 21 de dezembro de 1989, a Lei nº 9.296, de 24 de julho de 1996, a Lei nº 8.069, de 13 de julho de 1990, e a Lei nº 8.906, de 4 de julho de 1994; e revoga a Lei nº 4.898, de 9 de dezembro de 1965, e dispositivos do Decreto-Lei nº 2.848, de 7 de dezembro de 1940 (Código Penal).

VERSÃO EM INGLÊS



## Projeto da Assessoria Especial Internacional

Como forma de divulgar o arcabouço legislativo brasileiro a autoridades estrangeiras e a Organismos Internacionais e, ainda, de aprimorar a cooperação internacional, em diversas áreas, a Assessoria Especial Internacional do Ministério da Justiça e Segurança Pública desenvolveu projeto para a compilação e tradução<sup>1</sup>, para os idiomas inglês e espanhol, de parte das legislações brasileiras relacionadas às áreas de Justiça e Segurança Pública. A seleção das leis traduzidas ficou a cargo das áreas técnicas do Ministério, levando em consideração, igualmente, trabalhos já realizados por outros órgãos brasileiros, os quais serão disponibilizados como link externo no site da Assessoria Especial Internacional.



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<sup>1</sup>Traduções não juramentadas ou oficiais.

## LAW nº 13,869 OF SEPTEMBER 5<sup>th</sup>, 2019

[Veto message](#)

[Effectiveness](#)

[Enactment vetoed parts](#)

Provides for the crimes of abuse of authority; changes Law nº 7,960 of December 21<sup>st</sup>, 1989, Law nº 9,296 of July 24<sup>th</sup>, 1996, Law nº 8,069 of July 13<sup>th</sup>, 1990, and Law nº 8,906 of July 4<sup>th</sup>, 1994; and repeals Law nº 4,898 of December 9<sup>th</sup>, 1965, and provisions of Decree-Law nº 2,848 of December 7<sup>th</sup>, 1940 (Brazilian Criminal Code).

### **THE PRESIDENT OF BRAZIL**

Makes public that the National Congress decrees and I sanction the following Law:

#### **CHAPTER I**

##### **GENERAL PROVISIONS**

Art. 1. This law defines the crimes of abuse of authority, committed by public agent, servant or not, who, in the exercise of their functions or on the pretext of exercising them, abuse the power assigned to them.

Paragraph 1. The conducts described in this Law constitute crimes of abuse of authority when practiced by the agent with the specific purpose of harming another or benefiting him/herself or a third party, or for mere whim or personal satisfaction.

Paragraph 2. Divergence in the interpretation of law or in the evaluation of facts and evidence does not constitute abuse of authority.

#### **CHAPTER II**

##### **SUBJECTS OF THE CRIME**

Art. 2. The active subject of the crime of abuse of authority is any public agent, server or not, of the direct or indirect government, or foundational administration of any of the powers of the Union, States, the Federal District, Municipalities, and the territory, including, but not limited to:

I - public and military servants or persons equivalent to them;

II - members of the Legislative Branch;

III - members of the Executive Branch;

IV - members of the Judiciary Branch;

V - members of the Public Prosecutor's Office;

VI - members of the courts or audit boards.

Sole paragraph. For the purposes of this Law, a public agent is considered anyone who exercises, even if temporarily or without remuneration, by election, appointment, designation, hiring, or any other form of investiture or bond, mandate, position, employment, or function in an organ or entity covered by the head provision of this article.

## CHAPTER III

### CRIMINAL ACTION

Art. 3. The crimes provided for in this Law are of unconditional public criminal actions.

Paragraph 1. A private action shall be admitted if the public criminal action is not brought within the legal period. The Public Prosecutor's Office shall add the complaint, repudiate it, and offer a substitute complaint, intervene in all the terms of the procedure, provide evidence, interpose an appeal and, at all times, in the case of negligence of the plaintiff, resume the action as a primary party.

Paragraph 2. The subsidiary private action shall be exercised within 6 (six) months, counting from the date on which the deadline for offering the complaint expires.

## CHAPTER IV

### EFFECTS OF THE CONVICTION AND RESTRAIN OF RIGHTS PENALTIES

#### Section I

##### Effects of the Conviction

Art. 4. The following are effects of the conviction:

I - make certain the obligation to compensate the damage caused by the crime. The judge must, at the request of the offended, fix in the sentence the minimum amount for reparation of the damage caused by the offense, considering the damages suffered;

II - the incapacity for the exercise of office, mandate or public function, for the period of 1 (one) to 5 (five) years;

III - the loss of office, mandate, or civil service.

Sole paragraph. The effects provided for in items II and III of the head provision of this article are conditioned to the occurrence of recidivism in a crime of abuse of authority, are not automatic, and must be justifiably declared in the sentence.

## Section II

### Restrain of Rights Penalties

Art. 5. The restrain of rights penalties that substitute imprisonment provided for in this Law are:

I - provision of services to the community or to public entities;

II - suspension of the exercise of office, function, or mandate, for a period of 1 (one) to 6 (six) months, with the loss of salaries and benefits;

III - (VETOED);

Sole paragraph. Restrain of rights penalties may be applied autonomously or cumulatively.

## CHAPTER V

### SANCTIONS OF A CIVIL AND ADMINISTRATIVE NATURE

Art. 6. The penalties provided for in this Law shall be applied regardless of the applicable civil or administrative sanctions.

Sole paragraph. Reports of crimes provided for in this Law that describe functional failure shall be informed to the competent authority for investigation.

Art. 7. The civil and administrative liabilities are independent of the criminal liability, and one can no longer question the existence or authorship of the fact when these issues have been decided in the criminal court.

Art. 8. The criminal sentence that recognizes the act as practiced in a state of necessity, in self-defense, in strict compliance with legal duty, or in the regular exercise of law determines *res judicata* in civil law.

## CHAPTER VI

### CRIMES AND PENALTIES

Art. 9. Decree imprisonment measures in manifest nonconformity with the legal hypotheses:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.

Sole paragraph. The same penalty is incurred by the judicial authority, which, within a reasonable time, fails to:

I - relax the manifestly illegal imprisonment;

II - replace pre-trial imprisonment with a different precautionary measure or grant provisional release, when clearly applicable;

III - grant an injunction or order of **habeas corpus**, when manifestly applicable.’

Art. 10. Decree the manifestly inappropriate coercive conduct of a witness or investigated person, or without prior subpoena of attendance at court:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.

Art. 11. (VETOED).

Art. 12. Unjustifiably fail to report a *flagrante delicto* arrest to the judicial authority within the legal term:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

The same penalty is incurred by who:

I - fails to immediately communicate the execution of temporary or preventive imprisonment to the judicial authority that decreed it;

II - fails to immediately communicate the imprisonment of any person and where he/she is to his/her family or the person appointed by him/her;

III - fails to deliver to the prisoner, within 24 (twenty-four) hours, the notice of fault, signed by the authority, with the justification for the arrest and the names of the arrester and witnesses;

IV - prolongs the execution of an imprisonment sentence, temporary arrest, preventive detention, security measure, or internment, failing to execute the release order immediately after received or performing the release of the prisoner when the judicial or legal period has expired, without fair a justification.

Art. 13. Embarrass the prisoner or detainee, through violence, serious threat, or reduction of their capacity for resistance, to:

I - display oneself, body, or body part to public curiosity;

II - submit to vexatious situation or embarrassment not authorized by law;

III - produce evidence against oneself or against a third party:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine, without prejudice to the added penalty for violence.

Art. 14. (VETOED).

Art. 15. Compel to testify, under threat of imprisonment, a person who, by reason of function, ministry, trade, or profession, must keep a secret or preserve secrecy:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.

Sole paragraph. The same penalty is incurred by who proceeds with the interrogation:

I - of a person who has decided to exercise the right to silence; or

II - of a person who has chosen to be assisted by a lawyer or public defender, without the presence of his/her patron.

Art. 16. Fail to identify oneself or falsely identify oneself to the prisoner at the time of his/her arrest or when one should do so during his/her detention or imprisonment:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

Sole paragraph. The same penalty is incurred by whom, as the person responsible for the interrogation in the context of the criminal investigation procedure, fails to identify him/herself to the prisoner or attributes to him/herself a false identity, position, or function.

Art. 17. (VETOED).

Art. 18. Subject the prisoner to police interrogation during the period of night rest, unless caught in *flagrante delicto* or if he/she, properly assisted, consents to give statements:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

Art. 19. Unjustifiably prevent or delay the submission of a prisoner's case to the competent judicial authority for the assessment of the legality of his/her arrest or the circumstances of his/her custody:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.

Sole paragraph. The same penalty is incurred by the magistrate who, aware of the impediment or delay, fails to take the measures to remedy it or, being incompetent to decide on the arrest, fails to send the request to the judicial authority that is.

Art. 20. Prevent, without just cause, the personal and confidential interview of the prisoner with his/her lawyer:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

Sole paragraph. The same penalty is incurred by those who prevent the interview of the prisoner, released defendant, or person investigated with his/her lawyer or defender, for a reasonable time before the hearing, and to sit at his/her side and communicate with him/her during the hearing, except in the course of the interrogation or in the case of a hearing by video-conference.'

Art. 21. Keeping inmates of both sexes in the same cell or confinement space:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.



Sole paragraph. The same penalty is incurred if a child or adolescent is kept in the same cell in the company of an adult or in an inappropriate environment, subject to the provisions of [Law nº 8,069 of July 13<sup>th</sup>, 1990](#) (Statute of the Child and Adolescent).

Art. 22. Invade or enter, clandestinely or astutely, or in absentia of the will of the occupier, another's property or its dependencies, or remain in the same conditions, without judicial determination or outside the conditions established in law:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.

Paragraph 1. The same penalty is incurred, as provided for in the head provision of this article, by who:

I - coerces someone, through violence or serious threat, to release access to the property or its dependencies;

II - (VETOED);

III - fulfills a search and seizure warrant after 21:00pm (nine hours pm) or before 5:00 am (five hours am).

Paragraph 2. There shall be no crime if the entry occurs to provide relief, or when there are well-founded indications of the need for the entry because of a situation of *flagrante delicto* or disaster.

Art. 23. Artificially innovate, in the course of diligence, investigation, or procedure, the state of place, thing, or person, with the aim of exempting oneself from responsibility, criminally holding someone responsible, or aggravating his/her responsibility:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.

Sole paragraph. The same penalty is incurred by who practices the conduct with the aim of:

I - exempting oneself from civil or administrative liability for excess practiced in the course of due diligence;

II - omitting data or information or disclosing incomplete data or information to divert the course of the investigation, due diligence, or process.

Art. 24. Embarrass, under violence or serious threat, server or employee of public or private hospital institution to admit for treatment a person whose death has already occurred, to change the place or time of a crime, damaging its determination:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine, in addition to the the added penalty for violence.

Art. 25. Obtain evidence in an investigation or inspection procedure through manifestly unlawful means:



Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.

Sole paragraph. The same penalty is incurred by those who make use of the evidence, to the detriment of the investigated or monitored person, with prior knowledge of their wrongfulness.

Art. 26. (VETOED).

Art. 27. Request or initiate an investigative procedure of a criminal or administrative offense, to the detriment of someone, in the absence of any evidence of the commission of crime, functional illicit, or administrative offense: [\(See ADIN 6234\)](#) [\(See ADIN 6240\)](#)

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

Sole paragraph. There is no crime when it comes to duly justified syndication or summary preliminary investigation.

Art. 28. Disclose a recording or excerpt of a recording unrelated to the evidence that is intended to be produced, exposing the intimacy or private life or hurting the honor or image of the investigated or accused person:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.

Art. 29. Provide false information about judicial, police, fiscal, or administrative proceedings to harm the interest of the investigated: [\(See ADIN 6234\)](#) [\(See ADIN 6240\)](#)

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

Sole paragraph. (VETOED)

Art. 30. Initiate or proceed to criminal, civil, or administrative prosecution without just cause or against anyone who is knowingly innocent:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.

Art. 31. Unjustifiably extend the investigation, procrastinating it to the detriment of the investigated or monitored person: [\(See ADIN 6234\)](#) [\(See ADIN 6240\)](#)

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

Sole paragraph. The same penalty is incurred by those who, without a deadline for execution or completion of the procedure, unreasonably extends it, procrastinating it to the detriment of the investigated or monitored person.

Art. 32. Deny the interested party and his/her defender or lawyer access to the preliminary investigation records, the detailed term, the inquiry, or any other investigative procedure of criminal, civil, or administrative offense, as well as prevent the obtaining of copies, apart from access to documents relating to ongoing proceedings, or that indicate the performance of future proceedings, of which secrecy is essential:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

Art. 33. Demand information or compliance with an obligation, including a duty to do or not to do, without express legal support:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

Sole paragraph. The same penalty is incurred by anyone who uses a public office or function or invokes the condition of a public agent to exempt oneself from legal obligation or to obtain undue advantage or privilege.

Art. 34. (VETOED).

Art. 35. (VETOED).

Art. 36. Decree, in court proceedings, the unavailability of financial assets in an amount that exacerbates the estimated value for the satisfaction of the party's debt and, with the demonstration by the party of the excessiveness of the measure, fail to correct it:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.

Art. 37. Delay unjustifiably in the examination of the process of which it has required a view in a collegiate body, to procrastinate its progress or delay the trial:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

Art. 38. The person responsible for the investigations anticipate, through communication, including through social media, the attribution of guilt, before the findings are completed and the indictment is formalized:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

## CHAPTER VII

### PROCEDURE

Art. 39. The provisions of [Decree-Law nº 3,689 of October 3<sup>rd</sup>, 1941](#) (Brazilian Code of Criminal Procedure) and of [Law nº 9,099 of September 26<sup>th</sup>, 1995](#) apply to the prosecution and trial of the offences provided for in this Law.

## CHAPTER VIII

### FINAL PROVISIONS

Art. 40. Article 2 of [Law nº 7,960 of December 21<sup>st</sup>, 1989](#), comes into force with the following wording:

"Art. 2. ....

.....

[Paragraph 4-A.](#) The arrest warrant shall necessarily contain the period of duration of the temporary arrest established in the head provision of this article and the day on which the prisoner is to be released.

.....

[Paragraph 7.](#) Having elapsed the period contained in the arrest warrant, the authority responsible for the custody shall, regardless of a new order from the judicial authority, immediately release the prisoner, unless it has already been notified of the extension of the temporary arrest or the decree of the preventive arrest.

Paragraph 8. The day of the execution of the arrest warrant is included in the calculation of the term of temporary arrest.” (NR)

Art. 41. Article 10 of [Law nº 9,296 of July 24<sup>th</sup>, 1996](#), comes into force with the following wording:

["Art. 10.](#) It is a crime to intercept telephone, computer, or telematics communications, promote environmental listening, or break the secrecy of justice, without judicial authorization or with a purposes not authorized by law:

Penalty - imprisonment, from 2 (two) to 4 (four) years, and fine.

Sole paragraph. The same penalty is incurred by the judicial authority that determines the execution of conduct provided for in the head provision of this article with a purpose unauthorized in law.” (NR)

Art. 42. [Law nº 8,069 of July 13<sup>th</sup>, 1990](#) (Statute of the Child and Adolescent), comes into force added with the following article 227-A:

["Art. 227-A.](#) The effects of the conviction provided for in [item I of the head provision of article 92 of Decree-Law nº 2,848 of December 7<sup>th</sup>, 1940](#) (Brazilian Criminal Code), for the crimes provided for in this Law, committed by public servants with abuse of authority, are conditioned on the occurrence of recidivism.

Sole paragraph. The loss of office, mandate, or function, in this case, shall be regardless of the penalty applied in the recidivism.”

Art. 43. [Law nº 8,906 of July 4<sup>th</sup>, 1994](#), comes into force added of the following article 7-B:

['Art. 7-B.](#) It is a crime to violate the right or prerogative of a lawyer provided for in items II, III, IV, and V of the head provision of article 7 of this Law:

Penalty - imprisonment, from 3 (three) months to 1 (one) year, and fine.”

Art. 44. [Law nº 4,898 of December 9<sup>th</sup>, 1965](#), and [paragraph 2 of article 150](#), and [article 350, both of Decree-Law nº 2,848 of December 7<sup>th</sup>, 1940](#) (Brazilian Criminal Code), are repealed.

Art. 45. This Law comes into force after 120 (one hundred and twenty) days of its official publication.

Brasilia, September 5<sup>th</sup>, 2019; 198<sup>th</sup> of the Independence and 131<sup>st</sup> of the Republic.

JAIR MESSIAS BOLSONARO

*Sérgio Moro*

*Wagner de Campos Rosário*

*Jorge Antonio de Oliveira Francisco*

*André Luiz de Almeida Mendonça*

This text does not replace the one published in the Federal Gazette of 9.5.2019 - Extra edition-A and rectified on 9.18.2019

**Presidency of Brazil  
Secretary-General  
Chief of Staff for Legal Affairs**

**LAW nº 13,869 OF SEPTEMBER 5<sup>th</sup>, 2019**

Provides for the crimes of abuse of authority; changes Law nº 7,960 of December 21<sup>st</sup>, 1989, Law nº 9,296 of July 24<sup>th</sup>, 1996, Law nº 8,069 of July 13<sup>th</sup>, 1990, and Law nº 8,906 of July 4<sup>th</sup>, 1994; and repeals Law nº 4,898 of December 9<sup>th</sup>, 1965, and provisions of Decree-Law nº 2,848 of December 7<sup>th</sup>, 1940 (Brazilian Criminal Code).

**The PRESIDENT OF BRAZIL** makes public that the National Congress decrees and I enact, under the terms of paragraph 5 of article 66 of the Federal Constitution, the following vetoed parts of Law nº 13,869 of September 5<sup>th</sup>, 2019:

**"CHAPTER III  
CRIMINAL ACTION**

Art. 3. The crimes provided for in this Law are of unconditional public criminal actions.

Paragraph 1. A private action shall be admitted if the public criminal action is not brought within the legal period. The Public Prosecutor's Office shall add the complaint, repudiate it, and offer a substitute complaint, intervene in all the terms of the procedure, provide evidence, interpose an appeal and, at all times, in the case of negligence of the plaintiff, resume the action as a primary party.

Paragraph 2. The subsidiary private action shall be exercised within 6 (six) months, counting from the date on which the deadline for offering the complaint expires."

"CHAPTER VI  
CRIMES AND PENALTIES

['Art. 9.](#) Decree imprisonment measures in manifest nonconformity with the legal hypotheses:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.

Sole paragraph. The same penalty is incurred by the judicial authority which, within a reasonable time, fails to:

I - relax the manifestly illegal imprisonment;

II - replace pre-trial imprisonment with a different precautionary measure or grant provisional release, when clearly applicable;

III - grant an injunction or order of **habeas corpus**, when manifestly applicable.'

'Art. 13. Embarrass the prisoner or detainee, through violence, serious threat, or reduction of their capacity for resistance, to:

.....

[III](#) - produce evidence against oneself or against a third party:

.....'

'Art. 15. Compel to testify, under threat of imprisonment, a person who, by reason of function, ministry, trade, or profession, must keep a secret or preserve secrecy:

.....

[Sole paragraph.](#) The same penalty is incurred by who proceeds with the interrogation:

I - of a person who has decided to exercise the right to silence; or

II - of a person who has chosen to be assisted by a lawyer or public defender, without the presence of his/her patron.'

['Art. 16.](#) Fail to identify oneself or falsely identify oneself to the prisoner at the time of his/her arrest or when one should do so during his/her detention or imprisonment:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

Sole paragraph. The same penalty is incurred by whom, as the person responsible for the interrogation in the context of the criminal investigation procedure, fails to identify him/herself to the prisoner or attributes to him/herself a false identity, position, or function.'

'[Art. 20](#). Prevent, without just cause, the personal and confidential interview of the prisoner with his/her lawyer:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

Sole paragraph. The same penalty is incurred by those who prevent the interview of the prisoner, released defendant, or person investigated with his/her lawyer or defender, for a reasonable time before the hearing, and to sit at his/her side and communicate with him/her during the hearing, except in the course of the interrogation or in the case of a hearing by video-conference.'

'[Art. 30](#). Initiate or proceed to criminal, civil, or administrative prosecution without just cause or against anyone who is knowingly innocent:

Penalty - imprisonment, from 1 (one) to 4 (four) years, and fine.'

'[Art. 32](#). Deny the interested party and his/her defender or lawyer access to the preliminary investigation records, the detailed term, the inquiry, or any other investigative procedure of criminal, civil, or administrative offense, as well as prevent the obtaining of copies, apart from access to documents relating to ongoing proceedings, or that indicate the performance of future proceedings, of which secrecy is essential:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.'

'[Art. 38](#). The person responsible for the investigations anticipate, through communication, including through social media, the attribution of guilt, before the findings are completed and the indictment is formalized:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.'"

## "CHAPTER VIII FINAL PROVISIONS

.....  
[Art. 43. Law nº 8,906 of July 4<sup>th</sup>, 1994](#), comes into force added of the following article 7-B:

'Art. 7-B. It is a crime to violate the right or prerogative of a lawyer provided for in items II, III, IV, and V of the head provision of article 7 of this Law:

Penalty - imprisonment, from 3 (three) months to 1 (one) year, and fine.'"

Brasilia, September 27<sup>th</sup>, 2019; 198<sup>th</sup> of the Independence and 131<sup>st</sup> of the Republic.

JAIR MESSIAS BOLSONARO

This text does not replace the one published in the Federal Gazette of 9.27.2019 - Extra edition – A

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