

Compendium of International and National Legal Frameworks on Domestic Violence

Volume IV of V — Countries R to Z

FIRST EDITION, JANUARY 2019



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Volume IV of V — Countries R to Z

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The Compendium is a working document intended as a reference tool for anyone interested in the topic of Domestic Violence (development practitioners, lawyers, community leaders, academics, researchers, students, etc.). It does not constitute an exhaustive treatment of the legal framework on Domestic Violence and may be updated from time to time.

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DOMESTIC VIOLENCE

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Volume IV of V

This compendium on domestic violence is divided in five volumes. Each volume should be observed as a part of the whole.

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FOREWORD

It is undisputed that domestic violence against women and girls remains one of the most extreme forms of gender inequality, a violation of human rights, and a development issue. Domestic violence against women and girls takes many forms, including physical, sexual, emotional, and economic. As a result, women and girls' lives are endangered with negative consequences not only for them, but also for their households, their communities, and society as a whole. It is an epidemic that leads to girls dropping out of school and affects women's ability to acquire more and better jobs; it increases absenteeism at work and limits mobility that hinder productivity and earnings. Altogether, domestic violence impedes women and girls from thriving, and takes away their voice, agency, rights and opportunities. This in turn affects every country's growth and development.

The international community recognizes that domestic violence is an important development challenge, and strides have been made to support countries in acquiring the tools and resources needed to end it along with other forms of discriminatory practices. Twenty-five years ago, the United Nations Declaration on the Elimination of Violence Against Women first called upon States to adopt legislation which prohibits domestic violence and to provide legal protection to end all forms of violence and harmful practices against women and girls in public and private spheres. More recent efforts have called for stronger action to address the underlying structural causes that increase the risks of domestic violence.

The share of countries with laws on domestic violence increased from 70.9 percent to 75.9 percent thanks to legal reforms in seven countries over the last four years, but more remains to be done, as 49 countries still do not have specific laws against domestic violence. Laws are an important step that countries can and should take towards ending violence against women and girls. We must support and strengthen the tools and means to end domestic violence everywhere.

I am pleased to share the following Compendium of International and National Legal Frameworks on Domestic Violence. In it you will find international and regional instruments that address domestic violence, and national legislations adopted to prevent and prosecute such crimes. This is a practical online legal tool to empower those fighting domestic violence and help shape change for the elimination of domestic violence.

We hope this responds to the needs of all persons and professionals interested in this subject as well as those who work with and support women and girls affected or at risk.

Sandie Okoro
Senior Vice President and General Counsel
World Bank Group

INTRODUCTION, DISCLAIMER AND LIMITATIONS

Domestic Violence (DV) is a universal phenomenon that affects millions of women of all social strata worldwide. It is the most pervasive, common, underrecognized, underestimated and underreported type of violence against women. It reflects discriminatory social norms, stereotypes, impunity and gender inequality. It is all too often considered as a “private, family issue”, widely accepted and minimized although it impairs the full enjoyment of life and fundamental rights and freedoms by victims and survivors who are overwhelmingly women.

Domestic Violence (DV) is a development challenge and has a high economic and social cost, including health and medical costs, death, suicide, depression, lost productivity, lost income, , psychological consequences and trauma, increased stress, reactive violence, reduced ability to study or find and hold a job, judicial and prison costs, economic insecurity and abuse, debt, housing instability, homelessness, *inter alia*¹. Beyond data and statistics, DV undermines autonomy and represents an enormous loss in terms of wellbeing not only for the women affected but also for the men who share their lives, for their children, their families and their societies.

The Compendium on International and National Legal Frameworks on Domestic Violence (the “Compendium”) provides a survey of the key international and regional instruments as well as national legislation as they relate to domestic violence.

In this Compendium, DV is understood and defined as gender-specific violence, commonly directed against women, occurring in the family and in interpersonal intimate relationships², and can encompass different types of abuse. As such, it includes legislation addressing DV as any type of violence (physical, sexual, psychological/emotional or financial/economic) committed by an intimate partner or family member. A number of countries have adopted legislation on DV against women specifically while others have not defined the gender of the victim or survivor.

The Compendium is a working document intended as a reference tool for anyone interested in the topic of DV – survivors, advocates, development practitioners, lawyers, policy makers, academics, among others. It does not constitute an exhaustive treatment of the legal framework on DV and may be updated from time to time.

The Compendium consists of topical chapters with jump links to source documents, such as United Nations conventions, regional treaties, and national legislations³. It is based on information available online, offline or both, and relies on research conducted, verified and

¹ Some research shows that DV costs USD 460 billion each year in the USA and USD 4.3 trillion internationally.

https://www.washingtonpost.com/opinions/the-cost-of-domestic-violence-is-astonishing/2018/02/22/f8c9a88a-0cf5-11e8-8b0d-891602206fb7_story.html?noredirect=on&utm_term=.00059cae58fd;

² Based on several United Nations documents, including the United Nations General Assembly, Declaration on the Elimination of Violence against Women, December 20, 1993; United Nations Economic and Social Council 1996; UNHCR 2005; United Nations 2010.

³ Jump links are in bold colored font and can be accessed by clicking on the link which will take the reader to the source document.

updated as of December 2018⁴. The hyperlinked references are not under the control of the World Bank, nor is the World Bank responsible for the accuracy of the content provided through these references. The content of the Compendium does not necessarily reflect the views of the World Bank, its Board of Executive Directors, or the governments they represent. Furthermore, the World Bank does not guarantee the accuracy of the data included in this work.

The research on country-level DV legislation builds on the *Women Business and the Law*⁵ database and includes additional legislation found during the course and time-frame for compiling the research. The Compendium is limited to countries that have adopted specific laws or provisions addressing DV⁶ and includes legislation from almost 160 countries; as such, the absence of a country's name may be due to the fact that no DV legislation has yet been enacted or that no information was available online⁷.

Ending all forms of gender-based violence, including domestic violence, is a critical development objective and comprehensive legislation addressing DV is a key first step towards ensuring prevention and protection. It is also a *sine qua non* condition for any effective strategy to address the problem. Nonetheless, many countries worldwide have yet to adopt laws against DV, while many others have adopted legislation that fails to comprehensively offer protection for the different types of survivors and against the different forms of abuse.

We hope the Compendium will contribute to this urgent and important debate.

Isabella Micali Drossos
Maya Goldstein-Bolocan
Paula Tavares

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⁴ Because it was developed primarily based on information publicly available online, the Compendium includes references to more than several hundred URLs and links to available treaties, laws and electronically published documents. All referenced URLs and links were verified and active at the time they were inserted. There is no guarantee as to their future accessibility nor as to the continued accuracy of the information contained therein after the last date on which they were last accessed and verified.

⁵ See more at <http://wbl.worldbank.org/en/data/exploretopics/protecting-women-from-violence>

⁶ Specific provisions addressing DV may include those in domestic violence laws, criminal codes, or laws on gender-based violence or violence against women more generally, provided they address violence or abuse between spouses, within the family or members of the same household, or in interpersonal relationships, including intimate partner violence.

⁷ When legislative information was not available online but was found by the team of authors, these have been attached as annexes to the Compendium.

VOLUME IV

1. ROMANIA

[Law on Preventing and Combating Domestic Violence, 2003 \(As amended\)](#)⁸

CHAPTER I: General provisions

Article 1

(1) Protecting and supporting the family, developing and strengthening family solidarity, based on friendship, affection and the moral and material support of family members is an objective of national interest.

(2) Preventing and combating domestic violence are part of the integrated family protection and support policy is an important public health issue.

(3) The Romanian State, through its competent authorities, develops and implements policies and programs aimed at preventing and combating domestic violence and protecting victims of domestic violence.

Article 2

The protection and promotion of the rights of victims of domestic violence is carried out in accordance with the following principles:

- a) the principle of legality;
- b) the principle of respecting human dignity;
- c) the principle of preventing the commission of acts of domestic violence;
- d) the principle of celerity;
- e) partnership principle;
- f) the principle of equal opportunities and treatment.

Article 3

(1) Within the meaning of this law, domestic violence is any intentional act or omission, with the exception of actions self-defense or defense, manifested physically or verbally, committed by a family member against another a member of the same family who causes or can cause physical, psychological, sexual, emotional or psychological, including the threat of such acts, coercion or arbitrary deprivation of liberty.

(2) It also constitutes domestic violence preventing women from exercising their rights and freedoms fundamental.

Article 4

Domestic violence is manifested in the following forms:

- a) verbal violence - blatant, such as the use of insults, threats, words and degrading or humiliating expressions;
- b) psychological violence - the imposition of will or personal control, the provocation of tension and suffering psychological in any way and by any means, demonstrative violence on objects and animals through threats verbal, ostentatious weapons display, neglect, control of personal life, acts of jealousy, constraints of any kind, as well as other actions with similar effect;
- c) physical violence - bodily injury or health by striking, stinging, slashing, pulling hair, punching, cutting, burning, strangulation, biting, in any form and intensity, including masked as a result of accidents, poisoning, intoxication, and other actions of similar effect;
- d) sexual violence - sexual assault, degrading acts, harassment, intimidation, manipulation, brutality in view of forced sexual relations, conjugal rape;
- e) economic violence - prohibition of professional activity, deprivation of economic means, including lack of means of primary life, such as food, medicines, essential necessities, deliberate action of the person's property, forbidding the right to possess, use and dispose of common goods, unfair common goods and resources, the refusal to support the family, the imposition of heavy and harmful work to the detriment of health, including a minor family member, as well as other actions having a similar effect;
- f) social violence - imposing the isolation of family, community and friends, banning attendance education institution, imposing isolation by detention, including family housing, intentional information, as well as other actions with similar effect;

⁸ Law on Preventing and Combating Domestic Violence (LEGE nr. 217 din 22 mai 2003 pentru prevenirea și combaterea violenței în familie), Law No. 217 (22 May 2003) published in the Official Gazette of Romania, Part I, no. 367 of May 29, 2003; Republished under the provisions of Art. 248 of Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code, published in the Official Gazette of Romania, Part I, no. 757 of 12 November 2012 and rectified in Official Gazette of Romania, Part I, no. 117 of 1 March 2013, with subsequent amendments, giving the texts a new numbering. Available at <http://www.ciasdumitrualexe.ro/data/documents/legea-217-2003-privind-prevenirea-violentei-in-familie.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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g) spiritual violence - underestimating or diminishing the importance of meeting moral-spiritual needs through prohibition, limitation, ridicule, penalization of the aspirations of family members, access to cultural, ethnic, linguistic or religious beliefs, imposing unacceptable adherence to unacceptable religious and religious beliefs and practices, as well as other actions having similar effects or similar repercussions.

Article 5

For the purposes of this law, a family member means:

- a) ascendants and descendants, brothers and sisters, their children, as well as persons who have been adopted by adoption, according to the law, such relatives;
- b) spouse and / or former spouse / ex-wife;
- c) persons who have established relationships similar to those of the spouses or between parents and children in the cohabit;
- d) the guardian or other person exercising in fact or in law the rights to the child's child;
- e) the legal representative or other person who cares for the person with mental illness, intellectual disability or disability physically, except for those who carry out these duties in the exercise of their professional duties.

Article 6

The victim of domestic violence is entitled:

- a) respecting his personality, his dignity and his private life;
- b) information on the exercise of its rights;
- c) special protection, appropriate to his / her situation and needs;
- d) to counseling, rehabilitation, social reintegration, as well as to free medical care, under the terms of this law;
- e) free counseling and legal assistance, according to the law.

Article 7

(1) The central and local public administration authorities are obliged to take the necessary measures for the prevention of violence in family and for the prevention of repeated violations of the fundamental rights of victims of violence in family.

(2) The central and local public administration authorities are obliged to ensure the exercise of the right to information of victims of domestic violence, according to their competencies, as appropriate, on:

- (a) non - governmental institutions and organizations providing psychological counseling or any other forms of assistance; and protection of the victim, according to his / her needs;
- b) the criminal investigation body to which they may lodge a complaint;
- c) the right to legal assistance and the institution where they can address the exercise of this right;
- d) conditions and procedure for granting free legal aid;
- e) the procedural rights of the injured person, the injured party and the civil party;
- f) conditions and procedure for the granting of financial compensation by the state, according to the law.

CHAPTER II: Institutions with responsibilities in the prevention and combating of domestic violence

Article 8

(1) The ministries and other central specialized bodies of the public administration, through their territorial structures, designates the staff with tasks in the field of preventing and combating domestic violence.

(2) Ministries and other central specialized bodies of public administration, public administration authorities, non-governmental organizations and other representatives of civil society will conduct, separately or as cooperation, prevention and combating domestic violence.

(3) The Ministry of Labor, Family, Social Protection and the Elderly is the central public authority develops social assistance policy and promotes the rights of victims of domestic violence.

(3)(1) The Department for Equal Opportunities for Women and Men, specialized body of public administration central, legal personality, subordinated to the Ministry of Labor, Family, Social Protection and the Elderly, exercises the functions of strategy, regulation, representation and state authority in the field of domestic violence, with attributions in the elaboration, coordination and implementation of government strategies and policies in the field of domestic violence.

(on 01-Feb-2015, Article 8, paragraph (3) of Chapter II, supplemented by Article I, paragraph 1 of Ordinance 6/2015)

(4) The Ministry of Labor, Family, Social Protection and the Elderly, through its specialized structures at the level centrally and territorially, develops and applies special measures to integrate victims of domestic violence into the labor market.

(5) Ministries and other central specialized bodies of public administration have the responsibility to develop a strategies at national level for preventing and combating the phenomenon of domestic violence, including a mechanism internal coordination and monitoring of the activities undertaken, approved by Government Decision⁹, at the proposal of the Ministry of Labor, Family, Social Protection and the Elderly, the Ministry of Internal Affairs and The Ministry of Regional Development and Public Administration.

Article 9

⁹See Government Decision no. 1.156 / 2012 approving the National Strategy for Prevention and Prevention combating the phenomenon of domestic violence for the period 2013-2017 and the Operational Plan for Implementation, the National Strategy for Preventing and Combating Domestic Violence for the Period 2013-2017, published in the Official Gazette of Romania, Part I, no. 819 of 6 December 2012.

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The Ministry of Health, together with the Ministry of Internal Affairs and the Ministry of Regional Development and Administration Public, develops and disseminates documentary material on the causes and consequences of domestic violence.

Article 10

The Ministry of National Education, with the support of the other ministries involved and in collaboration with the organizations non - governmental organizations active in the field, educational programs for parents and children, in order to prevent violence in Moldova family.

Article 11

Probation service in the tribunal, in collaboration with non-governmental organizations that carry out activities in the field or with the specialists, will carry out activities of social reinsertion of criminals convicted for domestic violence offenses.

Article 12

The authorities referred to in art. 8 ensures the continuous training and improvement of the designated persons with attributions in the field of prevention and combating domestic violence.

Article 13

(1) The local public administration authorities are obliged to take the following specific measures:

- a) include the issue of preventing and combating domestic violence in regional development strategies and programs, county and local authorities;
- b) to provide logistical, informational and material support to the departments responsible for prevention and combating domestic violence;
- c) establish, directly or in partnership, units to prevent and combat domestic violence and to support their operation;
- d) develop programs to prevent and combat domestic violence;
- e) to support the access of family aggressors to psychological counseling, psychotherapy, psychiatric treatment, detoxification and alcoholism;
- f) to develop and implement projects in the field of preventing and combating domestic violence;
- g) to provide in the annual budget for the support of social services and other social assistance measures for preventing and combating domestic violence;
- h) to bear, from the local budget, in serious social cases, expenditure on the preparation of legal acts, as well as for obtaining forensic certificates for victims of domestic violence;
- i) to collaborate in the implementation of a system for registering, reporting and managing cases of violence in the family.

(2) The local public administration authorities shall designate the specialized personnel to implement the recording, reporting and managing cases of domestic violence.

(3) Town halls and local councils will work with cult organizations, non-governmental organizations, as well as with any other legal and physical persons involved in charity, providing them with the necessary support for their fulfillment of the obligations stipulated in paragraph (1) and (2).

(4) At the level of the counties and sectors of the Bucharest municipality, besides the General Directorates of Assistance social and child protection of the county / Bucharest sector, the intersectoral team in the field of prevention and combating family violence, with advisory role.

(5) The intersectoral team has in its composition one representative of the police, the gendarmerie, the health directorate the Department of Family Violence within the Directorate-General for Social Assistance and Child the units for the prevention and combating of domestic violence, as well as of the non - governmental organizations active in field.

(6) The inter-sectoral team may be, but is not limited to, the representatives of the probation services, of the units of legal medicine, as well as of other institutions with attributions in the field.

(7) The intersectoral team proposes measures to improve the activity in the field, ensure cooperation between the institutions provided in paragraph (5) and (6) and shall evaluate the activity in the field on a yearly basis.

(8) The establishment and the way of their organization and operation are approved by a decision of the county council, respectively of the local councils of the sectors of Bucharest.

Article 14

Persons designated by public authorities to investigate cases of domestic violence will have the following main attributions:

- a) to monitor cases of domestic violence in the sector or unit served; collecting information on them; compiling a separate record; Ensuring access to information at the request of the judicial authorities and parties or their representatives;
- b) informing and supporting police workers who encounter situations of domestic violence in their specific activities;
- c) identifying the risk situations for the parties involved in the conflict and directing them to specialized services;
- d) cooperation with local child protection institutions and reporting of cases, in accordance with the legislation in force;
- e) advising parties in conflict for mediation;
- f) requesting information on the outcome of mediation;
- g) handling the case together with the social worker.

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Article 15

- (1) The units for preventing and combating domestic violence are:
- a) Emergency reception centers;
 - b) Recovery centers for victims of domestic violence;
 - c) assistance centers for aggressors;
 - d) Centers for the prevention and combating of domestic violence;
 - e) Centers for information and public awareness services.
- (2) Units for the prevention and combating of domestic violence offer free social services to the victims violence in the family.

Article 16

- (1) Units for the prevention and combating of domestic violence may be public, private or in public-private partnerships.
- (2) Units for preventing and combating domestic violence may be set up only by service providers social, accredited under the law.
- (3) The establishment, organization and functioning of the units for the prevention and combating of domestic violence are approved by the decisions of the county councils or, as the case may be, of the local councils, respectively of the Bucharest General Council of Bucharest.
- (4) The financing of the public units for the prevention and combating of domestic violence is provided by the local budgets.
- (5) In the case of units for the prevention and combating of domestic violence, the use of the amounts allocated from the budget state or, as the case may be, from local budgets is subject to the control of the bodies authorized by law.
- (6) The institution that provided the financing or subsidy of the units for preventing and combating domestic violence, public, private and public-private partnerships, monitors the use of assigned funds.
- (7) Assisting or, as the case may be, hosting the victims, respectively assisting the aggressors in the units provided by art. 15 par. (1) lit. a) -c) is made on the basis of the conclusion of a social service contract. For minors the contract of the provision of social services is signed by the accompanying parent or, as the case may be, by the legal representative.

Article 17

- (1) Emergency reception centers, hereinafter referred to as shelters, are social assistance units, with or without legal personality, of a residential type, providing protection, hosting, care and counseling to victims of violence in family.
- (2) The shelters provide free of charge, for a determined period of time, family assistance to both the victim and minors in care, protection against the aggressor, health care and care, food, accommodation, psychological counseling and legal advice, according to the organizational and operational instructions developed by the authority.
- (3) The reception of the victims in the shelter shall be done only in case of emergency or with the written approval of the director of the directorate general social assistance and child protection, when the isolation of the aggressor victim is imposed as a measure protection. Persons who have committed the act of aggression are forbidden access to the shelter where they are found victims.
- (4) The location of shelters is secret to the general public.
- (5) The isolation of victims of aggression is done with their consent or, as the case may be, with the legal representative.
- (6) All shelters must conclude a collaboration agreement with a hospital or other health facility, provide medical and psychiatric care. The convention is concluded by the local councils, respectively by the councils Bucharest, or, as the case may be, by the County Councils, as well as by the accredited private social service providers.

Article 18

- (1) Recovery centers for victims of domestic violence are social housing units of a residential type, with or without legal personality, which ensures accommodation, care, legal and psychological counseling, support for adaptation to an active life, the professional insertion of victims of domestic violence, as well as the rehabilitation and social reintegration of them.
- (2) Recovery centers for victims of domestic violence will conclude agreements with employment authorities the county labor force and the sectors of the Bucharest Municipality in order to provide the support for the integration in work, rehabilitation and retraining of assisted persons.
- (3) The provisions of art. 17 par. (5) and (6) shall apply accordingly.

Article 19

- (1) Assistance centers for aggressors are social assistance units operating as day centers with or without legal personality, which ensures their rehabilitation and social reintegration, educational measures, as well as family counseling and mediation services.
- (2) The psychiatric, de-alcoholic and detoxication treatments provided by the assistance centers aggressors shall be provided in the hospitals or sanitary establishments with which conventions have been concluded, under the conditions provided in art. 17 par. (6).

Article 20

Centers for the prevention and combating of domestic violence are day-care social welfare units, with or without legal personality, providing social assistance, psychological counseling, legal advice as well as information and guidance victims of domestic violence.

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Article 21

Centers for information and public awareness services are social care units, legal or not legal personality, providing information and education services, social assistance and an emergency telephone service for information and advice.

Article 22

- (1) Persons convicted for domestic violence offenses are obliged to participate in special programs of counseling and social reinsertion organized by the institutions responsible for the execution of the punishment to find out.
- (2) Cases of domestic violence may be subject to mediation at the request of the parties, in accordance with the law.

CHAPTER IV: Protection Order

Article 23

(1) A person whose life, physical or mental integrity or freedom is endangered by an act of violence a member of the family may request the court to issue an order for the purpose of removing the state of danger protection, by which, provisionally, one or more of the following measures - obligations or prohibitions:

- a) Temporary evacuation of the aggressor from the family home, regardless of whether he is the owner of the property right;
- b) reintegration of the victim and, where appropriate, of the children into the family home;
- c) limiting the aggressor's right to use only on part of the common dwelling when it can be so shared that the abuser does not come into contact with the victim;
- d) Oblige the aggressor to maintain a minimum distance to the victim, to his or her children his or her relatives or the place of work, or the educational establishment of the protected person;
- e) prohibition for the aggressor to move to certain designated localities or areas protected by the protected person attend or visit them periodically;
- f) prohibiting any contact, including by telephone, by correspondence or in any other way, with the victim;
- g) obliging the aggressor to surrender the weapons to the police;
- h) entrustment of minors or establishment of their residence.

(2) By the same decision, the court may also order the aggressor to bear the rent and / or maintenance for the temporary home where the victim, minor children or other family members live or will live due to the impossibility of staying in the family home.

(3) In addition to any of the measures ordered pursuant to paragraph (1), the court may also order the aggressor to follow psychological counseling, psychotherapy, or may recommend taking control measures, performing a treatment or of some forms of care, especially for detoxification purposes.

Article 24

(1) The duration of the measures ordered by the protection order shall be determined by the judge, not exceeding 6 months from the date issuing the order.

Where the decision does not contain any indication as to the duration of the measures ordered, they shall take effect for a period of 6 months from the date of issue of the order.

Article 25

(1) The request for the issuing of the protection order is within the competence of the court of the territorial jurisdiction in which it has its domicile or residence of the victim.

(2) The request for the issuing of the order may be filed by the victim personally or by a legal representative.

(3) The application may be filed on behalf of the victim and by:

- a) Prosecutor;
- b) the representative of the competent authority or structure, at the level of the territorial-administrative unit, with attributions in the matter protection of victims of domestic violence;
- c) the representative of any social service provider in the field of preventing and combating domestic violence, accredited according to the law, with the consent of the victim.

Article 26

(1) The application for the issuing of the protection order shall be drawn up in accordance with the application form set out in the Annex is an integral part of this law.

(2) The application shall be exempt from the judicial stamp duty.

Article 27

(1) Requests for the issuance of the protection order shall be judged as a matter of urgency and, in any event, their settlement shall not may exceed a period of 72 hours from the filing of the application. Requests are heard in the council room, attendance the prosecutor being obligatory.

(on 02-Jan-2016, Article 27, paragraph (1) of Chapter IV as amended by Article 1 of Law 351/2015)

(2) The parties shall be summoned in accordance with the rules on urgent summons.

(3) Upon request, the person requesting the protection order may be assisted or represented by a lawyer.

(4) The legal assistance of the person against whom the protection order is requested is mandatory.

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(5) In case of a special emergency, the court may issue the protection order on the same day, on the basis of application and documents submitted without the parties' conclusions.

(6) The prosecutor has the obligation to inform the person requesting the protection order on the legal provisions regarding protection of victims of crime.

(7) Judgment is made as a matter of urgency and, above all, is not admissible evidence whose administration takes a long time.

(8) The pronouncement may be postponed for up to 24 hours, and the motivation of the order is made within 48 hours from pronouncement.

Article 28

In the cases provided by art. 25 par. (3), the victim may give up, according to art. 406 of the Law no. 134/2010 on the Code of civil procedure, republished, with the subsequent amendments and completions, in the examination of the request for the protection order.

Article 29

(1) The protection order is enforceable.

(2) At the request of the victim or ex officio, when the circumstances of the case so require, the court may decide that the execution is done without summons or without passing any term.

Article 30

(1) The decision ordering the protection order is subject only to appeal, within 3 days from whether it was quoted from the parties, and from the communication, if it was given without quoting them.

(2) The Board of Appeal may suspend the execution until judgment is given, but only with a bail the amount of which will be determined by it.

(3) The appeal shall be adjudicated by the parties.

(4) Attorney's participation is mandatory.

Article 31

(1) A copy of the order of the decision ordering the issuance of the protection order shall be communicated, in within 5 hours of the decision, the structures of the Romanian Police in whose territorial range housing of the victim and / or aggressor. *(on 15-Nov-2015, Article 31, paragraph (1) of Chapter IV as amended by Article 1 of Law 272/2015)*

(2) The order of protection by which any of the measures provided by art. 23 par. (1) is enforced immediately, by or, as the case may be, under the supervision of the police.

(3) In order to enforce the protection order, the policeman may enter the family home and any annex with the consent of the protected person or, failing that, of another member of the family.

(4) The police have the duty to supervise the way the decision is complied with and to notify the criminal prosecution in case of removal from execution.

Article 32

Violation of any of the measures provided in art. 23 par. (1) and ordered by the protection order constitute the offense of non-compliance with the court decision and is punished by imprisonment from one month to one year. Reconciliation removes criminal liability.

Article 33

Upon expiration of the duration of the protection measures, the protected person may request a new protection order, if any indications that, in the absence of protection measures, life, physical or mental integrity, or freedom would be jeopardized.

Article 34

(1) The person against whom a measure of maximum protection has been ordered may request the revocation order or replacement of the ordered measure.

(2) The revocation may be ordered if the following conditions are met cumulatively:

a) the aggressor complied with the imposed bans or obligations;

b) The aggressor has received psychological counseling, psychotherapy, detox treatment or any other form of counseling or therapy that has been established in its task or recommended to it or has complied with its safety measures, if such measures were taken, according to the law;

c) if there are strong indications that the aggressor no longer presents a real danger to the victim of the violence or to the family it.

(3) The request for revocation shall be settled with the summons of the parties and of the police unit that enforced the order protection whose revocation is required. Attorney's participation is mandatory.

Article 35

If, with the settlement of the application, the court finds the existence of one of the situations requiring the establishment of a special protection measures of the child, will immediately notify the local public authority with protection duties child.

CHAPTER V: Financing in the field of preventing and combating domestic violence

Article 36

Activities in the field of preventing and combating domestic violence are funded from the following sources:

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- a) the state budget;
- b) budgets of funds from external loans contracted or guaranteed by the state and whose repayment, interest and other costs are provided by public funds;
- c) the budgets of the non-reimbursable foreign funds;
- d) the local budgets of the counties, respectively of the Bucharest municipalities, as well as of the municipalities, towns and municipalities;
- e) donations, sponsorships and other sources, under the terms of the law.

Article 37

(1) The Ministry of Labor, Family, Social Protection and the Elderly through the Department for Equal Opportunities between Women and Men can finance or, as the case may be, co-finance programs of national interest aimed at preventing and combating domestic violence, as well as protecting and supporting the family in order to increase the quality of life, funds from the state budget for this purpose, from reimbursable and non-reimbursable external funds, such as and other resources, under the law.

(on 01-Feb-2015, Article 37, paragraph (1) of Chapter V as amended by Article I, paragraph 2 of Ordinance 6/2015)

(2) Social services in the field of preventing and combating domestic violence can also be developed by:

- a) Partnership funding of social services to ensure continuity of service, according to the need social and subsidiarity principles;
- b) financing of pilot projects for the implementation of social assistance programs.

Article 38

The programs of national interest provided in art. 37 paragraph (1), complementary to actions financed at local level, have the following objectives:

- a) making the necessary investments for the development, diversification, restructuring and smooth functioning of the preventing and combating domestic violence;
- b) supporting the functioning of the units for the prevention and combating of domestic violence;
- c) carrying out studies, researches and publications in the field;
- d) training of specialists in the field of prevention and combating domestic violence, especially training staff working in the social services and family violence prevention and combat units, as well as the training of staff within the institutions with competencies in the field designated to instrument the cases of domestic violence;
- e) informing, raising awareness and raising awareness of the rights of victims of domestic violence, as well as the phenomenon of domestic violence;
- f) maintaining and developing the system for recording, reporting and managing cases of domestic violence;
- g) supporting victims through health recovery programs and social reinsertion;
- h) assisting the aggressors through de-alcoholic, detoxication, psychological and psychiatric treatments;
- i) initiating and coordinating social partnerships to prevent and combat domestic violence;
- j) any other objectives corresponding to the field of activity of the Ministry of Labor, Family, Social Protection and Protection of Elderly people.

Article 39

The financing of units for the prevention and combating of domestic violence is ensured by:

- a) local budgets of the local public administration authorities that approved their establishment, as well as from subsidies granted under the law;
- b) Amounts from donations and sponsorships;
- c) external, reimbursable and non-reimbursable funds;
- d) from other sources, in compliance with the relevant legislation.

CHAPTER VI: Sanctions

Article 40

(1) It is a contravention if, according to the criminal law, it does not constitute a crime, and it is sanctioned with a fine between 1,000 lei and 5,000 lei the following facts:

- a) the refusal to receive shelter or the refusal to grant, at the motivated request of the social worker, medical care free of charge to the person in distress to remove the consequences of violence;
- b) Changing the destination of the shelter.

(2) It is a contravention and a fine between 500 lei and 1,000 lei is sanctioned by refusal to leave the shelter, for whatever reason, when the conditions that caused the admission disappeared.

(3) It is a contravention and is sanctioned with fine between 500 lei and 1,000 lei the trial of the person who committed acts of aggression to penetrate into the shelter where he or she is or is believed to be the victim.

(4) The offenses shall be ascertained, and the sanctions shall be applied, according to the law, by the social workers, the mayor or the deputies it.

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(5) The provisions of the Government Ordinance no. 2/2001 on the legal status of contraventions, approved with amendments and completions by Law no. 180/2002, as subsequently amended and supplemented.

CHAPTER VII: Final Provisions

Article 41

This law¹⁰ shall enter into force 90 days after its publication in the Official Gazette of Romania, Part I.
[...]

2. RWANDA

[Law on Prevention and Punishment of Gender-Based Violence, 2008](#)¹¹

[...]

CHAPTER ONE: GENERAL PROVISIONS

Article 1: Purpose of the Law

This Law is aimed at preventing and suppressing gender-based violence.

Article 2: Definitions of terms Under this Law

The following terms shall have the following definitions:

1° gender based violence: any act that results in a bodily, psychological, sexual and economic harm to somebody just because they are female or male. Such act results in the deprivation of freedom and negative consequences. This violence may be exercised within or outside households them.

2° marriage : contract entered between a man and a woman in accordance with the law;

3° polygamy: the fact that one person marries a second spouse while the marriage with the first one is still valid.

4° concubinage: the fact that two people live permanently as if they were spouses though they are not married while one of them is legally married.

5° adultery: the fact of having sex with a person who is married to someone else;

6° rape: the fact that a person is involved into sexual intercourse without consent, by force, intimidation, trices and others;

7° conjugal rape: coercing a spouse into sexual relations without that spouse's consent, by way of force, intimidation, trices and others;

8° forcible abduction: abduction of someone by force or fraud for the purpose of marital union; 9° sexual slavery aimed at achieving self satisfaction: using influential authority, economic power or any other ways of achieving self sexual satisfaction. It may be aimed at sexual intercourse, physical touching, undress and photographing, exposing him/her, nakedness and eroticism exhibition, making one's sex touch other parts of the body and others;

10° indecency: acts or behaviour different from good morals and politeness, degrading human being;

11° elderly : any person above sixty five (65) years of age;

12° harassment: putting someone in unrest condition by persecuting, nagging, scorning or insulting him/her and others;

CHAPTER II: PREVENTION AND PROTECTION AGAINST GENDERBASED VIOLENCE

Article 3: Threatening by way of deprivation of certain rights

It is forbidden to use threat of depriving someone of certain rights for the purpose of having them indulge in any gender based violence act.

Article 4: Distorting tranquility of one's spouse

It is forbidden to distort tranquility of one's spouse due to polygamy, concubinage or adultery.

It is forbidden to distort tranquility of one's spouse because of dowry, reproduction and his/her natural phisionomy.

It is forbidden to harass to deprive one's spouse of the right to property and to employment.

Article 5: Conjugal rape

¹⁰Law no. 217/2003 was published in the Official Gazette of Romania, Part I, no. 367 of May 29, 2003; Republished under the provisions of Art. 248 of Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code, published in the Official Gazette of Romania, Part I, no. 757 of 12 November 2012 and rectified in Official Gazette of Romania, Part I, no. 117 of 1 March 2013, with the subsequent amendments, giving the texts a new one numbering. Law no. 217/2003 was republished in the Official Gazette of Romania, Part I, no. 365 of 30 May 2012.

¹¹ Law on Prevention and Punishment of Gender- Based Violence, Law No.59/2008 (10 September 2008), available at <http://www.refworld.org/docid/4a3f88812.html> (last visited December 30, 2018).

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Both spouses have equal rights as to sexual intercourse, reproductive health and family planning. It is forbidden to make sex with one's spouse without one's consent.

Article 6: Violence as the cause of divorce

Gender based violence shall be one of the causes of divorce. At the time divorce is being decided, the rights of children from the spouses shall be taken into account in accordance with the law.

Article 7: Protecting a child against gender based violence

The parent, trustee or any other person responsible for a child shall protect the latter against any gender based violence. It shall be forbidden not to cater for child under one's trusteeship just because of whether the child is male or female.

[...]

Article 10: Preventing violence and catering for the victims of violence

It is forbidden to use drugs, films, signs, language, and other means with the intention of exercising gender based violence. Any person must prevent gender based violence, rescue and call for rescue the victims of this violence. A Prime Minister's Order shall determine modalities in which government institutions prevent gender based violence and for receiving, relieving, defending, medicating and assisting the victim for the purpose of rehabilitating his/her health.

[...]

CHAPTER III: CASES AND PENALTIES FOR GENDERBASED VIOLENCE

Section One: Cases relating to gender based violence

Article 12: Place of hearing

Where it is convenient for the victim, gender based violence related cases shall be heard and pronounced at the scene of the crime if possible.

Article 13: Production of evidences and testimonies

Notwithstanding other legal provisions, evidences or testimonies related to gender based violence shall be produced in the courts by any person holding them. Testimonies given by children and other people living in the household as well as those produced by neighbours shall be taken into account.

Section 2: Penalties for gender based violence offences

[...]

Article 18: Penalty for child neglect because of his/her sex

Any person who does not care for his/her child or exercise harassment on him/her because of whether the latter is a boy or a girl or exercise harassment on his/her spouse shall be liable to imprisonment of six (6) months to three (3) years. [...]

Article 19: Penalty for conjugal rape

Any person who coerces his/her spouse to sexual intercourse shall be liable to imprisonment of six (6) months to two (2) years.

Article 20: Penalty for harassing one's spouse

Any person guilty of harassing his/her spouse shall be liable to imprisonment of six (6) to two (2) years.

[...]

Article 25: Penalty for someone who kills his/her spouse

Subject to the provisions of the Penal Code, any person guilty of killing his/her spouse shall be liable to life imprisonment.

Article 26: Penalty for distorting tranquility of one's spouse on sexual grounds

Any person guilty of the offence referred to in paragraph 2 and 3 of Article 4 of this Law shall be liable to imprisonment of six (6) months to two (2) years and a fine between fifty thousand (50,000 Rwf) Rwandan francs and two hundred thousand (200,000 Rwf) Rwandan francs.

[...]

Article 36: Penalty for a person refusing to assist the victim of violence or to testify over the violence

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Any person who refuses to assist the victim of violence or to testify over the violence against himself or herself or against someone else shall be liable to imprisonment of six (6) months to two (2) years and a fine between fifty thousand (50,000 Rwf) and two hundred thousand (200,000 Rwf) Rwandan francs or one of those penalties.

[...]

CHAPTER IV: MISCELLANEOUS AND FINAL PROVISIONS

Article 38: Damages

Any victim of gender based violence or any other person affected by such violence shall have the right to claim for damages.

Article 40: Abrogating provisions

All prior legal provisions contrary to this Law are hereby repealed.

Article 41: Commencement

This Law shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda. Kigali, on 10/09/2008

[Penal Code, 2012](#)¹²

Article 198: Definition of marital rape

Marital rape is any act of sexual intercourse committed by one spouse on the other by violence, threat or trickery.

Article 199: Penalty for marital rape

Any person who commits marital rape shall be liable to a term of imprisonment of at least two (2) months but less than six (6) months and a fine of one hundred thousand (100,000) to three hundred thousand (300,000) Rwandan francs or one of these penalties. If marital rape results in an ordinary disease, the offender shall be liable to a term of imprisonment of six (6) months to two (2) years. If marital rape results in an incurable illness, the offender shall be liable to a term of imprisonment of more than five (5) years to ten (10) years. If marital rape results in the death of the victim, the offender shall be liable to life imprisonment.

Article 200: Prosecution of marital rape

The prosecution of marital rape shall be instituted only upon complaint of the offended spouse. The offended spouse may, at any stage of the procedure, apply for the termination of the prosecution, when he/she withdraws his/her complaint. The offended spouse may also demand that the execution of the judgment be terminated in the best interest of the family.

3. SAMOA

[Family Safety Act, 2013](#)¹³

[...]

AN ACT to provide for greater protection of families and the handling of domestic violence and related matters.

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement – (1) This Act may be cited as the Family Safety Act 2013.

(2) This Act commences in whole or in part on a date or dates nominated by the Minister.

2. Interpretation – In this Act, unless the contrary intention appears:

¹² Organic Law instituting the Penal Code, N° 01/2012/OL (2 May 2012), available at <http://www.ilo.org/dyn/natlex/docs/SERIAL/93714/109657/F1967095662/RWA-93714.pdf> (last visited December 30, 2018).

¹³ Family Safety Act, No. 8 (1 June 2013), available at http://www.pacii.org/ws/legis/consol_act/fsa2013151/ (last visited December 30, 2018).

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“authorised counselling agency” means any organisation, association, incorporated body, person or group of persons or agency with qualified counsellors providing counselling to victims and perpetrators of domestic violence approved by the Minister of Justice and Courts Administration;

“arms” means a gun, pistol, rifle or any firearm, whether lawful or unlawful as are regulated under the Arms Ordinance 1960;

“child” means any person under the age of 18 years;

“Child Welfare Officer” means any person appointed as a child welfare officer under section 15 of the Infants Ordinance 1961;

“Commissioner” means the Commissioner of the Samoa Police Service;

“complainant” means any person without distinction of any kind such as race, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status who is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of domestic violence, and includes any child in the care of the complainant;

“Court” means the District Court of Samoa;

“dependants” includes children and other members of the complainant’s family dependant on the complainant in any way;

“domestic relationship” means a relationship between a complainant and a respondent in any of the following ways:

(a) they are or were married to each other, whether in accordance to law, custom or religion;

(b) they live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other;

(c) they are the parents of a child or are persons who have or had parental responsibility for that child;

(d) they are family members related by blood or marriage;

(e) they are family members related by legal or customary adoption;

(f) they are or were in an engagement, courtship or customary relationship, including an actual or perceived intimate or sexual relationship of any duration; or

(g) they share or recently shared the same residence.

“domestic violence” means:

(a) physical abuse;

(b) sexual abuse;

(c) emotional, verbal and psychological abuse;

(d) intimidation;

(e) harassment;

(f) stalking;

(g) any other controlling or abusive behaviour towards a complainant where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

“earliest opportunity” means, at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, but not later than 12 hours after the reporting of the incident to any Police Officer;

“emergency monetary relief” means compensation for monetary losses suffered by a complainant at the time of the issue of a protection order as a result of the domestic violence, including:

(a) loss of earnings;

(b) medical and dental expenses;

(c) relocation and accommodation expenses;

(d) household necessities; or

(e) transportation costs.

“emotional, verbal and psychological abuse” means a pattern of degrading or humiliating conduct towards a complainant, including:

(a) repeated insults, ridicule or name calling;

(b) repeated threats to cause emotional pain; or

(c) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant’s privacy, liberty, integrity or security.

“harassment” means engaging in a pattern of conduct that induces the fear of harm to a complainant including:

(a) repeatedly watching or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be;

(b) repeatedly making calls or texts by telephone, mobile phone, internet (skype) or by any other technological means, or inducing another person to make calls or texts by telephone or mobile phone to the complainant, whether or not conversation ensues;

(c) repeatedly sending, delivering or causing the delivery of radio messages, letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant.

“intimidation” means uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear;

“interim protection order” means an Order of the Court issued under section 5;

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“media” means any person or body of persons responsible for the operation of a newspaper, magazine, public website or broadcasting station, and includes any radio or television station;

“Minister” means the Minister of Justice and Courts Administration;

“Ministry” means the Ministry of Justice and Courts Administration;

“physical abuse” means any act or threatened act of physical violence, injury, torture, or inhumane punishment towards a complainant;

“Police Officer” means any sworn member of the Samoa Police Service;

“protection order” means an order issued under sections 6 or 7;

“qualified counsellor” means any person:

(a) providing counselling services and has undertaken specific and recognised training in counselling approved by the Minister; or

(b) who has obtained a recognised qualification in providing counselling services from any institution or training service provider approved by the Minister.

“Registrar” means a Registrar or Assistant Registrar of the District Court or the Supreme Court;

“respondent” means any person who is or has been in a domestic relationship with a complainant and who has committed or allegedly committed an act of domestic violence against the complainant;

“relevant Police station” means the Domestic Violence Unit of the Samoa Police Service or any station, unit or division of the Samoa Police Service, as may be nominated by the Minister of Police in writing from time to time;

“sexual abuse” means any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity and privacy of the complainant without his or her free will or consent;

“social worker” means any person holding a minimum qualification of a bachelor’s degree in Social Work or its equivalent and has undertaken relevant social work for a term of not less than 2 years;

“stalking” means repeatedly following, pursuing, or accosting the complainant;

“Village Representative” means any Sui o le Nu’u, Sui Tamaitai o le Nu’u, or a minister of religion living within the relevant village.

3. Act to bind the Government – This Act binds the Government.

**PART 2
PROTECTION ORDERS**

4. Application for protection order – (1) A complainant or a person acting on behalf of a complainant under subsection (3) may apply to the Court for a protection order under the provisions of this Act.

(2) Where a complainant is not represented by a legal counsel, the Registrar shall promptly inform, whether orally or in writing, or both, the complainant and any person acting on behalf of a complainant under subsection (3), of the following matters:

(a) the procedures required to be followed by the complainant in order to obtain remedies under this Act;

(b) the remedies available to the complainant under this Act; and

(c) the complainant’s right to lodge a criminal complaint against the respondent, where a criminal offence has been allegedly committed by the respondent.

(3) Subject to subsection (4), and despite the provisions of any other law, an application made under this section may be brought on behalf of the complainant by any other person acting on behalf of the complainant and may include a legal counsel, Village Representative, Child Welfare Officer, counsellor, health service provider, social worker or teacher or any other person approved by the Court.

(4) Where a person, other than the complainant, makes an application for an order under this section, the application shall be brought with the written consent of the complainant, except in circumstances where the complainant is:

(a) a child;

(b) suffering from a mental illness;

(c) in a coma and has been unconscious for a period exceeding 6 hours; or

(d) is a person whom the Court reasonably considers unable to provide the required consent.

(5) Despite the provisions of any other law, any child, or any person on behalf of a child, may apply to the Court for a protection order without the assistance of a parent, legal guardian or any other person.

(6) Despite any other law, an application made under this section may be brought outside ordinary Court hours or on a day which is not an ordinary court day, where, in the opinion of the Court, the complainant is likely to be either physically or sexually harmed by the Respondent if the application is not dealt with as a matter of urgency.

(7) Any application made under this section shall be lodged with the Court through a Registrar who shall without undue delay and at an early available opportunity, submit the application to any Judge of the Court at any time or place.

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5. Interim protection orders – (1) The Court shall as soon as is reasonably possible consider an application made under section 4.

(2) Where the Court is satisfied that there is sufficient, evidence that:

- (a) the respondent is committing, or has committed an act of domestic violence; and
- (b) the complainant is likely to be either physically or sexually assaulted as a result of such domestic violence if a protection order is not issued immediately,–

the Court shall issue an interim protection order against the respondent.

(3) An interim protection order, upon being issued by the Court, shall:

- (a) be served on the respondent;
- (b) call upon the respondent to show cause on the return date specified in the order why a protection order should not be issued;
- (c) attach a copy of the application referred to in section 4 and the record of any evidence considered by the Judge in issuing an interim order under this section.

(4) Where the Court does not issue an interim protection order under this section, the Court shall direct the Registrar or the complainant's legal counsel, to cause certified copies of the application concerned and any supporting affidavits to be served on the respondent with a notice calling on the respondent to show cause on the return date specified in the notice as to why a protection order should not be issued.

(5) The return dates referred to in this section must not be less than 10 days after service has been effected upon the respondent.

(6) An interim protection order shall have no force and effect until it has been served on the respondent.

(7) Upon service or upon receipt of a return of service of an interim protection order, the Registrar or the Complainant's legal counsel shall forthwith cause a certified copy of the interim protection order to be served on the complainant.

6. Protection orders where respondent does not appear on due date – Where a respondent does not appear on a return date as required under section 5(3)(b) and upon the application by a complainant or a person acting on behalf of a complainant, the Court shall issue a protection Order where the Court is satisfied that:

- (a) proper service has been effected on the respondent; and
- (b) the application contains, sufficient evidence that the respondent has committed or is committing an act of domestic violence.

7. Protection orders where respondent appears on due date – (1) Where the respondent appears on the return date required under section 5(3)(b), in order to oppose the issuing of a protection order, the Court shall:

(a) proceed to hear the matter and consider any evidence previously received in relation to the application made under section 4; and

(b) consider further evidence as it may direct to any party of the proceedings.

(2) The Court shall after hearing all the evidence regarding an application under this Act issue a protection order, if it finds, on a balance of probabilities, that the respondent has committed or is committing an act of domestic violence.

(3) Upon the issuing of a protection order under this section, the Registrar or the Complainant's legal counsel shall cause:

- (a) the original of such order to be served on the respondent; and
- (b) provide a certified copy of the protection order to the relevant Police station.

(4) A protection order issued in terms of this section remains in force until it is set aside, and the execution of such order shall not be automatically suspended upon the noting of an appeal.

(5) In issuing an order under this section, the Court may issue any direction to ensure that the complainant's physical address is not disclosed in any manner which may endanger the safety, health or wellbeing of the complainant.

8. Court procedures for protection of complainant-(1) The Court may, if the Court is of the opinion that it is just or desirable to do so during the hearing of an application under section 6 or 7, order that in the examination of witnesses, a respondent who is not represented by a legal representative shall not be entitled to directly cross-examine a witness being a person who is in a domestic relationship with the respondent.

(2) Where the Court makes an order under subsection (1), the Court shall direct the respondent to provide the Court with the questions which the respondent would like to ask the witness, and the Court shall ask the questions, instead of the respondent, to the witness.

(3) Where the Court considers it appropriate the Court may:

- (a) permit a screen to be placed between the complainant and the respondent during cross examination; or
- (b) order that video conferencing, video recordings or audio recordings be provided where the complainant or a witness so requests it provided that the witness giving evidence through such mediums shall still be required to be personally examined by the respondent and the provisions of subsection (2) may apply where the witness so chooses.

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9. Protection orders available to the Court – The Court may, in issuing a protection order under section 5, 6 or 7 prohibit the respondent from:

- (a) committing any act of domestic violence or enlisting the help of another person to commit such act;
- (b) entering a residence, or part of such residence, shared by the complainant and the respondent;
- (c) entering the complainant's place of employment, or part of such place;
- (d) preventing the complainant who ordinarily lives or lived in a shared residence from entering or remaining in the shared residence; or
- (e) committing any other act, which the Court considers appropriate in the circumstances, in order to protect the complainant.

10. Court's power to impose conditions on protection order – (1) The Court may impose any additional conditions which it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the complainant, including an order:

- (a) to seize any arm or dangerous weapon in the possession or under the control of the respondent; and
- (b) that a Police Officer shall accompany the complainant to a specified place to assist with arrangements regarding the collection of personal property and, where applicable, for the service of any protection orders made under this Act upon the relevant respondent;
- (c) that the respondent continues to make payments towards rent of shared accommodation or vehicle, or to make mortgage payments having regard to the financial needs and resources of the complainant and the respondent;
- (d) for the custody and maintenance of dependent children of both the complainant and the respondent pursuant to the provisions of the Infants Ordinance 1961 and the Maintenance and Affiliation Act 1967, respectively; or
- (e) that the respondent pay emergency monetary relief having regard to the financial needs and resources of the complainant and the respondent.

(2) Where the Court orders a condition under subsection (1)(d) and (e), such order shall have the effect of a civil judgment of a District court.

(3) Subject to subsection (4), where the court is satisfied that it is in the best interests of any child, it may:

- (a) refuse the respondent contact with such child; or
- (b) order contact with such child on such conditions as it may consider appropriate.

(4) Despite subsection (3), the Court must award interim custody of a child to the complainant where it is shown on the evidence before it that physical violence was applied, used or inflicted by the respondent upon the complainant or to any child involved in the domestic relationship between the complainant and the respondent.

(5) The court may not refuse:

- (a) to issue a protection order; or
- (b) to impose any condition or make any order which it is competent to impose under this section, – merely on the grounds that other legal remedies are available to the complainant.

11. Breach of protection order – (1) A respondent who breaches a protection order issued under this Act shall:

- (a) if the breach involves the further physical or sexual abuse of the complainant, be imprisoned for a term not exceeding 6 months;
- (b) if the breach involves any other act of violence not mentioned in paragraph (a), the respondent is to be subject to any punishment as the Court deems appropriate including sanctions available under the Community Justice Act 2008.

(2) If a breach of a protection order is reported to any Police Officer, the Police Officer shall refer the matter to the relevant Police Station.

(3) Despite any other law, if the relevant Police Station is referred a reported breach of a protection order under subsection (2), any Police Officer of that Police Station attending to the matter shall:

- (a) cause the respondent to be held in custody;
- (b) cause the respondent to be brought before the Court at the earliest possible opportunity, and not longer than 24 hours from the time that the respondent is brought under Police custody.

(4) Where a respondent is brought before the Court under this section, the Court may immediately, and without further delay, hear such evidence as the Court considers necessary in the circumstances to make a determination as to whether the respondent has breached a protection order, and upon finding:

- (a) that there was a breach, shall proceed to sentence the respondent under subsection (1); or
- (b) that there was no breach, shall order the release of the respondent from custody.

(5) Despite any other law, in making a determination under subsection (4), the Court shall only be required to decide questions of fact on the balance of probabilities.

(6) Nothing in this section is to be construed to:

- (a) prohibit the further laying of any relevant criminal charges against the respondent for the action or omission giving rise to the breach of a protection order; or

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(b) override a sanction imposed against the respondent by the Court which is higher than that provided for under subsection (1) following a trial arising from the action or omission giving rise to the breach of a protection order.

12. Variation or setting aside of protection order –

(1) A complainant or a respondent may, upon written notice to the other party, apply to the Court for the variation or setting aside of a protection order issued under the provisions of this Act.

(2) Where the Court is satisfied that good cause has been shown for the variation or setting aside of the protection order, it may issue an order to that effect provided that the Court shall not grant such an application to the complainant unless it is satisfied that the application is made voluntarily.

13. Seizure of arms and dangerous weapons – The Court shall, during any proceedings brought under this Act, order a Police Officer to seize any arm or dangerous weapon in the possession or under the control of a respondent, if the Court is satisfied on the evidence placed before it that:

(a) the respondent has threatened or expressed the intention to kill or injure himself or herself, or any person in a domestic relationship, whether or not by means of such arm or dangerous weapon; or

(b) possession of such arm or dangerous weapon is not in the best interests of the respondent or any other person in a domestic relationship, as a result of the respondent's—

(i) state of mind or mental condition;

(ii) inclination to violence; or

(iii) use of or dependence on intoxicating liquor or drugs.

14. Attendance of proceedings and prohibition of publication of certain information – (1) No person may be present during any proceedings in terms of this Act except:

(a) officers of the Court;

(b) the parties to the proceedings;

(c) any person bringing an application on behalf of the complainant;

(d) any legal representative representing any party to the proceedings;

(e) witnesses;

(f) any other person whom the court permits to be present,—

provided that the court may, if it is satisfied that it is in the interests of justice, exclude any person from attending any part of the proceedings.

(2) Nothing in this section limits any other power of the Court to hear proceedings in chambers or to exclude any person from attending the proceedings.

(3) No person or the media, shall publish in any manner any information which might, directly or indirectly, reveal the identity of any party to the proceedings unless allowed by the Court.

(4) The Court may direct that any other information relating to proceedings held in terms of this Act is not to be published by a person or the media if it is satisfied that it is in the best interest of justice.

**PART 3
DUTIES OF POLICE OFFICERS**

15. Duty to assist and inform complainant of rights – (1) Subject to subsection (2), and in addition to other duties of a Police Officer, a Police Officer who receives a report of domestic violence by any person shall at the earliest opportunity render any assistance to the complainant without any discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status and guarantee to all persons equal and effective protection as may be required in the circumstances.

(2) In providing assistance under subsection (1), a Police Officer shall:

(a) where necessary, make arrangements for the complainant and the complainant's dependants to find a suitable shelter, to obtain medical treatment or counselling service where needed; and

(b) provide information, whether written or oral, or both explaining to the complainant in a language that he or she understands, the remedies at his or her disposal in terms of this Act and the right to lodge a criminal complaint where applicable; or

(c) where the complainant is a person under 18 years of age, to refer such person to a Child Welfare Officer.

16. Duty to Prosecute – (1) Subject to subsection (2), where a report of domestic violence involves any form of physical or sexual abuse, and provided that there is sufficient evidence for doing so, a Police Officer handling the matter shall:

(a) ensure and undertake to do all things necessary in order that a charge or information is laid with the Court in order to commence prosecution of the matter in Court; and

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(b) not endeavour to withdraw a charge or information laid under paragraph (a).

(2) Where a report of domestic violence involves any other form not being physical or sexual, the Police Officer may where the Police Officer considers it appropriate to do so and in accordance with applicable guidelines:

(a) have the matter referred to an authorised counselling agency and from there monitor progress of such an arrangement; or

(b) lay a charge or information to commence prosecution, particularly in cases of repeated offending of a similar nature.

(3) Failure by a Police Officer to comply with an obligation imposed in terms of this Act constitutes misconduct for the purposes of the Police Service Act 2009.

(4) Unless the Commissioner directs otherwise in any specific case for good cause, disciplinary proceedings must be issued against any Police Officer who allegedly failed to comply with an obligation referred to in subsection (1).

**PART 4
MISCELLANEOUS**

17. Sentencing – (1) Where an offence took place within the context of a domestic relationship, the Court shall consider that fact as an aggravating factor against the offender when considering sentence.

(2) In sentencing offenders for an offence involving domestic violence, a court must also have regard to:

(a) any special considerations relating to the physical, psychological or other characteristics of a complainant or victim of the offence, including—

(i) the age of the complainant or victim;

(ii) whether the complainant or victim was pregnant; and

(iii) whether the complainant or victim suffered any disability;

(b) whether a child was present when the offence was committed, or was otherwise affected by it;

(c) the effect of the violence on the emotional, psychological and physical well being of a victim;

(d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a complainant or victim;

(e) the conduct of the offender towards the complainant or victim since the offence, and any matter which indicates whether the offender—

(i) accepts responsibility for the offence and its consequences;

(ii) has taken steps to make amends to a complainant or victim, including action to minimise or address the negative impacts of the offence on a complainant or victim; or

(iii) may pose any further threat to a complainant or victim;

(f) evidence revealing the offender's—

(i) attitude to the offence;

(ii) intention to address the offending behaviour; and

(iii) likelihood of continuing to pose a threat to a complainant or victim; and

(g) whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance.

18. Offences and penalties – Despite the provisions of any other law, a person who:

(a) contravenes any prohibition, condition, obligation or order imposed under this Act;

(b) fails to comply with any direction under section 7(5); or

(c) in an affidavit required to be provided under any provision of this Act, wilfully makes a false statement in a material respect,—

commits an offence and is, upon conviction, be liable to a fine not exceeding 20 penalty units or imprisonment not exceeding 2 years, or both.

19. Evidence and procedure –

(1) Despite any other law, the Court may receive any evidence which the Court considers necessary for it to make a decision, determination or direction for the granting or refusal of a protection order under the provisions of this Act whether the evidence is admissible or not by law.

(2) The Court, in making a decision, determination or direction for the granting or refusal of a protection order, in cases where no procedure is specifically provided for, shall apply such procedure which the Court deems best calculated to promote the ends of justice.

20. Police Officers to assist Registrar – (1) All Police Officers enlisted in the relevant Police Station shall:

(a) cooperate with the Registrar; and

(b) assist at no cost with any task required by the Registrar in order to serve or have served any application or order made by the Court under this Act.

(2) This section applies despite any provision of any law to the contrary.

21. Application for restraining orders under the Divorce and Matrimonial Causes Ordinance 1961 – To avoid duplication, if a restraining order is issued under Part 3A of the Divorce and Matrimonial Causes Ordinance 1961, that restraining order is taken as a protection order issued under this Act.

22. Forms – The Minister may approve, amend, or replace the form for any application, certificate, warrant or any other document required under this Act.

23. Fees – The Minister may determine and publish by Notice in the Savali, the following in respect of any matter under this Act:

- (a) the types of fees payable;
- (b) the rate at which such fees are to be calculated; or
- (c) the amounts of such fees.

24. Protection from liability – No action shall lie against the Government, the Minister, the Ministry, the Chief Executive Officer of the Ministry, the Registrar or any member, employee or agent of the Ministry or the Police Service or any person acting pursuant to any authority conferred by the Minister, Ministry, Chief Executive Officer of the Ministry, or the Registrar, as the case may be, in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of their respective functions conferred by or under this Act.

25. Regulations – (1) The Head of State acting on the advice of Cabinet may make regulations as may be necessary for the effective administration of this Act.

(2) Without limiting the generality of subsection (1), regulations made under this Act may make provision for:

- (a) any forms or fees required under this Act;
- (b) any matter required to be prescribed in terms of this Act.

(3) Any regulations made under this Act may provide that any person in contravention of such regulations shall be guilty of an offence and upon conviction be liable to a fine not exceeding 10 penalty units or to imprisonment for a period not exceeding 3 months, or both.

26. Consequential amendments - (1) Section 77(1) of the Crimes Ordinance 1961 is amended by substituting “16” with “18”.

(2) Section 26A of the Divorce and Matrimonial Causes Ordinance 1961 is amended by substituting the definition of “domestic violence” with the following:

“has the same meaning ascribed to it under the Family Safety Act 2013.”.

(3) Section 12 of the Infants Ordinance 1961 is amended by substituting “14” with “18” where it appears.

[...]

4. SAN MARINO

[Law on Prevention and Elimination of Violence against Women and Gender Violence, 2008](#)¹⁴

[...]

CHAPTER I

UNDERLYING PRINCIPLES, AWARENESS-RAISING AND PREVENTION MEASURES FOR COMBATING VIOLENCE AGAINST WOMEN AND GENDER VIOLENCE, INCLUDING DOMESTIC VIOLENCE

Art. 1

(Purpose of this Law)

This Law aims at preventing and combating violence against women and gender violence, including domestic violence.

¹⁴ Law on Prevention and Elimination of Violence against Women and Gender Violence, Law No. 97 (20 June 2008), available in English at <https://www.legislationline.org/legislation/country/6/section/legislation/topic/25>, in Italian at <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/scheda17016343.html> (last visited December 30, 2018).

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Art. 2

(Definition of Violence against Women)

Violence against the individual means any act of gender-based violence that results, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life

Art. 3

(Mass Media and Dissemination of Discriminatory Information)

Mass media shall contribute to promoting and safeguarding equality between men and women and shall avoid any form of gender-based discrimination.

The use of images or expressions that are detrimental to individual dignity and identity, or have a discriminatory content, including references to a person's sexual orientation or gender identity in general, also for advertising purposes, is prohibited.

The specifically appointed Equal Opportunities Authority can request the Law Commissioner, on its own initiative, or upon notification made in writing by any interested person:

- a) to prevent the circulation of images, information or references that do not comply with the prohibition referred to in paragraph 2;
- b) to prevent their further circulation and to eliminate their effects;

without infringing on the right of the person portrayed or mentioned to apply for damages.

After listening to the party against which the measure is to be taken, the Law Commissioner issues a decree. In particularly urgent cases and when the party against which the measure is to be taken is not a resident or is not based in the Republic of San Marino, or has no legal representation in the trial, the Law Commissioner can order the enactment of the measure without a preliminary hearing.

Anyone who does not comply with the order issued pursuant to the previous paragraph shall be punished as described in Article 366 of the Criminal Code. The decree issued by the Law Commissioner can be challenged before the Judge of Appeal for nullity, but this shall not affect the enactment of the measure unless the Judge of Appeal should decide otherwise.

The State Law Office shall provide legal assistance to the Equal Opportunity Authority in court proceedings. Trial records are exempt from legal taxes.

Art. 4

(Assistance to victims of violence)

To victims of domestic and sexual violence, the State shall:

- a) provide information on the measures envisaged by the law for the protection, safety and right to assistance and support for victims of violence;
- b) provide specialised social services that are conveniently located and easily accessible to victims and employing specifically trained staff;
- c) ensure that these services are able to face emergency situations and provide immediate support, also of psychological nature, and be responsible for medium-term cases, also for the purpose of family reunification;
- d) provide social support, protection, support for education, training and professional re- integration;
- e) ensure that, in the most serious cases, in which continuing to live in the family is deemed to be dangerous, victims are admitted to a family-sized community for the time necessary to develop a social reintegration project;
- f) create, if necessary, programs for the protection and social integration of the victims of violence, - which also address housing needs and ensure that their residence permit is prolonged, should it expire during the proceeding, at least for the

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whole duration of the proceeding - professional reintegration, care and support for dependent children;

g) specific training for the judges presiding over judicial proceedings described in this Law and for law enforcement agencies. The planning and creation of services and the actual definition of the measures to be taken shall be set forth through a specific Delegate Decree to be issued six months after the entry into force of this Law.

CHAPTER II

AMENDMENTS TO THE CRIMINAL CODE

Art. 5

(Aggravating circumstance for murder) –

The following article is inserted after Article 150, paragraph 2 of the Criminal Code:

“1-bis) by a spouse, cohabitant or person who was or is involved in an affective relationship with the victim, including cases of non-cohabitation”.

Art. 6

(Aggravating circumstance for personal injuries)

Article 156 of the Criminal Code is replaced by the following: “When injury leads to abortion, life-threatening hazard, a disease requiring a healing time of more than sixty days or to an incurable disease, permanent facial scars, loss or significant weakening of one of the senses, one organ or its functions or the loss of procreation abilities, or genital mutilation, even when it is performed for religious reasons, third-degree imprisonment and disqualification shall apply. The same punishment shall apply if the victim is or was the spouse or is/was a person similarly situated to a spouse, including cases of non-cohabitation, or if the victim is a particularly vulnerable person living with the offender”.

[...]

Art. 10

(Aggravating circumstance for offences involving violation of sexual freedom)

The following paragraph is added after Article 172 of the Criminal Code: “The punishment shall be raised by one degree if the crime referred to in the first paragraph is committed by the spouse or the cohabitating partner or by the person who is or was involved in an affective relationship with the victim.

The punishment shall be raised by one degree if the crime is committed against a person with disabilities”.

[...]

Art. 12

(Prosecution of crimes against sexual freedom)

Article 178 of the Criminal Code is superseded by the following: “The offences referred to in Articles 171, 172, 172-bis, 173, 175, 176 and 177 can be prosecuted upon complaint filed by the offended party. The complaint can no longer be withdrawn after the date referred to in Art. 7, paragraph 3 of the Code of Criminal Procedure. If the offended party is a minor, the time limit for prosecution as well as the deadline for submitting the complaint starts to run from the date on which the minor comes of age. The court shall proceed ex officio if the offence is committed by the ascendant, the guardian or the adopter or by the person who has been entrusted with the care or custody of the offended person. The court shall also proceed ex officio if the offence is committed jointly with an offence which is prosecutable ex officio or in cases of repeated offences”.

Art. 13

(Persecutory acts – Stalking-Mobbing)

The following Article is inserted after Article 181 of the Criminal Code

“Art. 181-bis Persecutory acts

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Anyone who repeatedly harasses or threatens a person causing severe moral suffering and harming his/her dignity to such an extent as to upset his/her usual life conditions, or to intimidate him/her, or to cause substantial physical or psychological distress, or reasonable fear for his/her own safety and for the safety of the people close to him/her, shall be punished upon complaint filed by the offended party by first degree imprisonment and a monetary fine.

[...]

The Court shall proceed upon complaint filed by the offended party.

The Court shall proceed ex officio and imprisonment shall be raised by one degree if the crime is accompanied by the use of a weapon, violence or a particularly serious threat. The court shall also proceed ex officio if the offence is committed jointly with an offence that can be prosecuted by the court ex officio.

[...]

Art. 15

(Maltreatment of family members or cohabitants)

Article 235 of the Criminal Code is superseded by the following:

“Maltreatment of family members and cohabitants”

Anyone who mistreats a family member or a cohabitant or a person under his/her authority or entrusted to him/her shall be punished by terms of second degree imprisonment. If the crime is committed against a person aged less than 14 years, third degree imprisonment shall apply. If the crime derives from an aggravating circumstance described in Article 156, fourth degree imprisonment shall apply. Fifth degree imprisonment shall apply if the crime leads to the victim’s death.

CHAPTER III

JUDICIAL MEASURES FOR THE PROTECTION AND SAFETY OF VICTIMS

TITLE I

GENERAL PROVISIONS

Art. 16

(Protection of victims’ confidentiality)

During civil or criminal trials for violence against the individual, including domestic violence, the victim’s confidentiality and privacy, his/her personally identifying information, that of the victim’s children or of any other person under his/her custody shall be protected. The release of personal information as well as circulation of images of the victim is prohibited in any case.

Anyone who releases or publishes data, information, or images thus breaching the prohibitions mentioned above shall be punished with a fine of Euro 12,000.00.

Art. 17

(Legal assistance)

In all proceedings, whether civil, criminal or administrative, legal assistance shall be provided to victims of violence when they cannot objectively afford their own legal defence, including in those situations not usually defined as free of charge.

The Association of Lawyers and Notaries shall draw up a list of registered legal professionals ready to provide their assistance to victims. This list shall be transmitted to the relevant Social services, Law Enforcement Agencies, the Court and the Equal Opportunities Authority.

The Association of Lawyers and Notaries shall be responsible for the ongoing and specialized training of the people listed and organise interdisciplinary training courses.

A listed lawyer cannot refuse to take a case assigned to him/her, unless there are serious and well-grounded reasons.

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Legal assistance shall be free of charge. However, lawyers are entitled to have the offender pay their fees, when a definitive civil or criminal sentence has been indeed passed for the offence or in cases where records show that the Judge issued a statement during cross-examination dismissing the criminal or civil proceeding, or when protection orders have been issued against the offender. In case of extreme necessity and urgency, legal assistance shall be provided by a court-appointed lawyer, who shall promptly contact a lawyer on the list, by whom he/she will be replaced once the urgent situation is over.

The judicial proceedings in favour of victims of violence are not subject to taxation.

The State shall pay in advance the expenses necessary to carry out or participate in judicial actions, including judicial examinations necessary for the protection of the victim of violence.

The State shall be entitled to reimbursement by the convicted when a definitive civil or criminal sentence has been indeed passed, or in cases where records show that the Judge issued a statement during cross-examination dismissing the criminal or civil proceeding, or when protection orders have been issued against the offender.

TITLE II

PROTECTION MEASURES IN CRIMINAL PROCEEDINGS

Art. 18

(Representation of minors in criminal proceedings)

When the victim of offences against personal freedom or of maltreatment is a minor and the offence is committed by the ascendant, the guardian, the adopter, or other relatives or third parties having significant relationships with the minor or his/her parents, a special curator is entrusted with the representation of the minor in court with a view to protecting the minor's rights. The curator is appointed by the Guardianship Judge upon immediate request by the Investigating Judge.

If the offence referred to in paragraph 1 cannot be prosecuted ex officio, the complaint shall be filed by the special curator and the deadline for filing the complaint shall start running from the date of his/her appointment.

Judicial acts affecting the minor's interests in which the special curator has not taken part shall be null and void.

The legal assistance for a minor represented by the curator shall fall under the provisions set out in article 17 of this Law

Art. 19

(Reporting obligations)

Social Services, law enforcement agencies and health professionals, both public or private, are required to report to the Law Commissioner acting as civil Guardianship Judge any act of violence against women, minors or gender violence of which they may have knowledge because of their activities or professions, even for those offences that are prosecuted upon complaint.

Teachers of any grade or level are required to timely report to the Minors' Service any act specified in the previous paragraph of which they may have knowledge.

Reporting does not entail any violation of official or professional secrecy; the Law Commissioner shall ensure that the report and the records of the proceeding are kept confidential.

The violation of the reporting obligation is punished with a monetary administrative sanction amounting to € 500 and applied by the Law Commissioner.

Following a report, the Law Commissioner requires Social Services to carry out any necessary examinations; once the findings are available and, based on the report drawn up by the Social Services, the Law Commissioner shall summon the victim and, if necessary, adopt the protection measures provided for by this Law and entrust the competent Services.

When, based on the facts, it is reasonable to assume that offences were committed that may be prosecuted ex officio or, when the victim has filed a complaint, the report mentioned in paragraph 1 shall be made to the Law Commissioner, Investigating Judge, who shall adopt protection measures and programs, if necessary. If the victim of violence is a minor, the Investigating Judge is required to promptly report the *notitia criminis* to the Guardianship Judge for any necessary action from his/her end.

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Art. 20

(Right to participate in criminal proceedings)

In proceedings for violence against women, minors or gender violence, the Equal Opportunities Authority is entitled to participate and bring an action before the court.

For this purpose, the Investigating Judge shall promptly inform the Equal Opportunities Authority that a criminal proceeding is underway.

[...]

Art. 22

(Special precautionary measures in criminal proceedings)

When addressing an offence against personal safety, personal freedom or family maltreatment by a co-habiting partner, the Investigating Judge may, upon the victim's request, order the defendant to stay away from the family house and not to return or enter it without his/her authorization, and, if necessary, establish visitation rules.

In cases where the safety of the victim or of his/her close relatives is at stake and needs to be protected, the Investigating Judge may, upon the victim's request, order the defendant or the suspect to stay away from places usually frequented by the victim, in particular the workplace, the residence of the family of origin or of his/her close relatives, unless it is necessary for work-related reasons. In this case, the Judge shall establish the relevant rules and may impose limitations.

Following a request, the Judge shall collect any relevant information and take measures through a motivated decree, after listening to the defendant and, if necessary, the petitioner, except for in urgent cases.

Upon the victim's request and in compliance with cross-examination procedure, the Investigating Judge may order that a cheque is regularly paid off to the co-habiting persons who have no adequate financial means as a result of the precautionary measure adopted. The Judge shall determine the amount to be paid based on the person's financial condition as well as the methods and terms of payment. He/she may order, if necessary, that the cheque is directly paid to the beneficiary by the offender's employer by deducting it from his/her wages. The order of payment is an enforceable act.

The provisions described in the second and fourth paragraphs may be also be adopted after the measure referred to in the first paragraph, provided that this measure has not been repealed or become null. Though adopted at a later time, these measures shall become null if the measure mentioned in the first paragraph is repealed or becomes null. The measure set forth in the fourth paragraph shall become null if it is in favour of the spouse or the children, as well as in cases where the Civil Judge adopts a measure in a legal separation case or another measure concerning the economic and property relationships between spouses or the financial support of children.

The measure envisaged in the fourth paragraph may be amended should the situation of the person obliged to pay or the beneficiary change, and it is repealed if co-habitation resumes.

Art. 23

(Psychological support for victims of violence in criminal proceedings and other protection measures in criminal preliminary investigation)

When offences against personal safety, freedom or mal-treatment of a person are proceeded against, psychological support shall be ensured to the victim by experts when the victim is examined as a witness or during the confrontation with the defendant or other witnesses.

When a judicial or medical and legal examination has to be conducted during the proceedings for one of the offences described in the first paragraph, the expert shall be preferably chosen among professionals of the same sex of the victim.

The examination of the victim in court shall take place so as to avoid having to repeat it. To this end, the Investigating Judge shall adopt any appropriate measure, including having the examination videotaped.

When the victim is a minor, the Investigating Judge shall carry out the examination of the victim of the offence, through a confrontation with the defendant or witnesses, by using a mirror glass and an interphone device or other suitable tools ensuring confidentiality. The examination shall be video-taped. The minor shall always be assisted by a child psychologist

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auxiliary to the Judge.

Art. 24

(Protection of victims during the trial)

In criminal proceedings for offences against personal safety, personal freedom or ill-treatment of a person, the trial shall always take place behind closed doors, if the victim is a minor, and upon the victim's request, if he/she is an adult.

Testimonies and confrontations shall not be repeated if the defendant's right to legal defence has been granted during the preliminary investigations or whenever they have been videotaped.

If the examination or the confrontation need to be repeated, the provisions set out in article 23 shall be complied with. If the victim is a minor, the repetition cannot be requested when there is a real danger of worsening the minor's conditions; the danger shall be proven through a judicial examination to be cross-examined by technical advisors of the parties involved.

Art. 25

(Placing a person convicted of sexual and family violence on probation)

A person convicted of sexual or family violence may be placed on probation, in those cases set forth by law, provided that the convicted person is prepared to undergo a specific rehabilitation program.

TITLE III

CIVIL PROTECTION MEASURES

Art. 26

(Protection against family abuse)

When the conduct of the spouse or another co-habitant seriously affects the physical or ethical integrity or freedom of the other spouse or partner, the Judge, upon a complaint filed by either of spouses or co-habitant, may adopt through a decree one or more of the measures described in the following article in cases where the conduct does not constitute an offence to be prosecuted ex officio or if no complaints have been lodged.

The conducts mentioned in the first paragraph constitute a valid reason for the removal of the abuser from the family house, pursuant to Article 30 of Law No. 49 of 26 April 1986.

The provisions set out in this article also apply, inasmuch as they are compatible, in cases in which another family member different from the spouse or the co-habitant is responsible for the prejudicial conduct. In this case, the petition shall be filed by the family member who has been affected by the prejudicial conduct.

Art. 27

(Protection orders against family abuse)

The Judge shall order the spouse or the cohabitant having undertaken a prejudicial conduct to cease this conduct and request that he/she be removed from the family house. Furthermore, if necessary, the Judge shall order the offender not to visit the places usually frequented by the petitioner and, in particular the workplace, the domicile of his/her family of origin or the domicile of other close relatives or people. In addition, the offender shall be prohibited from coming into the proximity of the educational facilities attended by the couple's children, unless the offender has to frequent these places for work-related reasons.

The Judge may also request, if necessary:

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- the involvement of social services, family mediation centres, as well associations that aim at providing support and shelter to abused or ill-treated women, minors or other individuals as their statutory goals.
- That the cohabitants who have no adequate financial means as a result of the measures described in the first paragraph receive a check on a regular basis. The Judge shall determine the terms and methods of payment and order, where necessary, that the amount be directly paid to the beneficiary by the offender's employer by deducting it from his/her wages.

By virtue of the same decree and in the cases described in the previous paragraphs, the Judge shall establish the duration of the protection order starting from the date of the enactment of the order. The protection order shall not last more than six months and may be extended, upon a party's request, only if there are serious reasons and as strictly necessary.

By virtue of the same decree, the Judge shall determine the ways in which the order should be enacted. When ordering the offender to stay away from the family house, the Law Commissioner relies on the assistance of law enforcement agencies and orders the forced removal of the person subject to the order who does not comply with it spontaneously. The Law Commissioner may also indicate the measures deemed to be suitable in order to prevent violations of the provisions set out by the measure, including the supervision and the assistance by law enforcement agencies.

The decree shall always be transmitted to the Gendarmerie, a military corps responsible for internal security and public order, and to the Neuropsychiatric Service for the possible adoption of measures concerning arms and munitions.

Art. 28

(Proceedings for protection orders against family abuse)

The petition can also be submitted personally by the party. In this case, after receiving it, the Judge shall choose a defence lawyer from the list referred to in Article 17.

After listening to the parties, the Law Commissioner carries out the necessary preliminary work for the case in the way deemed to be most suitable, by collecting, also officially, any relevant information, and issues a motivated and immediately enforceable decree.

In urgent cases, the Judge, after obtaining very general information, where necessary, may immediately enact the protection order, by fixing the hearing for the parties within no more than fifteen days. At the hearing, the Judge validates, amends or repeals the protection order.

It is possible to appeal to the Civil Judge of Appeal against the decree through which the Judge enacted the protection order or rejected the appeal under the second paragraph, or validated, amended or repealed the protection order previously adopted in the case described in the preceding paragraph. The appeal does not suspend the enactment of the protection order, unless otherwise decided by the Judge of Appeal.

Art. 29

(Sanctions)

Anyone violating the protection order provided for in article 27 of this Law, or a similar measure taken during a personal separation, dissolution of marriage or annulment proceeding shall be punished with the sanction set out in Article 366 of the Criminal Code.

Art. 30

(Scope of protection orders)

The provisions of Articles 27 and 28 of this Law shall not be applied when the prejudicial conduct is undertaken by the spouse seeking or from whom personal separation, dissolution or annulment of marriage are sought, if during the proceeding thereof the hearing of the spouses referred to in Articles 110 and 127 of Law No. 49 of 26 April 1986 has taken place. In such case, the Judge may adopt protection orders in these proceedings.

The protection order enacted under Articles 27 and 28 shall become null if during a separation, dissolution of marriage or annulment proceeding sought by the petitioning spouse or against him/her, a decree containing provisional and urgent measures has been subsequently issued.

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Art. 31

(Suspension of parental rights)

When violence is committed against minors, the Law Commissioner may suspend the parental rights held by the defendant or the parent who tolerated the violence until liability is ascertained.

TITLE IV

PREVENTIVE ACTION BY LAW ENFORCEMENT AGENCIES

Art. 32

(Request for help to law enforcement agencies)

When a victim of violence or a third party witnessing the fact report the violence to Law Enforcement agencies, these shall immediately take action and, in any case, within an hour from the receipt of the report, unless there are serious reasons not to do so.

Law enforcement agencies may enter, also coercively, the victim's house or other privately owned places or premises where the victim is to be found; they shall curb the violent behaviour; they shall inform the victim of his/her rights, including the right to request protection orders; if there are concerns about a serious or irreparable prejudice, they shall immediately make a report

to the competent social services, unless it is an offence to be prosecuted ex officio or the victim has filed a complaint. In the latter case, the report shall be made to the Investigating Judge, who may adopt the relevant precautionary measures, including the ones described in this Law.

In all cases, police forces shall seize the weapons found in the abuser's house and inform the Law Commissioner or the Command of the Gendarmerie so that the necessary steps to suspend or revoke the firearm certificate or the hunting license might be taken.

Police Forces are also required to take immediate action when they receive reports regarding abusers who are driving or are going to drive in a state of drunkenness and adopt the necessary preventive and precautionary measures.

If the request for intervention relates to persecutory acts as defined by law, Law Enforcement Agencies are required to keep the offender away, and to make the necessary reports provided for by this Law, even regardless of the victim's complaint.

A report detailing the action taken shall be drafted and sent to the Command of the Gendarmerie and the Neuropsychiatric Service.

The data collected are sent to the Equal Opportunities Authority and are also available to the Civil Judge required to issue protection orders.

Art. 33

Article 3 of Law No. 26 of 25 February 2004 shall be amended to read as follows:

“Art. 3 (Composition)

The Commission is appointed by the Great and General Council at the beginning of the legislature for the duration of its term. It is composed of:

- eight members chosen on a proportional basis from the groups within the Great and General Council;
- a member designated by Trade Unions
- a member designated by the Council (*Consulta*) of the SanMarinese Cultural Associations and Cooperatives.

The members of the Commission cannot be members of the Great and General Council.”

Art. 34

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(Temporary provision)

The Commission on Equal Opportunities set up by Law No. 26 of 25 February 2004 shall be replaced by the Equal Opportunities Authority for the exercise of the functions described in this law.

When this law enters into force, the Commission for Equal Opportunities shall be supported by the Equal Opportunities Authority in the exercise of the functions and activities provided for in Article 2, points a, g, i, j, k, l of Law No. 26 of 25 February 2004

The Equal Opportunities Authority shall be composed of three members appointed for a 4year mandate by the Great and General Council among experts in legal issues, representatives of associations or NGOs operating in the field of Equal Opportunities, as well as experts in communication and psychology.

The Equal Opportunities Authority shall ensure the participation of all of the above- mentioned professionals.

The Equal Opportunities Authority shall collect data on violence against women and gender violence every six months.

The Equal Opportunities Authority shall draw up every year a specific report to be publicly circulated.

[...]

[Law incorporating the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in the Sanmarinese Legal Order, 2016](#) ¹⁵

[...]

Art. 1 (General Principles).

In compliance with provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence, open for signature in Istanbul on 11 May 2011, the Republic of San Marino commits to:

1. adapt the activities of its health, social, support, tutelage, prevention and protection services to the principles of the Convention;
2. implement effective policies that promote equality between women and men as well as the emancipation and empowerment of women;
3. adopt a gender perspective in the design of measures to implement the Convention and in evaluating their impact.

Art. 2 (Integrative definitions)

Article 2 of Law no. 97 of 20 June 2008 is replaced by the following:

(Concept of violence against women and gender-based violence; domestic violence)

Violence against the person is every act of violence based on the sexual or gender identity which entails, or is likely to entail, for those who are targeted, damage or suffering of a physical, sexual, psychological, or economic nature, including the threat of such acts, coercion, arbitrary deprivation of liberty, both in public and in private life.

The term gender refers to socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men.

Domestic violence is any act of physical, sexual, psychological, or economic violence that occurs within the family or family nucleus, or between current or former spouses, or partners considered equivalent to the spouses, regardless of whether the perpetrator has been cohabiting, or has cohabited, with the victim.

The term woman refers also to the minor of eighteen years".

¹⁵ Law incorporating the Council of Europe Convention on Preventing and Combating Violence against women and Domestic Violence in the Sanmarinese Legal Order (Legge 6 maggio 2016 n.57 - Norme di adeguamento dell'Ordinamento Sammarinese alle disposizioni della Convenzione del Consiglio d'Europa sulla prevenzione e la lotta alla violenza contro le donne e la violenza domestica (Convenzione di Istanbul)), No. 57 (6 May 2016) available at <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/scheda17148426.html> (last visited December 30, 2018). Unofficial translation by Compendium team.

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Art. 3 (Expansion of protection and assistance measures to victims)

Protection and assistance measures of Law No. 97 of 20 June 2008 are applicable to all victims of any forms of violence foreseen by the Convention.

Art. 4 (Assistance and rehabilitation of victims)

In order to address specific assistance and rehabilitation needs of victims, Art. 4 of Law No. 97/2008 provides for legal advice, psychological assistance, financial aid, housing, education, training and assistance with seeking employment, where needed. To complement duties foreseen by Art. 1 of Delegated Decree No. 60 of 31 May 2012, the Equal Opportunities Authority is charged with the coordination and organization of measures of assistance, through the stipulation of specific protocols with:

- the Order of Lawyers and Notaries for the provision of legal advice and legal assistance services, including in the extra judicial field, and for the provision of information on access to remedies for individual and collective complaints;
- the competent ISS structures for the provision of psychological support services;
- the offices competent to provide assistance and services in the provision of access to instruction, vocational training, and support with initial employment;
- adequate reception structures, for the accommodation in adequate facilities in emergency situations.

Legal advice and legal assistance services will be provided by experts in the roster established by the Order of Lawyers and Notaries according to Art. 17 (2) of Law No. 97 of 20 June 2008.

Art. 5 (Fund for the financial assistance of victims of violence)

In the State budget, a Fund for the financial assistance of victims is established within the expense chapters of the Department of Institutional and Justice Affairs, and is assigned to the Equal Opportunity Authority.

The Equal Opportunities Authority is the body responsible for identifying the need to provide adequate financial assistance to victims on the basis of specific circumstances of the case, as well as the availability of funds.

Victims of acts of violence identified by the Convention are entitled to access the Fund for acts that have been consumed, or attempted, on the territory of the Republic provided they are Sanmarinese citizens, either resident, or domiciled, in the territory of the Republic, and that they are in a state of economic hardship, even temporary.

The Equal Opportunities Authority provides to the timely disbursement of funds from the Department of Institutional and Justice Affairs where the existence of the need under section 2 of this article is ascertained.

Art.6

(Measures to protect and support children who witness violence)

The measures referred to in Article 4, letters b), c), d), e) and f) of Law No.97 of 20 June 2008, as well as the protection and support measures referred to in this law, must be understood as extending to minors who are witnesses to any form of violence falling within the scope of the Convention.

Art. 7 (Confidentiality of the identity of individuals who denounce or report)

The judicial and police authorities adopt through Regulation of the State Congress adequate measures to guarantee the confidentiality of identity of the individual who has denounced or reported an act of violence foreseen by the Convention.

Art. 8 (Compensation for failure to adopt prevention and protection measures)

Victims of acts of violence under the Convention are entitled to recourse to the competent judicial authorities to seek compensation for any potential damages resulting from the state authorities' failure to adopt, with malice or serious fault, in their respective competencies, preventive and protective measures in relation to the offences referred to in the Convention.

[...]

Art. 12 (Maltreatment against family members and cohabiting partners; domestic violence)

Art. 235 of the Penal Code is replaced by the following:

"Art. 235 Maltreatment against family members and cohabiting partners; domestic violence.

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Whoever maltreats a person of the same family, or a cohabiting partner, or a person with whom he is, or used to be, in a sentimental relationship, even if not cohabiting, is punished with second degree imprisonment. Imprisonment is of the fourth degree if the fact is aggravated by one of the aggravating elements indicated by Art. 156, and of fifth degree if death has derived from it.

Art.13

(Discrimination, hatred, or violence for racial, ethnic, national, religious or sexual orientation and gender identity reasons)

Article 179 bis of the Penal Code is replaced by the following:

"Art.179 bis

(Discrimination, hatred or violence for racial, ethnic, national, religious or sexual orientation and gender identity reasons)

Anyone who disseminates in any way ideas based on superiority or racial or ethnic hatred, or incites to commit, or commits acts of discrimination for racial, ethnic, national, religious, or sexual orientation or gender identity reasons, or incites to commit, or commits, violence or acts of incitement to violence for racial, ethnic, national, religious, or sexual orientation and gender identity reasons, is punished with second-degree imprisonment.

Ex officio prosecution is warranted, in any case, for crimes aggravated by the circumstances of racial, ethnic, national, religious discrimination, or linked to sexual orientation and gender, referred to in Article 90, paragraph 1, point 1. "

Art. 14 (Unacceptable justification for crimes)

Culture, usages and costumes, religion, traditions, or motive of honor cannot be adduced as a cause of justification, or reduction of punishment, for crimes foreseen under the Convention.

Art. 15 (Jurisdiction Criteria)

The citizen or the resident of the Republic who commits offenses covered by the Convention outside the territory of the State is subject to the jurisdiction of San Marino.

The person who commits the crimes foreseen by the Convention outside the territory of the State against a Sanmariense citizen, or a resident on the Republic's territory, is subject to the jurisdiction of San Marino.

Provisions of Articles 154 bis and 176 bis, as introduced by the present law, as well as provisions in Article 153, third section, n.1, as well as Articles 171, 172, 172 bis of the Penal Code, are applicable even where the facts are not considered crimes under the jurisdiction of the State in which they were committed, or even where these facts represent a crime under the jurisdiction of the State in which they are committed, but criminal proceedings can only be initiated on the victim's denunciation or an action of that State.

When one of the conditions provided for by Art. 7 of the Penal Code occurs, no procedure can be initiated according to section one and two above.

Art. 16 (Aggravating circumstances)

They constitute additional aggravating circumstances of the crimes contemplated by Articles 154 bis, 156 bis, 176 bis, and 235, as introduced or modified by this law, as well as Articles 171 and 172 bis of the Criminal Code, when the perpetrator committed the crime:

- a) against a minor or in the presence of a minor;
- b) to the detriment of a person who is in conditions of illness, mental deficiency, or state of pregnancy;
- c) with the use or threat of a weapon;
- d) or any other crime, linked more than once over a certain period of time.

The abuse of family relations, which is an aggravating circumstance under Art. 90 point 2 of the Penal Code, also includes the abuse committed by the ex-spouse or ex-partner.

Where additional aggravating circumstances are present, the judge can increase the punishment by one degree.

Art. 17 (Ex officio prosecution and abandonment of private prosecution)

Article 178 of the Penal Code is replaced by the following:

"Article 178. Ex officio prosecution and abandonment of private prosecution.

[...]

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Ex officio prosecution is warranted if the fact is committed by the ascendant, the tutor, the adopting parent, or the individual under whose care or custody is the offended person.

Ex-officio prosecution is also warranted when the fact is committed in conjunction with other fact which is punishable ex-officio, or in case of reiterated recidivism”.

[...]

Art. 19 (Tax exemption for acts committed in the victim’s interest)

The tax exemption provided for by Art. 17, section 7 of Law No. 97/2008 must be extended to all acts undertaken in the interest of the victim of violence in the context of civil, criminal, and administrative proceedings.

[...]

5. SAUDI ARABIA

[Law of Protection from Abuse, 2013](#)¹⁶

[...]

Article 1

The following terms and phrases – wherever mentioned in this Law – shall have the meanings assigned thereto unless the context requires otherwise:

- Ministry: Ministry of Social Affairs.
- Minister: Minister of Social Affairs.
- Law: Law of Protection from Abuse.
- Regulations: Implementing Regulations of this Law.
- Abuse: any form of exploitation; physical, psychological or sexual, or the threat thereof committed by an individual against another exceeding the limits of powers and responsibilities derived from guardianship, dependency, sponsorship, trusteeship or livelihood relationship. The term “abuse” shall include the omission or negligence of an individual in the performance of his duties or responsibilities in providing basic needs for a family member or an individual for whom he is legally responsible.

Article 2

This Law aims to:

- ensure protection from all forms of abuse;
- 2- provide assistance, treatment and shelter as well as social, psychological and health care;
- take necessary legal proceedings to hold the violator accountable and punish him;
- raise community awareness about the concept of abuse and its implications;
- address undesirable social behavior that indicates the existence of a favorable environment for the occurrence of abuse; and
- set scientific and practical mechanisms to deal with abuse.

Article 3

Anyone who becomes aware of a case of abuse must report it immediately.

- 2- Without prejudice to procedures set in other relevant laws, any public servant, civilian or military, as well as any employee in the private sector who becomes aware of a case of abuse, by virtue of his work, must report such case immediately to his employer, who in turn must report it immediately to the Ministry or the police. The Regulations shall specify reporting procedures.

Article 4

The Ministry and police shall receive reports of abuse cases from victims, government entities; including relevant security and health authorities, private entities or witnesses.

If the police receives a report of a case of abuse, it shall take necessary procedures falling under its jurisdiction, and shall immediately refer the report to the Ministry.

¹⁶ Law of Protection from Abuse, Royal Decree No. M/52, (15/11/1434H – 21/9/2013), available in English at https://www.nfsp.org.sa/ar/awareness/DocLib/english_law.pdf, in Arabic at <https://boe.gov.sa/ViewSystemDetails.aspx?lang=ar&SystemID=309&VersionID=287> (last visited December 30, 2018).

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Article 5

The identity of a person reporting a case of abuse may not be disclosed except with his consent, or in cases provided for in the Implementing Regulations. Ministry employees and those who become aware of such cases of abuse, by virtue of their employment, shall maintain the confidentiality of such information.

2- Any public servant, civilian or military, as well as private sector employees, who violate any of the provisions relating to reporting cases of abuse stipulated in this Law, shall be subject to a disciplinary action in accordance with legally prescribed procedures.

Article 6

A bona fide individual reporting a case of abuse shall be exempted from liability if it is established that such case is not a case of abuse, in accordance with the provisions of this Law.

Article 7

The Ministry shall immediately, upon receipt of a case of abuse and upon ascertaining the report and assessing the case, take any of the following measures:

Take necessary measures which ensure the provision of necessary health care to victims of abuse, and make a medical evaluation of the case, if needed.

Take necessary arrangements to prevent the continuation or recurrence of abuse.

Provide family and social counseling to the parties involved if the Ministry decides to address the case within the confines of the family.

Summon any of the parties to the case or any relative thereof, or any person involved to take their statements. Necessary measures and undertakings shall be taken to ensure the necessary protection for the victims of abuse.

Subject the parties of an abuse case to psychological treatment or rehabilitation programs as appropriate for each case.

Article 8

Without prejudice to the provisions of Article 7 of this Law, the Ministry shall, if it appears from the report that the case is serious and poses a threat to the life of the victim of abuse or his safety or health; take all necessary measures to deal with such case in accordance with its degree of seriousness, including notifying the governor or the relevant security authorities to take necessary measures, each within their respective jurisdiction, and coordinate with said authorities to ensure the safety of the victim of abuse including his transfer or the transfer of the aggressor – if necessary – to a proper place until the danger has passed.

Article 9

If the Ministry finds that dealing with a case of abuse requires urgent intervention or access to the place where the incident of abuse has occurred, it may seek the assistance of the competent security authorities. Said authorities shall respond immediately to the request according to the nature of each case and degree of seriousness.

Article 10

The Ministry shall take into account – when dealing with any case of abuse – the degree, kind and frequency of violence, provided that any of the means used in treatment do not result in greater harm to the victim, or adversely affect his family or livelihood. In dealing with abuse cases, priority shall be given to preventive and counseling measures, unless the case requires otherwise.

Article 11

If the Ministry deems that the incident of abuse constitutes a crime, it shall notify the competent detecting and recording authority to take necessary legal action.

Article 12

The Ministry shall follow cases of abuse that it refers to the competent detecting and recording authority, in accordance with Article 11 of this Law. Said authority shall notify the Ministry of action taken regarding each case.

Article 13

Without prejudice to any severer penalty prescribed under Sharia or law, a person who commits an act that constitutes a crime of abuse specified in Article 1 of this Law shall be subject to imprisonment for a period of not less than one month and not more than one year and a fine of not less than five thousand and not more than fifty thousand riyals, or to either

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punishment. In case of recidivism, the punishment shall be doubled and the competent court may issue an alternative punishment for the freedom-depriving punishment.

Article 14

Provisions and procedures provided for in this Law shall not prejudice the obligations of other competent authorities, nor shall they prejudice any more favorable right of protection from abuse stipulated in another law or an international convention to which the Kingdom is party.

Article 15

The Ministry shall, in cooperation with the relevant authorities, take all appropriate preventive measures for protection from abuse. To this end, it may, without limitation, do the following:

Raise awareness of the concept of abuse, its seriousness and adverse effects on an individual's personality as well as stability and solidarity of the community.

Take necessary action to address undesirable social behavior conducive to creating an environment leading to the occurrence of abuse.

Provide authenticated statistical data on abuse cases to be utilized in devising treatment mechanisms and the conduct of scientific research and studies.

Promote awareness and educational programs that aim to curb abuse through media and other means.

Organize specialized training programs for all persons involved in dealing with abuse cases, including judges, detecting and recording officers, investigation officers, physicians, specialists and others.

Raise awareness of community members, particularly the most vulnerable to abuse, of their rights under Sharia or law.

Intensify family counseling programs.

Support and conduct scientific research and studies relating to protection from abuse.

Article 16

The Minister shall issue the Regulations within 90 days from the date of publication of this Law in the Official Gazette. Said Regulations shall enter into force as of the date the Law enters into force.

Article 17

This Law shall enter into force 90 days after the date of its publication in the Official Gazette.

6. SÃO TOMÉ AND PRÍNCIPE

Law on Domestic and Family Violence, 2008¹⁷

TITLE I PRELIMINARY PROVISIONS

Article 1 – Object

This Act creates mechanisms to prevent and punish domestic and family violence, in accordance with the Convention on the Elimination of all Forms of Discrimination Against Women, provides for the creation of specialized courts to judge cases of domestic violence and other cases involving other forms of gender-based violence; and establishes assistance and protective measures for victims of domestic violence.

Article 2 – Scope of Application

Every woman and man, child, regardless of class, ethnicity, sexual orientation, profession, culture, level education, age and religion, enjoy the fundamental rights inherent to the human person, and are ensured with the opportunities and possibilities to live a life without violence, to preserve their physical and mental health, and their moral, intellectual and social integrity.

Article 3 – Guarantee of Rights

1. The father, mother, son, brother, sister, wife, companion, grandfather, grandmother, children and old dependents, are ensured with the conditions to effectively exercise their rights to life, safety, health, nutrition, education, culture, housing, access to justice, work, citizenship, freedom, dignity, respect, and family and community living.

¹⁷ Law on Domestic and Family Violence (Lei Sobre a Violência Doméstica e Familiar), Law No. 11/2008 (22 October 2008). Unofficial translation by Compendium team. See Annex V.

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2. Public authorities shall develop policies aimed at guaranteeing human rights in the context of family members, in order to protect each member of the family from any form of negligence, discrimination, exploitation, violence, cruelty and oppression.
3. It is up to the family, to the society and to the public authorities to create the necessary conditions for the effective exercise of the rights mentioned in the previous paragraph.

Article 4 – Interpretation

To interpret this Law, it shall be considered the social purpose to which it is intended and in particular the peculiar conditions of people that are in situations of domestic and family violence.

TITLE II
ON DOMESTIC AND FAMILY VIOLENCE

CHAPTER I
GENERAL PROVISIONS

Article 5 – Concept

For the purposes of this Law, domestic violence is considered to be any action or omission arising within the family or household that causes death, injury, physical, sexual or psychological, moral or property damage, or deprivation of one's freedom under the following situations:

- (a) within the domestic unit, hereby understood as the permanent coexistence space between people with or without family ties, including the ones sporadically aggregated.
- (b) within the family, hereby understood as the community formed by individuals that are, or consider to be, related, linked by natural bonds, by affinity or express will.
- (c) within any intimate relationship in which the aggressor lives or has lived with the victim, regardless of cohabitation.

Article 6 – Human Rights

Domestic and family violence constitute a form of human rights violation.

CHAPTER II
FORMS OF DOMESTIC AND FAMILY VIOLENCE

Article 7 – Forms

These are considered to be forms of domestic and family violence, among others:

- (a) Physical violence, understood as any conduct that offends the integrity or bodily health, namely slapping, pulling, pushing, banging, pinching, biting, scratching, punching, kicking, or striking with weapons or objects.
- (b) Psychological violence, understood as any conduct that causes emotional damage and lower self-esteem, or that impairs or disturbs a person's full development, or that is aimed at degrading or controlling its actions, behaviors, beliefs and decisions, through threats, embarrassment, humiliation, manipulation, coercive isolation, constant vigilance, persecution, insult, blackmail, exploitation and ridicule, or any other means that can cause damage to one's psychological health and self-determination.
- (c) Sexual violence, understood as any conduct that compels someone to witness, maintain or participate in unwanted sexual intercourse, through intimidation, threat, coercion or use of force; that induces someone to commercialize or to use its sexuality in any way, that prevents to use any form of contraceptive method, or that forces into marriage, pregnancy, abortion or prostitution, through coercion, blackmail, bribery or manipulation; or that limits or annuls the exercise of sexual and reproductive rights.
- (d) Patrimonial violence, understood as any conduct that configures retention, subtraction, partial destruction or total destruction of the objects, work documents, personal documents, goods, values and rights or economic resources, including those designed to meet their needs.
- (e) Moral violence, understood as any conduct that constitutes slander, defamation, or injury.

TITLE III
ASSISTANCE TO WOMEN IN SITUATION OF DOMESTIC AND FAMILY VIOLENCE

CHAPTER I
INTEGRATED PREVENTION MEASURES

Article 8 – Prevention Policy

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Public policy aimed at preventing violence domestic and family life will be achieved through an articulated set of actions by the State (Assembly, Government), the Autonomous Region and the Autarchies and non-governmental organizations, with the following guidelines:

- a) The operational integration of the Judiciary (Courts and Public Prosecutions), with the public security, social assistance, health and education, work and solidarity;
- b) The promotion of studies and research, statics and other relevant information, with gender and race perspective, concerning the causes, consequences and frequency of domestic and family violence, to the systemic data, to be unified nationally and the periodic evaluation of the results derived from measures taken;
- c) The respect, in social media, of ethic and social values of the person and the family, to punish stereotyped roles that legitimize or exacerbate domestic and family violence.
- d) The implementation of police assistance for victims of domestic and family violence, inside the District Police Offices.
- e) The promotion and implementation of prevention policies on domestic and family violence, addressed to the public in education and society in general, and the propagation of this law and other instruments of human rights protection.
- f) Reestablishment of the notion of family, mutual respect, and ethics in Society; and restructuring of Society.
- g) Signing of conventions, protocols, and other instruments that promote partnership between government agencies and non-governmental entities, aiming at eradicating domestic and family violence.
- h) Permanent training of Civil and Military Police and of professionals belonging to the agencies and areas regarding gender and ethnicity.
- i) The promotion of educational programs that disseminate ethical values, the respect for human dignity under the perspective of gender and ethnicity.
- j) The emphasis in school curricula in all levels of education, of content related to human rights, gender equality, ethnicity and to the problem of domestic and family violence.

CHAPTER II

ASSISTANCE TO VICTIMS IN SITUATION OF DOMESTIC AND FAMILY VIOLENCE

Article 9 – Assistance to the Victim

1. Assistance to victims of domestic violence shall be provided in an articulated manner and in accordance with the principles and guidelines provided in the area of Social Assistance, Health, Public Safety, among other norms and public policies concerning protection and emergency, according to each case.
2. The judge shall provide protection to the victim of domestic and family violence in order to preserve their physical and psychological integrity by maintaining the employment relationship, when it is necessary to move away from the workplace, up to six months.
3. Assistance to victims of domestic violence and the family will include access to the benefits derived from scientific and technological development, including emergency contraception, prophylactic transmissible Sexually Transmitted Diseases (STD) and Acquired Immunodeficiency Syndrome (AIDS) and other necessary medical procedures in cases of sexual violence.

CHAPTER III

ATTENTION BY THE POLICE AUTHORITY

Article 10 – Emergency Measures

In the event of the imminence or practice of domestic and family violence, the police authority and other vocational institutions that are aware of the violence occurred, shall immediately adopt the legal measures needed.

Single paragraph: This shall be applied to the deferred urgency protection measure.

Article 11 – Treatment

In treating the victim of family and domestic violence, the police authority shall provide in the sense of:

- (a) Ensure police protection, when necessary, immediately communicating with the special courts.
- (b) Refer the offended person to the hospital or health Center;
- (c) Provide transportation for the offended and their dependents to shelter or to a safe place, when there's a life threat;
- (d) If necessary, follow the offended to ensure the removal of her belongings from the place where the violence occurred, or from the family home;
- (e) Inform the victims about their rights conferred by this Law, and about the services available.

Article 12 – Procedures

1. In all cases of domestic and family violence, once the event is registered, the competent authority shall immediately adopt the following procedures, without the prejudice to those provided for in the Criminal Procedure Code:

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- (a) Listen to the offended person, write the event bulletin, and take forward the representation, if presented;
 - (b) Collect all evidence that serves to clarify the event and its circumstances;
 - (c) Submit within 24 (twenty-four) hours expedient with the request of the offended, for granting of urgent protective measures;
 - (d) Determine the medical examination of the offended and request other necessary forensics reports;
 - (e) Listen to the aggressor and the witnesses;
 - (f) Order the identification of the aggressor and attach his criminal record to the process, indicating the existence of arrest warrants or registration of any other police event against the perpetrator;
 - (g) Submit within the time legally prescribed in paragraph c) the records of the police investigation to the special court.
2. The offended person's request shall be registered by the police authority and should contain:
- (a) Information about the offended and the aggressor;
 - (b) Name and age of dependents;
 - (c) Brief description of the facts and the protective measures that were requested by the offended person.
3. The police authority shall attach the document mentioned in number 2 of the event bulletin and copy of all the available documents that the offended person has.
4. Medical reports provided by hospitals and health centers shall be admitted as evidence.

TITLE IV
OF PUNITIVE MEASURES

CHAPTER I
PSYCHOLOGICAL VIOLENCE

Article 13 – Penalty

Whoever commits psychological violence shall be punished with a prison sentence of 2 to 5 years.

Article 14 – Aggravation

The following shall be considered as aggravating factors:

- a) If psychological violence is exercised with coercion or threat, the term of imprisonment is 3 years.
- b) If the psychological violence is the direct cause of death of the victim, the agent shall be punished with a sentence of 5 years.

CHAPTER
SEXUAL VIOLENCE

Article 15 – Violation

Whoever commits sexual violence in the family or home shall be punished with imprisonment from 1 to 10 years.

Article 16 – Aggravation

It shall be considered as aggravating factors:

- (a) Whoever, by abusing of the authority resulting from domestic and family coexistence, constrains another person to have a relevant sexual act with himself or with others, through an order or threat, shall be punished with imprisonment of 2 years.
- (b) Whoever, by means of violence, serious threat, or after having rendered the woman unconscious or in a state of impossibility of resisting, constrains a woman to practice with himself or with others copulation, oral sex, anal sex, shall be punished with imprisonment of 3 years.
- (c) Whoever, by abusing of the authority resulting from domestic and family coexistence, constrains another person, through an order or threat, to practice with himself or with others copulation, oral sex, anal sex, shall be punished with imprisonment of 5 years.

CHAPTER III
PATRIMONIAL VIOLENCE

Article 17 – Crime Against Property

Whoever, abusing of the domestic and family support, unilaterally dispose of property interests of the other, causing severe violation to these property interests and their respective obligations, shall be punished with imprisonment of up to 3 years, and fine penalty up to 300 days.

CHAPTER IV

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MORAL VIOLENCE

Article 18 – Crimes Against the Honor

Whoever, abusing the domestic and familiar coexistence, commit injury, slander, or defamation of others, imputing them facts, even on suspicion, directing offensive words attacking their honor or consideration, shall be punished with imprisonment of up to 3 years, or a fine of up to 120 days, or with community service.

CHAPTER V
PHYSICAL VIOLENCE

Article 19 – Bodily Injury

Whoever, abusing the domestic and familiar coexistence, offends the body or the health of the other, is punished with imprisonment from 3 to 8 years.

Article 20 – Aggravation

It shall be considered as aggravating factors:

- a) Whoever, by abusing of the authority resulting from domestic and family coexistence, deprive someone from an important organ or limb, cause serious and permanent deformation, shall be punished with imprisonment of 3 years.
- b) Whoever, through violence, serious threat, take away someone's capacity to work, or their intellectual or procreative capacity, or their possibility to use their bodies, senses and language, shall be punished with the prison sentence of 4 to 6 years;
- c) Whoever, by abusing the authority resulting from domestic and family cohabitation, cause someone a particularly severe or permanent disease, or a severe or incurable psychiatric anomaly, shall be punished with imprisonment of 6 to 10 years;
- d) Whoever, by abusing the authority resulting from domestic or family cohabitation, cause the death of someone, shall be punished with imprisonment from 8 to 16 years.

TITLE IV
PROCEDURES

CHAPTER I
GENERAL PROVISIONS

Article 21 – Procedures

The process, the trial and the execution of the causes civil and criminal cases resulting from the practice of domestic and family will apply the norms of Criminal Procedure and Civil Procedure provided for which do not conflict with O established in this Law.

Article 22 – Judges

The Judges of Domestic and Family Violence, of ordinary justice with criminal and criminal jurisdiction, may be created by the State, for the prosecution, and the implementation of the causes arising from of domestic and family violence. Single paragraph Procedural acts may be carried out on time night, according to the organization norms tion.

Article 23 – Competent Forum

It is competent, at the option (s) I have offended, civil proceedings governed by this Law, the Judgment:

- The) From his domicile or residence;
- B) From the place of the occurrence of violence;
- w) From the domicile of the aggressor.

Article 24 – Criminal Proceedings

In public criminal proceedings of the offended person referred to in this Law, the resignation of the representation before the judge in court, prior to the receipt of the public prosecutor has been heard.

Article 25 – Interdiction

It is forbidden to apply, in cases of domestic and family allowances, food allowance penalties, other benefits of pecuniary benefit, as well as the penalty which entails the payment in isolation of traffic ticket.

CHAPTER II
EMERGENCY PROTECTIVE MEASURES

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SECTION I
GENERAL PROVISIONS

Article 26 – Deadlines

Received the expedient with the request of the offended, it shall be the responsibility of the judge, within twenty-four (24) hours, to:

- (a) Know the dossier and the application and decide on emergency protection measures;
- (b) Determine the aggressor's referral to the judicial assistance body, where it is the case;
- (c) To inform the Public Prosecutor's Office that precautionary measures.

Article 27 – Applicability of emergency protection measures

1. Emergency protection measures may be granted by the judge, at the request of the Public Ministry, or at the request of the offended party.
2. The emergency protection measures may be immediately, regardless of hearing the parties and of a manifestation of the Public Ministry.
3. The emergency protection measures shall be applied independently or cumulatively and may be substituted at any time by others of greater efficacy, every time a right recognized by this Law is threatened or violated.
4. The judge may, at the request of the Public Ministry or at the request of the offended person, to grant further protective measures or reviewing those already granted, if it deems necessary to protect the offended person, members of his family and his assets, after hearing the public interest.

Article 28 – Preventive Detention

At any stage of the police investigation or the criminal instruction, the preventive detention of the aggressor can be decreed by the judge, upon request by the Public Ministry.

Single paragraph: The judge may revoke pre-trial detention if, in the course of the proceedings, is it verified the lack of grounds for subsisting, as well as to re-enact it, if there are reasons to justify it.

Article 29 – Notification of procedural acts to the aggressor

The offended shall be notified of the procedural acts relating to the aggressor, his entry and exit from prison, without prejudice of subpoena to the constituted lawyer or public defendant.

Single paragraph: The offended person cannot deliver a subpoena or notification to the aggressor.

SECTION II
EMERGENCY PROTECTION MEASURES THAT OBLIGE THE AGGRESSOR

Article 30 – Emergency protection measures

Once verified the practice of domestic and family violence, under the terms of this Law, the judge may apply to the aggressor, immediately, together or separate, the following measures:

I - Suspension of ownership and possession of weapons, followed by communication to the competent body;

II - Removal from the home, place of residence or living quarters with the offended;

III - Prohibition of certain conducts, including:

- (a) Approximation of the offended person, his or her family members and witnesses, setting the minimum limit for the distance between them and the aggressor;
- (b) Contact with the offended and witnesses by any means of communication;
- (c) Going to certain places in order to preserve the physical and psychological integrity of the offended;

IV - Restriction or suspension of visits to underaged dependents, after hearing the multidisciplinary care team or similar service;

V - Provision of alimony.

1. The measures referred to in this Article do not prevent the application of other provisions of the legislation in force, whenever the safety of the offended require so, and such provision must be communicated to the Public Ministry.

2. In the event of application of Article I, if the aggressor is found under the conditions mentioned above, the judge shall communicate to the appropriate body or institution the emergency protection measures that were granted and shall determine the restriction of carrying weapons, being the immediate superior of the aggressor responsible for compliance with the judicial determination, under penalty of committing crimes of disobedience, as the case may be.

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3. In order to ensure the effectiveness of the urgency, the judge may request, at any time, help from the police force.

SECTION III
MEASURES TO PROTECT THE OFFENDED PERSON

Article 31 – Emergency Protective Measures

The judge may, where necessary, without prejudice to other measures:

- I – Send the offended person and his or her dependents to an official or community protection or care program;
- II – To determine the reappointment of the victim and his / her dependents to the respective domicile, after removing the aggressor;
- III – Determine the removal of the aggressor from the home, without prejudice to the rights related to property, child custody and alimony;
- IV – Determine the separation of persons.

Article 32 – Patrimonial Protection

For the protection of assets of the conjugal society or of personal property, the judge may determine, through injunction, the following measures, among others:

- I – Restitution of property unduly deprived by the aggressor to the offended;
- II – Temporary prohibition for the execution of acts and contracts of purchase, sale and lease of common property, unless through express judicial authorization;
- III – Suspension of powers of attorney granted by the offended to the aggressor;

Refund of assets unduly withdrawn by the aggressor (a) to (the) victim (s);

- II - Temporary prohibition on the performance of acts and contracts for the purchase, sale and leasing of property in judicial authorization;
- III - Suspension of powers of attorney eaten by (a) offended to the aggressor;
- IV – Provision of a provisional bond, by judicial deposit, for material losses and damages resulting from the practice of domestic and family violence against the offended person.

CHAPTER III
PERFORMANCE OF THE PUBLIC MINISTRY

Article 33 – Intervention by the Public Ministry

The Public Ministry shall intervene, even when it is not a party, in all civil and criminal cases resulting from domestic and family violence.

Article 34 – Attributions of the Public Ministry

Service It shall be incumbent upon the Public Prosecutor, without prejudice to other attributions, in cases of domestic and family violence, when necessary:

- I - Request police force and public health services. of education, social assistance and security, among others;
- II - To supervise public and private care centers for victims in situations of domestic and family violence, and to adopt immediately the administrative or judicial remedies in respect of any or irregularities found;
- III - Inventory of domestic and family violence cases.

CHAPTER IV
JUDICIAL ASSISTANCE

Article 35 – Judicial Assistance

All procedural, civil and criminal acts, in situation of domestic and family violence, may be accompanied by a lawyer.

Article 36 – Free Legal Assistance

It is guaranteed to the victim in situations of domestic and family violence the access to free legal aid services, under the terms of the Law, in both police and judicial sphere, through specific and humanized care.

TITLE VI
MULTIDISCIPLINARY CARE TEAM

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Article 37 – Composition

The Domestic and Family Violence Court that will eventually be created can count with a multidisciplinary care team to be integrated by specialized professionals in the psychosocial, legal and health areas.

Article 38 – Attributions

The multidisciplinary care team shall be responsible, among other attributions established by the law, to provide written submissions to the judge, the Public Ministry, through reports or during hearings, and to develop an orientation work with prevention and other measures aimed to assist the offended, the aggressor and their families, with special attention to children and adolescents.

Article 39 – Professional Assessment

Where the complexity of the case requires a more in-depth assessment, the judge can determine a manifestation of a specialized professional, by indicating someone from the multidisciplinary care team.

Article 40 – Budget Proposal

The Judiciary, while preparing its budget proposal, can allocate resources to the creation and maintenance of the multidisciplinary care team, according to the State's General Budget Law.

TITLE VII
TRANSITIONAL PROVISIONS

Article 41 – Civil and Criminal Competencies

Until the Judgment on Domestic Violence has been and Family Law, criminal courts will accumulate civil and criminal competencies to know how to causes of domestic violence and family, in compliance with the provisions of Title IV of this Law, subsidized by the relevant procedural legislation.

Single paragraph: the right of first refusal shall be guaranteed in the merits for the prosecution and review of the previous article.

TITLE VIII
FINAL PROVISIONS

Article 42 – Concomitance

The Domestic Violence and Family Court can be constituted in concomitance with the implantation of the necessary curatorship and the legal aid service.

Article 43 – District Chambers Functions

The District Chambers may create and promote, within their respective powers:

- I – Comprehensive and multidisciplinary centers for dependents in situations of domestic and family violence;
- II – Home shelters for their underaged dependents in situations of domestic and family violence;
- III – Police stations, centers of public defense, and medical-legal expertise centers specializing in assistance to victims of domestic and family violence;
- IV – Programs and campaigns to fight domestic and family violence;
- V – Education and rehabilitation centers for aggressors.

Article 44 – Adaptation by the State

The State shall promote the adaptation of its organs according to the guidelines and principles of this Law.

Article 45 – Defense of Interests

The defense of trans-individual interests and rights provided for by this Law may be exercised, concomitantly, by the Public Prosecutor's Office and the Associations that work in this area, which has been regularly constituted for at least one year under the terms of the civil legislation.

Single paragraph: the pre-constitution requirement may be waived by the court when it finds that there is no other representative entity to represent the victim.

Article 46 – Statistics

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Statistics on Domestic and Family Violence against victims will be included in the databases of bodies of the Justice and Security Systems to subsidize the national data and information system concerning domestic violence.

Single paragraph: The Public Security Services may send information in the domain to the Public Ministry database.

Article 47 – Budget Allocations

The Central and Regional Governments, as well as the autarchies, within the limits of their powers and within their respective laws and budgetary guidelines, can establish specific budget allocations for each financial year, for the implementation of the measures established in this Law.

Article 48 – Guarantee of Principles

The obligations provided for in this Law do not exclude other principles adopted by it.

Article 49 – Public Matter

The crimes of domestic and family violence, once denounced, are assumed to be crimes of public matter.

[...]

7. SENEGAL

[Penal Code, 1965 \(As amended\)](#) ¹⁸

Article 297 bis - (Law n° 99-05 January 29, 1999)

Anyone who wilfully injures or beats his spouse or commits any other violence or assault will be punished by a prison sentence of one to five years and a fine of 50,000 to 500,000 francs if the violence results in illness or incapacity to work for more than twenty days.

Where the injury or assault or other violence or assault has not caused illness or total incapacity for work of a duration equal to that mentioned in the preceding paragraph, the offender shall be liable to the penalties provided for in paragraph 2 of Article 294.

In the cases referred to in the first two paragraphs of this article, suspension of the execution of sentences shall not be imposed.

If the violence results in modification, amputation or deprivation of the use of a limb, blindness or loss of an eye or other permanent disabilities, the penalty shall be that of forced labour for a period of ten to twenty years.

If the beatings or violence systematically inflicted have resulted in death without intention of causing it, the penalty of forced labour for life shall always be imposed.

If the systematic beatings or violence have resulted in death, the perpetrators will be punished as guilty of murder.

Article 312-

The murder committed by the husband on the wife, or by the wife on her husband, is not excusable, if the life of the husband or wife who committed the murder was not endangered at the very moment that the murder was committed.

Nevertheless, in the case of adultery provided for in article 330, the murder committed by one spouse against the other, as well as on the accomplice, at the moment when he catches them in flagrante delicto, is excusable.

8. SERBIA

¹⁸ Penal Code, (July 21, 1965, as amended), available at <http://www.droit-afrique.com/upload/doc/senegal/Senegal-Code-1965-penal.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

[Law on the Prevention of Domestic Violence, 2016](#)¹⁹

[...]

I. INTRODUCTORY PROVISIONS

Subject of the Law

Article 1

This law regulates the prevention of domestic violence and the role of state authorities and institutions in preventing domestic violence and providing protection and support to victims of domestic violence.

This law does not apply to minors who commit domestic violence.

Objective of the Act

Article 2

The aim of this law is to regulate the organization and role of state entities and institutions in a general and unique manner and thereby enable effective prevention of domestic violence and urgent, timely and effective protection and support to victims of domestic violence.

Preventing domestic violence, imminent danger of domestic violence, domestic violence

Article 3

Preventing domestic violence consists of a set of measures to detect whether a direct threat of domestic violence exists and a set of measures that apply when a direct danger is detected.

The imminent danger of domestic violence exists when the behavior of a possible perpetrator and other circumstances arises that he is ready, in the time immediately preceding, and prepared to commit or repeat domestic violence.

Domestic violence, within the meaning of this law, is an act of physical, sexual, psychological or economic violence of the perpetrator towards the person with whom the perpetrator is in the present or former marital or extra-marital relationship or intimate partnership relationship or with whom the perpetrator has a family relationship in direct blood line to the second degree, or with whom the perpetrator has a family-in-law relationship to the second degree or to whom the perpetrator is an adoptive parent, guardian, caretaker or foster parent, or another person with whom he lives or lived in a common household.

Application of this law to certain criminal offenses

Article 4

This law also applies to cooperation in the prevention of domestic violence (Articles 24-27) in criminal proceedings for criminal offenses:

- 1) prosecution (Article 138a of the Criminal Code);
- 2) rape (Article 178 of the Criminal Code);
- 3) sexual intercourse with a helpless person (Article 179 of the Criminal Code);
- 4) sexual intercourse with a child (Article 180 of the Criminal Code);
- 5) sexual intercourse through abuse of office (Article 181 of the Criminal Code);
- 6) prohibited sexual acts (Article 182 of the Criminal Code);
- 7) full disturbance (Article 182a of the Criminal Code);
- 8) enforcing and facilitating sexual intercourse (Article 183 of the Criminal Code);
- 9) mediation in prostitution (Article 184 of the Criminal Code);
- 10) displaying, obtaining and possessing pornographic material and exploitation of minors for pornography (Article 185 of the Criminal Code);
- 11) inducing a minor to attend sexual acts (Article 185a of the Criminal Code);
- 12) neglecting and abuse of a minor (Article 193 of the Criminal Code);
- 13) domestic violence (Article 194 of the Criminal Code);
- 14) failure to provide maintenance (Article 195 of the Criminal Code);
- 15) violation of family obligations (Article 196 of the Criminal Code);
- 16) incest (Article 197 of the Criminal Code);
- 17) human trafficking (Article 388 of the Criminal Code);
- 18) other criminal offenses, if the offense is a consequence of domestic violence.

This law shall also apply to the provision of protection and support to victims of criminal offenses referred to in paragraph 1 of this Article (hereinafter: criminal offenses established by this Law).

¹⁹ Law on the Prevention of Domestic Violence, O.G. of the Republic of Serbia No. 94 (24 November 2016), available at <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/viewdoc?uuiid=47229f7e-55cc-4162-9516-cc01fd5a512a®actid=418709&doctype=reg> (last visited December 30, 2018).
Unofficial translation by World Bank.

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Application of other regulations

Article 5

Unless otherwise provided by this Law, in the prevention of domestic violence, in the procedures against perpetrators of criminal offenses established by this Law and in the provision of protection and support to victims of domestic violence and victims of criminal offenses determined by this Law, the Criminal Code, the Code of Criminal Procedure, the Civil Procedure Code, the Family Law and the Law on Police shall apply.

Discipline responsibility

Article 6

Disobedience of judges, public prosecutors and deputy public prosecutors within the time limits determined by this law constitutes a disciplinary offense.

II. COMPETENT AUTHORITIES AND INSTITUTIONS

Article 7

The police, public prosecutors, general courts and misdemeanor courts, as competent state bodies, and centers for social work, as institutions, are responsible for the prevention of domestic violence and the provision of protection and support to victims of domestic violence and victims of criminal acts.

In addition to the competent state authorities and centers for social work, other institutions in the field of children, social protection, education, education and health are involved in the prevention of domestic violence through the provision of help and information on violence, as well as support to victims of violence (hereinafter: state bodies and institutions responsible for the implementation of this law), as well as bodies for gender equality at the level of local governments.

Support to victims of domestic violence and victims of criminal offenses established by this Law may also be provided by other legal and natural persons and associations.

Police

Article 8

The head of the regional police administration designates police officers who have completed specialized training to prevent domestic violence and provide protection to victims of violence (hereinafter: competent police officers).

Public Prosecutor's Office

Article 9

In each public prosecutor's office, in addition to those special competencies, the public prosecutor shall appoint deputy public prosecutors who have completed specialized training in order to exercise the competencies of the public prosecution in the prevention of domestic violence and the prosecution of perpetrators of criminal offenses established by this Law.

Courts

Article 10

The president of each court of general jurisdiction and misdemeanor court shall appoint judges who have completed specialized training to rule on cases of prevention of domestic violence and for criminal offenses determined by this Law.

Procedures for the prevention of domestic violence include the extension of emergency measures and procedures for measures for the protection against domestic violence provided for in the Family Law (hereinafter: measures for the protection against domestic violence), including enforcing misdemeanor procedures for violation of protection measures as envisaged by this Law (Article 36).

Center for Social Work

Article 11

The head of each center for social work determines among the center's staff a team of experts to help prevent domestic violence and provide support to victims of violence.

III. PROCEDURE

General rules

Article 12

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON
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State bodies and institutions in charge of the implementation of this law shall be obliged to prevent, in a rapid, effective and coordinated manner, domestic violence and the commission of criminal offenses established by this Law and to provide victims with protection, legal assistance and psychosocial and other support for the purpose of their recovery, empowerment and independence.

a) Preventing domestic violence

Reporting and recognizing domestic violence

Article 13

Everyone must report to the police or the public prosecutor without delay the violence in the family or the imminent danger thereof.

State and other bodies, organizations and institutions are obliged to immediately report to the police or the public prosecutor any knowledge of domestic violence or immediate danger thereof.

The competent state authorities and centers for social work (Article 8-11) shall be obliged, within their regular duties, to recognize domestic violence or danger thereof.

Recognition can arise from examining the application submitted to the victim of violence by anyone, by spotting the traces of physical or other violence on the victim, and other circumstances that indicate the existence or immediate danger of domestic violence.

The public prosecutor who has reported the violence or the immediate danger thereof is obliged to immediately forward the application to the police officers so that they inform the competent police officer thereof (Article 14, paragraph 1).

Acting police officers

Article 14

Police officers are obliged to immediately inform the competent police officer of any domestic violence or immediate danger thereof, regardless of how they have learned about it, and have the right to bring a possible perpetrator to the competent organizational unit of the police, either alone or at the request of a competent police officer, to conduct the proceedings.

Retention in the competent organizational unit of the police for the conduct of the procedure can last no more than eight hours.

During the procedure in the competent organizational unit of the police, a possible perpetrator must be instructed and allowed to contact and use the services of defense counsel and legal assistance in accordance with the Constitution and laws of the Republic of Serbia.

Action by a competent police officer

Article 15

The competent police officer must make possible to the perpetrator brought to the competent organizational unit of the police to give a statement on all relevant facts, collect the necessary information from other police officers, immediately assess the risk of immediate danger of domestic violence (hereinafter: risk assessment) and, under the conditions stipulated by this Law (Article 17, paragraph 1), impose an urgent measure for the prevention of domestic violence (hereinafter: urgent measure).

If the potential perpetrator is not brought to the competent organizational unit of the police, the competent police officer assesses the risk immediately when he receives a notification of violence or immediate danger from police officers.

Before completing the risk assessment, the competent police officer may, if necessary, seek the opinion of the Center for Social Work.

Risk assessment

Article 16

Risk assessment is based on available information and takes place as soon as possible.

When assessing risks, particular consideration is given to whether a potential perpetrator has, before or immediately before the risk assessment, committed domestic violence and whether he is ready to repeat it, whether he is threatening with murder or suicide, whether he has a weapon, whether he is mentally ill or abuses psychoactive substances, whether there is a conflict over custody of the child or the manner of maintaining personal relationships between the child and the parent who is the possible perpetrator, whether the perpetrator is pronounced an urgent measure or a certain measure of protection against domestic violence, whether the victim is in fear and how they assess the risk of violence.

The competent police officer shall immediately provide all available information on or in the immediate vicinity of domestic violence or risk assessment - if it indicates an imminent threat of violence - to the primary public prosecutor in whose area the victim is resident, or the victim's residence, the Center for Social Work and the group for coordination and cooperation.

If the competent police officer establishes the existence of a danger that is not immediate, all available domestic violence or danger reports and his risk assessment shall be submitted to the primary public prosecutor and the Center for Social Work.

Emergency measures

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Article 17

If, after assessing the risk, there is an imminent danger of domestic violence, the competent police officer shall issue an order ordering an immediate measure to the perpetrator who has been brought to the competent organizational unit of the police (Article 15, paragraph 1).

Emergency measures are: a measure of the temporary removal of the perpetrator from the apartment and the measure of a temporary ban on the perpetrator to contact the victim of the violence and approach her.

Both emergency measures can be imposed by order.

The order contains: the name of the authority that brings it, the information on the person to whom the urgent measure is imposed, the type of urgent measure to be pronounced and its duration, the day and time of pronouncement of the emergency measure and the obligation of the person to whom the emergency measure was ordered to report to the police officer upon his expiration which he pronounced.

The order is delivered to the person to whom the emergency measure has been pronounced. If it refuses the receipt of an order, the competent police officer shall draw up a note thereof, which shall be deemed to have been delivered to the order.

The competent police officer delivers an order, immediately after his delivery, to the basic public prosecutor in whose area the victim is staying, or the residence of the victim, the social welfare center and the coordination and co-operation groups, and the victim of violence is informed in writing about the type of urgent measure imposed.

Role of a public prosecutor

Article 18

After receiving notification, risk assessment and ordering, the Public Prosecutor examines the notifications and evaluates the risk assessment of the competent police officer.

If they subsequently establish an imminent threat of domestic violence, they are obliged to submit a motion to the court to extend the emergency measure, within 24 hours from the time of delivery of the order to the person to whom the emergency measure was imposed.

In addition to the proposal, the Public Prosecutor submits to the court the risk assessment of the competent police officer, his evaluation of the risk assessment and other evidence pointing to the immediate danger of domestic violence.

First-instance court action

Article 19

The motion to extend the emergency measure shall be submitted to the basic court in whose territory the place of residence or residence of the victim is located, and the judge shall decide on the proposal.

The court extends the emergency measure if, after assessing the risk assessment of the competent police officer, the evaluation of the risk assessment made by the public prosecutor, the assessments of the submitted evidence and claims from the proposal of basic public prosecutor and the assessment of the statement of the person to whom the emergency measure was pronounced, establishes an imminent danger of domestic violence, or otherwise rejects the proposal as unfounded.

The resolution on the proposal is passed without holding a hearing, within 24 hours from the receipt of the proposal to extend the emergency measure.

Appeal against the judgment of the Basic Court

Article 20

The public prosecutor and the person against whom the emergency measure has been pronounced may oppose the decision of the basic court and file an appeal to the higher court within three days from the date of receipt of the decision, through the basic court that issued the decision.

The Basic Court is obliged to forward the appeal and all case files to the higher court within 12 hours from the receipt of the appeal.

The Appeal shall be decided by a larger higher court of three judges, within three days from the date on which it received the appeal from the Basic Court.

The High Court may reject the appeal and confirm the decision of the Basic Court or rule on appeal and modify the decision of the Basic Court. The High Court cannot invalidate the decision of the basic court and return the case to the basic court for review.

The appeal does not postpone the execution of the decision of the basic court.

The law governing the civil procedure shall be applied accordingly to the procedure of deciding on the extension of an emergency measure, unless otherwise provided by this Law.

Duration of emergency measures

Article 21

The emergency measures imposed by the competent police officer lasts 48 hours after the delivery of the order.

The court can extend the emergency measure for another 30 days.

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If the urgent measure of the temporary removal of the perpetrator from the apartment is prolonged, the person to whom it is pronounced may take the necessary personal belongings from the apartment accompanied by police officers.

b) Special Provisions on Criminal Proceedings

Obligation to report the crime

Article 22

A person who has knowledge of the committed criminal offense determined by this Law is obliged to report this to the police or public prosecutor.

Urgency in deciding on measures to secure the presence of the defendant

Article 23

In the criminal procedure for criminal offenses determined by this Law, the court is obliged to decide within a period of 24 hours on the proposal of the public prosecutor to determine the measure of prohibiting the admission, meeting or communication with a certain person and visits to certain places, measures for the prohibition of leaving the place of residence and measures to ban leaving the apartment.

IV. COOPERATION IN PREVENTION OF DOMESTIC VIOLENCE

A person designated for a relationship

Article 24

The persons appointed for the connection are appointed in the police administration, the primary and higher public prosecutors, the primary and higher courts and the Center for Social Work.

They are appointed by the head of the police administration, the public prosecutor, the president of the court and the head of the Center for Social Work, from among the competent police officers and judges and deputy public prosecutors who have completed specialized training, and employees of the Center for Social Work.

Persons appointed for the purpose of daily communication exchanges notifications and data relevant for the prevention of family violence, detection, prosecution and trial for criminal offenses established by this Law and for providing protection and support to victims of domestic violence and victims of criminal offenses established by this Law.

The minister in charge of internal affairs, the minister in charge of judicial affairs and the minister responsible for family protection, shall mutually prescribe the manner of exchanging information and data between the persons designated for liaison.

Coordination and Cooperation Group

Article 25

A group for coordination and cooperation is formed in the area of each basic public prosecutor's office. It examines every case of domestic violence that has not been terminated by a final court decision in civil or criminal proceedings, cases when the protection and support of victims of domestic violence and victims of crimes referred to in this law should be provided, develops an individual plan of protection and support to the victim and proposes to the competent public prosecutor's office measures for the completion of court proceedings.

The Coordination and Cooperation Group holds meetings at least once every 15 days, and the minutes of the meeting are kept.

Meetings may, where necessary, be attended by representatives of educational, education and health institutions and the National Employment Service, as well as representatives of other legal entities and associations and individuals providing protection and support to victims.

The Coordination and Cooperation Group issues the Rules of Procedure that regulate more closely its mode of operation and decision-making.

Composition of the Coordination and Cooperation Group

Article 26

The coordination and cooperation group consists of representatives of the basic public prosecutor's offices, police administrations and centers for social work, from the areas for which the group is formed.

The members of the co-ordination and cooperation group are appointed by the heads of the organs, from the position of the Deputy Basic Public Prosecutor who have completed specialized training and the competent police officers and employees of the centers for social work dealing with cases of domestic violence.

The Coordination and Cooperation Group is chaired by a member of the group from the rank of Deputy Basic Public Prosecutor.

If prosecuting offenders of criminal acts determined by this law are more publicly prosecuted by the public prosecutor, the higher public prosecutor appoints his deputy, who has completed specialized training, to participate in the work of the group and preside over it.

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Rules of cooperation

Article 27

The Minister in charge of judicial affairs, the Minister in charge of internal affairs and the minister responsible for family protection shall, by mutual consent, issue a rulebook on cooperation, which shall closely regulate mutual rights.

The Code of Cooperation defines the obligations and cooperation of state bodies and institutions responsible for the implementation of this law in the prevention of domestic violence and the provision of protection and support to victims of domestic violence and victims of criminal offenses established by this Law.

V. TRAINING

Specialized training

Article 28

The competent police officers and public prosecutors, deputy public prosecutors and judges applying this law are obliged to complete specialized training according to the program adopted by the Judicial Academy.

Specialized training is conducted by the Judicial Academy for Public Prosecutors, Deputy Public Prosecutors and Judges, in cooperation with other professional institutions and organizations, and for the police officers specialized training is conducted by the Criminal Police Academy.

Upon completion of specialized training, the Judicial Academy and the Criminal Police Academy will issue trainee certificates to the trainees.

The issuance and the certificate form are closely regulated by the act of the Judicial Academy and the Criminal Police Academy.

VI. PROTECTION AND SUPPORT TO VICTIMS OF VIOLENCE IN FAMILY AND VICTIMS OF CRIMINAL PARTIES PROVIDED BY
THIS LAW

Right to notice

Article 29

State authorities and institutions in charge of the implementation of this law shall, in the first contact with the victim of domestic violence or victims of the criminal offense under this law, provide victims with complete information on bodies, legal entities and associations providing protection and support, in a manner and in a language of understanding to the victim of violence.

The right to free legal aid

Article 30

A victim of domestic violence and a victim of a criminal offense under this law is entitled to free legal aid, according to a special law.

Individual plan for protection and support of the victim

Article 31

Upon receipt of a risk assessment that identifies a direct threat of domestic violence, the Coordination and Coordination Group creates an individual victim protection plan that includes comprehensive and effective protection and victim support measures for the victim as well as other family members in need.

In the development of an individual plan for the protection and support of the victim, the victim also participates, if it so wishes, and if it allows her emotional and physical condition.

Measures of protection must ensure the safety of the victim, stop the violence, prevent it from repeating and protect the rights of the victim, and measures of support to enable the victim to provide psychosocial and other support for the recovery, empowerment and independence of the victim.

The individual plan of protection and support of the victim determines the executors of concrete measures and deadlines for their undertaking, as well as the plan of monitoring and evaluation of the effectiveness of planned and undertaken measures.

Individual victim protection and victim support plans are also developed for victims of criminal offenses under this law.

VII. RECORD OF DATA ON CERTAIN VIOLENCE IN FAMILY

Records

Article 32

The competent police directorate keeps records of reported cases of domestic violence and on the pronouncement and execution of urgent measures and the execution of measures for the protection of domestic violence.

The records of the police administration include:

1) data on reported cases of domestic violence (participants of the event, time, place, collected statements, circumstances of the case, information on the possible victim, etc.);

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2) data on the declared possible perpetrator (name, surname, unique registration number of the citizen, address of residence or place of residence, data on previously specified measures of protection against domestic violence);

3) data on the risk assessment and the names of the institutions to whom the risk assessment was submitted;

4) information on the imposition of urgent measures (date and number of orders on pronouncement of urgent measures, their duration and time of beginning of their duration);

5) information on extension and execution of urgent measures (number and date of decision of the basic court on extension of urgent measures, data on execution of urgent measures);

6) data on the execution of measures of protection against domestic violence.

The Basic Court keeps records of its decisions on proposals for the extension of urgent measures and on certain measures to protect against domestic violence.

Records of the Basic Court on proposals for extending emergency measures include:

1) information on the person whose extension is the emergency measure (name, surname, unique citizen registration number, address of residence or place of residence, data on previously defined measures of protection against domestic violence);

2) the number and date of the decision extending the emergency measure;

3) the number and date of the decision rejecting the proposal to extend the emergency measure;

4) information on the appeal against the decision made on the proposal for the extension of urgent measures;

5) information on the decision made on the appeal.

The records of the Basic Court on certain measures of protection against domestic violence include:

1) data on the person who is determined the measure of protection against domestic violence (name, surname, unique registration number of the citizen, address of residence or place of residence, data on previously defined measures of protection against domestic violence);

2) information on the court decision on the determination of measures for protection against domestic violence (number and date of decision, type of measure determined and its duration);

3) information on appeal against the decision of the court on determining measures of protection against domestic violence;

4) information on the decision rendered on appeal;

5) information on the extension or the termination of the measures for protection against domestic violence.

The Basic Public Prosecutor's Office keeps records of proposals for extending urgent measures and requirements for determining measures to protect against domestic violence.

The record of the Basic Public Prosecutor's Office contains:

1) information on the person for whom the extension of emergency measures (name, surname, unique registration number of the citizen, address of residence or place of residence, data on previously specified measures of protection against domestic violence) has been proposed;

2) information on extension of urgent measures (date and number of requests for extension of urgent measures, name of court to which extension of emergency measures has been proposed, court decision on proposal by public prosecutor, information on decision on appeal);

3) information on filing a lawsuit for the determination of measures to protect against domestic violence;

4) type of protection against domestic violence whose determination is sought;

5) information on the decision of the court regarding the lawsuit for determining the measure of protection against domestic violence (number and date of decision, type of measure determined and duration of the measure);

6) information on the extension and termination of the measure of protection against domestic violence.

The competent center for social work keeps records on the implementation of individual protection plans and victim support.

Records of the Center for Social Work contain:

1) name, surname, unique registration number of the citizen and address of the place of residence, or residence of the victim;

2) information on the individual plan for the protection and support of the victim;

3) information on the planned measures for the protection of the victim;

4) information on planned victim assistance measures;

5) data on the executors of concrete measures of protection and support and deadlines for their undertaking;

6) data on the monitoring plan and the assessment of the effectiveness of planned and undertaken measures.

Records of police administrations, basic courts, basic public prosecutors' offices and centers for social work are kept in electronic form and comprise the Central Record of Domestic Violence Cases (hereinafter: Central Records), managed by the Republic Public Prosecutor's Office.

Data can be entered in the Central Record only using appropriate protected access codes.

The data is kept in the records and in the Central Record for ten years and afterwards it is deleted.

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Access to records

Article 33

Access to data from the Central Record is permitted only for the purpose of exercising the competencies provided by this Law and with the use of protected access codes.

The Deputy Public Prosecutor who exercises the competencies of the Public Prosecutor's Office in preventing domestic violence and prosecuting offenders specified in this Law (Article 9) has the right to access all data from the Central Record.

The competent police officer has the right to access to the Central Records only in the part that contains data from the records of the regional police administrations and relevant centers for social work, the competent courts only in the part containing data from the records kept by the basic courts, and the competent centers for social work in that part which contains data from records kept by centers for social work.

Personal data protection

Article 34

State bodies and institutions in charge of the application of this law are obliged to protect personal data, according to the law regulating the protection of personal data.

In order to collect the data contained in the records, no consent of the person to whom the data relates is required.

VIII. MONITORING THE APPLICATION OF THE LAW

Council for the Suppression of Domestic Violence

Article 35

The government is formed by the Council for the Suppression of Domestic Violence (hereinafter: the Council), which monitors the implementation of this law and improves coordination and effectiveness of preventing domestic violence and protection against domestic violence.

Members of the Council are representatives of state bodies and institutions in charge of the implementation of this law.

The Council may, if necessary, include in the work and representatives of scientific and other professional institutions and associations whose activity is related to the protection against domestic violence.

The composition, mode of work and decision-making of the Council shall be more closely regulated by the Government's act on the education of the Council.

IX. PENALTY PROVISIONS

Violations

Article 36

With a prison sentence of up to 60 days, a person who violates an urgent measure imposed or prolonged will be punished for an offense.

A fine in the amount of 50,000 dinars to 150,000 dinars will be imposed on a responsible person in a state and other body, organization and institution that does not immediately report or react to the police or the public prosecutor, or obstructs reporting or reaction to any knowledge of domestic violence or direct the danger from him (Article 13, paragraph 2).

The conviction for the misdemeanor referred to in paragraph 1 of this Article may be enforced before its power of attorney under the Law on Misdemeanors.

X. TRANSITIONAL AND FINAL PROVISIONS

Deadline for adoption of by-laws

Article 37

The bylaws envisaged by this Law shall be passed within three months from the entry into force of this Law, except for the acts adopted by the co-ordination and cooperation groups to be adopted within 30 days from the date of their education.

Deadline for education of coordination and cooperation groups and Council and appointment of persons designated for liaison

Article 38

By the date of the implementation of this law, the Coordination and Cooperation Groups and the Council will be formed and the persons appointed for the connection will be appointed.

Final provision

Article 39

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This Law shall enter into force on the eighth day from the date of its publication in the "Official Gazette of the Republic of Serbia", and shall apply from 1 June 2017.

[Criminal Code, 2005 \(As amended\)](#)²⁰

Domestic Violence

Article 194

(1) Whoever by use of violence, threat of attacks against life or body, insolent or ruthless behavior endangers the tranquility, physical integrity or mental condition of a member of his family,
shall be punished with imprisonment of three months to three years.

(2) If in committing the offence specified in paragraph 1 of this Article weapons, dangerous implements or other means suitable to inflict serious injury to body or seriously impair health are used,
the offender shall be punished with imprisonment from six months to five years.

(3) If the offence specified in paragraphs 1 and 2 of this Article results in grievous bodily harm or serious health impairment or if committed against a minor,
the offender shall be punished with imprisonment from two to ten years.

(4) If the offence specified in paragraphs 1, 2 and 3 of this Article results in death of a family member,
the offender shall be punished with imprisonment from three to fifteen years,

(5) Whoever violates a measure against domestic violence that was imposed on them by the court in accordance with the law
shall be punished with imprisonment from three months to three years and a fine.

9. SEYCHELLES

[Family Violence \(Protection Of Victims\) Act, 2000](#)²¹

Short title

1. This Act may be cited as the Family Violence (Protection of Victims) Act, 2000.

Interpretation

2. (1) In this Act —

“Director of Social Services” means the person performing the functions of this office in the Ministry responsible for social affairs;

“family violence” means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person’s family that causes that or another member of the person’s family to fear for or to be apprehensive about, the personal safety or well being of that or the other member of the person’s family.

“member of a person’s family” or “family member of a person” means —

- (a) a spouse or former spouse of the person;
- (b) a son, daughter, grandson or granddaughter of the person or of the spouse or of a former spouse of the person;
- (c) a brother, sister, parent, or grandparent of the person or of the spouse or of a former spouse of the person;
- (d) a member of the household of the person or of the spouse or of a former spouse of the person;

“protection order” means a protection order under this Act;

“respondent” means the person against whom a protection order is sought or is in force;

²⁰ Criminal Code, O.G. RS No. 85/2005, 88/2005, 107/2005 (as amended on 31 August 2009, 29 December 2009, and 24 December 2012), available at https://www.paragraf.rs/propisi/krivicni_zakonik.html (last visited December 30, 2018). Unofficial translation by Compendium team.

²¹ Family Violence (Protection Of Victims) Act, (1 May 2000, consolidated until 31 December 2015), available at <https://greybook.sevlii.org/w/se/2000-4#!fragment/zoupio-Toc521419751/BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgFYAmARgBYeATgDshHgeEoANMmylCEAlqJCuAJ7QA5BskQ4ubABSDAYSrpoAQmQ7CYXAIUr1Wm3YQBIPKQBC6gEoAogAyAQBqAllAcsYBkqRgAEbQpOzi4kA> (last visited December 30, 2018).

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“spouse” includes —

- (a) a person of the opposite sex who is cohabiting with another person as the de facto husband or wife of that other person;
- (b) a person of the opposite sex, whether living with another person or not, who with the other person are the parents of a common child;

“Tribunal” means the Family Tribunal established under the Children Act.

Application for protection order

3. (1) The Tribunal may, on an application, grant a protection order.

(2) An application for a protection order may be made —

- (a) by a family member who has been or may be subjected to family violence;
- (b) where the family member referred to in paragraph (a) is an adult and is unable to make the application, by the Director of Social Affairs;
- (c) where the family member referred in paragraph (a) is a child
 - (i) by a parent or guardian of the child;
 - (ii) by a person with whom the child normally or regularly resides;
 - (iii) by the Director of Social Affairs;
 - (iv) by the child, with leave of the Tribunal, if the child has attained the age of 14 years

(3) An application for a protection order shall set out the scope of the order prayed for by the applicant.

(4) Subject to subsection (7), where an application for a protection order is received by the Tribunal, the Tribunal shall cause a notice of the application to be served on the respondent and shall summon the respondent to appear before the Tribunal on such day as may be fixed by the Tribunal to show cause why the protection order shall not be made.

(5) Where the respondent fails to appear on the day fixed in the summons to appear under subsection (4) and the Tribunal is satisfied that the summons has been served on the respondent, the Tribunal may proceed to hear the application in the absence of the respondent.

(6) Where the Tribunal makes a protection order in the absence of the respondent, the protection order shall unless the Tribunal orders otherwise, be served on the respondent personally and is not binding until it is so served.

(7) Where on an application for a protection order the Tribunal is satisfied that there is a serious risk of harm being caused to a family member before summoning and hearing the respondent and that it is appropriate to do so, the Tribunal may issue an interim protection order and the order shall remain in force until the determination of the application, unless the Tribunal determines otherwise.

(8) A party in a proceeding in respect of an application for a protection order may call witnesses in support of the party case.

(9) Where the Tribunal is of the opinion that it is necessary for the protection of the privacy of a person concerned in the proceeding in respect of an application for a protection order, the Tribunal may hold the proceeding in private and for this purpose may exclude any person from the proceeding, other than persons directly concerned with the proceeding, the legal representatives of the persons and, where appropriate, the Director, Social Services.

(10) In considering an application for a protection order and the terms of the order, the Tribunal shall have regard to

- (a) the need to ensure that family members are protected against violence;
- (b) the welfare of any child affected or likely to be affected by the conduct of the respondent;
- (c) the accommodation needs of the family member;
- (d) any hardship that may be caused to the family members including the respondent;
- (e) the income, assets and liabilities of the respondent and the other family members when considering whether to direct the respondent to return any property to a family member or allow a family member to recover or have access to or make use of any property;
- (f) any other legal proceedings between the respondent and a family member;
- (g) any other matter that the Tribunal may consider relevant, including the prayer contained in the application.

(11) Where there is a protection order in force, either party or the person for whose benefit the order was made may apply to

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the Tribunal for a variation or revocation of the order and subsection (2)(b) to (c) shall have effect for the purposes of an application under this subsection.

(12) The person applying for the variation or revocation of a protection order shall cause a copy of the application to be served on the other party and the Tribunal shall, before varying or revoking the order, allow all parties affected by the order a reasonable opportunity to be heard and shall have regard to the matters specified in subsection (10).

(13) Notwithstanding any other written law, where the Tribunal is satisfied that it is not reasonably possible to serve a summons or any other document under this Act personally on any person, the Tribunal may make an order for substituted service.

(14) An application for a protection order shall be deemed to be a matter of urgent nature and shall be dealt with accordingly.

(15) The Minister may, after consultation with the Chairman of the Tribunal, prescribe the forms for the making of an application for a protection order.

Protection order

4. (1) A protection order made under this Act —

(a) may impose such restraints on the respondent as are necessary or desirable to prevent the respondent acting in an apprehended manner or engaging in any conduct which may constitute family violence;

(b) may apply for the benefit of —

(i) the member of the respondent's family who made the application for the order or on whose behalf the application was made or for whose protection the application was made; or

(ii) any other member of the family specified in the order.

(2) Without limiting the effect of subsection (1), a protection order may —

(a) prohibit the respondent from being on premises at which a family member resides, works, is studying or is undergoing vocational training or an apprenticeship;

(b) prohibit the respondent from being on premises specified in the order frequented by a family member;

(c) prohibit the respondent from being in a locality specified in the order;

(d) prohibit the respondent from approaching within a distance specified in the order of a family member;

(e) prohibit the respondent from contacting, harassing, threatening or intimidating a family member, or any other person at a place where a family member resides, works, is studying or is undergoing vocational training or an apprenticeship;

(f) prohibit the respondent from damaging property of a family member or property, including furniture and household effects, used by a family member;

(g) prohibit the respondent from taking possession of movable property, including furniture and household effects, used by a family member;

(h) prohibit the respondent from causing or allowing another person to engage in any conduct referred to in paragraphs (e) to (g);

(i) direct the respondent to return any movable property specified in the order to a family member or to allow a family member to recover or have access to or make use of movable property specified in the order;

(j) direct the respondent to attend such counselling or rehabilitation programmes as may be specified in the order;

(k) specify conditions subject to which a respondent may —

(i) be on or in a locality specified in the order;

(ii) approach or contact a family member or any other person at a place where a family member works, resides, is studying or is undergoing vocational training or an apprenticeship;

(l) contain any other condition which the Tribunal considers necessary in the circumstances.

(3) A protection order may be made against a respondent in relation to premises or property despite the fact that the respondent has a legal or equitable interest in the premises or property.

(4) Where the Tribunal makes an order which —

(a) prohibits the respondent from being on any premises; or

(b) limits the access of the respondent to the premises,

and the premises are rental premises or premises in respect of which the respondent is or the spouses are repaying any installments in respect of a mortgage or charge, the Tribunal may, when making the order prohibiting or limiting the access of the respondent, also order the respondent to pay the rent or the installments during the currency of the order.

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- (5) A protection order —
- (a) shall be valid for the period specified in the order;
 - (b) shall not, in any event, be for a period of more than, 24 months.

Costs

5. Notwithstanding any other written law, no costs shall be allowed in proceedings under this Act.

Offence

6. A person who intentionally contravenes an interim protection order or a protection order shall be guilty of an offence and liable on conviction before the Tribunal to a fine of R30,000 or to imprisonment for three years or both such fine and imprisonment.

Regulations

7. The Minister may make regulations for carrying out the purposes and provisions of this Act.

Savings

1. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other written law relating to conduct constituting family violence.

10. SIERRA LEONE

[The Domestic Violence Act, 2007](#) ²²

PART I
PRELIMINARY

Section 1 - Interpretation

In this Act, unless the context otherwise requires-

“abuse” means conduct that harms or is likely to cause harm to the safety, health or well-being of the complainant;

“aggravated” in relation to domestic violence refers to any act of domestic violence where-

- (a) it has caused the victim to suffer wounding or grievous bodily harm; or
- (b) the court otherwise considers the incident or incidents to be so serious as to be aggravated, taking into

consideration-

- (i) whether a weapon was used;
- (ii) any failures to respond to previous warnings by the police, the court or any official body;
- (iii) evidence of premeditation;
- (iv) whether the victim is particularly vulnerable; and
- (v) any other consideration the court considers appropriate;

“applicant” means a person who applies for a protection order under this Act;

“associated respondent” means a person associated with another person against whom an application for a protection order has been brought;

“child” means a person below eighteen years;

“complainant” means a person who makes a complaint to the police under section 5;

“court” means the High Court or Magistrate’s Court; “economic abuse” means

(a) the unreasonable deprivation of any economic or financial resources to which the complainant, or a family member or dependant of the complainant is entitled under any law, requires out of necessity or has a reasonable expectation of use, including household necessities and mortgage bond repayments or rent payments in respect of a shared household;

(b) unreasonably disposing of moveable or immovable property in which the complainant or family member or reasonable expectation of use;

²² The Domestic Violence Act, No. 20 of 2007, available at https://www.ilo.org/dyn/natlex/natlex4_detail?p_lang=en&p_isn=80085&p_country=SLE&p_count=166 (last visited December 30, 2018).

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(c) destroying or damaging property in which the complainant, or a family member or a dependant of the complainant has an interest or a reasonable expectation of use;

“emergency monetary relief” means compensation for monetary losses suffered by a complainant at the time of the issue of a protection order as a result of the domestic violence, including, as appropriate-

- (a) loss of earnings;
- (b) medical and dental expenses;
- (c) relocation and accommodation expenses; and (d) household necessities;

“harassment” means sexual contact without the consent of the person with whom the contact is made, repeatedly making unwanted sexual advances, repeatedly following, pursuing or accosting a person or making persistent, unwelcome communication with a person and includes -

(a) watching, loitering outside or near a building where the harassed person resides, works, carries on business, studies or happens to be;

(b) repeatedly making telephone calls or inducing a third person to make telephone calls to the harassed person, whether or not conversation ensues;

(c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects or messages to the harassed person’s residence, school or workplace; or

- (d) engaging in any other menacing behaviour;

“household chattels” include jewellery, clothes, furniture and furnishings, refrigerator, television, radiogram, other electrical and electronic appliances, kitchen and laundry equipment, simple agricultural equipment, hunting equipment, books, motor vehicles, other than vehicles used wholly for commercial purposes, and household livestock;

“interim protection order” means an order made by the court under section 12 pending the final determination of an application;

“intimidation” means intentionally inducing fear in another person by-

- (a) threatening to abuse that person or a third party;
- (b) threatening to damage, destroy or dispose of property in which that person or a third party has a material interest; or

- (c) exhibiting a weapon before that person;

“marriage” includes marriage under any custom or religion;

“Minister” means the Minister responsible for social welfare and “Ministry” shall be construed accordingly;

“next friend” means a person who intervenes to assist a child to bring a legal action;

“offender” means a person against whom a complaint of domestic violence is filed;

“order” means a protection order;

“physical abuse” means physical assault or use of physical force against another person, including the forcible confinement or detention of another person and the deprivation of another person of access to adequate food, water, clothing, shelter, rest, or subjecting another person to torture or other cruel, inhuman or degrading treatment or punishment;

“place of safety” means premises where the welfare of a victim of domestic violence is assured;

“protection order” means an order made by the court under sections 13, 14 and 15 on the final determination of an application;

“respondent” means a person against whom a protection order is brought;

“sexual abuse” means the forceful engagement of another person in a sexual contact, whether married or not, which includes sexual conduct that abuses, humiliates or degrades the other person or otherwise violates another person’s sexual integrity, whether married or not, or a sexual contact by a person aware of being infected with human immunodeficiency virus (HIV) or any other sexually transmitted infection with another person without that other person being given prior information of the infection.

PART II
OFFENCE OF DOMESTIC VIOLENCE

Section 2 – Offence of domestic violence.

(1) It is an offence under this Act for any person in a domestic relationship to engage in any act of domestic violence.

(2) For the purposes of subsection (1), domestic violence means any of the following acts or threat of any such act:-

- (a) physical or sexual abuse;
- (b) economic abuse;
- (c) emotional, verbal or psychological abuse, including any conduct that makes another person feel constantly unhappy, humiliated, ridiculed, afraid or depressed or to feel inadequate or worthless;
- (d) harassment, including sexual harassment and intimidation;
- (e) conduct that in any way harms or may harm another person, including any omission that results in harm and either-

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- (i) endangers the safety, health or wellbeing of another person;
- (ii) undermines another person's privacy, integrity or security; or
- (iii) detracts or is likely to detract from another person's dignity or worth as a human being.

(3) An offence under subsection (1) shall be punishable by a fine not exceeding Le5,000,000 or by a term of imprisonment not exceeding 2 years or by both such fine and imprisonment.

Section 3 – of domestic relationship.

(1) A domestic relationship means a family relationship, a relationship akin to a family relationship or a relationship in a domestic situation that exists or has existed between a complainant and an offender and includes a relationship where the complainant –

- (a) is or has been married to the offender;
- (b) lives with the offender in a relationship in the nature of a marriage notwithstanding that they are not, were not married to each other or could not or cannot be married to each other;
- (c) is engaged to the offender, courting the offender or in an actual or perceived romantic, intimate, or cordial relationship not necessarily including a sexual relationship with the offender;
- (d) and the offender are parents of a child, are expecting a child together or are foster parents to a child;
- (e) and the offender are family members related by consanguinity, affinity or adoption; or would be so related if they are married either customarily or under any enactment or were able to be married or if they were living together as spouses although they are not married;
- (f) and the offender, share or shared the same residence or are co-tenants;
- (g) is a parent, an elderly blood relation or is an elderly person who is by law a relation of the offender;
- (h) is a house-help in the household of the offender;
- (i) lives in or attends a public or private care institution and is under the care and control of the offender; or
- (j) is in a relationship determined by the court to be a domestic relationship.

(2) A court shall, in a determination under paragraph (j) of subsection (1) have regard to –

- (a) the length of time the persons spend together;
- (b) the place where that time is ordinarily spent;
- (c) the manner in which that time is spent; and
- (d) the duration of the relationship.

(3) Without prejudice to subsection (1), a person is in a domestic relationship where the person -

- (a) is providing refuge to a complainant whom an offender seeks to attack; or
- (b) is acting as an agent of the offender or encouraging the offender;

Section 4 – Number of acts amounting to domestic violence.

(1) A single act may amount to domestic violence.

(2) A number of acts that form a pattern of behaviour may amount to domestic violence even though some or all of the acts when viewed in isolation may appear minor or trivial.

(3) When a cause for complaint has arisen between persons in a domestic relationship and the persons do not cohabit, none of those persons shall enter into the residence of the other person without permission.

Section 5 – Filing of complaint to police.

(1) A victim of domestic violence or any other person with information about domestic violence may file a complaint about the domestic violence.

(2) A child may be assisted by a next friend to file a complaint of domestic violence.

(3) Notwithstanding subsection (1), a complaint of domestic violence shall be filed by a social welfare officer or health care provider where the intervention is in the interest of the victim.

(4) Where a victim is, for any reason, unable to file a complaint personally, a member of the victim's family may file a complaint on behalf of the victim.

(5) Where a person who could have been a complainant under this Act has died, the complaint may be made by the deceased person's personal representative or by a member of the deceased's family or any other person competent to represent the deceased.

(6) A complaint of domestic violence shall be filed with the police at the place where

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- (a) the offender resides;
- (b) the victim resides;
- (c) the domestic violence occurred or is occurring; or
- (d) the victim is residing temporarily, where the victim has left his or her usual place of abode.

Section 6 – Police to respond promptly.

A police officer shall respond promptly to a request by any person for assistance from domestic violence and shall offer such protection as the circumstances of the case or the person who made the report required even when the person reporting is not the victim of the domestic violence.

Section 7 – Police assistance after receipt of complaint.

(1) When a police officer receives a complaint under Police subsection (6) of section 5, the officer shall – assistance after receipt

- (a) interview the parties and witnesses to the of complaint. domestic violence, including children;
- (b) record the complaint in detail and provide the victim with an extract of the complaint upon request in a language the victim understands;
- (c) assist the victim to obtain medical treatment, where necessary;
- (d) assist the victim to a place of safety as the circumstances of the case or as the victim requires where the victim expresses concern about safety;
- (e) protect the victim to enable the victim retrieve personal belongings, where applicable;
- (f) assist and advise the victim to preserve evidence; and
- (g) assist and advise the victim of his or her rights and any services which may be available.

(2) Police assistance to a victim under paragraph (c) of subsection (1) consists of issuing a medical form to the victim and, where necessary, sending the victim to a medical facility.

(3) A victim of domestic violence who is assisted by the police to obtain medical treatment under paragraph (c) of subsection (1), shall be entitled to free medical treatment and a free medical report within fourteen days of the issuance of the medical form.

(4) Family mediation or intervention shall not be a bar to the investigation or prosecution of a complaint of domestic violence.

Section 8 – Arrest by police.

(1) A police officer may arrest a person for domestic by police violence with a warrant issued in pursuance of this Act or without a warrant.

(2) A police officer may arrest a person for domestic violence without a warrant where -

- (a) an act of domestic violence is committed in the presence of the police officer;
- (b) the police officer is obstructed by the person in the execution of police duties; or
- (c) the person is held in lawful custody under this Act and has escaped or attempts to escape from such custody.

(3) A police officer may arrest without warrant upon reasonable grounds of suspicion, a person who -

- (a) has committed an offence of domestic violence; or
- (b) is about to commit an offence of domestic violence and there is no other way to prevent the commission of the offence.

(4) A police officer may arrest a person without warrant if the officer has reasonable cause to believe that the person has contravened or is contravening a protection order issued under section 12 or 13.

Section 9 – Arrest by person other than police without warrant.

(1) A person may, without warrant, arrest another person if that other person commits an act of domestic violence in his presence. A person may, without warrant, arrest another person where the person has reasonable suspicion that the other person has committed an offence of domestic violence.

(2) A person who effects an arrest under subsection (1) or (2) shall, within a reasonable time, being not more than twelve hours after the arrest, hand over the person arrested to the police.

PART III
PROTECTION ORDERS

Section 10 – Application for protection order.

(1) An applicant may apply to a court for a protection order to prevent – a respondent;

- (a) an associated respondent; or

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- (b) both a respondent and an associated respondent, from carrying out a threat of domestic violence against a complainant or any other person or to prevent the respondent, an associated respondent or both from further committing acts which constitute domestic violence against a complainant or any other person.
- (2) The application may be filed in a court situated where-
 - (a) the applicant or complainant resides, carries on business or is employed;
 - (b) the respondent resides, carries on business or is employed; or
 - (c) the act of domestic violence occurred or is occurring or is likely to occur.
- (3) The application may be made ex-parte, unless the court otherwise orders it to be on notice.
- (4) A court before which criminal proceedings in relation to domestic violence is pending may, on its own motion, considering the circumstances of the case, or on an application by the victim, issue a protection order in respect of the victim.

Section 11 – Conduct of proceedings.

- (1) Proceedings for a protection order shall be held in chambers in the presence of the parties, their legal practitioners and any other person permitted by the court to be present.
- (2) Notwithstanding subsection (1), where the court is of the opinion that the presence of the respondent is likely to have a serious adverse effect on the victim or a witness, the court may take such steps as it considers necessary to separate the respondent from the victim or the witness, without sacrificing the integrity of the proceedings.
- (3) Subject to subsection (3) of section 10, an application for a protection order shall be heard by the court within a period of 14 days of the filing of the application.
- (4) The court may request a social enquiry report on any of the parties to the proceedings and the report shall be prepared and submitted to the court by a social worker, probation officer or other person appointed by the court, as appropriate.
- (5) The report shall contain details of the circumstances of the domestic violence, an assessment of the effect of the violence and any other information considered expedient by the social worker, probation officer or other person appointed by the court.

Section 12 – Interim protection order.

- (1) Where an application is made ex-parte to the court for a protection order, the court shall issue an interim protection order if it considers the order to be in the best interest of the applicant.
- (2) In determining whether it is in the best interest of the applicant to issue an interim protection order, the court shall take into account –
 - (a) whether there is a risk of harm to the applicant or a relation or friend of the applicant if the order is not made immediately;
 - (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately;
 - (c) whether there is reason to believe that the respondent is deliberately evading service of notice of the proceedings and the applicant, or any person in a domestic relationship with the respondent, will be prejudiced by the delay involved in effecting service.
- (3) An interim protection order shall be for a period of three months and the court may, where it thinks fit, extend it for a period not exceeding three months.
- (4) The court shall, when making an interim protection order where the respondent is not already before the court, summon the respondent to appear within the period of three months referred to in subsection (3) to show cause why the interim order should not be made final.
- (5) If the respondent fails to appear before the court in accordance with subsection (4), the order shall become final.
- (6) Where an application is made on notice to the court for a protection order and the court is of the opinion that -
 - (a) the respondent is committing, has committed or is likely to commit an act of domestic violence; and
 - (b) the applicant will suffer significant harm if a protection order is not issued,the court may issue an interim protection order pending the consideration of the order applied for.
- (7) Where the court grants an interim protection order, it shall apply the provisions contained in subsection (1) of section 13, and subsection (1) of section 15 and may apply any of the provisions contained in subsection (2) of section 13 and subsection (2) of section 15.

Section 13 – Effect of protection order.

- (1) The court may issue a protection order to prohibit a respondent from committing or threatening to commit an act of domestic violence personally or otherwise against an applicant or a relation or a friend of the applicant.
- (2) The protection order may prohibit the respondent from-
 - (a) physically assaulting or using physical force against the applicant or any relation or friend of the applicant;
 - (b) forcibly confining or detaining the applicant or any relation or friend of the applicant;

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- (c) depriving the applicant access to adequate food, water, clothing, shelter or rest;
- (d) forcing the applicant to engage in any sexual contact, whether married or not;
- (e) engaging in any sexual conduct that abuses, humiliates, or degrades the applicant or otherwise violates the applicant's sexual integrity, whether married or not;
- (f) depriving or threatening to deprive the applicant of -
 - (i) economic or financial resources to which the applicant is entitled by law, including house mortgage repayments or rent payments in respect of shared accommodation; and
 - (ii) household chattels required by the applicant as a matter of necessity;
- (g) contacting the applicant at work or other places frequented by the applicant;
- (h) contacting the applicant by telephone or any other form of communication;
- (i) disposing of or threatening to dispose of movable or immovable property in which the applicant has a material interest;
- (j) destroying or damaging, or threatening to destroy or damage property in which the applicant has a material interest;
- (k) hiding or hindering the use of property in which the applicant has a material interest;
- (l) threatening to abuse the applicant;
- (m) harassing the applicant;
- (n) entering the applicant's residence without consent, where the parties do not share the same residence;
- (o) emotionally, verbally or psychologically abusing the applicant;
- (p) coming within 50 metres of the applicant; or
- (q) doing any act which the court considers is not in the best interest of the applicant.

Section 14 – Duration of final protection order.

A final protection order issued by the court shall not exceed twelve months in the first instance but may, for good cause shown, be extended, modified or rescinded by the court on a motion by a party to the original proceeding.

Section 15 – Conditions of protection order.

(1) A protection order shall include a provision restraining the respondent from subjecting the applicant to domestic violence.

(2) A protection order may, at the request of the applicant or on the court's own motion, include any or all of the following: -

- (a) a provision which –
 - (i) binds the respondent to be of good behaviour;
 - (ii) directs the respondent to seek counselling or other rehabilitative service;
 - (iii) directs the respondent to relocate and continue to pay any rent, mortgage payment and maintenance to the applicant;
 - (iv) forbids the respondent to be, except under conditions specified in the order, at or near places frequented by the applicant or by any child or other person in the care of the applicant;
- (b) a provision directing the respondent to surrender any firearm or other specified weapon in the possession of the respondent, which may also include, if appropriate –
 - (i) a provision suspending any firearm licence in the name of the respondent for the duration of the protection order;
 - (ii) a provision authorizing the police to search for and seize any weapon at any specified place where there is probable cause to believe that the weapon may be located;
- (c) a provision restraining the applicant or respondent or both from taking, converting, damaging, or otherwise dealing in property in which the other party may have an interest or a reasonable expectation of use;
- (d) a provision temporarily directing the respondent to make periodic payments in respect of the maintenance of the applicant, and of any child of the applicant, if the respondent is legally liable to support the applicant or the child, as an emergency measure where no such maintenance order is already in force, together with such other emergency monetary relief as is appropriate;
- (e) a provision granting temporary sole custody-
 - (i) of a child of the applicant to any appropriate custodian other than the respondent; or
 - (ii) of any child of the applicant or any child in the care of the applicant to the applicant or to another appropriate custodian if the court is satisfied that that is reasonably necessary for the safety of the child in question;
- (f) a provision temporarily–
 - (i) forbidding contact between the respondent and any child of the applicant;
 - (ii) specifying that contact between the respondent and a child of the applicant, must take place only in the presence and under the supervision of a social worker or a family member designated by the court for that purpose; or
 - (iii) allowing such contact only under specified conditions designed to ensure the safety of the applicant, any child who

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may be affected, and any other family members; if the court is satisfied that that is reasonably necessary for the safety of the child in question;

- (g) a provision ordering the relocation of the applicant to a safe house to be provided by the Minister and compelling the respondent to pay rent for the period the applicant resides in such a safe house if the court is satisfied that that is reasonably necessary for the safety of the applicant or any child or person in the care of the applicant;
- (h) any other provisions that the court thinks reasonably necessary to ensure the safety of the applicant or any child or other person who is affected.

Section 16 – Extension of protection order to other persons.

(1) A court may extend a protection order to any person specified in the order other than the applicant if the court is satisfied that –

- (a) the respondent is engaging in or has engaged in conduct, which, if the person specified in the order, (referred to hereafter as the “specified person”), were or had been in a domestic relationship with the respondent, the conduct would amount to domestic violence against the specified person;
- (b) the respondent’s conduct towards the specified person is due, in whole or in part to the applicant’s relationship with the specified person; or
- (c) the extension of the protection order is necessary for the protection of the specified person.

Section 17 – Occupation order.

(1) Where the court, in issuing a protection order, considers it expedient to issue an occupation order, the court may issue an order to vacate the matrimonial home or other home which shall only be issued by the court after the consideration of a social enquiry report prepared by a social worker, a probation officer or other person appointed by the court, as appropriate.

(2) The court shall consider the effect of the order or omission of the order on the health, education and development of the family where the complainant and the respondent are in a marital relationship.

(3) A landlord shall not evict an applicant solely on the basis that the applicant is not a party to a lease, where a residence is rented by a respondent but exclusive occupation is given to the applicant by the court.

(4) In furtherance of subsection (3), the landlord shall provide the details of the lease to the applicant on request.

Section 18 – Power to discharge protection order.

(1) A court may discharge a protection order on an application on notice by an applicant or a respondent.

(2) The discharge of the order may occur even though the order –

- (a) applies for the benefit of a specified person in the order other than the applicant;
- (b) applies against an associated respondent.

(3) Upon the discharge of an order under subsection (2), it shall cease to have effect for the benefit of any specified person or associated respondent as if either of them had applied for or been granted a discharge of the order.

(4) Where a discharge order applies for the benefit of a specified person or against an associated respondent, either of them may apply for the order to be discharged in so far as it applies to them.

(5) An application may be made under this section for the discharge of an interim order in which case the court shall fix a hearing date as soon as practicable and no later than thirty days after the filing of the application unless there are special circumstances.

Section 19 – Contravention of protection order.

(1) Any person who contravenes a protection order commits an offence and is liable on conviction to a fine not exceeding Le5,000,000 or to a term of imprisonment not exceeding 3 years or to both such fine and imprisonment.

(2) Any person convicted of a subsequent offence of contravening a protection order is liable on conviction to a fine not exceeding Le5,000,000 or to a term of imprisonment not exceeding 3 years or to both such fine and imprisonment.

(3) A complainant who, with intent to induce a police officer to perform any act or exercise any power provided in this Act in relation to a contravention of a protection order, intentionally gives false information to the police officer or fails to provide information to the police officer in order to induce him to do any act or exercise any power under this Act, commits an offence and is liable on conviction to a fine not exceeding Le1,000,000 or to a term of imprisonment not exceeding 1 year or to both such fine and imprisonment.

PART IV
MISCELLANEOUS

Section 20 – Settlement of matter out of court.

(1) Where in a criminal trial in respect of domestic violence which is not aggravated -

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- (a) the complainant expresses the desire to have the matter settled out of court, the court shall refer the case for settlement by any alternative dispute resolution method; or
 - (b) the court is of the opinion that the case can be amicably settled, it may, with the consent of the complainant refer the case for settlement by any alternative dispute resolution method.
- (2) Where any case is referred for settlement under subsection (1), the court shall, in addition -
- (a) refer the complainant and the offender for counselling;
 - (b) where necessary, require the offender to receive psychiatric help;
 - (c) after consultation with the Ministry, appoint a probation officer to observe and report on the subsequent conduct of the offender to the court.
- (3) Where a probation officer reports that the offender has engaged in any act of domestic violence after the settlement, the offender shall be brought before the court and prosecuted under section 21.
- (4) In any criminal trial in respect of domestic violence which is aggravated, the court shall not consider or approve any settlement of the matter out of court, whether in accordance with subsections (1), (2) and (3) or not.

Section 21 – Modification of protection order.

An applicant or respondent may apply to the court which granted a protection order, for the modification or cancellation of the protection order.

Section 22 – Public education.

The Minister shall, for the purpose of this Act, provide for public education on domestic violence and the contents of this Act.

Section 23 – Regulations.

The Minister may, by statutory instrument, make regulations providing for -

- (a) forms necessary for the purposes of this Act;
- (b) the training of the police and court officials on domestic violence;
- (c) the education and counselling of victims and perpetrators of domestic violence;
- (d) place of shelter for victims;
- (e) enhancement of social welfare services for victims;
- (f) the modalities for the provision of free medical treatment for victims; and
- (g) any matter for the effective implementation of this Act.

Passed in Parliament this 14th day of June, in the year of our Lord two thousand and seven.

[Sexual Offences Act, 2012](#) ²³

Section 5 – Marriage not defence to offence.

Subject to subsection (4) of section 9, the marriage of a defendant and the victim shall not be a defence to an offence under this Act.

Section 6 – Rape.

A person who intentionally commits an act of sexual penetration with another person without the consent of that other person commits the offence of rape and is liable on conviction to a term of imprisonment not less than five years and not exceeding fifteen years.

11. SINGAPORE

[Women's Charter, 1961 \(As amended\)](#)²⁴

PART VII

PROTECTION OF FAMILY

²³ Sexual Offences Act, (1 November 2012), available at http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=92359&p_country=SL&p_count=166 (last visited December 30, 2018).

²⁴ Women's Charter, Part VII, Ordinance No. 18/61, (15 September 1961, revised edition 31 October 2009), available at <https://sso.agc.gov.sg/Act/WC1961>, (last visited December 30, 2018).

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Interpretation of this Part

64. In this Part, unless the context otherwise requires —

“applicant” means the person who applies for a protection order or, where the application is made by a guardian, relative or person referred to in section 65(2)(b), or by an individual referred to in section 65(2)(c), the family member on whose behalf the application is made;

[Act 7 of 2016 wef 01/07/2016]

[Deleted by Act 27 of 2014 wef 01/10/2014]

“expedited order” means an order made under section 66(1);

“family member”, in relation to a person, means —

- (a) a spouse or former spouse of the person;
- (b) a child of the person, including an adopted child and a step-child;
- (c) a father or mother of the person;
- (d) a father-in-law or mother-in-law of the person;
- (e) a brother or sister of the person; or
- (f) any other relative of the person or an incapacitated person who in the opinion of the court should, in the circumstances, in either case be regarded as a member of the family of the person;

“family violence” means the commission of any of the following acts:

- (a) wilfully or knowingly placing, or attempting to place, a family member in fear of hurt;
- (b) causing hurt to a family member by such act which is known or ought to have been known would result in hurt;
- (c) wrongfully confining or restraining a family member against his will; or
- (d) causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member,

but does not include any force lawfully used in self-defence, or by way of correction towards a child below 21 years of age;

“hurt” means bodily pain, disease or infirmity;

“incapacitated person” means a person who is wholly or partially incapacitated or infirm, by reason of physical or mental disability or ill-health or old age;

“protected person” means a person who is protected under a protection order;

“protection order” means an order made under section 65;

“relative” includes a person who is related through marriage or adoption;

“shared residence” means the premises at which the parties are, or have been, living together as members of the same household.

[30/96]

Protection order

65.—(1) The court may, upon satisfaction on a balance of probabilities that family violence has been committed or is likely to be committed against a family member and that it is necessary for the protection of the family member, make a protection order restraining the person against whom the order is made from using family violence against the family member.

[30/96]

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(2) An application for a protection order under this section, or for an expedited order under section 66, may be made —

- (a) by the family member concerned, if that family member is not below the age of 21 years and is not an incapacitated person;
- (b) by a guardian or relative or person responsible for the care of the family member concerned, or by any person appointed by the Minister for the purposes of this paragraph, if that family member is below the age of 21 years or is an incapacitated person; or
- (c) despite paragraphs (a) and (b), by an individual below the age of 21 years who is married or has been previously married, if the family member concerned is —
 - (i) the individual;
 - (ii) the individual's child (including an adopted child or a stepchild) below the age of 21 years; or
 - (iii) a relative below the age of 21 years whom the individual is responsible for the care of.

[Act 7 of 2016 wef 01/07/2016]

(3) A protection order may be made subject to such exceptions or conditions as may be specified in the order and for such term as may be specified.

[30/96]

(4) The court, in making a protection order, may include a provision that the person against whom the order is made may not incite or assist any other person to commit family violence against the protected person.

[30/96]

(5) A protection order may, where the court is satisfied on a balance of probabilities that it is necessary for the protection or personal safety of the applicant, provide for such orders as the court thinks fit having regard to all the circumstances of the case, including any one or more of the following orders:

- (a) the granting of the right of exclusive occupation to any protected person of the shared residence or a specified part of the shared residence by excluding the person against whom the order is made from the shared residence or specified part thereof, regardless of whether the shared residence is solely owned or leased by the person against whom the order is made or jointly owned or leased by the parties;
- (b) referring the person against whom the order is made or the protected person or both or their children to attend counselling provided by such body as the court may direct; and

[Act 7 of 2016 wef 01/07/2016]

- (c) the giving of any such direction as is necessary for and incidental to the proper carrying into effect of any order made under this section.

[30/96]

(6) Except so far as the exercise by the person against whom a protection order is made of a right to the shared residence is suspended or restricted, or prohibited or restrained, by virtue of an order made under subsection (5), such order shall not affect any title or interest that the person against whom the order is made or any other person might have in the residence.

[30/96]

(7) Where a person against whom a protection order or an expedited order has been made contravenes the order, the court may, in addition to any penalty provided for under subsection (8), make, as the case may be, any one or more of the orders under subsection (5), to commence from such date as is specified in such new order.

[30/96]

(8) Any person who wilfully contravenes a protection order or an expedited order or an order made by virtue of subsection (5), except an order made by virtue of subsection (5)(b), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

[30/96]

(9) [Deleted by Act 19 of 2016 wef 01/10/2017]

(10) [Deleted by Act 7 of 2016 wef 01/07/2016]

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(11) An offence under subsection (8) shall be deemed to be a seizable offence within the meaning of the Criminal Procedure Code (Cap. 68).

[30/96]

Expedited order

66.—(1) Where, upon an application for a protection order under section 65, the court is satisfied that there is imminent danger of family violence being committed against the applicant, the court may make the protection order notwithstanding —

- (a) that the summons has not been served on the respondent or has not been served on the respondent within a reasonable time before the hearing of the application; or
- (b) that the summons requires the respondent to appear at some time or place.

[30/96]

(2) An expedited order shall not take effect until the date on which notice of the making of the order is served on the respondent in such manner as may be prescribed or, if the court has specified a later date as the date on which the order is to take effect, that later date, and an expedited order shall cease to have effect on whichever of the following dates occurs first:

- (a) the date of the expiration of a period of 28 days beginning with the date of the making of the order; or
- (b) the date of commencement of the hearing of the application for an order under this section.

[30/96]

(3) Notwithstanding subsection (2), the court may extend the duration of the expedited order.

[30/96]

Supplementary provisions with respect to orders under sections 65 and 66

67.—(1) The court shall, on an application made by the applicant or the person against whom a protection order or an expedited order is made, have power by order to vary, suspend or revoke such order.

[30/96]

(2) [Deleted by Act 27 of 2014 wef 01/01/2015]

(3) The expiry by virtue of section 66(2) of an expedited order shall not prejudice the making of a further expedited order under that section.

[Women's Charter \(Amendment\) Act, 2016](#)²⁵

Amendment of section 64

13. Section 64 of the Women's Charter is amended by deleting the definition of "applicant" and substituting the following definition:

“ “applicant” means the person who applies for a protection order or, where the application is made by a guardian, relative or person referred to in section 65(2)(b), or by an individual referred to in section 65(2)(c), the family member on whose behalf the application is made;”.

Amendment of section 65

14. Section 65 of the Women's Charter is amended —

- (a) by deleting subsection (2) and substituting the following subsection:

“(2) An application for a protection order under this section, or for an expedited order under section 66, may be made —

²⁵ Women's Charter (Amendment) Act, Law No. 9 (29 February 2016), available at <https://sso.agc.gov.sg/Acts-Supp/7-2016/Published/20160530?DocDate=20160530> (last visited December 30, 2018).

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- (a) by the family member concerned, if that family member is not below the age of 21 years and is not an incapacitated person;
 - (b) by a guardian or relative or person responsible for the care of the family member concerned, or by any person appointed by the Minister for the purposes of this paragraph, if that family member is below the age of 21 years or is an incapacitated person; or
 - (c) despite paragraphs (a) and (b), by an individual below the age of 21 years who is married or has been previously married, if the family member concerned is —
 - (i) the individual;
 - (ii) the individual's child (including an adopted child or a stepchild) below the age of 21 years; or
 - (iii) a relative below the age of 21 years whom the individual is responsible for the care of.”;
- (b) by deleting the words “as the Minister may approve or” in subsection (5)(b); and
- (c) by deleting subsection (10).

[Penal Code, 1872 \(As amended\)](#)²⁶

Sexual offences

Rape

375.—(1) Any man who penetrates the vagina of a woman with his penis —

- (a) without her consent; or
- (b) with or without her consent, when she is under 14 years of age,

shall be guilty of an offence.

[51/2007]

[...]

(4) No man shall be guilty of an offence under subsection (1) against his wife, who is not under 13 years of age, except where at the time of the offence —

- (a) his wife was living apart from him —
 - (i) under an interim judgment of divorce not made final or a decree nisi for divorce not made absolute;
 - (ii) under an interim judgment of nullity not made final or a decree nisi for nullity not made absolute;
 - (iii) under a judgment or decree of judicial separation; or
 - (iv) under a written separation agreement;

²⁶ Penal Code (Chapter 224), (16 September 1872, revised edition 30 November 2008), available at <https://sso.agc.gov.sg/Act/PC1871> (last visited December 30, 2018).

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- (b) his wife was living apart from him and proceedings have been commenced for divorce, nullity or judicial separation, and such proceedings have not been terminated or concluded;
- (c) there was in force a court injunction to the effect of restraining him from having sexual intercourse with his wife;
- (d) there was in force a protection order under section 65 or an expedited order under section 66 of the Women's Charter (Cap. 353) made against him for the benefit of his wife; or
- (e) his wife was living apart from him and proceedings have been commenced for the protection order or expedited order referred to in paragraph (d), and such proceedings have not been terminated or concluded.

[51/2007]

(5) Notwithstanding subsection (4), no man shall be guilty of an offence under subsection (1)(b) for an act of penetration against his wife with her consent.

[51/2007]

[UK SOA 2003, s. 1; SPC 1985 Ed., s. 375 (repealed); SPC 1985 Ed., s. 376 (repealed); Indian PC 1860, s. 375; Malaysia PC 2006 Ed., s. 375]

12. SLOVAK REPUBLIC

[Criminal Code, 2005](#) ²⁷

Person

Section 127

[...]

(4) For the purposes of this Act, close person shall mean a person related in the first degree, adoptive parent, adopted child, sibling and spouse; other persons related by family or otherwise are considered to be close persons only if the harm caused to one of them is reasonably perceived by the other person as its own harm.

(5) For the purposes of the criminal offences of extortion pursuant to Section 189, rape pursuant to Section 199 par. 2, sexual violence pursuant to Section 200 par. 2, sexual abuse pursuant to Section 201 par. 2, battering a close person and a person entrusted to one's care pursuant to 208 or dangerous threatening pursuant to Section 360 par. 2, a close person shall also mean ex-husband, spouse, ex-spouse, biological parent of a child and a person which is related to them as a close person pursuant to paragraph 4, as well as a person who lives or lived with the perpetrator in a shared household.

Section 139

Protected Person

(1) A protected person shall mean

[...]

c) a close person,

d) a dependent person

[...]

(2) The provision of paragraph 1 shall not apply if a criminal offence was not committed in connection with the position, state or age of a protected person.

Section 208

Battering a Close Person and a Person Entrusted into one's Care

(1) Any person who ill-treats a close person or a person entrusted into his care or charge, causing him physical or mental suffering by

a) repeated beating, kicking, hitting, inflicting various types of wounds and burn wounds, humiliating, disregarding, continuous stalking, threatening, evoking fear or stress, by forced isolation, emotional extortion or by other improper conduct endangering his physical or psychical health, or putting his safety at risk,

b) repeated and unjustified denial of food, rest or sleep, or denial of necessary personal care, basic clothing, elementary hygiene, health care, housing, upbringing or education,

c) forcing to beggary or to a repeated performance of activities causing excessive physical strain or psychical stress for the person subject to ill-treatment considering his age or health condition, or damaging his health,

d) repeated exposure to the effects of substances that are detrimental to his health, or

²⁷ Criminal Code, Act 300/2005 Coll. (2 July 2005, with amendments through Act 161/2018), available at <http://www.legislationline.org/documents/section/criminal-codes/country/4> (last visited December 30, 2018).

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e) unjustified restriction on his right of access to the assets that he is entitled to use and enjoy, shall be liable to a term of imprisonment of three to eight years.

(2) The offender shall be liable to a term of imprisonment of seven to fifteen years if he commits the offence referred to in paragraph 1,

a) and causes grievous bodily harm or death through its commission,

b) by reason of specific motivation,

c) in spite of having been convicted for the same offence during the past twenty-four months or released from the service of a term of imprisonment imposed upon him for such offence, or

d) acting in a more serious manner.

(3) The offender shall be liable to a term of imprisonment of fifteen to twenty-five years or to life imprisonment if he commits the offence referred to in paragraph 1, and causes grievous bodily harm or death to several persons through its commission.

Section 199

Rape

(1) Any person who, by using violence or the threat of imminent violence, forces a woman to have sexual intercourse with him, or takes advantage of a woman's helplessness for such act, shall be liable to a term of imprisonment of five to ten years.

(2) The offender shall be liable to a term of imprisonment of seven to fifteen years if he commits the offence referred to in paragraph 1

a) acting in a more serious manner,

b) against a protected person,

c) by reason of specific motivation, or

d) against a woman remanded in custody or serving her term of imprisonment.

(3) The offender shall be liable to a term of imprisonment of fifteen to twenty years if he commits the offence referred in paragraph 1, and causes grievous bodily harm through its commission.

(4) The offender shall be liable to a term of imprisonment of twenty to twenty-five years if he commits the offence referred to in paragraph 1,

a) and causes death through its commission, or

b) under a crisis situation.

Section 200

Sexual Violence

(1) Any person who, by using violence or the threat of imminent violence, forces another to engage in oral sex, anal sex, or any other sexual acts, or takes advantage of another's helplessness for such act, shall be liable to a term of imprisonment of five to ten years.

(2) The offender shall be liable to a term of imprisonment of seven to fifteen years if he commits the offence referred to in paragraph 1

a) acting in a more serious manner,

b) against a protected person,

c) by reason of specific motivation, or

d) against a woman remanded in custody or serving her term of imprisonment.

(3) The offender shall be liable to a term of imprisonment of fifteen to twenty years if he commits the offence referred in paragraph 1, and causes grievous bodily harm through its commission.

(4) The offender shall be liable to a term of imprisonment of twenty to twenty-five years if he commits the offence referred to in paragraph 1,

a) and causes death through its commission, or

b) under a crisis situation.

Sexual Abuse

Section 201

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(1) Any person who has sexual intercourse with a person under fifteen years of age, or who subjects such person to other sexual abuse, shall be liable to a term of imprisonment of three to ten years.

(2) The offender shall be liable to a term of imprisonment of seven to twelve years if he commits the offence referred to in paragraph 1

- a) acting in a more serious manner,
- b) against a protected person, or
- c) by reason of specific motivation.

(3) The offender shall be liable to a term of imprisonment of twelve to fifteen years if he commits the offence referred to in paragraph 1, and causes grievous bodily harm through its commission.

(4) The offender shall be liable to a term of imprisonment of fifteen to twenty years if he commits the offence referred to in paragraph 1,

- a) and causes death through its commission, or
- b) under a crisis situation.

Section 360

Serious Threats

(1) Any person who threatens another with killing, inflicting grievous bodily harm or other aggravated harm to an extent which may give rise to justifiable fears shall be liable to a term of imprisonment of up to one year.

(2) The offender shall be liable to a term of imprisonment of between six months and three years if he commits the offence referred to in paragraph 1

- a) acting in a more serious manner,
- b) against a protected person,
- c) with the intention of preventing or obstructing the exercise of fundamental rights and freedoms by another,
- d) by reason of specific motivation, or
- e) in public.

[Criminal Procedure Code, 2005 \(As amended\)](#)²⁸

Art. 82 paragraphs (1) (d),(h),(i),(j),(k) and (2)-(6) (on civil protection orders)

[Civil Contentious Procedure Code, 2015 \(As amended\)](#)²⁹

Art. 325 (2) (d) (e) (f) (g) (h) (on civil protection orders)

13. SLOVENIA

[Domestic Violence Prevention Act, 2008 \(As amended\)](#)³⁰

[Act on Tasks and Powers of Police, 2013](#)³¹

Arts. 60, 61 (on prohibition to approach a particular person, place or area; extension of the prohibition)

[Rules on Restraining Orders Prohibiting the Perpetrator from Approaching a Particular Person, Place or Area, 2004](#)³²

Art. 7

²⁸ Criminal Procedure Code, Act No. 301/2005 Coll. (2 July 2005, as amended up to 2018), available at <http://www.zakonypreludi.sk/zz/2005-301#cast1> (last visited December 30, 2018).

²⁹ Civil Contentious Procedure Code, Act No. 160/2015 (17 July 2015, as amended by Act No. 87/2017 Coll.), available at <http://www.zakonypreludi.sk/zz/2015-160> (last visited December 30, 2018).

³⁰ Domestic Violence Prevention Act, Act No. 16/08 (15 February 2008, as amended by Act No. 68/16 of 4 November 2016), available at <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5084> (last visited December 30, 2018).

³¹ Act on Tasks and Powers of Police, Act No. 15/2013 (18 February 2013), available at <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5084> (last visited December 30, 2018).

³² Rules on Restraining Orders Prohibiting the Perpetrator from Approaching a Particular Person, Place or Area, 95/2004 (27 August 2004), available at <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/51067> (last visited December 30, 2018).

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[Criminal Code, 2008](#) ³³

Family Violence

Article 191

(1) Whoever within a family treats badly another person, beats them, or in any other way treats them painfully or degradingly, threatens with direct attack on their life or limb to throw them out of the joint residence or in any other way limits their freedom of movement, stalks them, forces them to work or give up their work, or in any other way puts them into a subordinate position by aggressively limiting their equal rights shall be sentenced to imprisonment for not more than five years.

(2) The same punishment shall be imposed on whoever commits the acts under the preceding paragraph in any other permanent living community.

(3) If the act under paragraph 1 is committed against a person with whom the perpetrator lived in a family or other permanent community, which fell apart, however this act is connected to the community, the perpetrator shall be sentenced to imprisonment for not more than three years.

Rape

Article 170

(1) Whoever compels a person of the same or opposite sex to submit to sexual intercourse with him by force or threat of imminent attack on life or limb shall be sentenced to imprisonment for not less than one and not more than ten years.

[...]

(3) Whoever compels a person of the same or opposite sex to submit to sexual intercourse by threatening him/her with large loss of property to him/her or to his/her relatives or with the disclosure of any matter concerning him/her or his/her relatives which is capable of damaging his/her or his/her relatives' honour and reputation shall be sentenced to imprisonment for not less than six months and not more than five years.

(4) If offences under paragraphs 1 or 3 of this Article have been committed against a spouse or an extra-marital partner or partner of a registered same-sex civil partnership, the prosecution shall be initiated upon a complaint.

14. SOLOMON ISLANDS

[Family Protection Act, 2014](#) ³⁴

[...]

PART 1 – PRELIMINARY

1. This Act may be cited as the Family Protection Act 2014 and commences on a date appointed by the Minister responsible for justice, in consultation with the Minister responsible for women's affairs, by notice in the Gazette.

2. (1) The objects of the Act are—

(a) to ensure the safety and protection of all persons who experience or witness domestic violence; and

(b) to provide support and redress for all victims of domestic violence; and

(c) to facilitate programs for victims of domestic violence to assist their recovery and ensure that they are able to lead a safe and healthy life; and

(d) to facilitate the issue and enforcement of police safety notices and protection orders to stop domestic violence; and

(e) to implement certain principles underlying the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child; and

(f) to create offences in relation to domestic violence and provide for increased sentences for persons convicted of such

³³ Criminal Code (1 November 2008), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=180880 (last visited December 30, 2018).

³⁴ Family Protection Act, Law No. 15 (27 August 2014), available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98705/117521/F1967801277/SLB98705.pdf> (last visited December 30, 2018).

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offences where certain aggravating factors are present.

(2) In enacting this Act, Parliament recognises—

(a) that domestic violence in all its forms is unlawful; and

(b) that domestic violence occurs in and impacts on all sectors of the community; and

(c) that domestic violence may involve the exploitation of power imbalances or patterns of abuse over many years; and

(d) the particularly vulnerable position of vulnerable persons who are exposed to domestic violence as victims or witnesses, and the impact that such exposure can have on their current and future psychological, physical and emotional well-being; and

(e) that domestic violence is best addressed through a coordinated legal and social response of assistance to victims and measures to prevent violence and, in certain cases, by appropriate intervention by the Court.

(3) A court or a person that exercises any power conferred by this Act must implement the objects of, and follow the guidance provided by, this section.

3. In this Act, unless the context otherwise requires—

“affected person” has the meaning set out in section 7;

“authorised justice” has the meaning set out in section 9;

“child” means a person under 18 years of age;

“Clerk of Court” has the meaning set out in section 2 of the Magistrates’ Court Act (Cap. 20);

“Council” means the Family Protection Advisory Council established by section 49;

“Court” means the Magistrates’ Court established by section 3 of the Magistrates’ Courts Act (Cap. 20);

“domestic relationship” has the meaning set out in section 5;

“domestic violence” has the meaning set out in section 4

“economic abuse”, of a person, means any of the following—

(a) unreasonably controlling behaviour which denies the person financial autonomy or prevents them from taking part in decisions over household expenditures or the disposition of joint property;

(b) withholding financial support reasonably necessary for the maintenance of the person or of the person’s household;

(c) the unreasonable and unilateral disposal, retention or subtraction of moveable or immovable property in which the person has a material interest, or damage to or destruction of their personal property, so as to interfere with their use of such property;

“family law proceedings” mean proceedings—

(a) under the Affiliation, Separation and Maintenance Act (Cap. 1); or

(b) under the Islanders’ Divorce Act (Cap. 170); or

(c) otherwise related to family law;

“family member” has the meaning set out in section 6;

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“final protection order” means a protection order made under section 29;

“firearm” has the meaning set out in section 2 of the Firearms and Ammunition Act (Cap. 80);

“harassment” means engaging in a pattern of conduct that induces the fear of harm in a person, including any of the following—

(a) watching, or loitering outside of or near, a place where the person lives, works, studies or happens to be;

(b) making unwarranted phone calls or inducing another to make such phone calls to the person, whether or not conversation ensues;

(c) sending or delivering unwanted letters, packages, other objects, facsimiles, text messages or other electronic mail to the person;

“health care provider” means a doctor, nurse or health worker engaged in any facility that provides medical services;

“High Court” means the High Court established by section 77 of the Constitution;

“interim protection order” means a protection order made under section 23;

“intimidate”, a person, means to intimidate the person within the meaning of section 231(2) of the Penal Code (Cap. 26);

“Local Court” means a Local Court established under section 2 of the Local Courts Act (Cap. 19);

“officer in command” has the meaning set out in section 2 of the Police Act 2013;

“physical abuse”, of a person, means—

(a) conduct causing bodily pain or harm to the person or danger to the person’s life or health; and

(b) includes assault;

“police safety notice” means a notice issued under section 12;

“police station” includes police post;

“possess” includes control;

“protection order” means an interim or final protection order;

“psychological abuse” means conduct that degrades or humiliates a person, including any of the following—

(a) insults, ridicule or name calling;

(b) obsessive possessiveness or jealousy, which constitutes a serious invasion of the person’s privacy, liberty, integrity or security;

(c) harassment;

(d) stalking;

(e) intimidation;

“registered counsellor” means a domestic violence counsellor registered under section 54;

“respondent” has the meaning set out in section 8;

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“sexual abuse”, of a person, means conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the person;

“social welfare officer” means a person holding a position of that designation in the Ministry responsible for social welfare;

“stalk”, a person, means to engage in a pattern of conduct consisting of following or pursuing the person in an unwanted and unwelcome manner, whether in person or by telephone calls, text messages or other means of communication;

“victim”, in relation to an offence—

(a) against section 58 – means the person against whom the act of domestic violence was committed; and

(b) against section 59 – means the affected person for the protection order or police safety notice;

“vulnerable person” means—

(a) a child; or

(b) a person with a cognitive impairment that results in substantially reduced capacity in any of the following—

(i) self-care or management;

(ii) decision making or problem solving;

(iii) communication or social functioning;

“weapon” has the meaning set out in section 84(6) of the Penal Code (Cap. 26).

4. (1) “Domestic violence” is conduct committed by a person (the “offender”) against another person with whom the offender is in a domestic relationship, or the threat of such conduct, that constitutes any of the following—

(a) physical abuse;

(b) sexual abuse;

(c) psychological abuse;

(d) economic abuse.

(2) Domestic violence may consist of a single act or a number of acts that form part of a pattern of behaviour, even though some or all of those acts when viewed in isolation appear to be minor or trivial.

5. A person is in a “domestic relationship” with another person if—

(a) they are or have been family members; or

(b) they are the parents of a child or are persons who have or have had parental responsibility together for a child; or

(c) they are or were in an engagement, courtship or customary relationship, including an actual or perceived intimate or sexual relationship of any duration; or

(d) one person is a domestic worker in the other person’s household.

6. (1) A “family member”, of a person, is a member of the person’s family, whether related by blood, adoption, marriage or custom.

(2) Without limiting subsection (1), each of the following is a member of a person’s family—

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- (a) the person's spouse or de facto spouse;
- (b) the person's child, grandchild, step-child or child-in-law;
- (c) the person's parent, grandparent, step-parent or parent-in-law;
- (d) the person's sibling, half-sibling, step-sibling or sibling in-law;
- (e) the person's uncle or aunt or uncle-in-law or aunt-in-law;
- (f) the person's nephew or niece;
- (g) the person's cousin;
- (h) any other person who is treated by the person as a member of the person's family or a member of the person's household.

7. (1) An "affected person", for a police safety notice or protection order, is a person for whose protection the notice or order is in force or is sought.

(2) More than one person may be named as an affected person in—

- (a) an application for a protection order; or
- (b) a police safety notice or protection order.

(3) If more than one person is an affected person for a police safety notice or protection order, a reference in this Act to "the affected person" includes a reference to any of the affected persons.

8. (1) A "respondent", for a police safety notice or protection order, is a person against whom the notice or order is in force or is sought.

(2) Only one person may be named as a respondent in—

- (a) an application for a protection order; or
- (b) a police safety notice or protection order.

9. An "authorised justice" is—

- (a) a Justice of a Local Court; or
- (b) a prescribed person or a person belonging to a prescribed class of persons.

10. A reference in this act to a Form by number is a reference to the Form of that number in the Schedule.

11. (1) The Minister responsible for women's affairs is responsible for administering Parts 4 and 5 of this Act.

(2) The Minister responsible for justice is responsible for administering the remaining provisions of this Act.

PART 2— POLICE SAFETY NOTICES

12. (1) A police officer may issue a police safety notice for the protection of an affected person if the police officer believes on reasonable grounds that—

- (a) the affected person is in a domestic relationship with the respondent; and
- (b) the respondent has committed or is likely to commit domestic violence against the affected person; and

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(c) the notice is necessary—

(i) because of urgent circumstances; or

(ii) because it is not otherwise practicable in the circumstances to obtain a protection order.

(2) In addition, if the affected person is a vulnerable person, the police officer may issue a police safety notice if the police officer believes on reasonable grounds that—

(a) the respondent has committed or is likely to commit domestic violence against a person with whom the vulnerable person is in a domestic relationship; and

(b) the notice is necessary to protect the vulnerable person from exposure to the domestic violence; and

(c) the notice is necessary—

(i) because of urgent circumstances; or

(ii) because it is not otherwise practicable in the circumstances to obtain a protection order; and

(d) the notice is in the best interests of the vulnerable person.

(3) The notice must be issued on Form 1.

(4) The notice may be issued without the consent of the affected person.

(5) The issue of the notice does not limit the duty of the police officer to investigate whether the respondent has committed an offence related to domestic violence under this or any other written law.

13. (1) A police officer must—

(a) give a copy of the police safety notice to the affected person; and

(b) personally serve the notice on the respondent; and

(c) complete and file with the Court an affidavit of service on Form 6.

(2) The police officer must explain to the respondent—

(a) the purpose, duration and effect of the notice; and

(b) the consequences of breaching the notice.

(3) Failure to comply with subsection (2) does not invalidate or otherwise affect the notice.

14. (1) A police safety notice has effect from the time it is served until the earlier of the following—

(a) the Court or an authorised justice makes a decision on the affected person's application for a protection order (including an application for an interim protection order);

(b) the notice expires.

(2) The notice expires 21 days after it is served unless, before that time, a police officer extends it for a single further period not exceeding 21 days.

(3) A police officer may only extend the notice if the officer is satisfied that it is not possible for the affected person to obtain an interim protection order within 21 days due to exceptional circumstances.

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15. (1) It is a condition of every police safety notice that the respondent—

(a) must not commit domestic violence—

(i) against the affected person; or

(ii) if an affected person is a vulnerable person – in the presence of the vulnerable person; and

(b) must not possess a firearm.

(2) If the police officer issuing the notice believes on reasonable grounds that it is necessary for the safety of the affected person, the police officer may include in the notice a condition that prohibits the respondent from doing any of the following—

(a) entering or remaining at a specified place, or approaching within a specified distance of the place;

(b) approaching within a specified distance of the affected person;

(c) contacting the affected person;

(d) attempting to do anything mentioned in paragraphs (a) to (c);

(e) engaging in stated behaviour that is likely to lead to domestic violence against the affected person;

(f) possessing a weapon other than a firearm.

16. A police officer who issues a police safety notice must, as soon as practicable but within 21 days after issuing the notice, assist the affected person to make an application for a protection order.

PART 3— PROTECTION ORDERS

Division 1 – Jurisdiction to make protection orders

17. (1) The Magistrates' Court has jurisdiction to—

(a) make a protection order; and

(b) vary or revoke a protection order.

(2) An authorised justice has jurisdiction to—

(a) make an interim protection order; and

(b) vary or revoke an interim protection order.

18. (1) This section applies if—

(a) the affected person and respondent are parties to family law proceedings before a court; or

(b) the respondent is the defendant in criminal proceedings before a court for the commission of an offence that involves domestic violence.

(2) The court may, of its own motion or on an application by or on behalf of an affected person—

(a) make a protection order for the protection of the affected person; or

(b) vary or revoke a protection order for the protection of the affected person made by—

(i) a court with the same or an inferior level of jurisdiction; or

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(ii) an authorised justice.

(3) If the court makes, revokes or varies a final protection order, any application for a protection order for the protection of the affected person before another court or an authorised justice is taken to be withdrawn.

(4) Sections 19, 20, 21, 23, 29, 30 and 41 apply in relation to a protection order sought or made under this section.

Division 2 – Applications for protection orders

19. An application for a protection order may be made by or on behalf of—

(a) a person against another person with whom he or she has or has had a domestic relationship; or

(b) 2 or more persons against another person with whom at least one of those persons has or has had a domestic relationship.

20. (1) If the affected person is a vulnerable person, only the following persons may apply for a protection order—

(a) the vulnerable person;

(b) a parent or legal guardian of the vulnerable person;

(c) a person over the age of 18 years who cares for the vulnerable person;

(d) a social welfare officer;

(e) a police officer.

(2) A police officer or social welfare officer must apply for a protection order for a vulnerable person if the officer has reasonable cause to believe—

(a) the respondent has committed or is likely to commit domestic violence against the vulnerable person or a person with whom the vulnerable person is in a domestic relationship; and

(b) the vulnerable person's wellbeing has or is likely to be adversely affected by the violence; and

(c) that insufficient other action has been taken to protect the vulnerable person's wellbeing, and it is unlikely that sufficient action will be taken; and

(d) the application is in the best interests of the vulnerable person.

21. (1) An application for a protection order may be made to—

(a) the Court; or

(b) if, as part of the application, the applicant is seeking an interim protection order – an authorised justice.

(2) The application may be made—

(a) on Form 2, including by email or facsimile; or

(b) if the applicant is unable to transmit a written application on Form 2 to the Court or authorised justice – orally or in another written form, including by telephone or similar national facility approved by the Court or authorised justice.

(3) If an application is made orally or in a written form other than on Form 2—

(a) it must be reduced to writing on Form 2—

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- (i) if the application is made to the Court – by the Clerk of Court; or
 - (ii) if the application is made to an authorised justice – by the authorised justice; and
- (b) the Clerk or authorised justice may sign the form on behalf of the applicant.

22. (1) On receiving an application for a protection order, including an application filed under section 25, the Court or authorised justice must give the officer in command of the police station nearest to where the respondent lives or was last known to live—

- (a) a notice to attend on Form 7; and
- (b) a copy of the application.

(2) A police officer must—

- (a) personally serve the notice and application on the respondent; and
- (b) complete and file with the Court an affidavit of service on Form 6.

Division 3 – Interim protection orders

23. (1) In response to an application for a protection order, the Court or authorised justice may make an interim protection order if satisfied that, if the order were not made immediately—

- (a) the respondent is likely to commit domestic violence against the affected person; or
- (b) the affected person may be prevented or deterred from pursuing the application for the final protection order.

(2) In addition, if the affected person is a vulnerable person, the Court or authorised justice may make an interim protection order if satisfied that, if the order were not made immediately—

- (a) the respondent is likely to commit domestic violence against a person with whom the vulnerable person is in a domestic relationship; and
- (b) the order is necessary to protect the vulnerable person from exposure to the domestic violence; and
- (c) the order is in the best interests of the vulnerable person.

(3) An interim protection order may be made—

- (a) even if the respondent has not been served with the application for the order; and
- (b) in the absence of the respondent; and
- (c) outside ordinary sitting or business hours.

(4) An interim protection order need only be supported by the evidence that the Court or authorised justice considers sufficient and appropriate having regard to the temporary nature of the order.

(5) An interim protection order must be made on Form 3.

24. (1) After making an interim protection order, the Court or authorised justice must give a copy of—

- (a) the order to the affected person; and
- (b) the following to the officer in command of the police station nearest to where the respondent lives or was last known to live, for service on the respondent—

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- (i) if the respondent has not already been served with the application for the order – the application for the order;
- (ii) the order.

(2) A police officer must—

- (a) personally serve the application and order on the respondent; and
- (b) complete and file with the Court an affidavit of service on Form 6.

(3) The police officer must explain to the respondent—

- (a) the purpose, duration and effect of the order; and
- (b) the consequences of breaching the order.

(4) Failure to comply with subsection (3) does not invalidate or otherwise affect the order.

(5) Subsections (2) and (3) do not apply if the respondent is before the authorised justice or Court when the order is made.

25. (1) This section applies if an authorised justice makes an interim protection order.

(2) After receiving them from the authorised justice, a police officer must file the following in the nearest Local Court and the Magistrates' Court—

- (a) the application for the order;
- (b) the order.

26. An interim protection order comes into force as soon as it is served on the respondent and remains in force until the earliest of the following—

- (a) a final protection order is made;
- (b) the interim protection order is revoked;
- (c) the affected person withdraws the application for the final protection order.

27. An application for a final protection order is not discontinued merely because the Court or authorised justice makes, or refuses to make, an interim protection order in relation to the application.

Division 4 – Final protection orders

28. (1) When the Court receives an application for a protection order, including an application filed under section 25, the Court must inform the affected person that he or she may elect to seek mediation with the respondent.

(2) If the affected person elects to seek mediation—

- (a) a court officer must assist the affected person to arrange mediation facilitated by a registered counsellor; and
- (b) the hearing of the application for the final protection order must not proceed until the mediation has taken place; and
- (c) if the application for the final protection order proceeds, in addition to the matters mentioned in section 29(3), the Court must take into account the outcome of the mediation in deciding the application.

(3) This section does not—

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(a) require the affected person to seek mediation; and

(b) does not prevent the Court from making or varying an interim protection order before the mediation has taken place.

29. (1) In response to an application for a final protection order, the Court may make the order if satisfied on the balance of probabilities that—

(a) the respondent has committed or is likely to commit domestic violence against the affected person; and

(b) the making of an order is necessary to protect the affected person from domestic violence.

(2) In addition, if the affected person is a vulnerable person, the Court may make the final protection order if satisfied on the balance of probabilities that—

(a) the respondent has committed or is likely to commit domestic violence against a person with whom the vulnerable person is in a domestic relationship; and

(b) the order is necessary to protect the vulnerable person from exposure to the domestic violence; and

(c) the order is in the best interests of the vulnerable person.

(3) Before making the order, the Court must take into account the following—

(a) the need to ensure that the affected person is protected from domestic violence;

(b) the opinion of the affected person of the nature and seriousness of the behaviour of the respondent;

(c) the effect of that behaviour on the affected person; and

(d) the well-being and accommodation needs of the affected person.

(4) A final protection order must be made on Form 3.

(5) If the Court refuses an application for a final protection order, it must give written reasons for doing so.

30. (1) This section applies if—

(a) a respondent fails to appear before the Court for the hearing of an application for a final protection order; and

(b) the Court is satisfied that the respondent has been served with a copy of the application.

(2) The Court may—

(a) hear and decide the application in the absence of the respondent; or

(b) adjourn the proceedings.

(3) Before adjourning the proceedings, the Court may make an interim protection order (if one is not already in force), whether or not the application for the final protection order includes an application for an interim protection order.

(4) Section 23 applies to the making of an interim protection order under this section as if the order were made on application.

31. (1) After making a final protection order, the Court must give a copy of the order to—

(a) the affected person; and

(b) the officer in command of the police station nearest to where the respondent lives or was last known to live, for service on the respondent.

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(2) A police officer must—

- (a) personally serve the order on the respondent; and
- (b) complete and file in the Court an affidavit of service on Form 6.

(3) The police officer must explain to the respondent—

- (a) the purpose, duration and effect of the order; and
- (b) the consequences of breaching the order.

(4) Failure to comply with subsection (3) does not invalidate or otherwise affect the order.

(5) Subsections (2) and (3) do not apply if the respondent is before the Court when the order is made.

32. A final protection order comes into force as soon as it is served on the respondent and remains in force until the earliest of the following—

- (a) the expiry of the period, not exceeding 5 years, set out in the order;
- (b) the order is revoked under section 41;
- (c) the order is revoked on appeal under section 45.

33. (1) An affected person for an application for a protection order may withdraw the application at any time before the order is made, by filing a notice on Form 8.

(2) If more than one affected person is named in an application for a protection order, withdrawal of the application by one of the affected persons does not withdraw the application in relation to the other affected persons.

34. (1) The only persons who may be present during the hearing of an application for a protection order are the following—

- (a) the affected person and the respondent;
- (b) if the hearing is before a court – court officers;
- (c) legal or other representatives of the affected person and the respondent;
- (d) witnesses;
- (e) any other person permitted by the Court or authorised justice to be present.

(2) The affected person is entitled to have a person with her or him throughout the proceedings to provide support and other assistance.

Division 5 – Conditions of protection orders

35. (1) It is a condition of every protection order that the respondent—

- (a) must not commit domestic violence—
 - (i) against the affected person; or
 - (ii) if an affected person is a vulnerable person – in the presence of the vulnerable person; and
- (b) must not possess a firearm.

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(2) The Court or authorised justice may also impose other conditions and orders on the respondent in accordance with sections 36 to 38 if it considers the conditions are necessary or desirable for protecting the affected person.

36. The Court or authorised justice may include in the protection order a condition that prohibits the respondent from doing any of the following—

- (a) entering or remaining at a specified place, or approaching within a specified distance of the place;
- (b) approaching within a specified distance of the affected person;
- (c) contacting the affected person;
- (d) attempting to do anything mentioned in paragraphs (a) to (c);
- (e) engaging in stated behaviour that is likely to lead to domestic violence against the affected person;
- (f) possessing a weapon other than a firearm;
- (g) encouraging another person to engage in behaviour in relation to the affected person that, if engaged in by the respondent, would be prohibited under the order.

37. The Court or authorised justice may include in the protection order a condition that does any of the following—

- (a) prohibits the respondent from damaging property of the affected person;
- (b) directs the respondent—
 - (i) to return any specified personal property of the affected person; or
 - (ii) to allow the affected person to recover, have access to or make use of any specified personal property;
- (c) directs the respondent to vacate a residence or a specified part of a residence to enable the affected person to occupy it, whether or not the residence is solely owned or leased by the respondent.

38. (1) Subject to any order in force under the Affiliation, Separation and Maintenance Act (Cap. 1), the Court or authorised justice may include in a protection order any of the following—

- (a) an order for the temporary custody of or access to a child of the affected person;
- (b) an order directing the temporary maintenance of the affected person or a child of the affected person.

(2) An order under this section that relates to a child—

- (a) must be made in the best interests of the child; and
- (b) does not affect the child's right to, inheritance of, or succession to, property.

(3) An order under this section does not affect any proceedings under the Affiliation, Separation and Maintenance Act (Cap. 1).

Division 6 – Variation and revocation of protection order

39. (1) An affected person or a respondent for a protection order may apply for a variation or revocation of the order.

(2) The application may be made to—

- (a) the Magistrates' Court; or

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(b) for an interim protection order— an authorised justice.

(3) The application must be made on Form 4.

40. (1) After the Court or authorised justice receives an application for variation or revocation of a protection order from a party to the protection order, the Court or authorised justice must give the officer in command of the police station nearest to where the other party to the order lives or was last known to live—

(a) a notice to attend on Form 7; and

(b) a copy of the application.

(2) A police officer must—

(a) personally serve the notice and application on the other party; and

(b) complete and file with the Court an affidavit of service on Form 6.

41. (1) A Court or authorised justice may vary a protection order by—

(a) varying the conditions imposed by the order; or

(b) extending the period for which the order remains in force.

(2) Before revoking an order, the Court or authorised justice must—

(a) if the application was made by the affected person – investigate the reasons for the application and be satisfied that the affected person made the application freely and voluntarily; and

(b) be satisfied that the safety and well-being of the affected person will not be adversely affected by the revocation; and

(c) be satisfied that there is no further risk of the respondent committing domestic violence—

(i) against the affected person; or

(ii) if the affected person is a vulnerable person – against a person with whom the vulnerable person is in a domestic relationship.

(3) The Court or authorised justice may only vary or revoke a protection order on application by the respondent if—

(a) the affected person for the order is present for the hearing of the application; and

(b) the Court or authorised justice is satisfied that there has been a substantial change in circumstances since the protection order was made or last varied.

42. (1) After deciding to vary or revoke a protection order, the Court or authorised justice must give notice of the variation or revocation on Form 5 to the officer in command of the police station nearest to where each of the affected person and the respondent lives or was last known to live, for service on the affected person and the respondent.

(2) A police officer must—

(a) personally serve notice of the variation or revocation on each of the affected person and the respondent; and

(b) complete and file with the Court an affidavit of service on Form 6.

(3) The police officer must explain to the person served the effect of the variation or revocation.

(4) Failure to comply with subsection (3) does not invalidate or otherwise affect the variation or revocation.

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(5) Subsections (2) and (3) do not apply in relation to a person who is before the Court or authorised justice at the time the decision is made.

43. The revocation or variation has effect as soon as it is served on both the affected person and the respondent.

Division 7 – Appeals

44. (1) The affected person or respondent for a protection order may appeal to the High Court against a decision of the Magistrates' Court—

- (a) to make a final protection order; or
- (b) to vary or revoke a final protection order; or
- (c) to refuse to make, vary or revoke a final protection order.

(2) The appeal must be made within 30 days after the appellant is served with notice of the decision.

45. (1) The appeal is by way of rehearing.

(2) The appeal does not stay the operation of the protection order to which it relates.

(3) In deciding the appeal, the High Court may—

- (a) confirm, vary or revoke the protection order to which the appeal relates; and
- (b) make such order or decision as it considers should have been made by the original decision maker.

PART 4 – ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE

46. If a patient notifies a health care provider that they have been a victim of domestic violence, the health care provider must—

- (a) refer the patient to an appropriate provider of support services to victims of domestic violence; and
- (b) give the patient the opportunity to be medically examined and refer them for counselling or further medical treatment, as appropriate; and
- (c) advise the patient about filing a complaint with the police; and
- (d) if the health care provider medically examines the patient – apply any relevant policies or protocols for examining victims of domestic violence issued by the Ministry responsible for health; and
- (e) if the patient is a child – give a report in relation to the matter to a social welfare officer or police officer.

47. (1) A police officer who issues a police safety notice must assist the affected person in obtaining the following—

- (a) a place of safety in the community;
- (b) counselling and medical services;
- (c) legal services.

(2) A police officer who receives a report of domestic violence must—

- (a) investigate the report; and

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(b) inform the alleged victim about their rights under this Act.

48. (1) This section applies to a prosecution for an offence against section 58 or 59.

(2) The prosecutor must provide and explain all relevant information to the victim to enable the victim to understand the court proceedings.

(3) If the victim is female, the officer in command of the police station nearest to the court must ensure that a female police officer is available, as far as practicable, to assist the victim in court.

PART 5 – ADVICE, COUNSELLING, PREVENTION AND AWARENESS OF DOMESTIC VIOLENCE

Division 1 – Family Protection Advisory Council

49. (1) The Family Protection Advisory Council is established.

(2) The Council must advise and make recommendations to the Minister, either on its own initiative or on request by the Minister or any other person, in relation to the following—

(a) the implementation of this Act and any other written law relating to family law;

(b) the availability of legal aid to affected persons and respondents;

(c) any matter relating to domestic violence;

(d) funding needed to support initiatives addressing domestic violence, including—

(i) material support for victims of domestic violence;

(ii) assistance to domestic violence victim support centres and shelters;

(iii) training, public awareness and education programs on domestic violence.

50. (1) The Council consists of the following members, appointed by the Minister—

(a) three representatives of a national policy body dealing with eliminating violence against women, recommended by the chairperson, one of whom must be a representative of civil society;

(b) a representative of the Ministry responsible for women's affairs, recommended by the Permanent Secretary of that Ministry;

(c) a representative of the Ministry responsible for justice, recommended by the Permanent Secretary of that Ministry;

(d) a representative of the Police Force recommended by the Police Commissioner;

(e) a representative of the Ministry responsible for health, recommended by the Permanent Secretary of that Ministry.

(2) The Minister must appoint—

(a) one member of the Council to be the chairperson of the Council; and

(b) another member to be the deputy chairperson of the Council.

(3) The Ministry responsible for administering this Act must provide secretariat services to the Council.

51. (1) A member of the Council holds office for the period, not exceeding 3 years, specified in the instrument of appointment, and is eligible for re-appointment.

(2) A member may resign by writing to the Minister.

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- (3) The Minister must terminate the appointment of a member who—
- (a) is convicted of a criminal offence; or
 - (b) is physically or mentally incapable of performing their functions as a member; or
 - (c) is absent from three consecutive meetings of the Council without a valid reason.

52. (1) A meeting of the Council is presided over by—

- (a) the chairperson; or
- (b) in the absence of the chairperson, the deputy chairperson; or
- (c) in the absence of the chairperson and deputy chairperson, another member nominated by the members present.

(2) The quorum for a meeting of the Council is 4 members.

(3) The Council must keep records of its meetings.

(4) Subject to this Division, the Council may determine its own procedures.

53. The Council must, as soon as practicable after 31 December in each year, prepare and submit to the Minister a report of its operations during the previous year.

Division 2 – Registered counsellors

54. (1) On application by a person, the Minister, in consultation with the Council, may register the person to be a domestic violence counsellor.

(2) The Minister must not register a person unless the person—

- (a) is trained in counselling methodology approved by the Minister; and
- (b) has at least 2 years of experience in domestic violence counselling.

(3) The Minister may, following consultation with the Council, deregister a person as a registered counsellor if the Minister believes on reasonable grounds that the person has contravened a code of ethics or practice standards approved by the Minister.

55. (1) The Permanent Secretary of the Ministry responsible for the administration of this Act must keep a current register of counsellors.

(2) The register may be kept electronically.

(3) A person may inspect the register free of charge during normal office hours at—

- (a) at least one place in Honiara; and
- (b) each office of a provincial government.

Division 3 – Other duties of the Minister

56. The Minister, in collaboration with civil society organisations, other Ministries and any other relevant stakeholders, must establish and support public awareness programs aimed at preventing domestic violence.

57. (1) For each calendar year, the Minister must table in Parliament—

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- (a) a report on public awareness programs conducted under section 56 during the year; and
- (b) a copy of the report of the Council given under section 53 for the year.

(2) The Minister must table the report—

(a) within 3 months after the end of the calendar year; or

(b) if Parliament does not sit within 3 months after the end of the calendar year— at the first sitting of Parliament after the end of the calendar year.

PART 6 – OFFENCES

58. (1) A person commits an offence if the person commits domestic violence.

(2) The penalty for an offence under subsection (1) is a fine of 30,000 penalty units or imprisonment for 3 years, or both.

(3) It is not a defence to an offence under subsection (1) that the defendant paid an amount of money as customary compensation for committing the act of domestic violence.

59. (1) A respondent for a protection order or police safety notice commits an offence if the respondent breaches the order or notice.

(2) The penalty for an offence under subsection (1) is a fine of 30,000 penalty units or imprisonment for 3 years, or both.

(3) It is not a defence to an offence under subsection (1) that the defendant paid an amount of money as customary compensation for engaging in the conduct that resulted in the breach.

60. (1) A person commits an offence if the person obstructs, threatens or intimidates a registered counsellor, health care provider or other support worker providing services to an affected person.

(2) The penalty for an offence under subsection (1) is a fine of 10,000 penalty units or imprisonment for 1 year, or both.

61. Section 35 of the Magistrates' Court Act (Cap.20) does not apply in relation to an offence under section 58 or 59.

62. In sentencing an offender for an offence under section 58 or 59, the court must consider the following as aggravating circumstances—

(a) the offence was committed against a child or in the presence of a child;

(b) the offence was committed against a person with a disability;

(c) the offence was committed against a pregnant woman;

(d) the offence was committed at night;

(e) a weapon was used in the commission of the offence;

(f) a drug or alcohol were contributing factors to the commission of the offence;

(g) the conduct constituting the offence was repeated.

63. (1) This section applies if the victim of an offence against subsection 58 or 59 suffers personal injury, damage to property or financial loss as a result of the offence.

(2) In sentencing the offender for the offence, the court may order the offender to pay reasonable and fair compensation to the victim.

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(3) In considering whether to make an order for compensation, the court must take into account the following—

- (a) the pain and suffering of the victim, including psychological harm, shame and humiliation suffered;
- (b) the value of any property of the victim that has been taken, damaged or destroyed;
- (c) any loss of earnings suffered by the victim;
- (d) any necessary and reasonable expenses incurred by the victim as a result of separation from the offender.

(4) In considering the amount of compensation to be awarded, the court must have regard to the following—

- (a) the financial position of the offender and victim and the ability of the offender to pay the compensation;
- (b) the relationship between the offender and the victim;
- (c) any other order of a court relating to maintenance or compensation;
- (d) the time elapsed since the commission of the offence;
- (e) any other legal proceedings involving the parties.

PART 7 – MISCELLANEOUS MATTERS

64. (1) This section applies if—

- (a) a court, authorised justice or police officer is required to give, serve or file a document under this Act; and
- (b) no time is specified for doing so.

(2) The court, authorised justice or police officer must give, service or file the document as soon as practicable.

65. (1) This section applies to an application of any kind by an affected person under this Act that is required to be served on the respondent.

(2) If the affected person wishes to withhold his or her address from the respondent, the affected person may leave the address field on the application blank and instead provide the address to the relevant court or authorised justice on a separate document.

(3) The copy of the application served on the respondent must not include the affected person's address.

66. A person is not civilly or criminally liable for—

- (a) applying in good faith for a protection order on behalf of another person; or
- (b) complying with an obligation under section 46.

67. Within 3 years after the commencement of this Act, the Minister must—

- (a) ensure an independent review of the operation of this Act is undertaken; and
- (b) table a report of the review in Parliament.

68. To avoid doubt, the Minister responsible for the administration of the Public Financial Management Act 2013 may establish a targeted balance under section 28 of that Act for the purpose of administering and meeting the objects of this Act.

69. The Minister responsible for administering a provision of this Act may make regulations that are necessary or convenient

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for the administration of the provision.

[Penal Code \(Amendment\) \(Sexual Offences\) Act, 2016](#) ³⁵

SECTION 5
RAPE. 136 F

- (1) *a person commits rape if the person has sexual intercourse with another person:*
- (A) *without the other person's consent; and*
(B) *knowing about or being reckless as to the lack of consent.*

maximum penalty: life imprisonment

- (2) *to avoid doubt, subsection (1) applies even if the persons are married or in a marriage -like relationship.*

15. SOUTH AFRICA

[Domestic Violence Act, 1998 \(As amended\)](#) ³⁶

ACT

To provide for the issuing of protection orders with regard to domestic violence; and for matters connected therewith.

Preamble

1. Recognizing that domestic violence is a serious social evil; that there is a high incidence of domestic violence within South African society; that victims of domestic violence are among the most vulnerable members of society; that domestic violence takes on many forms; that acts of domestic violence may be committed in a wide range of domestic relationships; and that the remedies currently available to the victims of domestic violence have proved to be ineffective;
2. And having regard to the Constitution of South Africa, and in particular, the right to equality and to freedom and security of the person; and the international commitments and obligations of the State towards ending violence against women and children, including obligations under the United Nations Conventions on the Elimination of all Forms of Discrimination Against Women and the Rights of the Child;
3. It is the purpose of this Act to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby to convey that the State is committed to the elimination of domestic violence,

Section 1 - Definitions

Under the meaning of this law, unless specified otherwise in specific provisions thereof, by the following terms we shall understand:

1. "Complainant" means any person who is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of domestic violence, including any child in the care of the complainant.
2. "Court" means any court contemplated in the Magistrates' Courts Act, 1944 (Act 32 of 1944) or any family court established in terms of an Act of Parliament.
3. "Damage to Property" means the wilful damaging or destruction of property belonging to a complainant or in which the complainant has a vested interest.
4. "Dangerous Weapon" means any weapon as defined in section 1 of the Dangerous Weapons Act, 1968 (Act 71 of 1968).
5. "Domestic Relationship" means a relationship between a complainant and a respondent in any of the following ways:
 - a. they are or were married to each other, including marriage according to any law, custom or religion;
 - b. they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
 - c. they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not

³⁵ Penal Code (Amendment) (Sexual Offences) Act, No. 1/2016, available at [http://www.parliament.gov.sb/files/committees/bills&legislationcommittee/2016/Penal_Code_\(Amendment\)_Bill_2016.pdf](http://www.parliament.gov.sb/files/committees/bills&legislationcommittee/2016/Penal_Code_(Amendment)_Bill_2016.pdf) (last visited December 30, 2018).

³⁶ Domestic Violence Act, 1998 (20 November 1998, as amended by Acts 55/2003 and 31/2008), available at <http://www.justice.gov.za/legislation/acts/1998-116.pdf> (last visited December 30, 2018).

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- at the same time);
 - d. they are family members related by consanguinity, affinity or adoption;
 - e. they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or
 - f. they share or recently shared the same residence.
6. "Domestic Violence" means:
- a. physical abuse;
 - b. sexual abuse;
 - c. emotional, verbal and psychological abuse;
 - d. economic abuse;
 - e. intimidation;
 - f. harassment;
 - g. stalking;
 - h. damage to property;
 - i. entry into the complainant's residence without consent, where the parties do not share the same residence; or
 - j. any other controlling or abusive behavior towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.
7. "Economic Abuse" includes:
- a. the unreasonable deprivation of economic or financial resources to which a complainant is entitled under law or which the complainant requires out of necessity, including household necessities for the complainant, and mortgage bond repayments or payment of rent in respect of the shared residence;
 - b. the unreasonable disposal of household effects or other property in which the complainant has an interest.
8. "Emergency Monetary Relief" means compensation for monetary losses suffered by a complainant at the time of the issue of a protection order as a result of the domestic violence, including:
- a. loss of earnings;
 - b. medical and dental expenses;
 - c. relocation and accommodation expenses; or
 - d. household necessities.
9. "Emotional, Verbal and Physical Abuse" means a pattern of degrading or humiliating conduct towards a complainant, including:
- a. repeated insults, ridicule or name calling;
 - b. repeated threats to cause emotional pain; or
 - c. the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's privacy, liberty, integrity or security.
10. "Harassment" means engaging in a pattern of conduct that induces the fear of harm to a complainant including:
- a. repeatedly watching, or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be;
 - b. repeatedly making telephone calls or inducing another person to make telephone calls to the complainant, whether or not conversation ensues;
 - c. repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant.
11. "Intimidation" means uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear.
12. "Member of the South African Police Service" means any member as defined in section 1 of the South African Police Service Act, 1995 (Act 68 of 1995).
13. "Peace Officer" means a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977).
14. "Physical Abuse" means any act or threatened act of physical violence towards a complainant.
15. "Prescribed" means prescribed in terms of a regulation made under section 19.
16. "Protection Order" means an order issued in terms of section 5 or 6 but, in section 6, excludes an interim protection order.
17. "Residence" includes institutions for children, the elderly and the disabled.
18. "Respondent" means any person who is or has been in a domestic relationship with a complainant and who has committed or allegedly committed an act of domestic violence against the complainant.
19. "Sexual Abuse" means any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the complainant.
20. "Sheriff" means a sheriff appointed in terms of section 2 (1) of the Sheriffs Act, 1986 (Act 90 of 1986), or an acting sheriff appointed in terms of section 5 (1) of the said Act.
21. "Stalking" means repeatedly following, pursuing, or accosting the complainant.
22. "This Act" includes the regulations.

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Section 2 – Duty to assist and inform complainant of rights

Any member of the South African Police Service must, at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, or when the incident of domestic violence is reported:

1. Render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment;
2. If it is reasonably possible to do so, hand a notice containing information as prescribed to the complainant in the official language of the complainant's choice; and
3. If it is reasonably possible to do so, explain to the complainant the content of such notice in the prescribed manner, including the remedies at his or her disposal in terms of this Act and the right to lodge a criminal complaint, if applicable.

Section 3 – Arrest by peace officer without warrant

A peace officer may without warrant arrest any respondent at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence against a complainant.

Section 4 - Application for protection order

1. Any complainant may in the prescribed manner apply to the court for a protection order.
2. If the complainant is not represented by a legal representative, the clerk of the court must inform the complainant, in the prescribed manner:
 - a. of the relief available in terms of this Act; and
 - b. of the right to also lodge a criminal complaint against the respondent, if a criminal offence has been committed by the respondent.
3. Notwithstanding the provisions of any other law, the application may be brought on behalf of the complainant by any other person, including a counselor, health service provider, member of the South African Police Service, social worker or teacher, who has a material interest in the wellbeing of the complainant: Provided that the application must be brought with the written consent of the complainant, except in circumstances where the complainant is:
 - a. a minor;
 - b. mentally retarded;
 - c. unconscious; or
 - d. a person whom the court is satisfied is unable to provide the required consent.
4. Notwithstanding the provisions of any other law, any minor, or any person on behalf of a minor, may apply to the court for a protection order without the assistance of a parent, guardian or any other person.
5. The application referred to in subsection (1) may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court is satisfied that the complainant may suffer undue hardship if the application is not dealt with immediately.
6. Supporting affidavits by persons who have knowledge of the matter concerned may accompany the application.
7. The application and affidavits must be lodged with the clerk of the court who shall forthwith submit the application and affidavits to the court.

Section 5 - Consideration of application and issuing of interim protection order

1. The court must as soon as is reasonably possible consider an application submitted to it in terms of section 4 (7) and may, for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of the proceedings.
 - 1a. Where circumstances permit and where a Family Advocate is available, a court may, in the circumstances as may be prescribed in the Mediation in Certain Divorce Matters Act, 1987 (Act 24 of 1987), when considering an application contemplated in subsection (1), cause an investigation to be carried out by a Family Advocate, contemplated in the Mediation in Certain Divorce Matters Act, 1987, in whose area of jurisdiction that court is, with regard to the welfare of any minor or dependent child affected by the proceedings in question, whereupon the provisions of that Act apply with the changes required by the context. [Sub-s. (1A) inserted by s. 19 of Act 55 of 2003.]
2. If the court is satisfied that there is prima facie evidence that:
 - a. the respondent is committing, or has committed an act of domestic violence; and
 - b. undue hardship may be suffered by the complainant as a result of such domestic violence if a protection order is not issued immediately, the court must, notwithstanding the fact that the respondent has not been given notice of the proceedings contemplated in subsection (1), issue an interim protection order against the respondent, in the prescribed manner.
- 3a. An interim protection order must be served on the respondent in the prescribed manner and must call upon the respondent to show cause on the return date specified in the order why a protection order should not be issued.
- 3b. A copy of the application referred to in section 4 (1) and the record of any evidence noted in terms of subsection (1) must be served on the respondent together with the interim protection order.

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4. If the court does not issue an interim protection order in terms of subsection (2), the court must direct the clerk of the court to cause certified copies of the application concerned and any supporting affidavits to be served on the respondent in the prescribed manner, together with a prescribed notice calling on the respondent to show cause on the return date specified in the notice why a protection order should not be issued.
5. The return dates referred to in subsections (3) (a) and (4) may not be less than 10 days after service has been effected upon the respondent: Provided that the return date referred to in subsection (3) (a) may be anticipated by the respondent upon not less than 24 hours' written notice to the complainant and the court.
6. An interim protection order shall have no force and effect until it has been served on the respondent.
7. Upon service or upon receipt of a return of service of an interim protection order, the clerk of the court must forthwith cause:
 - a. a certified copy of the interim protection order; and
 - b. the original warrant of arrest contemplated in section 8 (1) (a), to be served on the complainant.

Section 6 – Issuing of Protection Order

1. If the respondent does not appear on a return date contemplated in section 5 (3) or (4), and if the court is satisfied that:
 - a. proper service has been effected on the respondent; and
 - b. the application contains prima facie evidence that the respondent has committed or is committing an act of domestic violence, the court must issue a protection order in the prescribed form.
2. If the respondent appears on the return date in order to oppose the issuing of a protection order, the court must proceed to hear the matter and:
 - a. consider any evidence previously received in terms of section 5 (1); and
 - b. consider such further affidavits or oral evidence as it may direct, which shall form part of the record of the proceedings.
3. The court may, on its own accord or on the request of the complainant, if it is of the opinion that it is just or desirable to do so, order that in the examination of witnesses, including the complainant, a respondent who is not represented by a legal representative:
 - a. is not entitled to cross-examine directly a person who is in a domestic relationship with the respondent; and
 - b. shall put any question to such a witness by stating the question to the court, and the court is to repeat the question accurately to the respondent.
4. The court must, after a hearing as contemplated in subsection (2), issue a protection order in the prescribed form if it finds, on a balance of probabilities, that the respondent has committed or is committing an act of domestic violence.
5. Upon the issuing of a protection order the clerk of the court must forthwith in the prescribed manner cause:
 - a. the original of such order to be served on the respondent; and
 - b. a certified copy of such order, and the original warrant of arrest contemplated in section 8 (1) (a) , to be served on the complainant.
6. The clerk of the court must forthwith in the prescribed manner forward certified copies of any protection order and of the warrant of arrest contemplated in section 8 (1) to the police station of the complainant's choice.
7. Subject to the provisions of section 7 (7), a protection order issued in terms of this section remains in force until it is set aside, and the execution of such order shall not be automatically suspended upon the noting of an appeal.

Section 7 - Court's powers in respect of protection order

1. The court may, by means of a protection order referred to in section 5 or 6, prohibit the respondent from:
 - a. committing any act of domestic violence;
 - b. enlisting the help of another person to commit any such act;
 - c. entering a residence shared by the complainant and the respondent: Provided that the court may impose this prohibition only if it appears to be in the best interests of the complainant;
 - d. entering a specified part of such a shared residence;
 - e. entering the complainant's residence;
 - f. entering the complainant's place of employment;
 - g. preventing the complainant who ordinarily lives or lived in a shared residence as contemplated in subparagraph (c) from entering or remaining in the shared residence or a specified part of the shared residence; or
 - h. committing any other act as specified in the protection order.
2. The court may impose any additional conditions which it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the complainant, including an order:
 - a. to seize any arm or dangerous weapon in the possession or under the control of the respondent, as contemplated in section 9; and
 - b. that a peace officer must accompany the complainant to a specified place to assist with arrangements regarding the collection of personal property.

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3. In ordering a prohibition contemplated in subsection 1 (c) , the court may impose on the respondent obligations as to the discharge of rent or mortgage payments having regard to the financial needs and resources of the complainant and the respondent.
4. The court may order the respondent to pay emergency monetary relief having regard to the financial needs and resources of the complainant and the respondent, and such order has the effect of a civil judgment of a magistrate's court.
- 5a. The physical address of the complainant must be omitted from the protection order, unless the nature of the terms of the order necessitates the inclusion of such address.
- 5b. The court may issue any directions to ensure that the complainant's physical address is not disclosed in any manner which may endanger the safety, health or wellbeing of the complainant.
6. If the court is satisfied that it is in the best interests of any child it may:
 - a. refuse the respondent contact with such child; or
 - b. order contact with such child on such conditions as it may consider appropriate.
- 7a. The court may not refuse:
 - i. to issue a protection order; or
 - ii. to impose any condition or make any order which it is competent to impose or make under this section, merely on the grounds that other legal remedies are available to the complainant.
- 7b. If the court is of the opinion that any provision of a protection order deals with a matter that should, in the interests of justice, be dealt with further in terms of any other relevant law, including the Maintenance Act, 1998, the court must order that such a provision shall be in force for such limited period as the court determines, in order to afford the party concerned the opportunity to seek appropriate relief in terms of such law.

Section 8 - Warrant of arrest upon issuing of protection order

1. Whenever a court issues a protection order, the court must make an order:
 - a. authorizing the issue of a warrant for the arrest of the respondent, in the prescribed form; and
 - b. suspending the execution of such warrant subject to compliance with any prohibition, condition, obligation or order imposed in terms of section 7.
2. The warrant referred to in subsection (1) (a) remains in force unless the protection order is set aside, or it is cancelled after execution.
3. The clerk of the court must issue the complainant with a second or further warrant of arrest, if the complainant files an affidavit in the prescribed form in which it is stated that such warrant is required for her or his protection and that the existing warrant of arrest has been:
 - a. executed and cancelled; or
 - b. lost or destroyed.
- 4a. A complainant may hand the warrant of arrest together with an affidavit in the prescribed form, wherein it is stated that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order, to any member of the South African Police Service.
- 4b. If it appears to the member concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the member must forthwith arrest the respondent for allegedly committing the offence referred to in section 17 (a) .
- 4c. If the member concerned is of the opinion that there are insufficient grounds for arresting the respondent in terms of paragraph (b) , he or she must forthwith hand a written notice to the respondent which:
 - i. specifies the name, the residential address and the occupation or status of the respondent;
 - ii. calls upon the respondent to appear before a court, and on the date and at the time, specified in the notice, on a charge of committing the offence referred to in section 17 (a) ; and
 - iii. contains a certificate signed by the member concerned to the effect that he or she handed the original notice to the respondent and that he or she explained the import thereof to the respondent.
- 4d. The member must forthwith forward a duplicate original of a notice referred to in paragraph (c) to the clerk of the court concerned, and the mere production in the court of such a duplicate original shall be prima facie proof that the original thereof was handed to the respondent specified therein.
5. In considering whether or not the complainant may suffer imminent harm, as contemplated in subsection (4) (b) , the member of the South African Police Service must take into account:
 - a. the risk to the safety, health or wellbeing of the complainant;
 - b. the seriousness of the conduct comprising an alleged breach of the protection order; and
 - c. the length of time since the alleged breach occurred.
6. Whenever a warrant of arrest is handed to a member of the South African Police Service in terms of subsection (4) (a) , the member must inform the complainant of his or her right to simultaneously lay a criminal charge against the respondent, if applicable, and explain to the complainant how to lay such a charge.

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Section 9 - Seizure of arms and dangerous weapons

1. The court must order a member of the South African Police Service to seize any arm or dangerous weapon in the possession or under the control of a respondent, if the court is satisfied on the evidence placed before it, including any affidavits supporting an application referred to in section 4 (1), that:
 - a. the respondent has threatened or expressed the intention to kill or injure himself or herself, or any person in a domestic relationship, whether or not by means of such arm or dangerous weapon; or
 - b. possession of such arm or dangerous weapon is not in the best interests of the respondent or any other person in a domestic relationship, as a result of the respondent's:
 - i. state of mind or mental condition;
 - ii. inclination to violence; or
 - iii. use of or dependence on intoxicating liquor or drugs.
2. Any arm seized in terms of subsection (1) must be handed over to the holder of an office in the South African Police Service as contemplated in section 11 (2) (b) of the Arms and Ammunition Act, 1969 (Act 75 of 1969), and the court must direct the clerk of the court to refer a copy of the record of the evidence concerned to the National Commissioner of the South African Police Service for consideration in terms of section 11 of the Arms and Ammunition Act, 1969.
3. Any dangerous weapon seized in terms of subsection (1):
 - a. must be given a distinctive identification mark and retained in police custody for such period of time as the court may determine; and
 - b. shall only be returned to the respondent or, if the respondent is not the owner of the dangerous weapon, to the owner thereof, by order of the court and on such conditions as the court may determine:
Provided that-
 - i. if, in the opinion of the court, the value of the dangerous weapon so seized is below R200; or
 - ii. if the return of the dangerous weapon has not been ordered within 12 months after it had been so seized; or
 - iii. if the court is satisfied that it is in the interest of the safety of any person concerned, the court may order that the dangerous weapon be forfeited to the State.

Section 10 - Variation or setting aside of protection order

1. A complainant or a respondent may, upon written notice to the other party and the court concerned, apply for the variation or setting aside of a protection order referred to in section 6 in the prescribed manner.
2. If the court is satisfied that good cause has been shown for the variation or setting aside of the protection order, it may issue an order to this effect: Provided that the court shall not grant such an application to the complainant unless it is satisfied that the application is made freely and voluntarily.
3. The clerk of the court must forward a notice as prescribed to the complainant and the respondent if the protection order is varied or set aside as contemplated in subsection (1).

Section 11 - Attendance of proceedings and prohibition of publication of certain information

- 1a. No person may be present during any proceedings in terms of this Act except:
 - a. officers of the court;
 - b. the parties to the proceedings;
 - c. any person bringing an application on behalf of the complainant in terms of section 4 (3);
 - d. any legal representative representing any party to the proceedings;
 - e. witnesses;
 - f. not more than three persons for the purpose of providing support to the complainant;
 - g. not more than three persons for the purpose of providing support to the respondent; and
 - h. any other person whom the court permits to be present:
Provided that the court may, if it is satisfied that it is in the interests of justice, exclude any person from attending any part of the proceedings.
- 1b. Nothing in this subsection limits any other power of the court to hear proceedings in camera or to exclude any person from attending such proceedings.
- 2a. No person shall publish in any manner any information which might, directly or indirectly, reveal the identity of any party to the proceedings.
- 2b. The court, if it is satisfied that it is in the interests of justice, may direct that any further information relating to proceedings held in terms of this Act shall not be published: Provided that no direction in terms of this subsection applies in respect of the publication of a bona fide law report which does not mention the names or reveal the identities of the parties to the proceedings or of any witness at such proceedings.

Section 12 -Jurisdiction

1. Any court within the area in which:

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- a. the complainant permanently or temporarily resides, carries on business or is employed;
 - b. the respondent resides, carries on business or is employed; or
 - c. the cause of action arose, has jurisdiction to grant a protection order as contemplated in this Act.
2. No specific minimum period is required in relation to subsection (1) (a).
 3. A protection order is enforceable throughout the Republic.

Section 13 - Service of documents

1. Service of any document in terms of this Act must forthwith be effected in the prescribed manner by the clerk of the court, the sheriff or a peace officer, or as the court may direct.
2. The regulations contemplated in section 19 must make provision for financial assistance by the State to a complainant or a respondent who does not have the means to pay the fees of any service in terms of this Act.

Section 14 - Legal representation

Any party to proceedings in terms of this Act may be represented by a legal representative.

Section 15 - Costs

The court may only make an order as to costs against any party if it is satisfied that such party has acted frivolously, vexatiously or unreasonably.

Section 16 - Appeal and review

The provisions in respect of appeal and review contemplated in the Magistrates' Courts Act, 1944 (Act 32 of 1944), and the Supreme Court Act, 1959 (Act 59 of 1959), apply to any proceedings in terms of this Act.

Section 17 - Offences

1. Notwithstanding the provisions of any other law, any person who:
 - a. contravenes any prohibition, condition, obligation or order imposed in terms of section 7;
 - b. contravenes the provisions of section 11 (2) (a) ;
 - c. fails to comply with any direction in terms of the provisions of section 11 (2) (b) ; or
 - d. in an affidavit referred to section 8 (4) (a) , wilfully makes a false statement in a material respect, is guilty of an offence and liable on conviction in the case of an offence referred to in paragraph (a) to a fine or imprisonment for a period not exceeding five years or to both such fine and such imprisonment, and in the case of an offence contemplated in paragraph (b) , (c) , or (d) , to a fine or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Section 18 - Application of Act by prosecuting authority and members of South African Police Service

1. No prosecutor shall:
 - a. refuse to institute a prosecution; or
 - b. withdraw a charge, in respect of a contravention of section 17 (a) , unless he or she has been authorised thereto, whether in general or in any specific case, by a Director of Public Prosecutions as contemplated in section 13 (1) (a) of the National Prosecuting Authority Act, 1998 (Act 32 of 1998), or a senior member of the prosecuting authority designated thereto in writing by such a Director.
2. The National Director of Public Prosecutions referred to in section 10 of the National Prosecuting Authority Act, 1998, in consultation with the Minister of Justice and after consultation with the Directors of Public Prosecutions, must determine prosecution policy and issue policy directives regarding any offence arising from an incident of domestic violence.
3. The National Commissioner of the South African Police Service must issue national instructions as contemplated in section 25 of the South African Police Service Act, 1995 (Act 68 of 1995), with which its members must comply in the execution of their functions in terms of this Act, and any instructions so issued must be published in the Gazette .
- 4a. Failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act or the national instructions referred to in subsection (3), constitutes misconduct as contemplated in the South African Police Service Act, 1995, and the Independent Complaints Directorate, established in terms of that Act, must forthwith be informed of any such failure reported to the South African Police Service.
- 4b. Unless the Independent Complaints Directorate directs otherwise in any specific case, the South African Police Service must institute disciplinary proceedings against any member who allegedly failed to comply with an obligation referred to in paragraph (a) .
- 5a. The National Director of Public Prosecutions must submit any prosecution policy and policy directives determined or issued in terms of subsection (2) to Parliament, and the first policy and directives so determined or issued, must be submitted to Parliament within six months of the commencement of this Act.
- 5b. The National Commissioner of the South African Police Service must submit any national instructions issued in terms of

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subsection (3) to Parliament, and the first instructions so issued, must be submitted to Parliament within six months of the commencement of this Act.

5c. The Independent Complaints Directorate must, every six months, submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4) (a) , and setting out the recommendations made in respect of such matters.

5d. The National Commissioner of the South African Police Service must, every six months, submit a report to Parliament regarding:

- i. the number and particulars of complaints received against its members in respect of any failure contemplated in subsection (4)(a);
- ii. the disciplinary proceedings instituted as a result thereof and the decisions which emanated from such proceedings; and
- iii. steps taken as a result of recommendations made by the Independent Complaints Directorate.

Section 19 - Regulations

1. The Minister of Justice may make regulations regarding:

- a. any form required to be prescribed in terms of this Act;
- b. any matter required to be prescribed in terms of this Act; and
- c. any other matter which the Minister deems necessary or expedient to be prescribed in order to achieve the objects of this Act.

2. Any regulation made under subsection (1):

- a. must be submitted to Parliament prior to publication thereof in the Gazette;
- b. which may result in expenditure for the State, must be made in consultation with the Minister of Finance; and
- c. may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding one year.

Section 20 - Amends section 40 (1) of the Criminal Procedure Act 51 of 1977

1. By adding paragraph (q).

Section 21 - Repeal of laws and savings

1. Sections 1, 2, 3, 6 and 7 of the Prevention of Family Violence Act, 1993 (Act 133 of 1993), are hereby repealed.
2. Any application made, proceedings instituted or interdict granted in terms of the Act referred to in subsection (1) shall be deemed to have been made, instituted or granted in terms of this Act.

Section 22 - Short title and commencement

This Act shall be called the Domestic Violence Act, 1998, and comes into operation on a date fixed by the President by proclamation in the Gazette.

[Prevention of Family Violence Act, 1993](#)³⁷

[...]

ACT

To provide for the granting of interdicts with regard to family violence; for an obligation to report cases of suspected ill-treatment of children; that a husband can be convicted of the rape of his wife; and for matters connected therewith.

Definitions

1. (1) In this Act, unless the context indicates otherwise-

³⁷ Prevention of Family Violence Act, Act No. 133 (6 October 1993), available at <https://www.gov.za/sites/www.gov.za/files/15161.pdf> (last visited December 30, 2018).

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(i) "magistrate" includes a family magistrate appointed under section 9(1)(a)(v) of the Lower Courts Act, 1944 (Act No. 32 of 1944); (ii)

(ii) "matrimonial home" means the house, flat, room or other structure in which the parties to a marriage ordinarily live or lived together; (i)

(iii) "prescribed" means prescribed by or under this Act. (iii)

(2) Any reference in this Act to the parties to a marriage shall be construed as including a man and a woman who are or were married to each other according to any law or custom and also a man and a woman who ordinarily live or lived together as husband and wife, although not married to each other.

Interdict with regard to family violence

2. (1) A judge or magistrate in chambers may, on application in the prescribed manner by a party to a marriage (hereinafter called the applicant) or by any other person who has a material interest in the matter on behalf of the applicant, grant an interdict against the other party to the marriage (hereinafter called the respondent) enjoining the respondent-

(a) not to assault or threaten the applicant or a child living with the parties or with either of them;

(b) not to enter the matrimonial home or other place where the applicant is resident, or a specified part of such home or place or a specified area in which such home or place is situated;

(c) not to prevent the applicant or a child who ordinarily lives in the matrimonial home from entering and remaining in the matrimonial home or a specified part of the matrimonial home; or

(d) not to commit any other act specified in the interdict.

(2) In granting an interdict contemplated in subsection (1) the judge or magistrate, as the case may be, shall make an order-

(a) authorizing the issue of a warrant for the arrest of the respondent;

(b) suspending the execution of such warrant subject to such conditions regarding compliance with the interdict as he may deem fit; and

(c) advising the respondent that he may, after 24 hours' notice to the applicant and the court concerned, apply for the amendment or setting aside of the interdict contemplated in subsection (1).

(3) The interdict contemplated in subsection (1) and the order contemplated in subsection (2) shall have no force and effect until served on the respondent in the prescribed manner.

Execution of warrant of arrest

3. (1) Subject to the provisions of section 2(3) a warrant of arrest issued and suspended in terms of section 2(2) may be executed by a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), upon receipt of an affidavit in which it is stated that the respondent has breached any of the conditions contained in the order contemplated in section 2(2).

(2) A respondent arrested in terms of subsection (1)-

(a) shall not be released unless a judge or magistrate orders his release; and

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(b) shall as soon as possible but not later than 24 hours after his arrest be brought before a judge or magistrate by a peace officer contemplated in subsection (1).

(3) Subject to the provisions of this section, all the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), relating to the form and manner of execution of warrants of arrest, the arrest, detention, searching and other treatment necessary for the control of persons named in warrants of arrest, shall mutatis mutandis apply in respect of warrants of arrest issued under section 2(2).

(4) The judge or magistrate before whom a respondent is brought in terms of subsection (2) shall enquire into the respondent's alleged breach of the conditions of the order made in terms of section 2(2) and may at the conclusion of such enquiry-

(a) order the release of the respondent from custody; or

(b) convict the respondent of the offence contemplated in section 6.

(5) The provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), relating to the procedure which shall be followed in respect of an enquiry referred to in section 170 of that Act, shall apply mutatis mutandis in respect of an enquiry under subsection (4).

[...]

Rape of wife by her husband

4. Notwithstanding anything to the contrary contained in any law or in the common law, a husband may be convicted of the rape of his wife.

Offences and penalties

6. A person who-

(a) contravenes an interdict or other order granted by a judge or magistrate under section 2(1) or (2); or

(b) fails to comply with the provisions of section 4, shall be guilty of an offence and liable on conviction in the case of an offence referred to in paragraph (a) to a fine or imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment and in the case of an offence referred to in paragraph (b) to a fine or imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[...]

[Criminal Law \(Sexual Offences and Related Matters\) Amendment Act, 2007](#)³⁸

Article 3

Rape

Any person ('A') who unlawfully and intentionally commits an act of sexual penetration with a complainant ('B'), without the consent of B, is guilty of the offence of rape.

Article 4

Compelled rape

Any person ('A') who unlawfully and intentionally compels a third person ('C'), without the consent of C, to commit an act of sexual penetration with a complainant ('B'), without the consent of B, is guilty of the offence of compelled rape.

³⁸ Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 (13 December 2007, with amendments up to 2013), available at <http://www.justice.gov.za/legislation/acts/2007-032.pdf> (last visited December 30, 2018).

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Article 56

Defences

Whenever an accused person is charged with an offence under section 3, 4, 5, 6 or 7 it is not a valid defence for that accused person to contend that a marital or other relationship exists or existed between him or her and the complainant.

16. SPAIN

[Law on Comprehensive Protection Measures against Gender Violence, 2004](#) ³⁹

Consolidated text

[...]

EXPLANATORY MEMORANDUM

I

Gender violence is not a problem that affects the private sphere. On the contrary, it manifests itself as the most brutal symbol of inequality in our society. It is a violence that is directed against women for the very fact of being women, because they are considered by their aggressors as lacking the minimum rights to freedom, respect and decision-making capacity.

Our Constitution incorporates in article 15 the right of everyone to life and to physical and moral integrity, without under any circumstances being subjected to torture or inhuman or degrading treatment or punishment. In addition, our Magna Carta continues, these rights are binding on all public authorities and only by law can its exercise be regulated.

The United Nations Organization at the IV World Conference in 1995 recognized that violence against women is an obstacle to achieving the objectives of equality, development and peace, and violates and undermines the enjoyment of human rights and fundamental freedoms. It also defines it broadly as a manifestation of historically unequal power relations between women and men. There is even a technical definition of the battered woman syndrome that consists of "the aggressions suffered by women as a consequence of the sociocultural conditions of the male and female gender, placing them in a position of subordination to men and manifested in the three basic areas of relationship of the person: mistreatment in the area of couple relationships, sexual violence in the social sphere, and harassment in the employment context.

In the Spanish reality, the aggressions against women have a special incidence, existing today a greater awareness than in previous times about it, thanks, to a large extent, to the effort made by women's organizations in their fight against all forms of violence of genre. It is no longer an "invisible crime", but it produces a collective rejection and an evident social alarm.

II

Public authorities can't be oblivious to gender violence, which constitutes one of the most flagrant attacks on fundamental rights such as freedom, equality, life, security and non-discrimination proclaimed in our Constitution. These same public powers have, in accordance with the provisions of Article 9.2 of the Constitution, the obligation to adopt positive action measures to make these rights real and effective, removing obstacles that impede or hinder their fulfillment.

In recent years there have been legislative advances in Spanish law in the fight against gender violence, such as the Organic Law 11/2003, of September 29, on Concrete Measures in the Area of Citizen Security, Domestic Violence and Integration Social of Foreigners; the Organic Law 15/2003, of November 25, which modifies the Organic Law 10/1995, of November 23, of the Criminal Code, or the Law 27/2003, of July 31, regulating the Order of Protection of Victims of Domestic Violence; in addition to the laws approved by various Autonomous Communities, within their sphere of competence. All of them have influenced different civil, criminal, social or educational fields through their respective regulations.

The Law aims to meet the recommendations of international organizations in the sense of providing a global response to the violence that is exerted on women. In this regard, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 can be cited; the United Nations Declaration on the Elimination of Violence against Women, proclaimed in December 1993 by the General Assembly; Resolutions of the last International Summit on Women held in Beijing in September 1995; Resolution WHA49.25 of the World Health Assembly declaring violence as a priority public health problem proclaimed in 1996 by WHO; the report of the European Parliament of July 1997; the Resolution of the United Nations Human Rights Commission of 1997; and the Declaration of 1999 as European Year of Fight against Gender Violence, among others. Very recently, Decision No. 803/2004 / EC of the European Parliament, approving a program of Community action (2004-2008) to prevent and combat violence against children, young people and women and protect to the victims and risk groups (Daphne II program), has set the position and strategy of the representatives of the citizenship of the Union in this regard.

³⁹ Law on Comprehensive Protection Measures against Gender Violence (Ley de Medidas de Protección Integral contra la Violencia de Género), Law No.1/2004 (28 December 2004), available at <https://www.boe.es/buscar/act.php?id=BOE-A-2004-21760> (last visited December 30, 2018 Unofficial translation by Compendium team.

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The scope of the Law covers the preventive, educational, social, welfare and aftercare aspects of the victims, as well as the civil legislation that affects the family or coexistence environment, where the aggressions mainly occur, as well as the principle of subsidiarity in Public Administrations. Likewise, the punitive response that all manifestations of violence that this Law regulates must be addressed with firmness.

Gender violence is approached by the Law in an integral and multidisciplinary way, beginning with the process of socialization and education.

The achievement of equality and respect for human dignity and the freedom of people must be a priority objective at all levels of socialization.

The Law establishes measures of awareness and intervention in the educational field. It reinforces, with concrete reference to the field of advertising, an image that respects the equality and dignity of women. Victims are supported through the recognition of rights such as information, free legal assistance and other social protection and economic support. It therefore provides a comprehensive legal response that covers both the procedural rules, creating new instances, and substantive criminal and civil rules, including the proper training of health, police and legal operators responsible for obtaining evidence and the application of the law.

Awareness and intervention measures are also established in the health field to optimize the early detection and physical and psychological attention to the victims, in coordination with other support measures.

Situations of violence against women also affect children who are within their family environment, direct or indirect victims of this violence. The Law also provides for their protection not only for the protection of the rights of minors, but also to effectively guarantee the protection measures adopted with respect to women.

III

The Law is structured in a preliminary title, five titles, twenty additional provisions, two transitional provisions, a derogatory provision and seven final provisions.

In the preliminary title, the general provisions of the Law that refer to its object and guiding principles are included.

In Title I, the measures of awareness, prevention, detection and intervention in different areas are determined. The educational system specifies its obligations regarding the transmission of values of respect for the dignity of women and equality between men and women. The fundamental objective of education is to provide a comprehensive preparation that allows them to shape their own identity, as well as to build a conception of reality that integrates both the knowledge and ethical assessment of it.

In secondary education, education on equality between men and women and against gender violence is incorporated as a curricular component, by incorporating in all school boards a new member that promotes educational measures in favor of equality and against violence against women.

In the field of advertising, it must respect the dignity of women and their right to a non-stereotyped, non-discriminatory image, whether it is exhibited in public or private media. On the other hand, the action of cessation or rectification of advertising is modified by legitimizing the institutions and associations that work in favor of equality between men and women for its exercise.

In the health field, early detection and assistance to victims is contemplated, as well as the application of sanitary protocols to the aggressions derived from the violence object of this law, which will be sent to the corresponding courts in order to speed up the judicial procedure. Likewise, a Commission in charge of technically supporting, coordinating and evaluating the sanitary measures established in the law is created within the Inter-territorial Council of the National Health System.

Title II, on the rights of women victims of violence, in chapter I, guarantees the right of access to information and integrated social assistance, through permanent, urgent care services with specialization of benefits and professional multi-disciplinarity. In order to contribute to the implementation of these services, a Fund will be provided to which the Autonomous Communities may access, in accordance with the objective criteria determined in the respective Sectoral Conference.

Likewise, the right to free legal assistance is recognized, in order to guarantee those victims with insufficient resources legal assistance in all processes and procedures related to gender violence, in which they are a party, and assuming the same legal assistance in all procedures. The measure is extended to those injured in case of death of the victim.

Measures of protection in the social sphere are also established, modifying Royal Legislative Decree No. 1 of March 24, 1995, which approves the revised text of the Workers' Statute Act, to justify absences from the post work of the victims of gender violence, enable their geographical mobility, the suspension with preservation of the job and the termination of the contract.

In the same sense, support measures are envisaged for public servants who suffer forms of violence that are opposed by this law, modifying the corresponding precepts of Law No.30 of August 2, 1984, on Measures for the Reform of Public Function.

Measures of economic support are also regulated, modifying Royal Legislative Decree 1/1994, of June 20, approving the revised text of the General Law of Social Security, so that victims of gender violence generate the right to the legal situation of unemployment when they voluntarily resolve or suspend their employment contract.

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In order to guarantee victims of gender violence who lack economic resources social assistance in those cases in which it is envisaged that they will not substantially improve their employability due to age, lack of specialized general preparation, and social circumstances, incorporation into the specific action program created for this purpose is foreseen for their professional reintegration. This support, which will be modulated in relation to the victim's age and family responsibilities, has as a fundamental objective to provide her with minimum subsistence resources to allow her to become independent from the aggressor; such assistance will be compatible with that provided for in Law No. 35 of December 11, 1995, on Aid and Assistance to Victims of Violent Crimes and Crimes Against Sexual Freedom.

In Title III, concerning Institutional Protection, the creation of two administrative bodies is envisaged. First, the Government's Special Delegation against Violence against Women, in the Ministry of Labor and Social Affairs will, among other functions, formulate the Government's policy regarding violence against women and coordinate and promote all actions carried out in this area, which must necessarily include all those that make effective the guarantee of women's rights. The State Observatory on Violence against Women is also created as a collegial body in the Ministry of Labor and Social Affairs, whose main functions will be to serve as a center for analyzing the situation and evolution of violence against women.

In its Title IV, the law introduces norms of a penal nature, by which it is included, within the aggravated types of injuries, a specific one that increases the criminal sanction when the this occurs against whoever is, or was, the author's wife, or woman who is or has been linked to him by an analogous relationship of affectivity, even without coexistence. Mild coercion and mild threats of any kind committed against the women mentioned above will also be punished.

For citizens, for women's groups and, specifically, for those who suffer this type of aggression, the law wants to give a firm and forceful response by defining specific criminal offences.

Title V establishes the so-called Judicial Protection to guarantee an adequate and effective treatment of the legal, family and social situation of victims of gender violence in intra-familial relations.

From the judicial point of view, we are facing a complex phenomenon in which it is necessary to intervene from different legal perspectives, from the procedural and substantive rules, to the provisions related to the assistance to victims, intervention that is only possible through specific legislation.

A law for the prevention and eradication of violence against women must be a law that includes procedural measures that allow for agile and summary procedures, such as the one established in Law 27 of July 31, 2003, but also, in the civil and criminal spheres, measures to protect women and their children, and precautionary measures to be carried out as a matter of urgency.

The current civil, criminal, advertising, social and administrative regulations have many shortcomings, mainly due to the fact that, up to now, this issue has not been given a global and multidisciplinary response. From the criminal point of view, the answer can never be a new burden for women.

Regarding the legal measures taken to guarantee an adequate and effective treatment of the legal, family and social situation of the victims of violence against women in intra-family relations, the following have been adopted: according to the Spanish legal tradition, it has been opted for a formula of specialization within the criminal order, of the Judges of Instruction, creating the Courts of Violence against Women and excluding the possibility of creating a new jurisdictional order, or the assumption of criminal competences by the Civil Judges. These Courts will be informed of the instruction, and, if applicable, of the ruling of the criminal cases in relation to violence against women, as well as of those related civil cases, so that both, in the first instance, are subject to procedures in the same venue. This ensures guaranteeing due process in the intervention on the fundamental rights of the alleged aggressor, without minimizing the legal possibilities provided by this act for the greater, more immediate and effective protection of the victim, as well as the resources to avoid repetitions in the aggression, or escalation of the violence.

Regarding the express regulation of the protection measures that may be adopted by the Judge of Violence against Women, it has been opted for their express inclusion, since these are not included as precautionary measures in the Criminal Procedure Act, which only regulates the prohibition of residence and that of visiting certain places with regards to the offenses set forth in article 57 of the Criminal Code (article 544 bis of the Criminal Procedure Act, introduced by Organic Law 14/1999, of June 9, amending the Criminal Code of 1995, regarding the protection of victims of mistreatment and the Law of Criminal Procedure).

In addition, we opt for the temporary delimitation of these measures (when they are precautionary measures) until the end of the process. However, it adds the possibility that any of these protective measures can be used as a security measure, from the beginning or during the execution of the sentence, thereby increasing the list of Article 105 of the Criminal Code (as amended by Law Organic 15/2003, by which Organic Law 10/1995 of the Penal Code is modified), and allowing the Judge the guarantee of protection of the victims beyond the completion of the process.

Rules that affect the functions of the Public Prosecutor's Office are envisaged, through the creation of the Prosecutor for Violence against Women, in charge of the supervision and coordination of the Public Prosecutor's Office in this aspect, as well as through the creation of an equivalent Section in each Prosecutor's Office, the Superior Courts of Justice and the Provincial Courts to which Prosecutors with specialization in the matter will be assigned. Prosecutors will intervene in criminal proceedings for the facts constituting crimes or misdemeanors whose competence is attributed to the Courts of Violence against Women, in addition to intervening in civil proceedings of nullity, separation or divorce, or involving custody of minor children where abuse of spouses or children is alleged.

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In its additional provisions, the law carries out a profound reform of the legal order to adapt the current regulations to the framework introduced by this text. In order to harmonize the previous norms and offer a coordinated context between the legal texts, part of the integral reform has been carried out through the modification of existing norms. In this sense, the additional provisions develop the measures foreseen in the articles, by integrating them directly in the educational, advertising, labor, social security and public sector legislation; likewise, these provisions affect, in particular, the recognition of pensions and the provision of the Fund foreseen in this law to favor comprehensive social assistance for victims of gender violence.

Regarding the transitory regime, the application of this law is extended to proceedings in course at the time of its entry into force, while respecting the judicial competence of the respective bodies.

Lastly, this law includes in its final provisions the necessary authorizations for the normative development of its precepts.

PRELIMINARY TITLE

Article 1. Object of the Law.

1. The purpose of this Law is to act against violence that, as a manifestation of discrimination, situation of inequality, and power relations between men over women, is exercised over them by those who are, or have been their spouses, or of those who are, or have been, linked to them by a similar relationship of affectivity, even without cohabitation.

2. This law establishes comprehensive protection measures whose purpose is to prevent, punish and eradicate this violence and provide assistance to women, their minor children, and minors subject to their care, guardianship or custody, victims of this violence.

3. The gender-based violence referred to in this law includes all acts of physical and psychological violence, including attacks on sexual freedom, threats, coercion, or arbitrary deprivation of liberty.

Article 2. Guiding principles.

Through this law, a comprehensive set of measures is articulated in order to achieve the following goals:

a) Strengthen public awareness measures for prevention, providing public authorities with effective instruments in the field of education, social services, health, advertising and media.

b) Consecrate the rights of women victims of gender violence, required before the public administrations, and thus ensure rapid, transparent and effective access to the services established for that purpose.

c) Strengthen the social, information, assistance, emergency, support and comprehensive recovery services required by the objectives of the law, as well as establish a system for the most effective coordination of existing services at the municipal and regional level.

d) Guarantee rights in the workplace and civil servants that reconcile the requirements of the employment relationship and public employment with the circumstances of those workers who suffer gender violence.

e) Guarantee economic rights for women victims of gender violence, in order to facilitate their social integration.

f) Establish a comprehensive system of institutional protection in which the General State Administration, through the Special Delegation of the Government against Violence against Women, in collaboration with the State Observatory on Violence against Women, promotes the creation of public policies aimed at offering protection to the victims of the violence contemplated in this law.

g) Strengthen the current criminal and procedural framework to ensure comprehensive protection, from a jurisdictional perspective, to victims of gender violence.

h) Coordinate the resources and instruments of all types of the different public powers to ensure the prevention of acts of gender violence and, where appropriate, the appropriate sanction for those responsible for them.

i) Promote collaboration and participation of entities, associations and civil society organizations working against gender-based violence.

j) Promote the specialization of the professional groups that intervene in the process of information, attention and protection of victims.

k) Guarantee the principle of mainstreaming of the measures, so that their application takes into account the specific needs and demands of all women victims of gender violence.

TITLE I

Sensitization, prevention and detection measures

Article 3. Awareness plans.

1. From the responsibility of the Government of the State, and immediately upon the entry into force of this law, with the consequent budgetary allocation, a National Plan of Awareness and Prevention of Gender-based Violence will be launched that will reflect, at a minimum, following elements:

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Introduce into the social scene the new scales of values based on respect for fundamental rights and freedoms and equality between men and women, as well as on the exercise of tolerance and freedom within the democratic principles of coexistence, all from the perspective of gender relations.

Directed to both men and women, from a community and intercultural work.

That contemplates an ample program of complementary training and recycling of professionals who intervene in these situations.

Controlled by a Commission of broad participation, which will be created within a maximum period of one month, with the participation of individuals affected, institutions, professionals, and people of recognized social prestige related to the treatment of these themes

2. The public authorities, within the framework of their competencies, will also promote specific information and awareness campaigns in order to prevent gender-based violence.

3. The information and awareness campaigns against this form of violence will be carried out in a way that guarantees access to them for people with disabilities.

CHAPTER I

In the educational field

Article 4. Principles and values of the education system.

1. The Spanish educational system will include among its aims training in respect of fundamental rights and freedoms and equality between men and women, as well as in the exercise of tolerance and freedom within the democratic principles of coexistence.

Likewise, the Spanish educational system will include, within its principles of quality, the elimination of obstacles that hinder full equality between men and women and training in the prevention and peaceful resolution of conflicts.

2. Early Childhood Education will contribute to the development, in childhood, of learning peaceful conflicts resolution skills.

3. Primary Education will contribute to develop in students their ability to acquire skills in the peaceful resolution of conflicts and to understand and respect equality between the sexes.

4. Compulsory Secondary Education will contribute to develop in students the ability to relate to others in a peaceful way and to know, value and respect the equal opportunities of men and women.

5. The Baccalaureate and Vocational Training will contribute to develop in students the ability to consolidate their personal, social and moral maturity, which allows them to act in a responsible and autonomous way and to analyze and critically assess gender inequalities and promote real equality between men and women.

6. Teaching for adults will include, among its objectives, the development of activities in the peaceful resolution of conflicts and the promotion of respect for the dignity of persons and equality between men and women.

7. The Universities will include and promote in all academic areas the training, teaching and research in gender equality and non-discrimination in a transversal manner.

Article 5. Immediate schooling in case of gender violence.

The competent Administrations must foresee the immediate schooling of the children who are affected by a change of residence derived from acts of gender violence.

Article 6. Promotion of equality.

In order to guarantee effective equality between men and women, educational administrations will ensure that all educational materials eliminate sexist or discriminatory stereotypes and promote the equal value of men and women.

Article 7. Initial and permanent teacher training.

The education authorities will adopt the necessary measures so that the initial and permanent teacher training plans include specific training on equality, in order to ensure that they acquire the knowledge and the necessary techniques that enable them to:

- a) Educate in respect of fundamental rights and freedoms and equality between men and women and in the exercise of tolerance and freedom within the democratic principles of coexistence.
- b) Educate in the prevention of conflicts and peaceful resolution of them, in all areas of personal, family and social life.
- c) Detect early violence in the family, especially on women and children.
- d) Promote attitudes aimed at the exercise of equal rights and obligations by women and men, both in the public and private spheres, and co-responsibility among them in the domestic sphere.

Article 8. Participation in School Boards.

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[...]

Article 9. Performance of educational inspection.

The educational inspection services will ensure compliance and application of the principles and values set forth in this chapter in the education system aimed at promoting real equality between women and men.

CHAPTER II

In the field of advertising and the media

Article 10. Illicit advertising.

In accordance with the provisions of Law 34/1988, of November 11, General Advertising, will be considered illegal advertising that uses the image of women with a degrading or discriminatory nature.

Article 11

The public entity that is responsible for ensuring that the audiovisual media fulfill their obligations will adopt the appropriate measures to ensure the treatment of women in accordance with constitutional principles and values, without prejudice to possible actions by other entities.

Article 12. Holders of the action of cessation and rectification.

The Special Delegation of the Government against Violence against Women, the Women's Institute or equivalent body of each Autonomous Community, the Public Prosecutor's Office and the Associations with the sole purpose of defending the interests of women shall be entitled to exercise before the Courts the action of cessation of illegal advertising to use in a vexatious way the image of women, in the terms of Law 34/1988, of November 11, General Advertising.

Article 13. Media.

1. The Public Administrations will ensure strict compliance with legislation regarding the protection and safeguarding of fundamental rights, with special attention to the eradication of conducts favoring situations of inequality of women in all social media, in accordance with current legislation.

2. The Public Administration shall promote self-regulation agreements that, with mechanisms for preventive control and effective resolution of disputes, contribute to compliance with the advertising legislation.

Article 14

The media will promote the protection and safeguard of equality between men and women, avoiding any discrimination between them.

The dissemination of information related to violence against women will guarantee, with the corresponding informative objectivity, the defense of human rights, freedom and dignity of women victims of violence and their children. In particular, special care will be taken in the graphic treatment of information.

CHAPTER III

In the health field

Article 15. Awareness and training.

1. The Health Administrations, within the Inter-territorial Council of the National Health System, will promote and promote actions of health professionals for the early detection of gender violence and propose the measures they deem necessary in order to optimize the contribution of the sector health in the fight against this type of violence.

2. In particular, awareness-raising and continuing education programs for health personnel will be developed in order to improve and promote the early diagnosis, assistance and rehabilitation of women in situations of gender violence referred to in this Law.

3. The competent educational authorities will ensure that in the curricular areas of the degrees and diplomas, and in the specialization programs of the socio-health professions, contents are included aimed at training for prevention, early detection, intervention and support for victims of this form of violence.

4. In the National Health Plans that proceed, a section on prevention and comprehensive intervention in gender violence will be considered.

Article 16. Inter-territorial Council of the National Health System.

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Within the framework of the Inter-territorial Council of the National Health System, a Commission against Gender-Based Violence will be set up within a year of the coming into force of this Law, to technically support and guide the planning of the sanitary measures contemplated in this chapter, evaluate and propose the necessary for the application of the sanitary protocol and any other measures that are considered necessary for the health sector to contribute to the eradication of this form of violence.

The Commission against Gender Violence of the Inter-territorial Council of the National Health System will be composed of representatives of all the Autonomous Communities with competence in the matter.

The Commission will issue an annual report that will be sent to the State Observatory on Violence against Women and the Plenary of the Inter-territorial Council.

TITLE II

Rights of women victims of gender violence

CHAPTER I

Right to information, comprehensive social assistance and free legal aid

Article 17. Guarantee of the rights of the victims.

1. All women victims of gender violence, regardless of their origin, religion or any other condition or personal or social circumstance, are guaranteed the rights recognized in this law.

2. Information, comprehensive social assistance, and legal assistance to victims of gender-based violence, in the terms regulated in this chapter, contribute to making effective and real their constitutional rights to physical and moral integrity, to freedom and security and equality and non-discrimination based on sex.

Article 18. Right to information.

1. Women victims of gender violence have the right to receive full information and advice appropriate to their personal situation, through the services, agencies or offices that may be available to the public administrations.

Said information shall include the measures contemplated in this law regarding protection and security, and the rights and assistance foreseen therein, as well as the place of provision of assistance, emergency, support and comprehensive recovery services.

2. Through necessary means, it will be guaranteed that women with disabilities who are victims of gender violence have full access to information about their rights and about existing resources. This information should be offered in an accessible and comprehensible format to persons with disabilities, such as sign language or other modalities or communication options, including alternative and augmentative systems.

3. Likewise, the necessary means will be articulated so that women victims of gender-based violence who, due to their personal and social circumstances, may have greater difficulty in obtaining comprehensive access to information, are guaranteed the effective exercise of this right.

Article 19. Right to comprehensive social assistance.

1. Women victims of gender-based violence have the right to social services of attention, emergency, support and reception and comprehensive recovery. The organization of these services by the Autonomous Communities and Local Corporations will respond to the principles of permanent attention, urgent action, specialization of benefits and professional multidisciplinary.

2. The multidisciplinary assistance will involve especially:

a) Information to the victims.

b) Psychological care.

c) Social support.

d) Monitoring of women's rights claims.

e) Educational support to the family unit.

f) Preventive training in the values of equality aimed at their personal development and the acquisition of skills in the non-violent resolution of conflicts.

g) Support for training and job placement.

3. The services will adopt organizational formulas that, by the specialization of their personnel, through their characteristics of convergence and integrated actions, guarantee the effectiveness of these principles.

4. These services will act in coordination and in collaboration with the security forces, the Judges on Violence against Women, the health services and the institutions of the corresponding geographical areas in charge of providing legal assistance to victims. These services may request from the judge the urgent measures they consider necessary.

5. Children who are under the custody or guardianship of the aggrieved person will also have the right to comprehensive social assistance through these social services. For these purposes, social services must have personnel specifically trained to

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care for children, in order to prevent and effectively avoid situations that may involve psychological and physical damage to children living in family environments where violence exists.

6. In the cooperation instruments and procedures between the General State Administration and the Administration of the Autonomous Communities in the matters regulated in this article, contribution commitments will be included, by the General State Administration, of financial resources specifically referred to the provision of services.

7. The equality bodies will guide and evaluate the programs and actions that are carried out and will issue recommendations for their improvement.

Article 20. Legal assistance.

1. Victims of gender-based violence have the right to receive free legal advice immediately prior to the filing of the complaint, and the defense and representation free of charge by a lawyer and attorney in all administrative processes and procedures that have direct or indirect cause in the violence suffered. In these cases, the same legal counsel must assume the defense of the victim, provided that his right of defense is duly guaranteed. This right shall also assist the successors in case of death of the victim, provided that they were not participants in the facts. In any case, the legal, free and specialized defense will be guaranteed immediately to all victims of gender violence who request it.

2. In any case, when guaranteeing the defense and legal assistance to victims of gender-based violence, they will proceed in accordance with the provisions of Law 1/1996, of January 10, on Free Legal Aid.

3. The Bar Associations, when they demand specialization courses for the exercise of their duty, will ensure specific training that contributes to the professional exercise of an effective defense in the area of gender-based violence.

4. Likewise, the Bar Associations will adopt the necessary measures for the urgent appointment of counsel or legal counsel ex officio in the procedures for gender violence and to ensure their immediate presence and assistance to the victims.

5. The Associations of Prosecutors shall adopt the necessary measures for the urgent appointment of a prosecutor in the procedures for gender violence when the victim wishes to appear as private prosecutor.

6. The lawyer appointed for the victim shall also have legal authorization for the procedural representation of the victim until the appointment of the prosecutor, so long as the victim has not appeared as private prosecution in accordance with the provisions of the following section. Until then, the lawyer will have the duty to indicate the address for the purposes of notifications and transfers of documents.

7. Victims of gender violence may appear as private prosecutors at any time during the proceedings, although this will not allow for the retrial or reiteration of the actions already carried out before their appearance, nor may it imply a reduction in the defendant's right of defense.

CHAPTER II

Labor rights and Social Security benefits

Article 21. Labor and Social Security Rights.

1. The worker victim of gender violence shall have the right, under the terms set forth in the Workers' Statute, to reduce or re-arrange her working time, to geographical mobility, to the change of workplace, to suspension of the employment relationship with reservation of work and the termination of the employment contract.

2. In the terms provided for in the General Law of Social Security, the suspension and termination of the employment contract provided for in the previous section will result in a legal unemployment situation. The time of suspension shall be considered as the effective contribution period for the purposes of Social Security and unemployment benefits.

3. Companies that formalize interim contracts to replace women workers who are victims of gender violence who have suspended their work contract or exercised their right to geographical mobility, or to change their workplace, will be entitled to a 100% bonus of the employer's Social Security contributions for common contingencies, during the entire period of suspension of the replaced worker, or for six months in the cases of geographical mobility or change of work place. When the reinstatement takes place, it will be carried out in the same conditions existing at the time of the suspension of the work contract.

4. Absences or lack of punctuality to work motivated by the physical or psychological situation derived from gender violence shall be considered justified, when determined by social services or health services, as appropriate, without prejudice to said absences being communicated by the worker to the company as soon as possible.

5. Self-employed workers who are victims of gender-based violence who cease their activities to enforce their protection or their right to comprehensive social assistance, will be suspended from the obligation to contribute for a period of six months, which will be considered as an effective contribution for the purposes of social security benefits. Likewise, their situation will be considered as assimilated to the discharge.

[...]

Article 22. Specific employment program.

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Within the framework of the Employment Plan of the Kingdom of Spain, a specific action program will be included for victims of gender violence registered as job seekers.

This program will include measures to encourage the start of a new activity on their own.

Article 23. Accreditation of situations of gender violence.

Situations of gender violence that give rise to the recognition of the rights regulated in this chapter shall be evidenced by a conviction for an offense of gender violence, a protection order or any other judicial decision that grants a precautionary measure in favor of the victim, or by the report of the Public Prosecutor's Office indicating the existence of indications that the applicant is a victim of gender violence. The situations of gender violence may also be accredited through a report from social services, specialized services, or reception services for victims of gender violence of the competent public administration; or by any other title, provided that this is provided for in the normative provisions of a sectoral nature that regulate access to each of the rights and resources.

The Government and the autonomous communities, in the framework of the Sectoral Conference on Equality, will design, by mutual agreement, the basic procedures that will allow the systems for the accreditation of situations of gender violence to be implemented.

CHAPTER III
Rights of public officials

Article 24. Scope of rights.

The official who is a victim of gender violence shall have the right to the reduction or redistribution of her working time, to the geographical mobility of the workplace, and to a leave period in the terms determined in the specific legislation.

Article 25. Justification of the absences of assistance.

Total or partial absences from work caused by the physical or psychological situation arising from gender violence suffered by a woman official will be considered justified in the terms determined in their specific legislation.

Article 26. Accreditation of situations of gender violence exercised on female employees.

The accreditation of the circumstances that give rise to the recognition of the rights of geographical mobility of work center, leave of absence, and reduction or reordering of working time, will be carried out in the terms established in article 23.

CHAPTER IV
Economic rights

Article 27. Social assistance.

1. When victims of gender violence lack incomes, by a monthly calculation, higher than 75% of the minimum inter-professional salary, excluding the proportional part of two extraordinary payments, they will receive a single payment aid, when it is presumed that due to their age, lack of general or specialized training, and social circumstances, they will have special difficulties in obtaining a job, and that for that reason they will not participate in employment programs directed at their professional reintegration.

2. The amount of this aid will be equivalent to six months of unemployment benefits. When the victim of violence against women has officially recognized a disability equal to, or greater than 33 percent, the amount will be equivalent to twelve months of unemployment benefits.

3. These grants, financed by the General State Budgets, will be granted by the competent authorities in the field of social services. In processing the concession procedure, the report of the Public Employment Service must be incorporated, referring to the predictability that, due to the circumstances referred to in section 1 of this article, the application of the employment program would not substantially affect the victim's employability.

The concurrence of the circumstances of violence will be calculated in accordance with what is established in article 23 of this law.

4. In the event that the victim has family responsibilities, the amount may correspond to a period equivalent to 18 months of subsidy, or 24 months if the victim, or one of the relatives who live with her, has officially recognized a disability in a degree equal or superior to 33%, in the terms established by the dispositions of the present law.

5. These grants will be compatible with any of those provided for in Law 35/1995, of December 11, on Aid and Assistance to Victims of Violent Crimes and against Sexual Freedom, as well as any other economic aid of an autonomous or local nature granted as a consequence of gender-based violence.

Article 28. Access to housing and public residences for the elderly.

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Women victims of gender violence will be considered priority groups in access to protected housing and public residences for the elderly, in the terms determined by the applicable legislation.

TITLE III
Institutional Protection

Article 29. The Special Delegation of the Government against Violence against Women.

1. The Special Government Delegation on Violence against Women, attached to the Ministry of Labor and Social Affairs, will formulate public policies in relation to gender-based violence to be developed by the Government, and will coordinate and promote all actions in this area, by working in collaboration and coordination with the Administrations with competence in the matter.

2. The head of the Special Government Delegation on Violence against Women shall be entitled before the jurisdictional bodies to intervene in defense of the rights and interests protected in this law in collaboration and coordination with the administrations with competence in the matter.

3. The specific rank and functions of the head of the Government's Special Delegation against Violence against Women will be determined by regulation.

Article 30. State Observatory on Violence against Women.

1. The State Observatory on Violence against Women will be set up as a collegiate body attached to the Ministry of Labor and Social Affairs, and will provide advice, evaluation, institutional collaboration, preparation of reports and studies, and proposals for action on gender violence. These reports, studies and proposals will consider in a special way the situation of women at greater risk of suffering gender violence or with greater difficulties in accessing services. In any case, the data contained in said reports, studies and proposals will be disaggregated by sex.

2. The State Observatory on Violence against Women shall submit to the Government and the Autonomous Communities, on an annual basis, a report on the evolution of violence against women in the terms referred to in Article 1 of this Law, with determination of the penal types that have been applied, and of the effectiveness of the agreed measures for the protection of the victims. The report will also highlight the needs for legal reform in order to ensure that the application of the protection measures adopted can ensure the highest level of protection for women.

3. Regulations will determine their functions, their operating regime and their composition, which will guarantee, in any case, the participation of the Autonomous Communities, local entities, social agents, consumer and user associations, and women's organizations with present throughout the State territory, as well as the most representative business and trade union organizations.

Article 31. Security Forces and Bodies.

1. The Government shall establish, in the State Security Forces and Corps, specialized units in the prevention of gender violence and in the control of the execution of the judicial measures adopted.

2. The Government, in order to make the protection of the victims more effective, will promote the necessary actions so that the local police, in the framework of their collaboration with the State Security Forces, cooperate in ensuring the compliance of the measures agreed upon by the judicial bodies when these are some of those provided for in this law or in article 544 bis of the Criminal Procedure Code, or article 57 of the Criminal Code.

3. The action of the Security Forces and Corps will have to take into account the Protocol of Action of the Security Forces and Coordination with the Judicial Bodies for the protection of domestic and gender violence.

[...]

Article 32. Collaboration plans.

1. The public authorities shall draw up collaboration plans that guarantee the organization of their actions in the prevention, assistance and prosecution of acts of gender violence, which shall involve the health administrations, the Administration of Justice, the Security Forces and social services and equality bodies.

2. In the development of said plans, action protocols will be established to determine the procedures that ensure a global and integral action of the different administrations and services involved, and that guarantee the probative activity in the processes that are followed.

3. The administrations with sanitary competences will promote the application, permanent update and dissemination of protocols that contain uniform guidelines of sanitary action, both in the public and private sphere, and especially, of the Protocol approved by the Interterritorial Council of the National Health System.

Such protocols will promote the activities of prevention, early detection and continued intervention with women subjected to gender violence or at risk of suffering it.

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The protocols, in addition to referring to the procedures to be followed, will expressly refer to the relationship with the Administration of Justice, in those cases in which there is a finding or well-founded suspicion of physical or psychological damage caused by these aggressions or abuses.

4. In the actions foreseen in this article, special consideration will be given to the situation of women who, due to their personal and social circumstances, may be at greater risk of suffering gender-based violence or greater difficulties in accessing the services provided for in this law, such as those belonging to minorities, immigrants, those in situations of social exclusion, or women with disabilities.

TITLE IV
Criminal Protection

Article 33. Suspension of sentences.

The second paragraph of section 1, 6a, of article 83 of the Penal Code, in the wording given by Organic Law 15/2003, is worded as follows:

"In the case of offenses related to gender violence, the judge or court will in any case condition the suspension to fulfill the obligations or duties provided for in rules 1, 2 and 5 of this section."

Article 34. Commission of crimes during the period of suspension of the sentence.

Section 3 of Article 84 of the Criminal Code, in the wording given by Organic Law 15/2003, is drafted as follows:

"3. In the event that the penalty suspended outside prison for the commission of crimes related to gender violence, the failure by the defendant to comply with the obligations or duties provided for in rules 1, 2 and 5 of the Article 83 (1) shall determine the revocation of the suspension of the execution of the penalty. "

Article 35. Substitution of penalties.

The third paragraph of section 1 of article 88 of the Criminal Code, in the wording given by Organic Law 15/2003, is worded as follows:

"In the event that the prisoner has been convicted of a crime related to gender violence, the prison sentence may only be replaced by work for the benefit of the community. In these cases, the Judge or Court will impose additionally, in addition to the subjection to specific reeducation and psychological treatment programs, the observance of the obligations or duties foreseen in the 1a and 2a rules, of section 1 of article 83 of this Code. »

Article 36. Protection against injuries.

Article 148 of the Criminal Code is amended, which is worded as follows:

"The injuries provided for in paragraph 1 of the previous article may be punished with imprisonment for two to five years, based on the result caused or risk produced:

1. If the perpetrator has used weapons, instruments, objects, means, methods or forms specifically dangerous to life or health, physical or mental, of the injured.
2. If there was premeditated cruelty or treachery.
3. If the victim was under twelve years of age or incapable.
4. If the victim is, or has been, the wife, or is, or has been linked, to the author by a similar relationship of affectivity, even without cohabitation.
5. If the victim was a particularly vulnerable person who lives with the author."

Article 37. Protection against mistreatment.

Article 153 of the Criminal Code is worded as follows:

"1. Whoever by any means or procedure causes another psychic impairment or injury not defined as a crime in this Code, or will hit or mistreat another without causing injury, when the victim is, or has been, the wife, or a woman who is, or has been linked to him by a similar relationship of affectivity, even without cohabitation, or an especially vulnerable person who lives with the author, will be punished with imprisonment of six months to one year, or community work from thirty-one to eighty days and, in any case, deprivation of the right to possession and carrying weapons from one year and one day to three years; and, when the judge or court deems it appropriate in the interest of the child, or incapacitated, disqualification from the exercise of parental authority, guardianship, curatorship, or foster care for up to five years.

2. If the victim of the offense provided for in the preceding paragraph is one of the persons referred to in article 173.2, except for the persons referred to in the preceding paragraph of this article, the author shall be punished by imprisonment of three months a one year or work for the benefit of the community from thirty-one to eighty days and, in any case, deprivation of the right to possession and carrying weapons from one year and one

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day to three years, as well as, when the Judge or Court deems it appropriate to the interest of the minor or incapable, disqualification for the exercise of parental authority, guardianship, guardianship, guardianship or fostering from six months to three years.

3. The penalties provided for in paragraphs 1 and 2 shall be imposed in their upper half when the offense is committed in the presence of minors, or using weapons, or takes place in the common domicile or in the victim's home, or is carried out in violation of a penalty of those contemplated in article 48 of this Code, or of a precautionary or security measure of the same nature.

4. Notwithstanding the provisions of the previous sections, the Judge or Court, reasoning in a judgment, in response to the personal circumstances of the author and those who concur in the realization of the act, may impose the lower penalty in degree.

Article 38. Protection against threats.

Three sections, numbered 4, 5 and 6, are added to Article 171 of the Criminal Code, which will have the following wording:

"4. Anyone who mildly threatens whomever, or someone who has been his wife, or a woman who is, or has been, bound to him by a similar relationship of affectivity even without coexistence, will be punished by imprisonment of six months to one year, or work for the benefit of the community from thirty-one to eighty days and, in any case, deprivation of the right to possession and carrying weapons from one year and one day to three years, as well as, when the judge or court deems it appropriate to the interest of the minor or disabled, special disqualification for the exercise of parental authority, guardianship, curatorship, or foster care for up to five years.

The same penalty will be imposed on anyone who mildly threatens a particularly vulnerable person who lives with the author.

5. Anyone who lightly threatens any of the persons referred to in article 173.2 with weapons or other dangerous instruments, except those referred to in the previous section of this article, will be punished by imprisonment for three months. one year, or works for the benefit of the community from thirty-one to eighty days and, in any case, deprivation of the right to possession and carrying weapons from one to three years, as well as, when the Judge or Court deems it appropriate to interest of the child or incapacitated, special disqualification for the exercise of parental authority, guardianship, guardianship, or foster care for a period of six months to three years.

The penalties provided for in paragraphs 4 and 5, in its upper half, shall be imposed when the offense is committed in the presence of minors, or takes place in the common domicile or in the victim's home, or is carried out in violation of a penalty of those contemplated in article 48 of this Code, or a precautionary or security measure of the same nature.

6. Notwithstanding the provisions of paragraphs 4 and 5, the Judge or Court, by a reasoned judgment, in response to the personal circumstances of the author and the participants in the realization of the act, may impose the penalty lower in degree."

Article 39. Protection against coercion.

The current content of article 172 of the Criminal Code is numbered as section 1 and a section 2 is added to said article with the following wording:

"2. He who in a mild way coerces whoever, or who has been his wife, or woman who is, or has been, bound to him by a similar relationship of affectivity, even without cohabitation, will be punished by imprisonment from six months to one year or of works for the benefit of the community from thirty-one to eighty days and, in any case, deprivation of the right to possession and carrying weapons from one year and one day to three years, as well as, when the Judge or Court deems it appropriate to the interest of the minor or incapacitated, special disqualification for the exercise of parental authority, guardianship, conservatorship, or foster care for up to five years.

The same penalty will be imposed on the person who, in a mild way, coerces a particularly vulnerable person who lives with the author.

The penalty shall be imposed in its upper half when the crime is committed in the presence of minors, or takes place in the common domicile or in the domicile of the victim, or is carried out in violation of a penalty of those contemplated in article 48 of this Code or a precautionary or security measure of the same nature.

Notwithstanding the provisions of the preceding paragraphs, the Judge or Court, reasoning in a judgment, in response to the personal circumstances of the author and those present in the realization of the act, may impose the lower penalty in degree."

Article 40. Breach of sentence.

Article 468 of the Criminal Code is amended and is worded as follows:

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"1. Those who break their sentence, security measure, prison, precautionary measure, driving or custody will be punished by imprisonment from six months to a year if they were deprived of their liberty, and with a fine of twelve to twenty-four months in prison in other cases.

2. In any case, the penalty of imprisonment from six months to one year shall be imposed on those who violate a penalty of those contemplated in article 48 of this Code, or a precautionary or security measure of the same nature imposed in criminal proceedings in which the victim is one of the persons referred to in article 173.2."

Article 41. Protection against minor harassment.

Article 620 of the Criminal Code is worded as follows:

"They will be punished with the penalty of a fine of ten to twenty days:

1. Those who lightly threaten another with weapons or other dangerous instruments, or take them out in a fight, except in just defense, unless the fact is constitutive of crime.

2. Those that cause another a threat, coercion, injury or unfair humiliation of a mild nature, unless the fact is constitutive of crime.

The facts described in the two previous issues will only be prosecutable by complaint of the aggrieved person or his legal representative.

In the cases of paragraph 2 of this article, when the victim is one of the persons referred to in article 173.2, the penalty shall be that of permanent location from four to eight days, always at a different address and away from the victim, or work for the benefit of the community for five to ten days. In these cases, the complaint referred to in the previous paragraph of this article shall not be enforceable, except for the prosecution of insults. "

Article 42. Penitentiary Administration.

1. The Penitentiary Administration will carry out specific programs for inmates convicted of crimes related to gender violence.

2. The Treatment Boards will evaluate, in grade progressions, concession of permits and conditional freedom concession, the monitoring and use of said specific programs by the inmates referred to in the previous section.

TITLE V
Judicial protection

CHAPTER I
Of the Courts of Violence against Women

Article 43. Territorial organization.

An article 87 bis is added in the Organic Law 6/1985 on the Judicial Power, with the following wording:

"1. In each district there will be one or more Courts on Violence against Women, with headquarters in its capital, and jurisdiction throughout its territory. The local municipality will appoint them.

2. Notwithstanding the above, in exceptional cases, Courts on Violence against Women having jurisdiction over two or more districts within the same province may be established.

3. The General Council of the Judiciary may agree, following a report from the Government Chambers, that, in those circumscriptions where it is convenient in accordance with the existing workload, knowledge of the matters referred to in article 87 ter of this Organic Law, corresponds to one of the Courts of First Instance and Instruction, or Instruction in its case, being determined in this situation that only one of these Organs hear all these matters within the judicial party, either exclusively or knowing also of other subjects.

4. In the judicial districts in which there is a single Court of First Instance and Instruction, this will assume the knowledge of the matters referred to in article 87 ter of this Law."

Article 44. Competence.

An article 87 ter is added in the Organic Law 6/1985 on the Judicial Power, with the following wording:

"1. The Courts of Violence against Women will hear, in the criminal sphere, in accordance with the procedures and remedies provided for in the Criminal Procedure Act, in the following:

a) Of the investigation of the processes to demand criminal responsibility for the crimes included in the titles of the Penal Code related to homicide, abortion, injuries, fetal injuries, crimes against freedom, crimes against moral integrity, against freedom and indemnity sexual or any other crime committed with violence or intimidation, provided that they were committed against whoever or who was his wife, or a woman who is or has been linked to the author by a similar relationship of affectivity, even without coexistence, as well as the tasks on the descendants, own or of the wife or partner, or on minors or incapable persons who live with him or who are subject

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to the power, guardianship, guardianship, fostering or de facto guardianship of the wife or partner, when there has also been produced an act of gender violence.

b) Of the investigation of the processes to demand criminal responsibility for any crime against family rights and duties, when the victim is one of the persons indicated as such in the previous letter.

c) The adoption of the corresponding protection orders for the victims, without prejudice to the competences attributed to the Judge of the Guard.

d) The hearing and ruling over of the offenses contained in titles I and II of Book III of the Penal Code, when the victim is one of the persons indicated as such in letter a) of this section.

2. The Courts on Violence against Women will hear, in the civil area, of any case in accordance with the procedures and remedies provided for in the Civil Procedure Act on the following matters:

a) Filiation, maternity and paternity.

b) Nullity of marriage, separation and divorce.

c) Those who deal with parental relations.

d) Those whose purpose is the adoption or modification of family-related measures.

e) Those dealing exclusively with custody of minor children or with alimony claimed by one parent against the other on behalf of the minor children.

f) Those related to the assent needed for cases of adoption.

g) Those whose purpose is to contest administrative resolutions in matters related to the protection of minors.

3. The Courts of Violence against Women shall have exclusive jurisdiction in civil cases when the following requirements concur simultaneously:

a) That it is a civil process that has as its object any of the matters indicated in number 2 of this article.

b) That one of the parties to the civil process is a victim of acts of gender violence, in the terms referred to in section 1 a) of this article.

c) That some of the parties to the civil process be accused as author, inductor or cooperator necessary in the performance of acts of gender violence.

d) That criminal proceedings have been initiated before the Judge of Violence against Women for a crime or offense as a result of an act of violence against women, or that a protection order has been adopted for a victim of gender violence.

4. When the Judge appreciates that the acts brought to his knowledge, in a well-known manner, do not constitute an expression of gender violence, he may reject the claim, sending it to the competent judicial body.

5. In all these cases, mediation is prohibited."

Article 45. Appeals in criminal matters.

A new 4th ordinal is added to article 82.1 of the Organic Law 6/1985, on the Judicial Power, with the following wording:

"Of the resources that the law establishes against the resolutions in penal matter dictated by the Courts of Violence on the Woman of the province. In order to facilitate knowledge of these resources, and taking into account the number of existing cases, one or several of its sections must be specialized in accordance with the provisions of article 98 of the aforementioned Organic Law. This specialization will be extended to those cases in which it corresponds to the Provincial Court the trial, in the first instance, of matters investigated by the Courts on Violence against Women of the province."

Article 46. Appeals in civil matters.

A new paragraph is added to article 82.4 in the Organic Law 6/1985, of July 1, of the Judicial Power, with the following wording:

"The Provincial Hearings will also know of the resources established by law against the resolutions issued in civil matters by the Courts of Violence against Women of the province. In order to facilitate the knowledge of these resources, and taking into account the number of existing matters, one or several of its sections may be specialized in accordance with the provisions of article 98 of the aforementioned Organic Law."

Article 47. Training.

The Government, the General Council of the Judiciary and the Autonomous Communities, within the scope of their respective competences, will ensure specific training related to equality and non-discrimination based on sex and gender-based violence to judges, magistrates, prosecutors, judicial secretaries, security forces and corps, and forensic doctors. In any case, in the previous training courses, the victim's disability approach will be introduced.

Article 48. Jurisdiction of the Courts.

Section 1 of article 4 of Law 38/1988, of December 28, of Demarcation and Judicial Plan is amended, which is drafted as follows:

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"1. The Courts of First Instance and Instruction, and the Courts on Violence against Women, have jurisdiction in the territory of their respective district.

Notwithstanding the above, and given the geographical, location and population circumstance, the Courts on Violence against Women may be created to serve more than one judicial district."

Article 49. Seat of the Courts.

Article 9 of Law 38/1988, of December 28, of Demarcation and Judicial Plan is amended, which is drafted as follows:

"The Courts of First Instance and Instruction and the Courts for Violence against Women are based in the capital of the district."

Article 50. Plant of the Courts of Violence against Women.

[...]

Article 51. Places served by Magistrates.

Section 2 of Article 21 of Law 38/1988, of December 28, on Demarcation and Judicial Plan shall have the following wording:

"2. The Minister of Justice may establish that the Courts of First Instance and of First Instance and Instruction, and the Courts on Violence against Women, are served by Magistrates, provided that they are located in a judicial district having more than 150,000 inhabitants, or experience an increase in the population which exceeds that figure, and the volume of demands so requires."

Article 52. Constitution of the Courts.

[...]

Article 53. Notification of judgments issued by Courts.

A new paragraph is added in article 160 of the Law of Criminal Procedure, with the following content:

"When the investigation of the case has been the responsibility of a Violence against Women Court, the judgment shall be remitted to it by testimony immediately, indicating whether or not it is final."

Article 54. Specialties in the case of quick trials.

A new article 797 bis is added in the Criminal Procedure Law with the following content:

"1. Where the Court on Violence against Women has jurisdiction, the proceedings and resolutions indicated in the previous articles must be practiced and adopted during the hours of hearing.

2. The Judicial Police will have to make the citations referred to in article 796, before the Violence against Women Court, on the next business day, among those that are fixed by regulation.

However, the detainee, if any, must be placed at the disposal of the Investigative Judge on Call, for the sole purpose of regularizing their personal situation, when it is not possible to appear before the Violence Court on Women that is competent.

3. In order to carry out the aforementioned citations, the Judicial Police will set the date and time of the hearing in coordination with the Violence against Women Court. For these purposes, the General Council of the Judiciary, in accordance with the provisions of Article 110 of the Organic Law of the Judiciary, will issue the appropriate regulations to ensure this coordination.

Article 55. Notification of judgments handed down by the Criminal Court.

A section 5 is added in article 789 of the Law of Criminal Procedure, with the following content:

"5. When the investigation of the case has corresponded to a Violence against Women Court the sentence will be remitted to the same by testimony immediately. Likewise, the declaration of finality and the judgment of second instance shall be sent to it when it is revoked, in whole or in part, of the judgment previously handed down."

Article 56. Specialties in the case of quick judgments regarding offenses.

A new section 5 is added to article 962 of the Law of Criminal Procedure, with the following content:

"5. In the event that the jurisdiction to hear corresponds to the Court of Violence against Women, the Judicial Police shall make the citations referred to in this article before said Court on the next business day. To carry out the aforementioned citations, the Judicial Police will set the date and time of the appearance in coordination with the Violence against Women Court.

For these purposes, the General Council of the Judiciary, in accordance with the provisions of Article 110 of the Organic Law of the Judiciary, will issue the appropriate regulations to ensure this coordination.

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CHAPTER II
Civil procedural rules

Article 57. Loss of objective competition when acts of violence against women occur.

A new article 49 bis is added in the Law 1/2000, of January 7, of Civil Procedure, whose wording is as follows:

«Article 49 bis. Loss of competition when acts of violence against women occur.

1. When a judge, who is hearing in the first instance a civil proceeding, becomes aware of the commission of an act of violence of those defined in Article 1 of the Organic Law of Measures of Comprehensive Protection against Gender Violence, which has led to the initiation of a criminal proceeding, or to a protection order, after verifying the concurrence of the requirements provided for in article 87 ter, section 3, of the Organic Law on the Judiciary, recuses himself, he shall transfer the documents in the state in which they are to the Judge on Violence against Women who is competent, unless the phase of the oral trial has begun.

2. When a judge who is hearing a civil proceeding becomes aware of the possible commission of an act of gender violence, which has not led to the initiation of criminal proceedings, or to issue an order of protection, after verifying the requirements of Article 87 ter, paragraph 3, of the Organic Law of the Judiciary, he must immediately summon the parties to a hearing with the Public Prosecutor, to be held within 24 hours, so that the latter takes cognizance of the data relevant to the events that have taken place. Immediately following this, the Prosecutor must decide, within 24 hours, whether to report acts of gender violence or to request an order of protection before the Court of Violence against Women that is competent.

3. When a Judge of Violence against Women hearing a criminal case for gender violence becomes aware of the existence of civil proceedings, and verifies the existence of the requirements of article 87 ter, section 3, of the Organic Law on the Judicial power, it will request the civil court to recuse itself, with the latter immediately complying and transferring the case to the requesting body.

For the purposes of the preceding paragraph, the request of recusal shall be accompanied by testimony regarding the initiation of preliminary, or criminal trial proceedings, the order of admissibility of the complaint, or the protection order adopted.

4. In the cases provided for in paragraphs 1 and 2 of this article, the civil court will transfer the proceedings to the Court on Violence against Women, without the provisions of Article 48.3 of the Civil Procedure Law being applicable, and the parties must, from that moment, appear before said body.

In these cases, the other norms of this section will not be applicable, a declination will not be accepted, and the parties that want to assert the jurisdiction of the Court on Violence against Women must present testimony of some of the resolutions issued by said court to which they are subject. refers to the final paragraph of the previous number.

5. The Courts of Violence against Women shall exercise their powers in civil matters exclusively and exclusively, and in any case in accordance with the procedures and remedies provided for in the Civil Procedure Act. »

CHAPTER III
Criminal procedural rules

Article 58. Competences in the criminal jurisdiction.

Article 14 of the Law of Criminal Procedure is amended, and drafted as follows:

"Apart from the cases expressly and limitedly attributed by the Constitution and the laws to certain judges and tribunals, shall be competent:

1. the Investigative Judge to hear and rule on misdemeanor cases, unless the Judge on Violence against Women has jurisdiction in accordance with number five of this article. However, it will hear misdemeanor proceedings defined in articles 626, 630, 632 and 633 of the Penal Code, the Justice of the Peace of the place in which they were committed. The Justices of the Peace will also hear the cases for offenses typified in article 620, paragraphs 1^o and 2^o, of the Penal Code, except when the offended person is one of those referred to in article 173.2 of the same Code.

2. For the investigation of the cases, the Investigative Judge of the district in which the crime was committed, or the Judge on Violence against Women, or the Central Judge of Instruction regarding the crimes determined by the law.

3. For the knowledge and ruling on cases related to crimes for which the law provides a custodial sentence of duration not exceeding five years, or penalty of a fine, whatever its amount, or any other of a different nature, even if they are unique, joint or alternative, provided that their duration does not exceed ten years, as well as for offences, whether or not incidental, attributable to the perpetrators of these crimes or to other persons, when the

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commission of the offense or its proof were related to those, the Criminal Judge of the circumscription where the crime was committed, or the Criminal Judge corresponding to the district of the Violence Court on the Woman in his case, or the Central Criminal Judge in the area that is his own, without prejudice to the competence of the Investigative Judge on call of the place of commission of the offense to issue a judgment of conformity, or of the Judge on Violence against the Woman competent in her case, in the terms established in article 801.

However, in cases within the jurisdiction of the criminal judge, if the offense is one attributable to the jury, the knowledge and decision shall correspond to it.

4. For the knowledge and ruling of the cases in the other instances, the Provincial Court of the district where the crime was committed, or the Provincial Court corresponding to the Circumscription of the Violence against Women Court, as the case may be, or the criminal Chamber of the National Court.

However, in cases of jurisdiction of the Provincial Court, if the offense is attributable to the Jury, the knowledge and decision shall correspond to it.

5. The Courts on Violence against Women shall be competent in the following matters, in any case in accordance with the procedures and resources provided for in this law:

a) for the investigation of the processes to demand criminal responsibility for the crimes included in the titles of the Penal Code related to homicide, abortion, injuries, fetal injuries, crimes against freedom, crimes against moral integrity, against sexual freedom and integrity or any other crime committed with violence or intimidation, provided that they were committed against who is, or was, his wife, or woman who is, or has been linked to the author by a similar relationship of affectivity, even without cohabitation, as well as against his own descendants, or those of the wife, or against minors or incapable persons who live with him or who are subject to the authority of a parent, guardian or custodian or to de facto guardianship of the wife or partner, when an act of gender violence has also been committed.

b) for the investigation of the procedures to seek criminal responsibility for crimes against family rights and duties, when the victim is one of the persons indicated in the previous letter.

c) The adoption of the corresponding protection orders for the victims, without prejudice to the competences attributed to the Judge on call.

d) Of knowledge and failure of the faults contained in titles I and II of Book III of the Penal Code, when the victim is one of the persons indicated as such in letter a) of this section. »

Article 59. Territorial jurisdiction.

A new article 15 bis is added to the Criminal Procedure Act, which is worded as follows:

"In the case of some of the crimes or offenses whose instruction or knowledge corresponds to the Judge for Violence against Women, the territorial jurisdiction will be determined by the place of the victim's domicile, without prejudice to the adoption of the protection order, or of urgent measures of article 13 of the present law that could be adopted by the judge of the place of commission of the facts."

Article 60. Connection competence.

[...]

CHAPTER IV

Judicial protection and safety measures for victims

Article 61. General provisions.

1. The protection and security measures provided for in this chapter shall be compatible with any of the precautionary and assurance measures that may be adopted in civil and criminal proceedings.

2. In all proceedings related to gender violence, the competent judge must rule in all cases, ex officio, or upon request of the victims, the children, the persons who live with them or who are subject to their care or custody, the Public Prosecutor's Office, or the Administration on which the victim's assistance services depend, on the appropriateness of the adoption of the precautionary and protective measures contemplated in this chapter, especially those included in articles 64, 65 and 66, determining their terms and regime of compliance and, if applicable, on the complementary measures that were necessary.

Article 62. Of the protection order.

Once the request for the adoption of an order of protection has been received, the Judge on Violence against Women and, as the case may be, the Judge on call, will act in accordance with the provisions of article 544 ter of the Law of Criminal Procedure.

Article 63. About data protection and limitations on advertising.

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1. The actions and procedures related to gender violence will protect the privacy of the victims; in particular, her personal data, those of descendants and those of any other person under her care or custody.
2. The competent Judges may agree, ex officio or at the request of a party, that the hearings take place behind closed doors and that the proceedings be reserved.

Article 64. Of measures to leave the domicile, not to approach, or to suspend communications.

1. The judge may order the mandatory departure of the defendant for gender violence from the domicile in which the family unit has been living or has his residence, as well as the prohibition to return to the same.
2. The judge, on an exceptional basis, may authorize the protected person to make an agreement with an agency or public company where there is one and include, among its activities, the leasing of houses, the exchange of the family home of which they are co-owners, with the use of another house, during the time, and under the conditions that are determined.
3. The judge may prohibit the accused from approaching the protected person, wherever this may be, as well as approaching her home, place of work or any other place frequented by him. she.
The use of appropriate technological instruments may be agreed upon to immediately verify non-compliance.
The judge will set a minimum distance to be kept between the accused and the protected person that cannot be breached, under penalty of incurring criminal liability.
4. The removal measure may be agreed independently of the fact that the person affected, or those it intends to protect, had previously left the place.
5. The Judge may prohibit the accused from any type of communication with the person or persons indicated, under penalty of incurring criminal responsibility.
6. The measures referred to in the preceding paragraphs may be agreed cumulatively or separately.

Article 65. Of the measures of suspension of parental authority or custody of minors.

The Judge may suspend for the accused for gender violence the exercise of parental authority, custody, foster care, guardianship, guardianship or de facto guardianship, with respect to minors who depend on him.
If the suspension is not agreed, the Judge must rule in all cases on the manner in which parental authority will be exercised and, where appropriate, the custody, custody, guardianship, guardianship or de facto custody of the minors Likewise, it will adopt the necessary measures to guarantee the safety, integrity and recovery of minors and women, and will periodically monitor its evolution.

Article 66. Of the measure of suspension of the regime of visits, stay, relationship or communication with minors.

The Judge may order the suspension of the regime of visits, stay, relationship or communication of the accused of gender violence with respect to minors who depend on him.
If the suspension is not granted, the judge must rule in all cases on the manner in which the regime of stay, relationship or communication of the accused for gender violence will be exercised with respect to minors who depend on him. Likewise, it will adopt the necessary measures to guarantee the safety, integrity, and recovery of minors and women, and will periodically monitor its implementation.

Article 67. Of the measure of suspension of the right to possession, carriage and use of arms.

The Judge may agree, with respect to the accused in crimes related to the violence referred to in this Law, the suspension of the right to possession, carriage and use of weapons, with the obligation to deposit them in the terms established by the current regulations.

Article 68. Guarantees for the adoption of measures.

The restrictive measures of rights contained in this chapter must be adopted by reasoned order in which their proportionality and necessity are appreciated, and, in any case, with the intervention of the Public Prosecutor and respect for the principles of contradictory, hearing, and defense.

Article 69. Maintenance of protection and security measures.

The measures of this chapter may be maintained after the final judgment and during the processing of the possible resources that correspond. In this case, the maintenance of such measures must be stated in the judgment.

CHAPTER V
On the Prosecutor against Violence against Women

Article 70. Functions of the Prosecutor against Violence against Women.

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An article 18 quater is added in Law 50/1981, of December 30, regulating the Organic Statute of the Public Prosecutor's Office, with the following wording:

"1. The Attorney General of the State will appoint, after hearing the Prosecutorial Council, as a delegate, a Prosecutor on Violence against Women, with category of Prosecutor for the Chamber, who will exercise the following functions:

a) Practice the procedures referred to in Article 5 of the Organic Statute of the Public Prosecutor's Office, and intervene directly in those criminal proceedings of special importance as determined by the State Attorney General, regarding crimes for acts of gender violence included in the Article 87 ter, number 1, of the Organic Law on the Judiciary.

b) Intervene, by delegation of the State Attorney General, in the civil proceedings included in Article 87 ter.2 of the Organic Law of the Judiciary.

c) Supervise and coordinate the actions of the Sections against Violence against Women, and collect reports from them, informing the Chief Prosecutor of the Prosecutor's Offices in which they are integrated.

d) Coordinate the criteria of action of the various prosecutors in matters of gender violence, for which you may propose to the Attorney General of the State the issuance of the corresponding instructions.

e) Prepare semiannually, and submit to the State Attorney General for referral to the Board of Prosecutors of the Supreme Court Chamber, and the Prosecutorial Council, a report on the procedures followed and actions taken by the Public Prosecutor's Office regarding gender-based violence.

2. Professionals and experts that are necessary to support it permanently or occasionally will be assigned to assist it in its proper performance. »

Article 71. Sections against violence against women.

The second and third paragraphs of section 1 of article 18 of Law 50/1981, of December 30, regulating the Organic Statute of the Public Prosecutor's Office, are replaced by the following text:

"In the Prosecutor's Office of the National Court and in each Prosecutor's Office of the Superior Courts of Justice and Provincial Hearings, there will be a Section for Minors that will be entrusted with the functions and powers that the Public Prosecutor's Office attributes to the Organic Law Regulating Criminal Responsibility of Minors, and another Section on Violence against Women in each Prosecutor's Office of the Superior Courts of Justice and the Provincial Courts. These Sections will be assigned to Prosecutors who belong to them, by taking precedence those who because of the previous functions performed, courses taught or passed, or any other analogous circumstance, have specialized in the subject. However, when the needs of the service so require, they may also act in other areas or subjects.

In the Prosecutor's Offices of the Superior Courts of Justice and in the Provincial Courts may be the permanent secondments that are determined by law.

The following functions are attributed to the Section on Violence against Women:

a) Intervene in criminal proceedings for the facts constituting crimes or offenses whose competence is attributed to the Courts on Violence against Women.

b) Intervene directly in civil proceedings whose jurisdiction is attributed to the Courts on Violence against Women.

In the Section on Violence against Women a record of the procedures that are related to these events should be kept that will allow the Prosecutor to consult when they know of a procedure of which they have attributed the competence, in each appropriate case."

Article 72. Delegates of the Office of the Prosecutor.

A new wording is given to section 5 of article 22 of Law 50/1981, of December 30, regulating the Organic Statute of the Public Prosecutor, which is drafted as follows:

"5. In those Prosecutor's Offices in which the number of matters which he or she hears so requires, and whenever it is convenient for the organization of the service, following a report from the Prosecutorial Council, delegates of the Headquarters may be appointed in order to assume the functions of direction and coordination that were specifically entrusted to him. The organic staff will determine the maximum number of delegates of the Headquarters that can be designated in each Prosecutor's Office. In any case, in each Prosecutor's Office there will be a delegate from Headquarters who will assume the functions of direction and coordination, in the terms foreseen in this section, regarding infractions related to gender violence, crimes against the environment, and prison supervision, with exclusive character or shared with other matters.

Such delegates will be appointed and, as the case may be, relieved by means of a resolution issued by the State Attorney General, upon a reasoned proposal from the respective Chief Prosecutor, after hearing the Office of the Prosecutor. When the resolution of the State Attorney General disagrees with the proposal of the respective Chief Prosecutor, it must be reasoned.

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For the coverage of these places will be necessary, prior to the proposal of the corresponding Chief Prosecutor, to make a call among the Prosecutors on staff. The proposal will be accompanied by a list of the other Prosecutors who have requested the position with their alleged merits."

First additional provision. Pensions and grants.

[...]

2. Whoever was convicted, by final judgment, for the commission of an intentional crime of homicide, in any of its forms, or personal injuries, when the victim of the offense was his spouse or ex-spouse, or was or had been bound to him by an analogous sentimental relationship, even without cohabitation, cannot be credited, in any case, the orphan's pension that his children would perceive from the Public Pension System, unless there was a reconciliation between them.

3. It will not be considered a beneficiary, as an indirect victim, of the aid provided for in Law No. 35 of December 11, 1995, on Aid and Assistance to Victims of Violent Crimes and against Sexual Freedom, whomever was convicted for an intentional crime of homicide in any of its forms, when the victim was his spouse or ex-spouse, or a person with whom he was or had been permanently bound by a similar affective relationship, regardless of her sexual orientation, during, at least, the two years prior to the death, unless they were of common descent, in which case mere cohabitation will suffice.

[...]

Seventh additional provision. Modification of the Law of the Workers' Statute.

One. A new section 7 is introduced in article 37 of the Workers' Statute Law, a consolidated text approved by Royal Legislative Decree 1/1995, of March 24, with the following content:

«7. The worker victim of gender violence will have the right, to make effective their protection or their right to integral social assistance, to the reduction of the working day with a proportional reduction of the salary, or to the reordering of the working time, through the adaptation of the schedule, of the application of the flexible schedule, or of other forms of organization of the time of work that are used in the company.

These rights may be exercised in the terms that for these specific cases are established in collective agreements or in agreements between the company and the workers' representatives, or in accordance with the agreement between the company and the affected worker. Failing that, the realization of these rights will correspond to the worker, being applicable the rules established in the previous section, including those related to the resolution of discrepancies. »

Two. A new section 3 bis) is introduced in article 40 of the Law on the Workers' Statute, a revised text approved by Royal Legislative Decree 1/1995, of March 24, with the following content:

"3bis) The worker who is a victim of gender violence who is forced to leave the workplace in the locality where she has been providing her services, in order to get her protection or her right to full social assistance, shall have the preferential right to occupy another job position, of the same professional type or equivalent category, where the company has vacancy in any other of its work centers.

In such cases, the company will be obliged to inform the worker of vacancies that exist at that time or those that may occur in the future.

The transfer or change of work center will have an initial duration of six months, during which the company will have the obligation to reserve the job that previously occupied the worker.

After this period, the worker may choose between returning to her previous job, or continuing in the new one. In the latter case, the aforementioned reserve obligation shall elapse. "

Three. A new letter n) is introduced in article 45, section 1, of the Law on the Workers' Statute, a consolidated text approved by Royal Legislative Decree 1/1995, of March 24, with the following content:

"n) By decision of the worker who is forced to leave her job as a result of being a victim of gender violence."

Four. A new section 6 is introduced in article 48 of the Law on the Workers' Statute, a revised text approved by Royal Legislative Decree 1/1995 of March 24, with the following content:

«6. In the case envisaged in letter n) of section 1 of article 45, the period of suspension shall have an initial duration that may not exceed six months, unless the actions of judicial protection result in the effectiveness of the right to protection of the victim may require continuity of the suspension. In this case, the judge may extend the suspension for periods of three months, with a maximum of eighteen months. "

Five. A new letter m) is introduced in article 49, section 1, of the Law on the Workers' Statute, a revised text approved by Royal Legislative Decree 1/1995, of March 24, with the following content:

"M) By decision of the worker who is forced to leave her job definitively as a result of being a victim of gender violence."

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Six. The second paragraph of letter d) of article 52 of the Law of the Workers' Statute is amended, the revised text approved by Legislative Royal Decree 1/1995, of March 24, with the following content:

«Absences due to legal strike for the duration of the strike, the exercise of activities of legal representation of workers, work accident, maternity, risk during the absence of assistance, for the purposes of the preceding paragraph, will be computed as pregnancy, illnesses caused by pregnancy, childbirth or lactation, leave and holidays, illness or non-work accident, when the leave has been agreed by the official health services and has a duration of more than twenty consecutive days, nor those caused by the situation physical or psychological violence derived from gender-based violence, accredited by the social services of health care or services, as appropriate. »

Seven. Modifies letter b) of section 5 of article 55, of the Law of the Workers' Statute, revised text approved by Legislative Royal Decree 1/1995, of March 24, with the following content:

«b) That of pregnant workers, from the date of the beginning of pregnancy until the beginning of the period of suspension referred to in letter a); that of workers who have applied for one of the permits referred to in sections 4 and 5 of article 37 of this Law, or are enjoying them, or have requested the leave provided for in section 3 of article 46 of the same ; and that of female workers who are victims of gender violence due to the exercise of rights to reduce or re-order their working time, geographical mobility, change of workplace or suspension of the employment relationship, under the terms and conditions recognized in this Law. »

Additional provision eight. Modification of the General Law of Social Security.

One. A section 5 is added in article 124 of the General Social Security Law, a consolidated text approved by Royal Legislative Decree 1/1994, of June 20, with the following content:

"5. The period of suspension with reservation of the job, referred to in Article 48.6 of the Workers' Statute, shall be considered as the effective contribution period for the purposes of the corresponding Social Security benefits for retirement, permanent disability, death or survival, maternity and unemployment.

[...]

Fifteenth additional provision. Housing agreements.

Through agreements with the competent Administrations, the Government will be able to promote specific procedures for the adjudication of subsidized housing for victims of gender violence.

Sixteenth additional provision. Coordination of Public Employment Services.

[...]

Seventeenth additional provision. Schooling

[...]

Additional provision eighteenth. Plants of the Courts of Violence against Women.

[...]

Additional provision nineteenth. Pension guarantee fund.

[...]

Twentieth additional provision. Change of surnames.

Article 58 of the Civil Registry Law of June 8, 1957, is worded as follows:

"2. When exceptional circumstances arise, and in spite of missing the requirements indicated in said article, the change may be acceded to by Royal Decree at the proposal of the Ministry of Justice, with a hearing of the Council of State. In the event that the applicant for the authorization of the change of their surnames is subject to gender violence, and in any other case in which the urgency of the situation so requires, the change may be granted by Order of the Ministry of Justice, in the terms set by the Regulation. "

[...]

Sixth final provision. Modification of Law 1/1996, of January 10, of Free Legal Assistance.

Section 5 of article 3 of Law 1/1996, of January 10, of Free Assistance is modified, which will be drafted as follows:

"5. Nor will it be necessary for victims of gender-based violence to previously claim lack of resources when they request specialized free legal defense, which will be provided immediately, without prejudice to the fact that

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if they are not subsequently recognized the right to it, they must pay to the lawyer the fees accrued for his intervention.”

[...]

[Penal Code, 1995 \(As amended\)](#) ⁴⁰

Art. 173

[...]

2. The person who habitually exercises physical or psychological violence against who is, or has been, his spouse, or a person who is, or has been bound to him, by a similar relationship of affectivity, even without cohabitation, or against descendants, ascendants, or siblings by blood, adoption or affinity, own or of the spouse or partner, or on minors or persons with disabilities in need of special protection who cohabit with him or who are subjected to the parental authority, guardianship, care, foster care or de facto custody of the spouse or partner, or against a person protected by another relationship by virtue of which is integrated into the family nucleus, as well as a person who, due to her special vulnerability, is subject to custody or care in public or private centers, will be punished with the penalty of prison from six months to three years, deprivation of the right to possession and carriage of weapons from three to five years and, when the judge or court deems it appropriate in the interest of the minor or person with disabilities in need of special protection, to special disqualification from the exercise of parental authority, guardianship, care, custody or foster care for a period from one to five years, without prejudice to the penalties that might apply to the crimes in which the acts of physical or psychological violence have materialized.

Penalties will be imposed on their upper half where one, or some acts of violence are perpetuated in the presence of minors, or by using weapons, or take place in the common domicile, or at the victim's home, or are carried out in violation of a penalty of those contemplated in article 48, or a precautionary or security measure, or prohibition of the same nature.

In the cases referred to in this section, probation may also be imposed.

3. In order to appreciate the habitualness referred to in the previous section, the number of acts of violence that are ascertained will be taken into account, as well as the temporal proximity of the same, independently of whether said violence has been exercised on the victims included in this article, or different ones, and that the violent acts have been prosecuted, or not, in previous procedures.

4. Whomever slanders or causes unfair humiliation of a mild character, when the offended person was one of those referred to in Article 173, paragraph 2, will be punished with the penalty of permanent domicile from five to thirty days, always at an address different and away from that of the victim, or to community work from five to thirty days, or to a fine of one to four months, the latter only in the cases in which the circumstances expressed in article 84, paragraph 2, exist.

The insults will only be prosecutable by complaint of the aggrieved person or his legal representative.

Art. 177

Where the crimes described in the preceding articles, in addition to an attack on the moral integrity, cause injury or damage to the life, physical integrity, health, sexual freedom or property of the victim or of a third party, the facts will be punished separately with the penalty corresponding to the offences committed, except when those are already specifically punished by the law.

[Law of Criminal Procedure, 1882 \(As amended\)](#) ⁴¹

Art. 544-ter

1. The Examining Magistrate will issue an order of protection for victims of domestic violence in cases in which, where there is well founded evidence of the commission of a crime or offense against the life, physical or moral integrity, sexual freedom, freedom or security of some of the persons mentioned in article 173.2 of the Penal Code, there is an objective situation of risk for the victim that requires the adoption of some of the protection measures regulated under this article.

2. The protection order will be issued by the judge ex officio or at the request of the victim or person who has with it any of the relationships indicated in the previous section, or of the Public Prosecutor.

⁴⁰ Penal Code, Organic Law No. 10 (23 November 1995, as amended by Organic Law No. 4/2015), available at https://www.wipo.int/wipolex/en/text.jsp?file_id=415252 (last visited December 30, 2018). Unofficial translation by Compendium team.

⁴¹ Law of Criminal Procedure (14 September 1882, as amended up to 6 October 2015 - Consolidated version), available at <https://www.boe.es/buscar/act.php?id=BOE-A-1882-6036> (last visited December 30, 2018). Unofficial translation by Compendium team.

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Without prejudice to the general duty of denunciation provided for in article 262 of this law, the entities or welfare agencies, public or private, that have knowledge of any of the facts mentioned in the previous section shall immediately inform the judge on duty or the Prosecutor's Office in order to initiate or request the procedure for the adoption of the protection order.

3. The protection order may be requested directly to the judicial authority or the Public Prosecutor, or to the Security Forces, the victim assistance offices or the social services or assistance institutions dependent on public administrations. This request must be sent immediately to the competent judge. In case of doubts about the territorial competence of the judge, the judge before whom this request has been presented must initiate and resolve the procedure for the adoption of the protection order, without prejudice to subsequently remit the proceedings to the competent one.

The social services and institutions referred to above will provide victims of domestic violence, to whom the protection order would apply, with immediate assistance, by making available information, forms and, where appropriate, telematic communication channels with the Justice Administration and the Fiscal Ministry.

4. Upon receipt of the request for protection order, the Judge on call, in the cases mentioned in section 1 of this article, will call an urgent hearing to the victim or his legal representative, the applicant and the alleged aggressor, assisted, in his case, by an attorney. The Prosecutor will also be convened.

This hearing may be held concurrently with that provided for in article 505 when its convocation proceeds, with the hearing regulated in article 798 in those cases that are tried in accordance with the procedure provided for in Title III of Book IV of this Law or, in his case, with the act of the trial of minor offences. When, exceptionally, it was not possible to hold the hearing during the after hour duty service, the judge before whom the request was made will summon it in the shortest possible time. In any case, the hearing must be held within a maximum period of seventy-two hours from the presentation of the request. During the hearing, the judge on duty will take the appropriate measures to avoid confrontation between the alleged aggressor and the victim, their children and the other members of the family. For these purposes, he will arrange that his statement at this hearing be made separately.

Once the hearing has been held, the Judge on duty will decide by order, on the request for the protection order, as well as on the content and validity of the measures that it incorporates. Without prejudice to this, the investigating judge may adopt the measures provided for in article 544 bis at any time during the trial of the case.

5. The protection order confers on the victim of the facts mentioned in paragraph 1 an integral protection statute that will include the precautionary measures of civil and criminal nature contemplated in this article, as well as other measures of assistance and social protection established in the legal system.

The protection order shall be enforced before any authority and public administration.

6. Precautionary measures of a criminal nature may consist of any of those provided for in criminal procedural legislation. Their requirements, content and validity will be those established in general in this law. They will be adopted by the examining magistrate attending to the need for full and immediate protection of the victim.

7. The measures of a civil nature must be requested by the victim or her legal representative, or by the Public Prosecutor when there are minor children or persons with reduced judicial capacity, determining its compliance regime and, if applicable, the complementary measures to those that were issued, provided they had not been previously issued by an organ of the civil jurisdiction, and without prejudice to the measures provided for in article 158 of the Civil Code. When there are minors or persons with reduced judicial capacity who live with and depend on the victim, the judge must rule in any case, even ex officio, on the pertinence of the adoption of the aforementioned measures.

These measures may consist in the attribution of the use and enjoyment of the family home, determine the care and custody regime, visits, communication and residence with the minors or persons with reduced judicial capacity, the alimony regime, as well as any disposition that is considered opportune in order to avoid danger or harm to them.

The civil measures contained in the protection order will be valid for a period of 30 days. If within this period, at the request of the victim or his legal representative, a family procedure before the civil jurisdiction is requested, the adopted measures shall remain in force during the thirty days following the presentation of the claim. Within this term the measures must be ratified, modified or left without effect by the judge of first instance who is competent.

8. The order of protection will be notified to the parties, and immediately communicated by the court clerk, through full testimony, to the victim and to the competent public administrations for the adoption of protection measures, whether [the public administrations] provide security, social, legal, sanitary, psychological assistance, or assistance of any other nature. For these purposes, an integrated system of administrative coordination will be established in order to guarantee the agility of these communications.

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9. The protection order will imply the duty to permanently inform the victim about the procedural situation of the person investigated, or of the defendant, as well as about the scope and validity of the precautionary measures adopted. In particular, the victim will be informed at all times of the penitentiary situation of the alleged aggressor. For these purposes, the order of protection will be reported to the Prison Administration.

10. The protection order will be registered in the Central Registry for the Protection of Victims of Domestic and Gender-based Violence.

11. In those cases in which, in the course of criminal proceedings, a situation of risk arises for any of the persons related to the person under investigation, or accused, by any of the relationships indicated in section 1 of this article, the judge or the court hearing the case may issue a protection order in accordance with the provisions of the previous sections.

17. SRI LANKA

[Prevention of Domestic Violence Act, 2005](#)⁴²

[...]

AN ACT TO PROVIDE FOR THE PREVENTION OF ANY ACT OF DOMESTIC VIOLENCE AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

Short Title

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

An aggrieved person to make an application

1. This Act may be cited as the Prevention of Domestic Violence Act, No. 34 of 2005.

2. (1) A person, in respect of whom an act of domestic violence has been, is, or is likely to be, committed (hereinafter referred to as “an aggrieved person”) may make an application to the Magistrate’s Court for a Protection Order, for the prevention of such act of domestic violence.

(2) An application under subsection (1) may be made—

(a) by an aggrieved person ;

(b) where the aggrieved person is a child, on behalf of such child by —

(i) a parent or guardian of the child ;

(ii) a person with whom the child resides;

(iii) a person authorised in writing by the National Child Protection Authority established under the National Child Protection Authority Act, No. 50 of 1998; or

(c) by a police officer on behalf of an aggrieved person.

(3) An application under subsection (1) shall be made in duplicate and shall be substantially in the form set out in Schedule II hereto and shall be made to the Magistrate’s Court within whose jurisdiction the aggrieved person or the relevant person temporarily or permanently resides, or the act of domestic violence has been or is likely to be committed. Short title. An aggrieved person to make an application.

(4) Affidavits of any person who has knowledge of the aforesaid acts of domestic violence may be attached affidavits to the application, in support thereof.

⁴² Prevention of Domestic Violence Act, Law No. 34 (3 October 2005), available at http://www.childprotection.gov.lk/Child_Related_ACTs/Prevention%20of%20Domestic%20Violence%20Act,%20No.%2034%20of%202005.pdf (last visited December 30, 2018).

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Considering the application.

3. Upon an application being made in accordance with the provisions of this Act, the Court shall forthwith consider the application.

Procedure for the issue or refusal of an Interim Protection Order.

4. (1) Upon the consideration of the application and the affidavits, if any, the court shall —

(a) where it is satisfied that it is necessary to issue an Interim Protection Order (hereinafter referred to as an “Interim Order”), until the conclusion of the inquiry into the application, forthwith issue an Interim Order having regard to the provisions of subsection (2), and shall also make an Order for the holding of an inquiry in respect of such application on a date not later than fourteen days from the date of the application; or

(b) where it is satisfied that it is not necessary to issue an Interim Order in the circumstances, make an Order for the holding of an inquiry in respect of such application, on a date not later than fourteen days from the date of the application :

Provided however, that the court may, where it considers it necessary, examine on oath prior to the issue of such Interim Order, any person referred to in subsection (2) of section 2 or any other material witness, as the case may be.

(2) In determining the issue of an Interim Order the court shall take into consideration the urgent need to prevent the commission of any act of domestic violence, and the need to ensure the safety of the aggrieved person.

(3) Upon the issuing of an Order under paragraph (a) or paragraph (b) of subsection (1), as the case may be, the court shall cause Notice to be issued on the respondent, to show cause on the date specified therein, why a Protection Order should not be issued against him.

(4) An Interim Order made under paragraph (a) of subsection (1), together with the Order made under paragraph (a) or paragraph (b) of subsection (1) as the case may be, shall be served on the respondent along with the Notice issued under subsection (3). Where service of such documents cannot, by the exercise of due diligence be effected by the fiscal or other authorized officer, such documents shall be deemed to be served on such respondent if it is posted in a conspicuous place at his usual place of residence.

Interim Order.

5. (1) An Interim Order—

(a) shall, pending the issue of a Protection Order prohibit the respondent from committing or causing the commission of any act of domestic violence;

(b) may, contain any other prohibition or condition specified in sub-paragraphs (a) to (l) of subsection (1) of section 11 where the Court is satisfied, that by reason of the circumstances of the case, and upon evidence given on oath by the aggrieved person or any other person on behalf of the aggrieved person, or any material witness, that such prohibition or condition is necessary to prevent any act of domestic violence.

(2) Where an Interim Order has been made, the Court may where it is satisfied that it is—

(a) in the interest of the parties to do so, order a social worker or a family counselor to counsel the parties and order the parties to attend such counseling sessions.

(b) reasonably necessary to protect and provide for the immediate safety of the aggrieved person, order a social worker, family counselor, probation officer, family health worker or child rights promotion officer to monitor the observance of the Order and submit to Court a report on the date specified for the inquiry into the application in terms of subsection (1) of section 4.

(3) An Interim Order shall remain in force until a Protection Order is issued by the court or such Interim Order is vacated.

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Issue of Protection Order where the respondent appears.

6. (1) Where, on the date specified in the Notice issued under subsection (3) of section 4, the respondent is present in Court, the Court shall proceed to inquire into the application, and consider any evidence previously received along with such further affidavits or oral evidence as it may deem necessary which shall form part of the record of the proceedings.

(2) Where the respondent is not represented by a legal representative, the Court may of its own accord or on the request of the aggrieved person, order —

(a) that the examination of witnesses including the aggrieved person shall not be conducted by the respondent ;

(b) the respondent to state the questions to Court so as to enable the Court to repeat the question accurately to the aggrieved person or witness.

(3) After the inquiry where the Court is satisfied that it is necessary to issue a Protection Order, issue a Protection Order having regard to the provisions of section 8.

(4) Where on the date specified in the Notice issued under subsection (3) of section 4 the respondent appears and does not admit to the act or acts of violence, but does not object to the issue of a Protection Order, the court shall issue a Protection Order having regard to the provisions of section 8.

Issue of protection order when respondent does not appear.

7. (1) Where on the date specified in the Notice issued under subsection (3) of section 4 the respondent does not appear and the Court is satisfied that the Notice has been served on the respondent, the court shall proceed to consider the application on the evidence previously received and such further evidence by way of affidavits or any oral evidence recorded in the absence of the respondent as it may deem necessary, which shall form part of the record of the proceedings.

(2) The Court may upon being satisfied on a consideration of the evidence before it, that it is necessary to issue a Protection Order, issue a Protection Order having regard to the provisions of section 8.

Matters to be taken into consideration in issuing a protection order.

8. In determining whether a Protection Order should be issued or not, the court shall take into consideration the need to prevent the commission of any act of domestic violence and the need to ensure the safety of the aggrieved person.

Protection Order to be served on the respondent.

9. Upon the issuing of a Protection Order the Court shall forthwith cause —

(a) such order to be served on the respondent; and

(b) certified copies of such Order, to be served on the—

(i) aggrieved person ;

(ii) applicant, where the applicant is not the aggrieved person ;

(iii) officers in charge of the police stations within whose jurisdiction the respondent and the aggrieved person reside.

Protection Order.

10. (1) A Protection Order —

(a) shall, prohibit the respondent from committing or causing the commission of, any act of domestic violence;

(b) may, contain any other prohibition specified in subparagraph, (a) to (l) of subsection (1) of section 11, or any supplementary order specified in subsection (1) of section 12 where the court is satisfied that by reason of the circumstances of the case, and upon evidence given on oath by the aggrieved person or any other person on behalf of the aggrieved person as the case may be, or any other material witness, that it is necessary to do so to ensure the safety and well being of the aggrieved person.

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(2) A Protection Order shall remain in force for a period not exceeding 12 months as specified therein.

Prohibitions that an Interim Order or Protection Order may contain.

11. (1) The Court may, by means of an Interim Order or Protection Order prohibit the respondent from :—

- (a) entering a residence or any specified part thereof, shared by the aggrieved person and the respondent;
- (b) entering the aggrieved person's —
 - (i) residence;
 - (ii) place of employment;
 - (iii) school;
- (c) entering any shelter in which the aggrieved person may be temporarily accommodated;
- (d) preventing the aggrieved person who ordinarily lives or has lived in a shared residence from entering or remaining in the shared residence or a specified part of the shared residence;
- (e) occupying the shared residence ;
- (f) having contact with any child of the aggrieved person or having contact with such child other than on the satisfaction of such conditions as it may consider appropriate, where the Court is satisfied that it is in the best interest of such child ;
- (g) preventing the aggrieved person from using or having access to shared resources ;
- (h) contacting or attempting to establish contact with the aggrieved person in any manner whatsoever ;
- (i) committing acts of violence against any other person, whether it be a relative, friend, social worker or medical officer, who may be assisting the aggrieved person;
- (j) following the aggrieved person around as to cause a nuisance ;
- (k) engaging in such other conduct as in the opinion of the Court will be detrimental to the safety, health or well being of the aggrieved person or other person who may require protection from the respondent as the Court may specify in the Protection Order ;
- (l) selling, transferring, alienating or encumbering the matrimonial home so as to place the aggrieved person in a destitute position.

(2) In imposing any prohibition referred to in subsection (1) the Court shall have regard to—

- (a) the need for the accommodation of the aggrieved person or the children (if any) of the aggrieved person and the children (if any) of the respondent ;
- (b) any hardship that may be caused to the respondent or to any other person as a result of the making of the Order.

Supplementary Orders.

12. (1) Where a Protection Order has been made and where the Court is satisfied that it is reasonably necessary to protect and provide for the immediate safety, health or welfare of the aggrieved person the Court may order—

- (a) the police to seize any weapons that the respondent may have in his or her possession ;
- (b) the police to accompany the aggrieved person to any place to assist with the collection of personal property of such person and of any children ;

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(c) the respondent and the aggrieved person to attend mandatory counseling sessions, psychotherapy or other forms of rehabilitative therapy as may be available ;

(d) the aggrieved person if such person so requests, be placed in a shelter or provided with temporary accommodation the location and other details of which shall be kept confidential if necessary ;

(e) a social worker, family counsellor, probation officer or family health worker to monitor the observance of the Protection Order between the aggrieved person and the respondent and submit to Court a report relating thereto, once in every three months.

(f) the respondent to provide urgent monetary assistance to any person, where such respondent has a duty to support such person ;

(g) the respondent to make such payments and provide such facilities, or make such payments or provide such facilities as the case may be, as are necessary to enable the aggrieved party to continue in occupation of any residence in which such aggrieved party will reside during the period of operation of such Order, notwithstanding that the respondent has been prohibited from entering or remaining in such residence by an Order made under section 11.

(2) An Order under paragraphs (f) and (g) of subsection (1) shall only be made after due inquiry and having regard to the financial needs and other resources of the aggrieved person and the respondent:

Provided however such an Order shall not affect the rights of any person under the Maintenance Act, No. 37 of 1999.

(3) The Court may, on the failure of the respondent to make any payment ordered under paragraph (f) of subsection (1) direct an employer of the respondent, to directly pay to the aggrieved person a part or the whole of the remuneration due to the respondent as financial relief that the Court may have ordered.

Orders made with consent of parties.

13. The Court may, with the consent of the parties to the proceedings, make any Order under this Act without proof or admission of guilt and such Order shall not be construed as having been made consequent to an admission of guilt or upon proof of guilt.

Variation or revocation of a Protection Order.

14. (1) A Protection Order may be altered, modified, varied, extended or revoked, on an application made either by the aggrieved person or the respondent, and where the Court is satisfied that there is a change of circumstances that require such alteration, modification, variation, extension, or revocation:

Provided however, no such alteration, modification, variation, extension or revocation, shall be made without hearing both the aggrieved person and the respondent:

Provided further that the Court shall not grant such an application to the aggrieved person unless it is satisfied that the application is made freely and voluntarily

Attendance of respondent and witnesses.

15. The provisions of Chapter V and VI of the Code of Criminal Procedure Act, No. 15 of 1979 shall be applicable for compelling the attendance of the respondent and any person required by the applicant to give evidence, and for requiring the production of any document necessary, for the purposes of this Act.

Spouse to be a competent witness.

16. In any proceedings under this Act a spouse shall be a competent witness against the other spouse.

Right of Appeal.

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17. Any person who is dissatisfied with an Order made by a Magistrate under section 6 or section 7 may prefer an appeal to the High Court established under Article 154P of the Constitution in like manner as if the Order was a final Order pronounced by a Magistrate's Court in a criminal case or matter, and sections 320 to 330 (both inclusive) and sections 357 and 358 of the Code of Criminal Procedure Act, No. 15 of 1979 shall, mutatis mutandis, apply to such appeal:

Provided however, that notwithstanding anything to the contrary in section 323 of the Code of Criminal Procedure Act, No. 15 of 1979 an Order under section 6 or section 7 shall not be stayed by reason of such appeal, unless the High Court for reasons to be recorded directs otherwise:

Provided further that the Magistrate in forwarding the record to the High Court shall retain a copy of his Order for purposes of enforcement.

Enforcement of Order.

18. Where respondent against whom an Interim Order or a Protection Order, as the case may be, has been issued and has failed to comply with such Order, such respondent shall be guilty of an offence and shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding ten thousand rupees or to imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.

Court to adopt procedure in framing charges.

19. Notwithstanding anything contained in the Code of Criminal Procedure Act, No. 15 of 1979, the Court may adopt a procedure as it may seem expedient in respect of the framing of charges.

Persons printing or publishing any matter in certain cases to be punished.

20. Any person who prints or publishes—

- (a) the name or any matter which may make known the identity of an applicant or a respondent in an application under this Act; or
- (b) any matter other than a judgment of the Supreme Court or Court of Appeal, in relation to any proceeding under this Act, in any Court,

shall be punished with imprisonment of either description for a term which may extend to two years or to a fine or to both such imprisonment and fine.

Other actions not barred.

21. Nothing in this Act shall be construed as depriving an aggrieved person of a right if any, to institute a separate civil action or criminal proceeding.

Sinhala text to prevail in case of inconsistency

22. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Interpretation.

23. In this Act unless the context otherwise requires —

“child” means a person who is under the age of 18 years ;

“domestic violence” means—

(a) an act which constitutes an offence specified in Schedule I ;

(b) any emotional abuse,

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committed or caused by a relevant person within the environment of the home or outside and arising out of the personal relationship between the aggrieved person and the relevant person ;

“emotional abuse” means a pattern of cruel, inhuman, degrading or humiliating conduct of a serious nature directed towards an aggrieved person ;

“shared resources” means movable or immovable property which both the aggrieved person and the respondent have habitually used or have had access to ;

“relevant person” in relation to an aggrieved person means,

- (a) (i) the spouse ;
- (ii) ex-spouse ;
- (iii) cohabiting partner ,

of an aggrieved person ;

- (b) (i) the father, mother, grandfather, grandmother, stepfather, stepmother ;
- (ii) the son, daughter, grandson, grand daughter, stepson, stepdaughter ;
- (iii) the brother, sister, half-brother, halfsister, step brother, step-sister ;
- (iv) siblings of a parent ;
- (v) the child of a sibling ;
- (vi) child of a sibling of a parent,

of an aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person ;

“respondent” in relation to a Protection Order or an Interim Order means the relevant person against whom such Order is sought or made.

[...]

18. ST. KITTS AND NAVIS

Domestic Violence Act, 2014 ⁴³[

[...]

AN ACT to provide greater protection for victims of domestic violence and to make provision for the granting of protection orders and for matters incidental thereto and connected therewith.

[...]

PART I
PRELIMINARY

1. Short title and commencement.

(1) This Act may be cited as the Domestic Violence Act, 2014.

(2) This Act shall come into operation on a day to be fixed by the Minister by Order published in the Gazette.

2. Interpretation.

In this Act, unless the context otherwise requires:

⁴³ Domestic Violence Act, No. 22 (10 November 2014), please see Annex VI.

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“applicant” means a person who applies or on whose behalf an application is made for an order pursuant to section 5;

“approved social worker” means a person experienced and qualified in social work and approved by the Minister in writing;

“child” means a person under the age of eighteen years who:

(a) normally resides with the applicant or, whether or not the child is a child of the applicant and the respondent or either of them; or

(b) is an adopted child, a stepchild, or a child who is treated as a child of the family; or

(c) is related by consanguinity or affinity to either the applicant or the respondent;

or

(d) is in the care and protection of the applicant or the respondent; or

(e) is a person of whom either the applicant or the respondent is a guardian; or

(f) is or has been a member of a shared household; and

(g) is not a person who is or has been married; “Court” means the Family Court;

“cohabitant” means a person who is living or has lived with a person of the opposite sex as a husband or wife although not legally married to that person;

“dependant” means a person over the age of eighteen years who by reason of physical or mental disability, age or infirmity is reliant on either the applicant or the respondent for his or her welfare;

“Director” means the Director of Social/ Family Services;

“domestic relationship” means a relationship between an applicant and a respondent in any of the following ways:

(a) they are or were married to each other, including marriage according to any law, custom or religion;

(b) they are cohabitants or were cohabitants;

(c) they are the parents of a child or are persons who have or had parental responsibility for the child, whether or not at the same time;

(d) they are family members related by consanguinity, affinity or adoption;

(e) they would be family members related by affinity if the persons referred to in paragraph (b) were, or were able to be married to each other;

(f) they are or were in an engagement, dating or visiting relationship which includes but is not limited to an actual or perceived romantic, intimate or sexual relationship of any duration; or

(g) they share or shared the same household or residence;

“domestic violence” means any controlling or abusive behaviour that harms the health, safety or well-being of a person or any child and includes but is not limited to the following:

(a) physical abuse or threats of physical abuse;

(b) sexual abuse or threats of sexual abuse;

(c) emotional, verbal or psychological abuse;

(d) economic abuse;

(e) intimidation;

(f) harassment;

(g) stalking;

(h) damage to or destruction of property; or

(i) entry into the applicant’s residence without consent, where the parties do not share the same residence;

“economic abuse” means the avoidance of financial obligations owed to the applicant and child or a dependant of the respondent, including mortgage or rental obligations;

“emergency monetary relief” means compensation for monetary losses suffered by an applicant and any child at the time of the issue of an interim protection order as a result of the domestic violence, including:

(a) loss of earnings;

(b) medical and dental expenses;

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- (c) moving, relocation and accommodation expenses; or
- (d) household necessities and other interim expenses;

“emotional, verbal and psychological abuse” means degrading or humiliating conduct by the respondent to the applicant, including:

- (a) repeated insults, ridicule or name calling; (b) repeated threats to cause emotional pain;
- (c) the repeated exhibition of behaviour which constitutes serious invasion of the applicant’s privacy, liberty, integrity or security;

“firearm” shall have the meaning assigned to it under the Firearms Act, Cap. 19.05; “harassment” means engaging in a pattern of conduct that induces the fear of harm, including:

- (a) watching or loitering outside of or near the building or place where the applicant resides, works or carries on business, studies or happens to be;
- (b) repeatedly making telephone calls or inducing another person to make telephone calls to the applicant, whether or not conversation ensues;
- (c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the applicant;

“interim protection order” means an order made pursuant to section 6;

“intimidation” means uttering, conveying or causing any person to receive a threat which induces fear;

“Judicial Officer” means a Judge or a Magistrate;

“member of the household” means a person who normally resides in the same dwelling house as the applicant or the respondent and is related to the applicant or respondent by blood marriage or adoption;

“Minister” means the Minister responsible for Social Services;

“order” includes an interim protection order and a final protection order; “police officer” has the meaning assigned to it in the Police Act Cap. 19.07; “physical abuse” means any act of assault;

“prescribed” means prescribed by the Regulations made pursuant to this Act;

“probation officer” means an officer appointed as such by the Public Services Commission;

“protection order” means an interim order issued under section 6 and a final protection order issued under section 12;

“Registrar” means the Registrar of the Court;

“respondent” means a person who is or has been in a domestic relationship with the applicant and against whom the applicant has applied for an order under this Act;

“sexual abuse” means any sexual conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the applicant;

“shared household” means a household where the applicant and the respondent live or lived together in a domestic relationship;

“spouse” includes a former spouse, a cohabitant or a former cohabitant; “stalking” includes repeatedly following, pursuing or accosting the applicant; “victim” means any person who alleges to have been subjected to an act of domestic violence;

“visiting relationship” means a non co-habitational relationship which is otherwise similar to the relationship between husband and wife.

3. Duty to inform victim and applicant of rights.

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(1) A police officer, at the scene of an incident of domestic violence, or when the incident of domestic violence is reported shall:

- (a) inform the victim of his or her rights in the form set out in Schedule I; and
- (b) hand the victim a printed copy of the information relating to the right of the victim pursuant to paragraph (a).

(2) Upon the report of a breach of a protection order to a police officer by a person or a victim, the police officer shall inform the person or the victim of the right to lodge a concurrent complaint against the respondent if a criminal offence appears to have been committed against the person, the victim or a child.

(3) The Director may inform any person or a victim of the relief available pursuant to this Act.

4. Arrest by police officer without warrant.

Subject to section 30, a police officer may arrest any person at the scene of an incident of domestic violence, without a warrant, whom he or she reasonably suspects of having committed an act of domestic violence.

PART II
PROTECTION AGAINST DOMESTIC VIOLENCE

5. Person entitled to apply for a protection order.

(1) A person referred to in subsection (2) may apply to the Court, in the form set out as Form I in Schedule II, for a protection order on the grounds that the respondent engaged in domestic violence.

- (2) An application for a protection order referred to in subsection (1), may be made by: (a) the spouse of the respondent;
- (b) a member of a shared household, either on his or her own behalf or on behalf of any other member of the shared household; (c) a child;
- (d) a dependant;
- (e) a parent or sibling by consanguinity or affinity of either the spouse or respondent not being a member of the shared household;
- (f) a person who has a child in common with the respondent; and
- (g) a person who is or has been in a visiting relationship with a person of the opposite sex.

(3) An application made pursuant to subsection (1) may be brought on behalf of the applicant by any other person, who has a material interest in the well-being of the applicant, including a police officer, the Director, a probation officer or an approved social worker, except that the application shall be brought with the consent of the applicant, but such consent shall be dispensed with in circumstances where the applicant is:

- (a) a child;
- (b) a dependant;
- (c) physically or mentally incapacitated by unsoundness of mind or a disability; (d) unconscious;
- (e) under the influence of intoxicating liquor or is misusing drugs; or
- (f) a person whom the Court is satisfied is unable to provide the required consent.

(4) Pursuant to subsection (3) (a), a child or dependant may apply for a protection order through:

- (a) a person with whom the child or dependant ordinarily or periodically resides or resided with or is reliant upon for his or her welfare or any adult member of his or her household;
- (b) a parent or guardian or a person who is in loco parentis to the child; or
- (c) the Director or other person who has parental responsibility for the child.

(5) The application referred to pursuant to subsection (1) may be brought outside the ordinary hours of the Court or on a day which is not an ordinary day for the sitting of the Court.

(6) The application for an order under this Act must be supported by evidence on affidavit unless the Court otherwise orders and an affidavit must include:

- (a) the facts on which the application is based;

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- (b) the nature of the order applied for; and
- (c) the name of the police station at which the applicant is likely to report any breach of the order.

(7) The application made pursuant to this Act may be accompanied by supporting affidavit of any person who has knowledge of the matter concerned.

(8) The applicant may request that his or her physical address be omitted from the protection order.

(9) The application and affidavits shall be lodged with the Registrar who shall forthwith submit the application and the affidavits for consideration of the Court.

(10) In considering an application made pursuant to subsection (1), the Court:

- (a) may require further oral evidence or evidence by affidavit; and
- (b) shall record any oral evidence referred to in paragraph (a).

6. Power of Court to issue interim protection order.

(1) If the Court is satisfied that the respondent is committing, or has committed or is likely to engage in conduct that would constitute an act of domestic violence, the Court shall issue an interim protection order against the respondent, in the form set out as Form II in Schedule II.

(2) The Court may issue an interim protection order, pending the hearing and determination of the proceedings for a protection order, if it appears necessary or appropriate to do so in order to ensure the safety and protection of the applicant.

(3) In exercising its powers pursuant to this section, the Court shall not refuse to issue an interim protection order by reason of the fact that the respondent has not been given notice of the proceedings.

(4) An interim protection order issued pursuant to this section must be served on the respondent and must call upon the respondent to show cause on the return date specified in the interim protection order as to why the interim protection order should not be confirmed.

(5) The return date referred to in subsection (4) must not be less than ten days after the date of the order.

(6) An interim protection order may be made for such period of time as the Court considers necessary but shall not exceed twenty-eight days.

(7) An interim protection order shall have no effect until it has been served on the respondent in the manner provided for in section 10 (1).

7. Terms of Protection Order.

(1) A protection order issued by the Court pursuant to this Act may prohibit the respondent from:

- (a) committing any act of domestic violence;
- (b) enlisting the help of any person to commit any act of domestic violence;
- (c) entering the shared household, except that the Court shall only impose this prohibition only if it appears to be in the interests of the applicant or any child or dependant;
- (d) entering a specified part of the shared household; (e) entering the residence of the applicant;
- (f) entering the place of employment of the applicant;
- (g) preventing the applicant, any child or dependant who ordinarily resides or has resided in the shared household from entering or remaining in the shared household or a specified part of the shared household;
- (h) taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in, or is reasonably used by the applicant as the case may be;
- (i) approaching the applicant within a specified distance; or
- (j) committing any other act as specified in the order.

(2) In addition to the prohibitions referred to in subsection (1), the Court may direct that:

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- (a) any or all of the conditions of an order be applied for the benefit of a child or dependant;
- (b) the respondent:
- (i) return to the applicant specified property that is in his or her possession or under his or her control;
 - (ii) pay emergency monetary relief to the applicant;
 - (vii)⁴⁴ pay interim monetary relief to the applicant for the benefit of a child or dependant, where there is no existing order relating to maintenance until such time as an obligation for support is determined, pursuant to any other law;
 - (viii) immediately vacate any shared household for a specified period, whether or not the shared household is owned or leased by the respondent and the applicant, or solely owned or leased by the respondent or the applicant;
 - (v) make or continue to make payments in respect of rent or mortgage payment for premises occupied by the applicant having regard to the financial needs and resources of the applicant and the dependant; or
 - (vi) the applicant, or both, receive professional counselling or therapy from any person or agency or from a programme which is approved by the Director in writing.
- (3) The Court may impose any additional conditions which it considers reasonably necessary to provide and protect the safety of the applicant, any child or dependant, including but not limited to an order that a police officer shall accompany the applicant to a specified place to supervise the collection of personal property.
- (4) The Court may direct that any or all of the prohibitions or conditions contained in an order apply for the benefit of a child or dependant.
- (5) The Court may:
- (a) refuse the respondent contact with any child if it is shown that such contact is not in the best interests of the child; or
 - (b) order structured contact with any such child.
- (6) The Court shall not refuse to issue an order under this Act on the basis that:
- (a) a single act has been committed or a single threat has been made by the respondent; or
 - (b) the acts or threats when viewed in isolation, appear to be minor or trivial.
- (7) Where pursuant to subsection (2) (b) (vi) the Court makes an order which includes counselling or therapy, the order must specify:
- (a) that the Court receive written notification from the counsellor or therapist of sessions missed by the applicant, the respondent or both, as the case may be, without reasonable excuse; and
 - (b) the date by which the counsellor or therapist shall submit a report to the Court in respect of the counselling or therapy.
- (8) Where the Court makes an order which includes a direction that the respondent:
- (a) vacate any shared household; or
 - (b) return to the applicant specified property that is in his or her possession or control,
- the Court may, in the same order, if it considers necessary, direct a police officer to remove the respondent either immediately or within a specified time from the shared household, or to accompany the applicant, as the case may be, either immediately or within a specified time to specified premises, in order to supervise the removal of property belonging to the applicant and to ensure the protection of the applicant.
- (9) A protection order may be for such period as the Court considers necessary but shall not exceed three years.
- (10) Where an order contains any prohibitions or directions, the Court shall specify different periods, none of which shall exceed three years, as the period for which each prohibition or direction shall remain in force.

8. Matters to be considered by Court.

In determining whether or not to impose one or more of the prohibitions or issue a direction specified in section 7, the Court shall have regard to the following:

⁴⁴ Numbering as in the original document.

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- (a) the nature, history, or pattern of the domestic violence that has occurred and whether a previous interim protection order or a final protection order has been issued;
- (b) the need to protect the applicant and any other person for whose benefit the order has been granted from further domestic violence;
- (c) the welfare of any child;
- (d) the accommodation needs of the applicant and any other person;
- (e) the hardship that may be caused to the applicant as a result of making the order;
- (f) the income, assets and financial obligations of the respondent, the applicant and any other person affected by the order;
- (g) the need to preserve and protect the institution of marriage and other relationships whilst affording protection and assistance to the family as a unit; and
- (h) any other matter, that in the circumstances of the case, the Court considers relevant.

9. Seizure of firearm and dangerous weapons.

(1) The Court may make an order directing a police officer to seize any firearm or dangerous weapon in the possession of the respondent, if the affidavit made pursuant to section 5 (3) contains information to the effect that:

- (a) the respondent has threatened or expressed the intention to kill or injure any person in a domestic relationship, including himself or herself whether or not by means of the firearm or dangerous weapon; or
- (b) possession of the firearm or dangerous weapon is not in the best interests of the respondent or any other person as a result of the respondent's:
 - (i) state of mind or mental condition;
 - (ii) inclination to violence, whether a firearm or a dangerous weapon was used in the violence or not; or
 - (iii) the use of or dependence on intoxicating liquor or drugs.

(2) The Court shall direct the Registrar to refer a copy of the affidavit made pursuant to section 5 (3) to the Commissioner of Police for consideration in relation to the FirearmsAct, if the Court had ordered the seizure of any firearm pursuant to this Act.

10. Service of notice of proceedings.

(1) Upon an application for a protection order pursuant to section 5 (1) and the granting of an interim protection order by the Court, a copy of the application and the interim protection order, together with the notice of the date on which, and the time at which the respondent is to appear before the Court to show cause as to why the interim protection order shall not be confirmed, shall be served on the respondent.

(2) A notice of the proceedings pursuant to subsection (1) shall be issued in the form set out as Form III in Schedule II.

(3) Where an application is filed in respect of a child or dependant, a copy of the application, together with notice of the date on which, and the time and place at which, the application is to be heard, shall as soon as practicable be served on the parent or guardian of the child or dependant or other person with whom the child or dependant ordinarily resides or resides with on a regular basis.

(4) A notice of proceedings which is issued and served under this section shall be deemed to be a summons that is duly issued and served pursuant to the Rules of the Court made under section 43 and shall compel the respondent to appear in Court to answer to the application.

(5) A notice of proceedings issued under this Act may be served on the respondent or his or her agent and the Court shall receive proof of service by affidavit in the form set out as Form IV in Schedule II.

(6) Where the hearing of an application is adjourned because the application and notice of the proceedings have not been served on the respondent, the time and place fixed by the Court for the adjourned hearing, shall be the date, time and place stated in the new notice of proceedings.

11. Service other than personal service.

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(1) Where the Court has not served notice of proceedings pursuant to section 10 or the interim protection order on the respondent personally, it may make an order for substituted service of the notice of the proceedings or interim protection order, as the case may be.

(2) For the purpose of subsection (1) “substituted service” means service:

(a) by registered post to the last known address of the respondent;

(b) by leaving the document at the last known address of the respondent or his or her closest relative;

(c) at the workplace of the respondent;

(d) by advertisement in a newspaper of general circulation, which service is deemed to have been effected at midnight on the date of the later advertisement, the cost to be borne by the applicant; or

(e) provided in such other manner as the Court may direct.

12. Filing of affidavits.

(1) The respondent shall, before the return date, file with the Registrar supporting affidavits showing cause as to why the interim protection order must not be confirmed.

(2) A copy of the affidavits of the respondent shall forthwith be served on the applicant. (3) The applicant, upon receipt of the affidavits may, before the return date, file a replying affidavit together with any supporting affidavits with the Registrar in which shall be stated the reasons why the interim protection order must be confirmed.

(4) A copy of the replying affidavit of the applicant shall forthwith be served on the respondent.

(5) On the return date, the Registrar shall submit to the Court the: (a) application for the protection order;

(b) the interim protection order granted;

(c) any supporting affidavits made by the respondent; and

(d) any replying affidavits made by the applicant.

13. Power to issue final protection order.

(1) Where notice of the proceedings has been served on the respondent in accordance with section 10 or 11 and the respondent fails to appear in person at the time fixed for the hearing, the Court may:

(a) proceed to hear and determine the matter in the absence of the respondent and issue a final protection order in the form set out as Form V in Schedule II; or

(b) if the Court is satisfied, having regard to the materials before it, that it is appropriate to do so, adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the Court.

(2) If the applicant or the person on whose behalf the application is made does not appear either in person or is not represented by an attorney-at-law, on the return date as stated pursuant to section 6 (4) and (5) and the respondent appears in Court, the Court may:

(a) dismiss the application;

(b) having received a reasonable excuse for the non-appearance of the applicant or other person, adjourn the hearing on such terms as it considers just; or

(c) where it is satisfied, having regard to the submissions before it, that it is appropriate for evidence to be given by affidavit pursuant to this section, it may so direct, but the Court shall, on the application of any other party, order the attendance for cross examination of the person making such affidavit.

(3) If the respondent appears on the return date in order to show cause as to why the interim protection order should not be issued or confirmed and the applicant or the person on whose behalf the application is made also appear the Court must proceed:

(a) to hear the matter and consider any evidence previously received under section 5 (6) and (7); and

(b) to consider such further affidavits or oral evidence as it may direct, which shall form part of the record of the proceedings.

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(4) At the hearing of the matter, the Court may:

- (a) decide the matter on the papers in the absence of either or both of the parties;
or
- (b) refer the matter for oral evidence.

(5) At the conclusion of the hearing pursuant to subsection (4) (a) or (b), the Court:

- (a) may confirm, amend, or set aside the interim protection order; and
- (b) shall issue a final protection order in the form set out as Form V in Schedule II.

(6) The Registrar shall forthwith notify the parties of the result and shall:

- (a) serve the original final protection order referred to in subsection (5) (b) on the respondent;
- (b) serve a certified copy of the final protection order referred to in subsection (5) (b) on the applicant.

(7) A final protection order shall be for such period as the Court considers necessary but shall not exceed three years.

(8) Where a final protection order contains any prohibitions or directions, the Court may specify different periods, none of which shall exceed three years, as the period for which each prohibition or direction shall remain in force.

14. Explanation of orders.

Where the Court proposes to make an interim protection order or a final protection order and the respondent is before the Court, the Court shall explain to the respondent:

- (a) the purpose, terms and effect of the order;
- (b) the consequences of failing to comply with the order; and
- (c) the means by which the order may be varied or revoked.

15. Respondent to have notice of final protection order.

A respondent shall not be bound by a final protection order issued pursuant to section 13:

- (a) if he or she was not present at the time of the making of the order; or
- (b) if the order has not been served on him or her personally or in accordance with section 11.

16. Variation and revocation of orders.

(1) Where an order is in force, a party to the proceedings in respect of whom the order was made may make an application to the Court in the form set out as Form VI in Schedule II, for an order to vary or revoke the order that is in force.

(2) On an application made pursuant to subsection (1), the Court may by order, vary or revoke the order.

(3) A copy of an application made under this section must be served on each person who was a party to the proceedings in respect of which the original order was made.

(4) In determining whether to vary or revoke an order and issue an order in the form set out as Form VII in Schedule II, the Court shall have regard to the matters specified in section 8.

17. Service of protection order.

Where an interim protection order or a final protection order is made or varied by the Court:

- (a) the Registrar shall arrange for the order to be drawn up in the form set out as Form VII in Schedule II and filed with the Court; and
- (b) the Court shall serve a copy of the order on:
 - (i) the respondent;
 - (ii) any other person to whom the order is to apply whether or not the person is a party to the proceedings; and
 - (iii) the police officer in charge of the police station located nearest to the area where the respondent or the applicant resides.

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18. Breach of protection order.

(1) A person against whom an order has been made or to whom a direction has been issued by the Court, commits an offence if that person:

(a) has notice of the order or direction; and

(b) contravenes any provision of the order or fails to comply with the direction. (2) A person who commits an offence under subsection (1) is liable:

(a) on a first summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding three months;

(b) on a second summary conviction, to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or both;

(c) on any subsequent summary conviction, to a period of imprisonment not exceeding five years.

(3) Where an order contains a direction of the Court pursuant to section 7 that the respondent seek counselling or therapy and it is brought to the attention of the Court that the respondent has refused or neglected to comply with such a direction and the Court finds that such refusal or neglect was unreasonable, the respondent commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

19. An application for an occupation order.

(1) An application for an occupation order may be made to the court where a prescribed person is granted a protection order under this Act.

(2) For the purposes of subsection (1) of this section an application for an occupation order may be made by any of the persons that share the same household residence.

20. Grant of occupation order.

(1) Upon receipt of the application referred to in subsection (1) of section 19 of this Act, the court may make an occupation order granting the applicant the right to live in the household residence of the respondent if it is necessary for the protection or is in the best interest of the applicant.

(2) An occupation order may be granted for such period, and on such terms and conditions as the court thinks fit.

(3) Before granting an occupation order under subsection (1) of this section, the court shall direct that notice be given to any person who has an interest in the property that is to be affected by the occupation order.

(4) The person referred to in subsection (3) of this section shall, after the notice has been served on him or her, be heard in the matter of the application for the occupation order as a party to that application.

21. Effect of occupation order.

(1) The person to whom the occupation order relates shall be entitled, to the exclusion of the respondent, personally to occupy the household residence to which the occupation order relates.

(2) Where the household residence in respect of which the occupation order is made is being rented by the respondent then the court shall order the respondent to continue paying the rent for the duration the occupation order remains in force.

(3) On or after making an occupation order the court may make an order granting to the applicant the use, for a specified period, and subject to any terms and conditions as the court thinks fit, all or any of the following:

(a) furniture;

(b) household appliances; (c) household effects;

in the household residence or other premises to which the occupation order relates.

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22. Grant of occupation order on an ex parte application.

(1) The court may, upon an ex parte application, grant an occupation order if it is satisfied that

- (a) the respondent has used violence against, or caused physical, or mental injury to the applicant; and
- (b) the delay that would be caused by proceeding on notice could or might expose the applicant to physical injury.

(2) An occupation order granted under subsection (1) of this section shall be of an interim nature, and the respondent may at any time apply to the court to vary or discharge the order.

(3) An occupation order made on an ex parte application while the applicant and the respondent are living together in the same household residence shall expire on the discharge of the order by the court or at the expiration of a period of seven days from the date on which the occupation order is made.

23. Application for tenancy order.

(1) An application for a tenancy order may be made to the court where a prescribed person is granted a protection order under this Act.

(2) An application for a tenancy order made under this section may be made by any of the persons specified in subsection (2) of section 19 of this Act.

24. Grant of tenancy orders.

(1) Upon receipt of the application referred to in subsection (1) of section 23 of this Act, the court may grant a tenancy order vesting in the applicant the tenancy of any dwelling house which, at the time of granting the order,

- (a) the respondent is either the sole tenant, or a tenant holding jointly, or a tenant holding in common with the applicant; and
- (b) is the household residence of the applicant or the respondent.

(2) Subject to subsections (3) and (4) of this section the court may grant a tenancy order if it is satisfied that the order is necessary for the protection or is in the best interest of the applicant.

(3) Before granting a tenancy order under subsection (1) of this section, the court shall direct that notice be given to any person who has an interest in the property that is to be affected by the tenancy order.

(4) The person referred to in subsection (3) of this section shall, after the notice has been served on him or her, be entitled to appear and be heard in the matter of the application for the tenancy order as a party to that application.

25. Effect of tenancy order.

(1) Upon the grant of a tenancy order, the applicant shall, unless the tenancy is sooner determined, become the tenant of the household residence subject to the terms and conditions of the tenancy in force at the time of the making of the order, and the respondent shall cease to be the tenant.

(2) A tenancy order shall have effect and shall be enforced as if it were an order of the court for possession of the land granted in favour of the applicant.

(3) Nothing in this Act or in a tenancy order shall

- (a) limit or affect the operation of any enactment or rule of law for the time being applicable to a tenancy to which a tenancy order applies, or to the household residence held under the tenancy; or
- (b) authorise the court to vary, except by vesting the tenancy pursuant to this section, or revesting the tenancy pursuant to section 27 of this Act, any express, or implied term, or condition of the tenancy.

26. Grant of tenancy orders on an ex parte application.

(1) The court may, upon an ex parte application, grant a tenancy order if it is satisfied

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that

- (a) the respondent has used violence against, or caused physical or mental injury to the applicant; and
- (b) the delay that would be caused by proceeding on notice could or might expose the applicant to physical injury.

(2) A tenancy order granted under subsection (1) of this section shall be of an interim nature, and the respondent may at any time apply to the court to vary or discharge the order.

(3) A tenancy order which is made on an ex parte application while the applicant and the respondent are living together in the same household residence shall expire on the discharge of the order by the court or at the expiration of a period of seven days from the date on which the order is made.

27. Revesting order.

(1) The court may, upon the application

- (a) of the applicant or the respondent; or
- (b) of the personal representative of the applicant or the respondent;

make a revesting order revesting the tenancy in the respondent.

(2) Upon the making of a revesting order, the respondent shall, unless the tenancy is sooner determined, become the tenant of the household residence subject to the terms and conditions of that tenancy.

28. Rehabilitation orders.

(1) Where a person is convicted of an offence under this Act, the court may, instead of imposing a sentence, make a rehabilitation order programme or rehabilitation programme.

(2) A rehabilitation order shall only be made under the following circumstances:

- (a) where the person is a first time offender under this Act and has no previous convictions for such offences;
- (b) where the convicted person has not previously breached any order made under this Act; or
- (c) where a suitable programme of education and training is available for such persons.

(3) The court shall, before making a rehabilitation order under this section, have regard to any submission and representations by the prosecution and the defence.

(4) A rehabilitation order may be made subject to such conditions as the court may think fit to impose.

(5) Where the person in respect of whom a rehabilitation order is made fails to comply with the conditions attached to the order, the court may, after holding an inquiry, terminate the rehabilitation order and pass sentence in accordance with the provisions of this Act.

PART III

POLICE POWERS OF ENTRY AND ARREST

29. Duties of police officers

(1) A police officer shall respond to every complaint or report alleging domestic violence whether or not the person making the complaint or the report is the victim.

(2) A police officer responding to a domestic violence complaint shall complete a domestic violence report which shall form part of a Domestic Violence Register to be maintained by the Commissioner of Police in the prescribed manner.

(3) A domestic violence report must be in the form set out as Form VIII in Schedule II and must include but not be limited to:

- (a) the name of the parties;
- (b) the relationship and sex of the parties;

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- (c) information relating to the history of domestic violence between the parties; (d) the date and time the complaint was received;
- (e) the type of the abuse and the weapon used, if any.

30. Issue of warrant.

Where a judicial officer is satisfied, by information on oath, that:

(a) there are reasonable grounds to suspect that a person on a premises has suffered or is in imminent danger of physical injury at the hands of another person in a situation amounting to domestic violence and needs assistance to deal with or prevent the injury; and

(b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person in paragraph (a),

the judicial officer may issue a warrant in writing authorising a police officer to enter the premises specified in the warrant at any time within twenty four hours after the issue of the warrant and subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace or to protect life or property.

31. Police powers of arrest without warrant.

(1) A police officer may act in accordance with the provisions of the Police Act, Cap.

19.07 where he or she has reasonable cause to believe that a person is engaging in or attempting to engage in conduct which amounts to physical violence and failure to act immediately may result in serious physical injury or death.

(2) This section does not authorise the entry onto premises by a police officer, for the purpose of any search or the arrest of any person, otherwise than in connection with the conduct referred to in subsection (1).

(3) Where a police officer exercises a power of entry pursuant to subsection (1), he or she shall immediately submit a written report to the Commissioner of Police, through the head of his or her division where the incident occurred, and the report shall contain:

(a) the reasons for entering the premises without a warrant;

(b) the offence being committed or about to be committed; and

(c) the manner in which the investigation was conducted and the measures taken to ensure the protection and safety of the person at risk.

(4) The report referred to in subsection (3) must be submitted to the Director of Public Prosecutions by the Commissioner of Police within seven days of its receipt by the Commissioner of Police.

(5) Where a complaint is made against a police officer by a person resident in a premises alleging that the entry of the police officer onto the premises pursuant to subsection (1) was unwarranted, the Commissioner of Police shall investigate the complaint and submit a copy of its report to the Commissioner of Police and the Director of Public Prosecutions within fourteen days of the complaint having been made.

(6) Where the investigation of the Commissioner of Police finds that entry made pursuant to subsection (1) was unwarranted, the Commissioner of Police shall also make and keep a report and such report may form the basis of disciplinary action against the police officer.

32. Duty of police officer to assist victims.

Where a police officer has entered on to premises pursuant to sections 4, 30 and 31 (1), the police officer shall:

(a) assist a person who has suffered injury;

(b) ensure the welfare and safety of a child or dependant who may be on the premises; and

(c) prevent any further breach of the law.

33. Warrant of arrest and procedure upon arrest of respondent where Court issues interim protection order.

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(1) In granting an interim protection order pursuant to section 6, the Court may:

- (a) issue a warrant for the arrest of the respondent, in the form set out as Form IX in Schedule II; or
- (b) suspend the execution of such a warrant, subject to compliance with any prohibition, condition, obligation or order imposed under section 7.

(2) The warrant referred to in subsection (1) shall remain in force until the interim protection order is set aside.

(3) A police officer shall:

- (a) execute a warrant of arrest upon its production and receipt of an affidavit in the form set out as Form X in Schedule II wherein it is stated that the respondent has breached any prohibition, condition or obligation or order imposed pursuant to section 7; or
- (b) arrest the respondent upon receipt of an affidavit by the applicant in the form set out as Form X in Schedule II wherein it is stated that:
 - (i) an interim protection order has been issued pursuant to section 6 or that a final protection order has been issued pursuant to section 13;
 - (ii) a warrant of arrest for the respondent has been issued; (iii) the warrant of arrest has been lost or destroyed; and
 - (iv) the respondent has breached any prohibition, condition, obligation or order imposed pursuant to section 7.

(4) The Court shall issue the applicant with a second or further warrant of arrest upon the applicant filing an affidavit in which it is stated that:

- (a) the respondent has not been arrested; or
- (b) the warrant of arrest issued has been lost or destroyed.

- (5) Subject to this Act, the provisions of any other Act relating to:
- (a) the form and manner of execution of warrants of arrest;
 - (b) the arrest;
 - (c) the detention, search, release from custody; and
 - (d) the criminal prosecution of the respondent;

shall apply with the necessary changes applicable in respect of warrants of arrest issued pursuant to subsection (1).

(6) A respondent arrested pursuant to subsection (3) shall:

- (a) not be released, unless:
 - (i) a Court orders the release; and
 - (ii) the respondent, having been given a reasonable opportunity to do so, adduces evidence which satisfies the Court that the interests of justice permit his or her release from detention in custody;
- (b) be brought before the Court as soon as reasonably possible, but not later than:
 - (i) forty eight hours after arrest; or
 - (ii) at the end of the first Court date, after the expiry of the forty eight hours, if the forty eight hours expire outside the ordinary court hours or on a day which is not an ordinary court day; and
- (c) be criminally charged with:
 - (i) an offence referred to in section 47; and
 - (ii) any other offence resulting from a complaint lodged by the applicant against the respondent.

34. Powers of arrest where a final protection order is in force.

Where a final protection order is in force and a police officer believes on reasonable grounds that the respondent has committed or is committing a breach of the final protection order, he or she may arrest and detain the respondent without a warrant.

35. Existing criminal law to apply.

(1) Subject to subsection (2), where a person is arrested pursuant to section 30 or 31, the person shall be charged in accordance with the relevant provisions of the criminal law for committing or attempting to commit any of the offences and shall be dealt with accordingly.

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(2) Where upon hearing the evidence pursuant to section 13 for the granting of a final protection order, the Court is satisfied that:

(a) the incident was an isolated one;

(b) there are circumstances which make it desirable to preserve the family unit; and

(c) the conduct complained of is not sufficiently grave to warrant the imposition of the order or the penalty, as the case may be;

the Court may, with the consent of the applicant, withhold the granting of a final protection order or the imposition of any penalty as prescribed by law and require the respondent to enter into a bond of good behaviour for a period not exceeding six months.

(3) Where a bond of good behaviour has been entered into pursuant to subsection (2), the Court may prescribe such additional conditions as follows:

(a) that the parties receive professional counselling, including family counselling; (b) that the parties report to a probation officer at certain fixed intervals; or

(c) that the matter be reviewed by the Court within three months.

(4) A bond of good behaviour entered into pursuant to subsection (2) shall be forfeited if the Court is satisfied that:

(a) the respondent has continued to engage in conduct amounting to domestic violence against the applicant;

(b) based on a report from a probation officer, the Director, an approved social worker or a police officer, domestic violence is likely to be perpetrated against the applicant; or

(c) the applicant has become fearful of the respondent to the extent that he or she is no longer willing to continue the domestic relationship.

PART IV
MISCELLANEOUS

36. Conduct of proceedings.

(1) The following persons may be present during the hearing of any proceedings pursuant to this Act:

(a) an officer of the Court;

(b) parties to the proceedings and their attorneys-at-law; (c) witnesses; or

(d) any other person permitted by the judicial officer to be present.

(2) A witness shall leave the Court room if asked to do so by the judicial officer.

(3) This section shall not limit any other power of the Court to hear proceedings in camera or to exclude any person from the Court.

(4) Where an application is made on behalf of a child, the parent or guardian of that child or the person with whom the child ordinarily resides with on a regular basis shall be entitled to be a party to the proceedings.

(5) This section shall not prevent a child, on whose behalf an application for an order is made, from being heard in the proceedings and where the child expresses his or her views, the Court shall take account of those views having regard to the age and maturity of the child and the ability of the child to express his or her views.

37. Evidence.

In any proceedings pursuant to this Act, other than criminal proceedings, the Court may receive such evidence as it thinks fit whether it is otherwise admissible in a court of law.

38. Standard of proof.

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Every question of fact arising in any proceedings pursuant to this Act, other than criminal proceedings shall be decided on a balance of probabilities.

39. Restriction of publication of reports.

(1) Subject to subsections (3) and (4), a person shall not publish any report of proceedings pursuant to this Act, other than criminal proceedings, except with the leave of the Court.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to a term of imprisonment not exceeding six months.

(3) This section does not limit:

(a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(b) the power of the Court to punish any contempt of Court.

(4) This section shall not apply to the publication of any report in any publication that:

(a) is of a bona fide professional or technical nature; or

(b) is intended for circulation among members of the legal or medical profession, officers of the public service, police officers, psychologists, marriage counsellors or social workers.

40. Orders by consent.

In any proceedings pursuant to this Act, the Court may make any order with the consent of all the parties to the proceedings.

41. Appeals.

(1) A person aggrieved by:

(a) an order of the Court; or

(b) the refusal of the Court to make an order;

may, within twenty eight days after the decision of the Court, appeal to the Court of Appeal. (2) Except where the Court which makes an order pursuant to the provisions of this Act

otherwise directs, the operation of such an order shall not be suspended by virtue of an appeal made pursuant to this section, and every order may be enforced in the same manner and in all respects as if an appeal under this section is not pending.

42. Protection of mortgage.

(1) The rights conferred on any person in respect of any property by an order made under this Act shall be subject to the rights of any person entitled to the benefit of any mortgage, security, charge or encumbrance affecting the property if:

(a) the mortgage, security, charge or encumbrance was registered before the order was registered; or

(b) the rights of that other person entitled to that benefit arise under an instrument executed before the date of the making of the order.

(2) Money payable under any mortgage, security, charge or encumbrance shall not be called up or become due by reason of the making of the order under this Act.

43. Rules of the Court

The Chief Justice may make Rules of the Court:

(a) to regulate the practice and procedure of the Court with respect to proceedings under this Act; and

(b) to provide for such matters as are necessary for giving full effect to this Act and for its due administration.

44. Property rights

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This Act shall not be construed as altering the rights of a spouse in respect of ownership of any real, personal, movable or immovable property.

45. Obligation to report ill-treatment of a child.

(1) A dentist, medical practitioner, nurse, psychologist, social worker, or a teacher who examines, attends to or deals with any child in circumstances giving rise to reasonable suspicion that the child has been subject to any act of domestic violence as a result of which the child suffers from injury, whether single or multiple, shall immediately notify a police officer of the said circumstances.

(2) A person referred to in subsection (1) shall not be liable in respect of any notification given in good faith in accordance with this section.

46. Bail.

(1) Subject to the provisions of the Bail Act, where the Court is required to determine whether to grant bail in respect of an offence committed under this Act, the Court shall consider:

- (a) the need to protect the applicant from domestic violence;
- (b) the welfare of a child or dependant where the respondent or the applicant has custody of that child or dependant;
- (c) the welfare of any child or dependant being a member of the household; and
- (d) any hardship that may be caused to the respondent or other members of the family if bail is not granted.

(2) The Court in granting bail, may order that the recognisance be subject to any one or more of the following conditions, as the Court considers appropriate:

- (a) that the respondent not harass or molest or cause another person to harass or molest the applicant;
- (b) that the respondent not be present on the premises in which the applicant works or resides; and
- (c) that the respondent not be in a locality in which is situated the premises in which the applicant works or resides.

(3) Where a police officer believes on reasonable grounds that a person, who has been admitted to bail subject to one or more conditions, has failed to comply with a condition of the recognisance, the police officer may arrest the person without a warrant.

47. Offences.

A person who contravenes any prohibition, condition or obligation or order imposed under this Act and for which a penalty is not stipulated commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

48. Regulations.

The Minister may make Regulations to give effect to this Act.

49. Repeal and savings.

(1) The Domestic Violence Act Cap. 12:04 is hereby repealed.

(2) Any application made, proceedings instituted or order made under the Act referred to in subsection (1) shall be deemed to have been made or instituted pursuant to this Act.

[...]

19. ST. LUCIA

[Domestic Violence \(Summary Proceedings\) Act, 1995 \(As amended\)](#) ⁴⁵

⁴⁵ Domestic Violence (Summary Proceedings) Act, Act. No. 7 (6 May 1995, as amended by Act No. 11 of 6 September 1997), available at <https://slucrisiscentre.com/2013/10/08/domestic-violence-summary-proceedings-act/> (last visited December 30, 2018).

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CHAPTER 4.04

1. Short title

This Act may be cited as the Domestic Violence (Summary Proceedings) Act.

PART 1

Preliminary

2. Interpretation

In this Act—

“applicant” means any person who applies or on whose behalf an application is made, under this Act, for an order;

“child” means a person under the age of 18 who is—

(a) a child of both parties to a marriage;

(b) a child, whether or not a child of either party to a marriage, who is or has been living in the household residence as a member of the family;

(c) a child of a man and a woman who, although not married to each other are living or have lived together in the same household; or

(d) a child, whether or not a child of the man and woman referred to in paragraph (c) or either of them who—

(i) is or has been a member of their household;

(ii) resides in that household on a regular basis; or

(iii) is a child of whom either the man or woman is a guardian;

“cooling off period” means a period not exceeding 2 days;

“court” means the Family Court or a court of summary jurisdiction;

“common law spouse” in relation to a person, means someone of the opposite sex who is living with that person as husband or wife although not legally married to that person;

“dependant” in relation to a person includes a dependant person under the age of 18 years who normally resides or resides on a regular basis with the first-mentioned person;

“domestic violence” means any act of violence whether physical or verbal abuse perpetrated by a member of a household upon a member of the same household which causes or is likely to cause physical, mental or emotional injury or harm to the abused party or any other member of the household;

“ex parte application” means an application made without notice to the respondent;

“household residence” means—

(a) in relation to both spouses, the dwelling house that is habitually used by both parties or either of them as the only or principal family residence together with any land, buildings or improvements appurtenant to it and wholly or mainly used for the purpose of the household;

(b) in relation to a man or a woman who are no longer spouses, the dwelling-house that was last habitually used by either of them, before or after they ceased to be spouses, as the only or principal family residence, together with any land, buildings, or improvements appurtenant to it, used wholly or mainly for the purpose of the household;

“Minister” means the Minister responsible for Social Affairs;

“occupation order” means an order made under section 7 and includes an interim order made under that section;

“parent” means—

(a) the parent or grandparent of a spouse;

(b) the parent or grandparent of a respondent, either by consanguinity or affinity; or

(c) the parent of a child of the household;

“specified person” means the spouse of the respondent, a parent, a child or dependant of that person;

“spouse” includes a former spouse, common law spouse and former common law spouse;

“protection order” means an order or interim order made under section 4;

“respondent” means a person against whom an order is granted under this Act;

“tenancy order” means an order made under section 11 or an interim order made under section 12;

“tenant”, in relation to any dwelling house, includes any person—

(a) whose tenancy has expired or has been determined; and

(b) who is deemed under or by virtue of any enactment or rule of law to continue to be the tenant of the dwelling house.

3. Person entitled to apply under this Act

(1) An application for an order other than a tenancy order under this Act may be made by—

(a) the spouse of the respondent who is the person on whom the alleged conduct has been, or is likely to be perpetrated by the respondent;

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(b) any member of the household on his or her own behalf or on behalf of any other member of the household; or
(c) the parent of the specified person or of the respondent though not residing in the household, on behalf of the specified person;

(2) The application under subsection (1) may be made by—

(a) a person with whom the child or dependant normally resides or resides on a regular basis or any other member of the household; or

(b) a parent or guardian of the child or dependant, where the alleged conduct involves a child or dependant.

(3) The application under subsection (1) may be made by—

(a) a person experienced or qualified in social welfare approved by the Minister in writing;

(b) a police officer; or

(c) a person holding the office or performing the duties of a probation officer or medical social worker where the dependant is mentally disabled.

(4) An application for a tenancy order may be made by the respondent's spouse in the circumstances in subsection (1)(a) or by a parent or guardian of a child or a dependant.

4. Application for protection order

(1) Application may be made to the court in accordance with Form 1 of the Schedule for a protection order prohibiting the respondent—

(a) from entering or remaining in the household residence of a specified person;

(b) from entering or remaining in a specified area where the household residence of a specified person is located;

(c) from entering the place of work or education of a specified person;

(d) from entering or remaining in any place where a specified person happens to be; or

(e) from molesting a specified person by—

(i) watching or besetting the specified person's household residence, place of work or education,

(ii) following or waylaying the specified person in any place,

(iii) making persistent telephone calls to a specified person; or

(iv) using abusive language or behaving towards a specified person in any other manner which is of such nature and degree as to cause annoyance to, or result in ill-treatment of the specified person.

(2) On hearing an application under subsection (1) the court may make a protection order if it is satisfied that—

(a) the respondent has used or threatened to use, violence against, or caused physical, mental or emotional injury to a specified person and is likely to do so again; or

(b) having regard to all the circumstances, the order is necessary for the protection of a specified person, and the court may, if it thinks fit, attach a power of arrest to the order.

(3) A protection order may be made on an ex parte application if the court is satisfied that the delay that would be caused by proceeding on notice would or might entail—

(a) risk to the personal safety of a specified person; or

(b) serious injury or undue hardship.

(4) Any protection order made on an ex parte application shall be an interim order.

(5) Where a protection order is granted on an ex parte application, the respondent may apply immediately for it to be discharged.

5. Breach of protection order

(1) Where a protection order or an interim protection order is made and—

(a) it is served personally on the respondent; and

(b) the respondent contravenes the order in any respect,

the respondent commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

(2) Subject to this section, where a protection order is in force, a police officer may arrest without warrant a person who he or she has reasonable cause to suspect has committed a breach of the order.

(3) A person shall not be arrested under this section unless the police officer believes that the arrest of that person is reasonably necessary for the protection of the applicant.

(4) For the purpose of subsection (2), the police officer shall take into account—

(a) the seriousness of the act which constituted the alleged breach; and

(b) the restraining effect of other persons or circumstances on the respondent.

(5) Despite this section a police officer may in the absence of a protection order take such steps as may be necessary and appropriate including the exercise of the power of arrest for the protection of any member of a household where he or she knows or has good cause to believe that a person is the object of domestic violence and is likely to be further abused.

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6. Duration and discharge of protection order

(1) A protection order may be discharged or varied if a party to the proceedings in which the order was made applies to the court for it to be discharged or varied.

(2) A copy of an application under subsection (1) shall be served personally on each person who was a party to the proceedings in which the original order was made.

(3) In determining whether to discharge or vary a protection order the court shall have regard to the matters referred to in section 4 (2).

(Amended by Act 11 of 1997)

PART 2

Occupation Orders

7. Application for grant

(1) Application may be made in accordance with Form 2 of the Schedule to the court for an occupation order granting a specified person named in the order the right to live in the household residence.

(2) Subject to section 14 and subsection (3) of this section, the court may, on an application under subsection (1), make an occupation order granting to the applicant, for such period or periods and on such terms and subject to such conditions as the court thinks fit, the right to occupy the household residence or any other premises forming part of the household residence.

(3) The court may make an occupation order under subsection (2) only if the court is satisfied that such an order—

(a) is necessary for the protection of a specified person; or

(b) is in the best interest of a child.

8. Effect of order

(1) Where an occupation order is made, the specified person to whose benefit it is made is entitled, to the exclusion of the respondent, personally to occupy the household residence to which that order relates.

(2) The conditions attached to an occupation order may include such arrangements as may be necessary for the financial support of the member of the household where appropriate.

9. Ex Parte application

(1) An occupation order may be made on an ex parte application if the court is satisfied that—

(a) the respondent has used violence against or caused physical or mental injury to a specified person; and

(b) the delay that would be caused by proceeding on notice could or might expose the specified person to physical injury.

(2) An occupation order made on an ex parte application is an interim order.

(3) Where the court grants an occupation order on an ex parte application, the court shall at the same time make an interim protection order unless it considers that there are special reasons why such an order should not be made.

(4) An occupation order which is made on an ex parte application while the specified person concerned and the respondent are living together in the same household residence expires—

(a) on the discharge of the occupation order by the court;

(b) on the discharge of an interim protection order made under subsection (3); or

(c) in any other case, at the expiration of a period of 7 days after the date on which the occupation order was made.

(5) Where an occupation order is made on an ex parte application, the respondent may apply immediately for a variation or discharge of that order.

10. Variation or discharge

The court may, if it thinks fit, on the application of either party, make an order—

(a) extending or reducing any period specified by the court under section 7(2); or

(b) varying or discharging the terms and conditions imposed by the court under to that subsection.

PART 3

Tenancy Orders

11. Tenancy order

(1) An application may be made to the court in accordance with Form 3 of the Schedule for a tenancy order vesting in the applicant, the tenancy of any dwelling house—

(a) of which the respondent is either the sole tenant or a tenant holding jointly or in common with the applicant; and

(b) which is the household residence of the applicant or the respondent, at the time of the making of the order.

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(2) Subject to section 16, the court may make a tenancy order in an application under subsection (1) if the court is satisfied that such an order—

- (a) is necessary for the protection of the applicant; or
- (b) is in the best interest of a child or a dependant,

on such terms and conditions as the court may think fit including a condition that the respondent shall continue to maintain and pay the whole or part of the rent as may seem to the court to be appropriate in the circumstances of the case, taking into consideration the financial means of both parties.

12. Grant on ex parte application

(1) A tenancy order may be made on an ex parte application if the court is satisfied that—

- (a) the respondent has used violence against, or caused physical or mental injury to, the applicant, child or dependant; and
- (b) the delay that would be caused by proceeding on notice would or might expose the applicant, child or dependant, to physical injury.

(2) Any tenancy order made on an ex parte application shall be an interim order.

(3) Where the court makes a tenancy order on an ex parte application the court shall, at the same time, make an interim protection order unless the court considers that there are special reasons why such an order should not be made.

(4) A tenancy order which is made on an ex parte application while the applicant and the respondent are living together in the said household shall expire—

- (a) on the discharge of the tenancy order by the court;
 - (b) on the discharge of an interim protection order made under subsection (3); or
 - (c) in any other case, at the expiration of a period of 7 days after the date on which the order was made.
- (5) Where a tenancy order is made on an ex parte application the respondent may apply immediately for variation or discharge of that order.

13. Effect of order

(1) Where a tenancy order is made the applicant shall, unless the tenancy is sooner determined, become the tenant of the dwelling-house subject to the terms and conditions of the tenancy in force at the time of the making of that order, and the respondent shall cease to be the tenant.

(2) Every tenancy order shall have effect and may be enforced as if it were an order of the court for possession of the land granted in favour of the applicant.

(3) This Act or a tenancy order does not—

- (a) limit or affect the operation of any enactment or rule of law applicable to any tenancy to which a tenancy order applies, or to the dwelling-house held under the tenancy; or
- (b) authorise the court to vary, except by vesting the tenancy under section 15, any express or implied term or condition of the tenancy.

14. Power to discharge order

(1) The court may, if it thinks fit, on the application of—

- (a) the applicant or respondent; or
- (b) the legal representative of either party,

make an order (in this section referred to as a “revesting order”) revesting the tenancy accordingly.

(2) Where a revesting order is made under subsection (1), the person in whose favour it is made shall, unless the tenancy is sooner lawfully determined, become the tenant of the dwelling house subject to the terms and conditions of the tenancy in force immediately before the date on which the revesting order was made.

PART 4

Provisions Relating to Occupation Orders and Tenancy Orders

15. Procedure relating to occupation orders and tenancy orders

(1) Before making any occupation order other than an interim occupation order or any tenancy order other than an interim tenancy order, the court shall direct that notice be given to any person having an interest in the property which would be affected by the order.

(2) The person referred to in subsection (1) shall, upon being notified under that subsection, be entitled to appear and to be heard in the matter of the application for the occupation order or tenancy order as a party to that application.

(3) Where an application is made for an occupation order, the court may treat that application as an application for a tenancy order or an occupation order or both and may make a tenancy order, whether or not it makes an occupation order, if it is satisfied that—

- (a) it has jurisdiction to make the tenancy order and that the making of such an order is appropriate; and

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(b) subsection (1) has been complied with in respect of the making of a tenancy order.

(4) Where an application is made for a tenancy order, the court may treat that application as an application for an occupation order or a tenancy order or both and may make an occupation order, whether or not it makes a tenancy order, if it is satisfied that—

(a) it has jurisdiction to make an occupation order and that the making of such an order is appropriate; and

(b) subsection (1) has been complied with in respect of the making of an occupation order.

16. Power of court to make ancillary order re: furniture

(1) On or after making an occupation order or a tenancy order, the court may, subject to subsection (2), make an order granting the applicant the use, for such period, on such terms and subject to such conditions as the court thinks fit, all or any of—

(a) the furniture;

(b) household appliances; and

(c) household effects,

in the household residence or other premises to which the occupation order relates or in the dwelling-house to which the tenancy order relates.

(2) Despite subsection (1), an order made under that subsection continues in force for a period of 3 months beginning on the date on which the order is made unless the court otherwise directs, but in any event, expires if the occupation order made in relation to the household residence or other premises or the tenancy order made in relation to the dwelling-house expires or is discharged.

17. Interim orders

(1) An interim order made under this Act on an ex parte application shall specify a date which shall be as soon as reasonably practicable, for a hearing on whether an order should be made in substitution for the interim order.

(2) The copy of any such interim order which is served on the respondent shall notify the respondent that unless he or she attends on the specified date to show cause why an order should not be made in substitution for the interim order, the court may discharge the interim order and substitute another order.

(3) At the hearing referred to in subsection (1) the court may—

(a) discharge the interim order; or

(b) discharge the interim order and make an order in substitution for it; or

(c) on good cause being shown, adjourn the hearing to such date and place as the court may specify.

(4) Where a hearing is adjourned under subsection (3)(c) the court shall, at the adjourned hearing, exercise either the power conferred by paragraph (a) or by paragraph (b) of that subsection.

(5) In this section—

“interim order” means an interim protection order, an interim occupation order or an interim tenancy order as the case may be;

“order” means a protection order, an occupation order or a tenancy order, as the case may be, not being an interim order.

PART 5

Miscellaneous Provisions

18. Conduct of proceedings

(1) A person shall not be present during the hearing of any proceedings under this Act except—

(a) officers of the court;

(b) parties to the proceedings and their counsel;

(c) witnesses; or

(d) any other person permitted by the magistrate to be present.

(2) A witness shall leave the courtroom if asked to do so by the magistrate.

(3) This section does not limit any other power of the court to hear proceedings in camera or to exclude any person from the court.

19. Standard of proof

Every question of fact arising in any proceedings under this Act (other than criminal proceedings) shall be decided on a balance of probabilities.

20. Restriction of publication of reports of proceedings

(1) Subject to subsection (4), a person shall not publish any report of proceedings under this Act (other than criminal proceedings) except with the leave of the court which heard the proceedings.

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(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

(3) This section does not limit—

(a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(b) the power of the court to punish any contempt of court.

(4) This section shall not apply to the publication of any report in any publication that—

(a) is of a bona fide professional or technical nature; or

(b) is intended for circulation among members of the legal or medical professions, officers of the Public Service, psychologists, marriage counsellors or social welfare workers.

21. Orders by consent

In any proceedings under this Act a court may make any order with the consent of all the parties to such proceedings.

22. Counselling

(1) The court shall, on making an order under this Act, recommend either or both parties to participate in counselling of such nature as the court may specify.

(2) A party who refuses or neglects to attend such counselling may be summoned to re-appear before the court and may, in the absence of reasonable excuse, be fined a sum not exceeding \$500.

23. Appeals

(1) Any person aggrieved by—

(a) an order by the court; or

(b) the refusal of the court to make an order,
may, within 28 days after the decision of the court, appeal to the High Court.

(2) Except where the court which makes an order under this Act otherwise directs, the operation of such order shall not be suspended by virtue of an appeal under this section, and every order may be enforced in the same manner and in all respects as if no appeal under this section were pending.

24. General penalty clause

(1) Any person who perpetrates domestic violence commits an offence and is liable summarily to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

(2) Any person found guilty of an offence under this Act for which no penalty is prescribed is liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

25. Protection of mortgages

(1) The rights conferred on any person in respect of any property by an order made under this Act shall be subject to the rights of any other person entitled to the benefit of any mortgage, security, charge or encumbrance registered before the order was registered or if the rights of that other person entitled to that benefit arise under an instrument executed before the date of the making of the order.

(2) Despite anything in any enactment or in any instrument, no money payable under any such mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of an order under this Act.

26. Rules of Court

Rules of court may be made for the purpose of regulating the practice and procedure of the court in proceedings under this Act, providing for such matters as are necessary for giving full effect to this Act and for its administration.

27. Power of Minister to amend Schedule and prescribe forms

(1) The Minister may by order amend the Schedule to this Act.

(2) The Minister may by order prescribe forms to provide for matters that may be necessary for giving full effect to the principal Act and for its administration.

(Inserted by Act 11 of 1997)

28. Jurisdiction

This Act shall be in addition to and not in derogation of any jurisdiction of the High Court in respect of matters referred to in this Act.

29. Property rights

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This Act shall not be construed as altering the right of a spouse to ownership of property.

20. ST. VINCENT AND THE GRENADINES

[Domestic Violence Act, 2015](#)⁴⁶

21. SURINAME

[Combating Domestic Violence Act, 2009](#)⁴⁷

[...]

CHAPTER I
Definitions

Article 1

For the purposes of this Act, the following definitions apply:

- (a) the Minister: Minister of Justice and Police;
- (b) the dependant: an adult who is dependent on the applicant or respondent for his or her livelihood due to physical or mental incapacity or age or illness;
- (c) protection order: an order issued in accordance with article 4 of this Act;
- (d) competent authorities: the bodies appointed by the Minister to combat domestic violence;
- (e) blood relative or affine: an adult who is related by birth or by marriage or adoption
- (f) qualified social worker: a person with experience or expertise in social work who is appointed by the Minister;
- (g) financial violence: patterns of behavior of a kind, the purpose of which is to exercise coercive control over, or exploit or limit or deny a person access to financial resources so as to ensure financial dependence, i.e.:
 - 1. preventing the victim from using his property at his own discretion;
 - 2. damaging the property of the victim;
 - 3. abstaining available financial resources for housekeeping or personal maintenance;
 - 4. refraining from paying alimony as ordered by the court;
 - 5. prohibiting the performance of paid work;
- (h) respondent: the person against whom a protection order has been applied for;
- (i) violence: domestic violence
- (j) domestic violence: any form of physical, sexual, psychological or financial violence committed by a person against a partner, child, parent, member of the family or a dependant, regardless of where the violence takes place;

⁴⁶ Domestic Violence Act (30 April 2015), available at http://www2.unwomen.org/-/media/field%20office%20caribbean/attachments/pages/svg%20domestic%20violence%20act_-07072015082955.pdf?vs=1606 (last visited December 30, 2018).

⁴⁷ Combating Domestic Violence Act (20 June 2009), available at <http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/americas/law%20on%20domestic%20violence%202009/suriname%20law%20on%20domestic%20violence%202009%20dutch.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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- (k) Child: a minor who normally, regularly or intermittently stays with the applicant or respondent, regardless of whether he is a child of the applicant or of the respondent or of both, including
1. A recognized child;
 2. An adopted child;
 3. A child over whom the applicant and / or respondent has guardianship;
 4. A step-child: a child brought into the marriage by either the applicant or respondent;
 5. A foster child: a child the applicant or the defendant look after regardless whether the child is a relative or an affine;
- (l) physical violence: any deliberate act or omission resulting in physical suffering or injury to the applicant or his child, including the commission of or an attempt to commit any of the acts listed in the Second Book, titles 19, 20 and 21 of the Penal Code.
- (m) member of the family: a person who usually resides in the same house as the applicant or the respondent regardless of whether he is a blood relative or an affine of the applicant or respondent;
- (n) parent: person who is the parent or grandparent of a child, a dependant, a spouse, a partner, the respondent or the applicant by blood, affinity, adoption or guardianship;
- (o) partner: a spouse, a former spouse or a concuban or concubine or a former concuban or former concubine or a person who has or has had a relationship without being married or having been married to the applicant or respondent and who may or may not have lived together or lived together with the applicant or respondent;
- (p) psychological violence: any behavioral pattern that aims to harm the emotional or mental well-being of a person, this includes:
1. persistent intimidation through the use of violent, threatening or degrading language;
 2. the persistent pursuit of the victim in multiple places;
 3. preventing the victim from using his property at his own discretion;
 4. damaging the property of the victim;
 5. stalking the victim or block the victim in his movements everywhere;
 6. isolating or compulsorily restricting the victim in his freedom of movement;
 7. persistently calling of the victim by phone;
 8. making unwelcome and repeated or intimidating contact with, among others, a direct member of the victim's family, a family member or a person the victim knows through his employment;
- (q) sexual violence: any sexually charged behavior or multiple behaviors with sexual intentions against the will of the victim, as well as the acts criminalized in Articles 290 up to and including 306 of the Penal Code or an attempt thereto;
- (r) interim order: an order issued in accordance with Article 6 of this Act;
- (s) applicant: the person applying for a protection order or the person on whose behalf a protection order is being applied for;
- (t) guardian: a person who has obtained custody of a child in accordance with the rules and procedure set out in the Civil Code.

CHAPTER II
Protection Orders

Article 2

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1. The applicant referred to in paragraph 2 of this article may request the court to issue a protection order on the grounds that the respondent has committed domestic violence or if there are reasonable suspicions that the respondent will be guilty of domestic violence in the future.
2. An application for a protection order can be issued by:
 - (a) the partner of the respondent;
 - (b) a member of the family of the partner or respondent, either for the benefit of himself or for the benefit of any other member of the family;
 - (c) a child, through the persons mentioned in paragraph 3 of this article;
 - (d) a dependant, whether or not through the persons referred to in paragraph 3 of this article;
 - (e) a parent or a blood relative or affine of the partner or the respondent, excluding a member of the immediate family;
 - (f) a person who has a child with the respondent as referred to in Article 1(k).
3. The child as referred to in paragraph 2(c) of this article or a dependant as referred to in paragraph 2(d) of this article can issue an application for a protection order by means of:
 - (a) a person with whom the child or dependant stays on a regular basis or every adult member of the family;
 - (b) a parent of the child or the dependant;
 - (c) a guardian of the child;
 - (d) any other relative or affine of the child or the dependant;
 - (e) the Office for Family Legal Affairs;
 - (f) the Public Prosecutor;
 - (g) the school, which the child frequents; or
 - (h) any other person or body to whose care, training or vigilance the child or the dependant has been entrusted.
4. An investigating officer, a probation officer, a doctor, a psychologist, a qualified social worker or a competent authority may, on his own initiative, submit an application for a protection order on behalf of:
 - (a) any person as referred to in paragraph 2 of this article or
 - (b) a person staying in a shelter or institution.
5. In order to implement the provisions of Article 2, paragraph 4, additional regulations may be laid down by State decree.

Article 3

1. If the court has established on the basis of a request made by a person as referred to in article 2 that there is a reasonable ground to believe domestic violence has occurred or if the respondent is guilty of behavior that may result in domestic violence in the future, he can issue a protection order containing one or more of the prohibitions or mandatory provisions listed in article 4.
2. The court may issue a protection order if he is convinced that the respondent:

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- (a) is guilty of domestic violence, or;
 - (b) is guilty of behavior that will most likely result in domestic violence;
- and in any case the circumstances of the case make the order necessary in order to protect the applicant.

Article 4

1. A protection order can:

(a) prohibit the defendant from:

1. doing anything that qualifies as domestic violence;
2. threatening the applicant with actions that qualify as domestic violence;
3. being in the marital home until the issue of who stays in the marital home has been decided on the basis of other legislation;
4. being in places regularly frequented by the applicant, as indicated in the order, including the place of residence, the company, the school or the office;
5. being at a location described in the order;
6. seeking direct and indirect contact with the applicant;
7. taking possession, destroying, changing or dealing in an alternative manner with the goods in which the applicant has an interest or which the applicant may be reasonably expected to use;
8. approaching the applicant within a distance determined by the order; or
9. encouraging or encouraging others to commit one or more of the actions mentioned under 1 through 8 of this section.

(b) provide that the order is executed in the interests of the child or dependant of the applicant or respondent; and

(c) determine that the respondent:

1. return to the applicant the goods indicated in the order which he holds in his possession or control;
2. pay compensation for the material damage suffered by the applicant as a direct consequence of domestic violence, details of the damage to be itemized in the order;
3. for the time being, provide financial compensation to the applicant for the benefit of the applicant and each child, if there is no decision regarding maintenance payments, until this obligation has been determined on the basis of other legislative instruments;
4. vacate the marital home until a decision has been made on the grounds of other legislative instruments;
5. vacate any place of residence which is jointly owned by the applicant and the defendant or is the sole property of the applicant or respondent or any place of residence jointly rented by the applicant and the respondent or solely rented by the applicant or respondent, for a certain period;
6. hand over any firearms license or any fire or other weapon that the respondent has in his possession or under his control and which is or is not being used, to the police;
7. meet his payment obligations with regard to the rent or mortgage of the property where the applicant resides;

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8. guarantee proper care of the child or the dependant, whether or not under the supervision of the Office for Family Legal Affairs or a qualified social worker;
 9. undergo professional treatment or therapy (whether alone or together with the applicant) from an expert, competent authority or qualified social worker appointed by the Minister;
2. A protection order may further include all other mandatory provisions or prohibitions, to which the applicant or respondent have consented.
 3. The execution of the protection order shall be issued by an enforceable title.
 4. If the court issues an injunction inter alia for compensation as paragraph 1 under c(2) of this article prescribes, this compensation shall include, but shall not be limited to:
 - (a) loss of income;
 - (b) costs for medical and dental treatment;
 - (c) relocation and housing costs;
 - (d) legal costs and extrajudicial costs.
 5. If the court orders that the respondent vacates the marital home or any other place of residence and the respondent refuses to do so, he may be removed forcibly by the police, either directly following the day on which the order is made or within a period specified by the court.
 6. If the court orders the respondent to return the goods that are in his possession or under his control to the applicant and he refuses to comply, the police will forcibly remove the goods and deliver them to the applicant either immediately following the day on which the order is made or within a period specified by the court.
 7. If the court issues an order pursuant to paragraph 1(c), subsections 2, 3 and 7 of this article and the defendant refuses to comply, a claim on the respondent's salary shall be made to pay for the stipulations therein.
 8. If the court makes an order for care of a child or dependant under the supervision of the Office for Family Legal Affairs or a qualified social worker, as described in paragraph 1(c), sub 8 of this article, this order shall state:
 - (a) that the judge by the Office for Family Legal Affairs or by a qualified social worker be informed in writing about the care of the child or the dependant; and
 - (b) the date on which the Office for Family Legal Affairs or a qualified social worker must submit the report as referred to under a of this paragraph to the court.
 9. If the court gives an order that, among other things, prescribes professional treatment and guidance as described in paragraph 1(c), sub 9 of this article, the order shall state:
 - (a) that the judge is informed in writing by the supervisor or therapist if the persons concerned did not show up and no valid reason for the absence was given; and
 - (b) the date on which the supervisor or therapist provides a report on the treatment or therapy, including a prognosis with a view to recovery, to the court.
 10. Upon issuing a protection order, the judge is authorized to determine whom the children will reside with until the time this is determined in the manner stipulated in the Civil Code.
 11. The judge has the power to determine that the protection order is to be executed without delay.
 12. A protection order may be issued for a period not exceeding three years.

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13. If the order contains several mandatory provisions or prohibitions, the court may set separate terms, meaning the terms within which every provision or prohibition shall be in force. However, the period within which each mandatory provision or prohibition is in force shall not exceed a period of three years.

Article 5

1. When deciding whether or not to impose one or more prohibitions and mandatory provisions as described in Article 4, the judge will have to take into account the following:
 - (a) the nature and history of the violence committed and the manner in which the violence was committed;
 - (b) whether a protection order or an interim order as referred to in article 6 has been issued previously;
 - (c) the need to protect the applicant against domestic violence and any other person in whose interests the protection order will be issued;
 - (d) the well-being of every child;
 - (e) the need for accommodation of the applicant and of any other person affected by the order;
 - (f) the inconvenience that may be caused by the order;
 - (g) the income, assets and financial obligations of the respondent, the applicant and any other person who is affected by the order;
 - (h) the need for safety, protection and assistance to the victim(s) will prevail over the maintenance of relationships;
 - (i) any other circumstance of the case that the court considers relevant.

Article 6

1. In response to an application for a protection order, the judge may, if he considers it necessary, issue an interim order ahead of the hearing and the decision, in order to ensure the safety and protection of the applicant.
2. An interim order may be issued by the court at any time either before or during the processing of the request for protection by the court, irrespective of whether:
 - (a) the respondent is present at the trial;
 - (b) the respondent has been notified of the application for an interim order.
3. An interim order may be issued for the time frame that the judge deems necessary, but is not to exceed a period of twenty-one days.
4. An interim order may contain one or more prohibition or mandatory provision referred to in article 4.
5. Article 4 paragraphs 3, 6, 7, 8 and 9 shall apply mutatis mutandis to the interim order.
6. After an interim order has been issued, the judge must summon the respondent as soon as possible to appear before him for a further hearing with respect to the case.
7. In this hearing, the judge can decide, irrespective of whether the respondent appears at the hearing:
 - (a) extend the term of the interim order by a period of one and twenty days or until the date on which the court issues the protection order;
 - (b) withdraw the interim order and accept the application or continue the application; or

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- (c) deal with the application and issue a warrant under Article 3 to replace the interim order.
- 8. If the judge extends the term of the interim order, as referred to in paragraph 7(a), he shall immediately determine the date and time at which the application is dealt with or further processed.

Article 7

- 1. At any stage during the proceedings brought under this Act, the judge may accept a promise made by the respondent under oath that he will no longer engage in the conduct as set out in the application or any other conduct that involves domestic violence.
- 2. If a promise as referred to in paragraph 1 of this article is made, the judge is entitled to issue a protection order or an interim order containing the promise made by the respondent.
- 3. A promise may include any of the prohibitions or mandatory provisions referred to in article 4.
- 4. A promise remains in force for the term included in the order, but may not exceed a period of three years.
- 5. The respondent is only given the opportunity to make a promise once.
- 6. Article 4(4)-(9), article 14 and article 15(1) apply mutatis mutandis to a promise.
- 7. If a promise has been made, which is included in the order in accordance with paragraph 2 of this article, each of the parties to the proceedings may, by means of completing the form referred to in article 16, apply to the court for an order to amend or withdraw the promise. Article 16 paragraphs 2 up to and including 4 and article 17 apply mutatis mutandis.

Article 8

- 1. If a request for an injunction has been filed and after the judge has heard all the evidence and is convinced that:
 - (a) the incident was an isolated case; and
 - (b) there are circumstances that make it desirable to maintain the family unit; and
 - (c) the behavior is not serious enough to justify the order,the judge is authorized, with the consent of the applicant, not to issue the protection order and to order the respondent to make a declaration of good conduct under oath for a maximum period of six months. This declaration of good conduct will be added to a form prescribed by the Minister for this purpose.
- 2. If under oath a declaration of good conduct has been made on the basis of paragraph 1 of this article, the court is entitled to set additional conditions such as:
 - (a) professional guidance, including family counseling;
 - (b) reconsideration of the case by the judge within three months.
- 3. A statement of good conduct made under oath can be overturned by the court if:
 - (a) the respondent continues to display behavior that results in domestic violence against the applicant;
 - (b) on the basis of the report of an expert appointed by the judge as referred to in paragraph 2 (a) of this article, of a probation officer, social worker, investigating officer or other competent official, it is expected that domestic violence against the applicant or the victim will re-occur or;

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- (c) the applicant is so afraid of the respondent that he does not want to continue the relationship.

CHAPTER III

Procedure for making an application for a protection order

Article 9

1. A request for a protection order shall be made on a form prescribed by the Minister for this purpose and shall be submitted to the Registrar of the District Court.
2. The hearing of a request for a protection order shall be held behind closed doors unless the court decides otherwise.
3. The child or the person on whose behalf a request for a protection order has been made may be heard at the hearing. The judge will take into account the age and capacity of the child or the dependant when assessing the content of the statements made by the aforementioned persons.

Article 10

1. The court will decide whether or not to issue a protection order within two months after submission of the request.
2. The clerk of the District Court will determine the date on which the application will be heard, which must take place within seven days of the filing of the application.

Article 11

1. A copy of the application for a protection order is served on the respondent by a bailiff. A copy of the summons to appear in court must be attached. The notification of hearing must also include the time and the place where the application will be heard.
2. A request for the processing of the application will be made on a form prescribed by the Minister.
3. A copy of the application for a protection order made on behalf of a child or a dependant will be sent to the parent or guardian, or any another person with or with whom the child or dependant lives intermittently, together with the notice of hearing of application.
4. A notification of hearing, irrespective of where the respondent resides, is issued and served in accordance with the provisions of Article 8 of the Code of Civil Procedure and orders the respondent to appear in court. Articles 1 up to and including 5, article 6(6)-(9), as well as articles 13 up to and including 15 of the aforementioned Code shall apply *mutatis mutandis*.
5. If a copy of the order and the notification of hearing have not been served on the respondent, the judge will immediately determine a new date, time and place for the hearing.
6. The new notice of hearing shall be made in accordance with paragraph 4 of this article.

Article 12

1. The parties are to appear before the court in person; if so desired, they may be represented by legal counsel.
2. If the notification of hearing has been served on the respondent in accordance with Article 11 paragraph 4 and he nevertheless does not appear at court, then the court is authorized to continue the proceedings and to decide on the application in absence of the respondent.

Article 13

If on the day of the processing of an application for a protection order, the respondent appears in court, but the applicant does not appear in person or by proxy at the hearing, the court has jurisdiction:

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- (a) following hearing reasonable grounds for the non-appearance by the applicant himself or by another person, to postpone the hearing under such conditions as the court may deem necessary;
- (b) if it has not received a reason for the applicant's non-appearance, to postpone the application and to reject the application on the day of the hearing if neither the applicant nor the person on whose behalf the petition was made appears personally or is represented by his legal counsel;
- (c) to decide that proof will have to be provided by means of a written statement made under oath if it is convinced that this is necessary on the basis of what has been stated by the parties. This decision can be made on the understanding that at the request of the opposite party, the court can order the cross-examination of the person who made the statement.

Article 14

If the respondent has appeared at the hearing, before issuing an order for protection or an interim order, the judge will tell him:

- (a) the goal, the conditions and consequences of the order;
- (b) the consequences of not complying with the order;
- (c) the way in which the order can be changed or withdrawn.

Article 15

1. If a protection warrant or an interim order is issued or modified:
 - (a) the Registrar shall arrange for the order to be put on a form prescribed by the Minister and file it with the District Court;
 - (b) the judge will order that a copy of the order be served on:
 1. the respondent;
 2. any other person to whom the order relates regardless of whether that person is a party to the proceedings;
 3. the investigating officer in charge of the police station located in the area where the respondent or the applicant resides.
2. The provisions of article 11, paragraph 4, apply mutatis mutandis to the service of the order.

CHAPTER IV
Amendments and withdrawal of orders

Article 16

1. If an order is in force, each of the parties to the proceedings may, by means of a form prescribed by the Minister, request the court to issue an order for amendment or withdrawal of the first order. Article 11 applies mutatis mutandis.
2. On a request as referred to in paragraph 1 of this article, the judge can order to change or withdraw the first order.
3. A copy of a request as referred to in this article will be served on each party to the proceedings.
4. The court shall take into account the circumstances specified in article 5 when making its decision to amend or withdraw.

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5. The judge shall not make a decision before having heard both parties.
6. Article 15 applies accordingly.

CHAPTER V
Implementation of orders

Article 17

1. Subject to the provisions of paragraph 2 of this article, the person against whom an order has been issued and upon whom that order has been served and who acts in violation of the prohibitions imposed by the court as included in Article 4(1)(a), and the stipulations included in Article 4(1)(c)(6), is guilty of a criminal offense and will be:
 - (a) in the event of a first violation of the order given a fine in accordance with the third category of the General Fines Act and / or a prison sentence not exceeding four years;
 - (b) in the event of a second violation of the order, given a fine pursuant to the fourth category of the General Fines Law and / or a term of imprisonment not exceeding six years;
 - (c) with each subsequent violation of the order, punished with a term of imprisonment not exceeding eight years.
2. The offenses set out in paragraph 1 of this article are criminal offenses.
3. If an order in accordance with article 4(1)(c)(9) contains a stipulation that the respondent must be under supervision or seek treatment and the judge is informed that the respondent has refused or failed to comply with this and such refusal is judged unreasonable by the judge, the respondent will be guilty of a criminal offense punishable by a fine in accordance with the third category of the General Fines Act.
4. The offense established in paragraph 3 of this article is a violation.

CHAPTER VI
Powers of the determining officer with regard to entering and arrest

Article 18

The provisions laid down in the Code of Criminal Procedure with regard to the powers of the investigating officer in respect of entry and arrest shall apply to the extent that this law does not deviate from these.

Article 19

1. An investigating officer must respond to any report or report relating to domestic violence, regardless of whether the person making the report or declaration is the victim or not.
2. It is the duty of every investigating officer who responds to a report or declaration of domestic violence to complete a domestic violence registration form as prescribed by the Minister, which is to be recorded in the National Domestic Violence Register (the 'NDVR'). The NDVR is established by State decree and maintained by the Police Force Suriname.

Article 20

1. The court may issue a written order authorizing an investigating officer to enter the premises on grounds mentioned in the order against the will of the resident(s) within twenty-four hours of its issuance and in accordance with the conditions specified therein and to take action that is necessary to prevent repetition of the action and / or of the offense and / or the disturbance of the peace and / or to protect life and / or property.

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2. Such a warrant shall only be issued by the court if it is obtained by information given under oath and if it is convinced that:
 - (a) there are reasonable grounds to suspect that a person in a building or in a dwelling has suffered physical distress or fears imminent bodily harm caused by another, which could lead to domestic violence;
 - (b) that person needs help to deal with the injury or to prevent injury; and
 - (c) an investigating officer has been denied permission to enter the premises or dwelling in order to provide assistance to the first-mentioned person in sub a of this paragraph.

Article 21

1. An investigating officer may, if he has reasonable grounds to suspect a person is engaging in acts or is attempting to engage in acts which can be defined as physical violence, and when failure to intervene could result in serious personal injury or death, enter any place, with the exception of a dwelling to which entry is refused by the resident and of the places in article 116 of the Code of Criminal Procedure, as indicated in that article. Articles 113 and 116 of the Code of Criminal Procedure apply mutatis mutandis, insofar as this law does not deviate from this.
2. If the investigating officer makes use of his power to enter, as referred to in paragraph 1 of this article, he will immediately draw up a report that will contain the following information:
 - (a) the reasons for entering the building or dwelling without a warrant;
 - (b) the offense that was committed or was about to be committed;
 - (c) the way in which the investigation was carried out;
 - (d) the measures taken to ensure the protection and safety of the person in danger.
3. The investigating officer must send the official report within twenty-four hours to the assistant public prosecutor of the district where the offense took place.
4. The official report as referred to in paragraph 3 of this article shall be sent to the prosecutor as soon as possible upon receipt.
5. When a complaint has been filed against an investigating officer by a resident of the accessed building or site, alleging that entering the premises on grounds by the investigating officer as referred to in paragraph 1 of the article was unlawful, the Public Prosecution Service and the Police Corps Suriname shall investigate the complaint and send a copy of his report to the Chief of Police of the Political Suriname Corps and the Attorney General, within fourteen days after the complaint has been filed.
6. If the investigation of the Personnel Investigation Division finds the entry as referred to in paragraph 1 of this article was unlawful, the Personnel Investigation Division will forward the report to the Chief of Police and the Attorney General and the same will form the basis of any litigation claim against the the investigating officer.

Article 22

When an investigating officer has entered a building or grounds pursuant to Article 20 paragraph 1 and Article 21 paragraph 1, he shall:

- (a) provide assistance to a person who has suffered an injury;
- (b) ensure the well-being and safety of a child in the building or on the premises: and
- (c) prevent any further violation of the law.

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When a protection or interim order is in force and a prosecuting official believes on reasonable grounds that someone has violated or is violating a prohibition or mandatory provision clause referred to in Article 17, then the investigating officer may hold that person and make an arrest. Title IV, 1st and 2c section of Book I of the Code of Criminal Procedure are applicable in so far as relevant to this Act.

Article 24

If a person who has been arrested pursuant to articles 20 and 21, the criminal proceedings against that person will take place on the grounds of Title 19, 20 and 21 of Book II of the Penal Code and articles 290 to 306 of the Code of Criminal Procedure with regard to prosecution.

Article 25

An oral statement by the victim made with respect to a fact made in proceedings under this Act, recorded in a report which confirms that fact, shall be used at the hearing in the following cases:

- (a) in cases where the victim refuses to be heard as a witness at the hearing or;
- (b) in cases where the victim makes an oral statement at the hearing that does not coincide or contradicts the statement made earlier in the official police report.

CHAPTER VII
Transitional provisions

Article 26

1. Without prejudice to the provisions of paragraph 4 of the Second Section of Title IV of Book I of the Code of Criminal Procedure, the judge shall suspend or postpone the pre-trial detention of a suspect who has committed a criminal offense as described in this law, and take the following into account:
 - (a) the need to protect the victim against domestic violence;
 - (b) the well-being of a child when the suspect or the victim of the offense concerned has custody of the child;
 - (c) the welfare of every child who lives with the suspect; and the welfare of the dependant;
 - (d) any unfairness brought on to the suspect or any other members of the family if no suspension or postponement of pre-trial detention is granted.
2. Without prejudice to the provisions of paragraph 4 of the Second Section of Title IV of Book I of the Code of Criminal Procedure, the court may, in its judgment on the suspension or postponement of the pre-trial detention, lay down, inter alia, the following conditions:
 - (a) that the suspect does not intimidate or molest the victim or initiate another attack;
 - (b) that the suspect is not at the victim's home or workplace;
 - (c) that the suspect is not in the vicinity of the victim's home or workplace; and
 - (d) that the suspect, who continues to live with the victim, may not be in or near the home when he is under the influence of alcohol or drugs.
3. If the suspect as referred to in paragraph 2 of this article does not meet one or more conditions, the arrest of this suspect may be ordered by the prosecutor or by an assistant public prosecutor.

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Article 27

1. The Court of Justice shall take notice of all orders made by the county court under this Act.
2. Without prejudice to the provisions of paragraph 1 above, a notice of appeal against an order or a judgment pursuant to this Act shall not have suspensory effect, unless the Court of Justice orders otherwise.

CHAPTER VIII
Final Provisions

Article 28

By or pursuant to state decree, further rules and regulations may be set out to promote further implementation of this Act.

Article 29

1. This Act will be cited as the Combating Domestic Violence Act.
2. This Act is promulgated in the Official Gazette of the Republic of Suriname.
3. The Act shall enter into force on the day following the date on which the promulgation is made.
4. The Minister of Justice and Police is responsible for the implementation of this Act.

[...]

[Penal Code, 1910 \(As amended\)](#)⁴⁸

Article 295 (read in conjunction with [Art. 1 \(g\) of the Combating Domestic Violence Act, 2009](#))

He who, by force or threat of violence, or other actions, compels a person to undergo acts consisting of or partly consisting of the sexual penetration of the body, is guilty of rape and will be punishable by a term of imprisonment not exceeding fifteen years and a fine of the fifth category.

22. SWEDEN

[Restraining Order Act, 1988 \(As amended\)](#)⁴⁹

[Penal Code, 1965 \(As amended\)](#)⁵⁰

Chapter 4- On Crimes against Liberty and Peace

Section 4a

A person who commits criminal acts as defined in Chapters 3, 4 or 6 against another person having, or have had, a close relationship to the perpetrator shall, if the acts form a part of an element in a repeated violation of that person's integrity and suited to severely damage that person's self-confidence, be sentenced for gross violation of integrity to imprisonment for at least six months and at most six years.

If the acts described in the first paragraph were committed by a man against a woman to whom he is, or has been, married or with whom he is, or has been cohabiting under circumstances comparable to marriage, he shall be sentenced for gross violation of a woman's integrity to the same punishment. (Law 1998:393)

⁴⁸ Penal Code, 14 October 1910 (with amendments up to 15 March 2015), available at http://dna.sr/media/138146/S.B._2015_no._44_wet_van_30_mrt_15_wijz_wetboek_van_strafrecht.pdf (last visited December 30, 2018). Unofficial translation by Compendium team.

⁴⁹ Restraining Orders Act (26 May 1988, as amended up to 17 June 2018), available at <http://www.notisum.se/rnp/sls/lag/19880688.htm> (last visited December 30, 2018).

⁵⁰ Penal Code, (1 January 1965, as amended up to 1 May 1999), available at <https://www.government.se/49cd60/contentassets/5315d27076c942019828d6c36521696e/swedish-penal-code.pdf> (last visited December 30, 2018).

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Chapter 6 - On Sexual Crimes

Section 1

A person who by violence or threat which involves, or appears to the threatened person to involve an imminent danger, forces another person to have sexual intercourse or to engage in a comparable sexual act, that having regard to the nature of the violation and the circumstances in general, is comparable to enforced sexual intercourse, shall be sentenced for rape to imprisonment for at least two and at most six years. Causing helplessness or a similar state of incapacitation shall be regarded as equivalent to violence. If having regard to the nature of the violence or the threat and the circumstances in general, the crime is considered less serious, a sentence to imprisonment for at most four years shall be imposed. If the crime is gross, a sentence to imprisonment for at least four and at most ten years shall be imposed for gross rape. In assessing whether the crime is gross, special consideration shall be given to whether the violence involved a danger to life or whether the perpetrator caused serious injury or serious illness or, having regard to the method used or the victim's youth or other circumstances, exhibited particular ruthlessness or brutality. (Law 1998:393)

Section 2

A person who, under circumstances other than those defined in Section 1, makes someone engage in a sexual act by unlawful coercion shall be sentenced for sexual coercion to imprisonment for at most two years. If the person who committed the act exhibited particular ruthlessness or if the crime is otherwise considered gross, a sentence of at least six months and at most four years shall be imposed for gross sexual coercion. (Law 1992:147)

23. SWITZERLAND

[Criminal Code, 1937 \(As amended\)](#) ⁵¹

Book Two: Specific Provisions
Title One: Offences against Life and Limb

Article 123 –

1. Any person who wilfully causes injury to the person or the health of another in any other way is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

In minor cases, the court may impose a reduced penalty (Art. 48a)

2. The penalty is a custodial sentence not exceeding three years or a monetary penalty, and the offender is prosecuted ex officio,

if he uses poison, a weapon or a dangerous object,

if he commits the act on a person, and in particular on a child, who is unable to defend himself, or is under his protection or in his care.

if he is the spouse of the victim and the act was committed during the marriage or up to one year after divorce,

if he is the registered partner of the victim and the offence was committed during the period of the registered partnership or up to a year after its dissolution, or

if he is the heterosexual or homosexual partner of the victim provided they have at any time cohabited and the act was committed at that time or up to one year after separation

Article 126 –

1 Any person who commits acts of aggression against another that do not cause any injury to the person or health is liable on complaint to a fine.

2 The offender is prosecuted ex officio if he commits the offence repeatedly:

- a. on a person under his protection or in his care, and in particular on a child;

⁵¹ Criminal Code, (21 December 1937, as amended up to 1 January 2017), available at <https://www.admin.ch/opc/en/classified-compilation/19370083/201701010000/311.0.pdf> (last visited December 30, 2018).

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- b. on his spouse during the marriage or up to a year after divorce; or
- b bis. on his registered partner during the period of the registered partnership or up to a year after its dissolution; or
- c. on his heterosexual or homosexual partner provided they have at any time cohabited and the act was committed at that time or up to one year after separation.

Title Four: Felonies and Misdemeanours against Liberty

Article 180 –

1 Any person who places another in a state of fear and alarm by making a serious threat is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

2 The offender is prosecuted ex officio if he:

- a) is the spouse of the victim and the threat was made during the marriage or within one year of divorce; or
- a bis) is the registered partner of the victim and the threat was made during the registered partnership or within one year of its dissolution; or
- b) is the heterosexual or homosexual partner of the victim, provided they are cohabiting for an unlimited period and the threat was made during this time or within one year of separation.

[Violence Protection Act, 2006](#) ⁵²

Title Three: Sentences and Measures

Chapter Two: Measures

Section Two: Other Measures

Article 67 b

If a person has committed a felony or misdemeanour against one or more specific persons, or against persons in a specific group, and if there is a risk that he will commit further felonies or misdemeanours in the event of having contact with such persons, the court may impose a contact prohibition and exclusion order of up to five years.

By means of a contact prohibition and exclusion order the court may prohibit the offender from:

- a. contacting one or more specific persons or persons in a specific group directly or via third parties, in particular by telephone, in writing or online, or employing, accommodating, educating, caring for such persons or associating with such persons in any other way;
- b. approaching a specific person or coming within a specific distance of that person's home;
- c. being present in specific locations, in particular specific streets, areas or districts.

The competent authority may use technical devices that are securely attached to the offender in order to enforce the prohibition order. These devices may in particular serve to determine the offender's location.

The court may order probation assistance for the duration of the prohibition order.

On application from the executive authority, it may extend limited prohibition orders by a maximum of five years in each case if this is necessary to prevent the offender from committing further felonies and misdemeanours against minors or other especially vulnerable persons.

[Civil Procedure Code, 2008 \(As amended\)](#) ⁵³

Title 4 Simplified Proceedings

Art. 243 Scope of application

1 Simplified proceedings apply in financial disputes with a value in dispute not exceeding 30,000 francs.

2 They apply regardless of the amount in dispute to:

- a. disputes under the Gender Equality Act of 24 March 1995;
- b. disputes concerning violence, threats or stalking under Article 28b CC;

[...]

3 The simplified proceedings do not apply to disputes before the court of sole cantonal instance in accordance with Articles 5 and 8 and before the Commercial Court in accordance with Article 6.

⁵² Violence Protection Act (19 June 2006), available at [http://www2.zhlex.zh.ch/ Appl/zhlex_r.nsf/0/8DFCC0E3F9AAE661C1257ACC0032ABF4/\\$file/351_19.6.06_79.pdf](http://www2.zhlex.zh.ch/ Appl/zhlex_r.nsf/0/8DFCC0E3F9AAE661C1257ACC0032ABF4/$file/351_19.6.06_79.pdf) (last visited December 30, 2018).
Unofficial translation by Compendium team.

⁵³ Civil Procedure Code (19 December 2008, as amended up to January 2017), available at <https://www.admin.ch/opc/en/classified-compilation/20061121/201701010000/272.pdf> (last visited December 30, 2018).

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Art. 244 Simplified statement of claim

1 The statement of claim may be filed in the forms provided for by Article 130 or orally on record before the court. It shall contain:

- a. the designation of the parties;
- b. the prayers for relief;
- c. a description of the matter in dispute;
- d. a statement of the value in dispute, if necessary;
- e. the date and signature.

2 A statement of the grounds for the claim is not necessary.

3 The following must be filed together with the statement of claim:

- a. a power of attorney in case of representation;
- b. the authorisation to proceed or the declaration that conciliation has been waived;
- c. the available physical records.

Art. 245 Summons to a hearing and statement of defence

1 If no grounds are stated for the action, the court shall serve the defendant with the statement of claim and summon the parties to a hearing.

2 If the grounds for the action are stated, the court shall first set a deadline for the defendant to file a written response to the claim.

Art. 246 Procedural rulings

1 The court shall make the required procedural rulings so that if possible the matter may be concluded at the first hearing.

2 If the circumstances so require, the court may order an exchange of written submissions and hold instruction hearings.

Art. 247 Establishment of facts

1 By asking the appropriate questions, the court shall cause the parties to complete inadequate submissions and to designate the evidence.

2 In the following cases, the court shall establish the facts ex officio:

- a. in matters under Article 243 paragraph 2;
- [...]

[Swiss Civil Code, 1907 \(As amended\)](#)⁵⁴

Article 28b Violence, threats or harassment

To obtain protection from violence, threats or harassment the applicant may request the court in particular to order the offending party to refrain from:

1. approaching the applicant or from entering a defined area around the applicant's dwelling;
2. frequenting specified locations, notably particular streets, squares or districts;
3. from making contact with the applicant, especially by telephone, in writing or electronically, or from harassing the applicant in any other way.

If the applicant lives in the same dwelling as the offending party, the applicant may ask the court to order the offending party to leave the dwelling for a specified period. This period may be extended on one occasion for good cause.

Where justified by the circumstances, the court may:

1. require the applicant to pay reasonable compensation for his or her exclusive use of the dwelling; or
2. with the landlord's consent, transfer the rights and obligations under the lease to the applicant alone.

The cantons shall designate an authority which in urgent cases may order the immediate expulsion of the offending party from the joint dwelling and shall enact rules governing the procedure.

⁵⁴ Swiss Civil Code, (10 December 1907, as amended up to 1 January 2018), available at <https://www.admin.ch/opc/en/classified-compilation/19070042/index.html> (last visited December 30, 2018).

24. TAIWAN, CHINA

[Domestic Violence Prevention Act, 2015](#) ⁵⁵

[...]

Chapter 1 General

Article 1 This Act is established in order to prevent acts of domestic violence and to protect the interest of the victims.

Article 2 The terms used in this Act are defined as follows:

1. Domestic violence: Means an act of harassment, control, threat or other illegal action conducted against any family member that is physical, psychological, or economical in nature.
2. An offense of domestic violence: Means a criminal offense stipulated by another law due to an act of domestic violence committed in a willful manner against a family member.
3. To witness domestic violence: Means to see or directly know about domestic violence.
4. Harassment: Means any language or gesture that interrupts, warns, mocks or insults any other person, or any conduct that causes a psychological scenario of fear.
5. Stalking: Means monitoring, following or controlling another person's whereabouts and activities in a continuous manner through any person, vehicle, tool, equipment, electronic communications device or any other manner.
6. Offender treatment program: Means awareness educational assistance, parenting educational assistance, psychological assistance, psychiatric treatment, detoxification treatment or other assistance or treatment provided to the offender.

Article 3 A family member defined in this Act includes the following members and their minors:

1. Spouse or former spouse.
2. Persons with an existing or former cohabitation relationship, a relationship between a householder and household members or a relationship between household members.
3. Persons with an existing or former relationship between lineal relative by blood or lineal relative by marriage.
4. Persons with an existing or former relationship between collateral relative by blood or collateral relative by marriage within four degrees of kinship.

Article 4 The competent authority referred to in this Act is the Ministry of Health and Welfare at the central level, the municipal governments in municipalities and the county (city) governments in counties (cities).

In relation to the matters provided in this Act, the competent authority and competent authorities in charge of the relevant activities shall take the initiative to plan the required protection, prevention and promotional measures within the scope of their responsibilities in accordance with the requirements of prevention against domestic violence, while respecting the differences of diversified cultures. They shall make their best efforts to provide cooperation for prevention activities involving the relevant authorities. The responsibilities are as follows:

1. Competent authority: Planning, promotion and monitoring of domestic violence prevention policies, establishment of regulations for cross-authority (institution) cooperation, regular publication of statistics related to domestic violence and other matters.
2. Health competent authority: Certification of injuries suffered by victims of domestic violence, evidence collection, physical and mental treatment, consultation, offender treatment and other related matters.
3. Education competent authority: Education of prevention against domestic violence in all levels of schools, assistance measures for children and youths who have witnessed domestic violence, protection of the interest of victims of domestic violence, the education rights of their children and other related matters.
4. Labor competent authority: Vocational training for victims of domestic violence, employment services and other related matters.
5. Police competent authority: Physical security of the victims of domestic violence and their minors, emergency measures, investigation of domestic violence offenses, statistics of criminal cases and other related matters.
6. Legal competent authority: Criminal matters such as the investigation of domestic violence offenses, correction and prevention of re-offense and other related matters.

⁵⁵ Domestic Violence Prevention Act 2015, available at <https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0050071> (last visited December 30, 2018).

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7. Immigration competent authority: Assisting spouses of foreign nationalities and spouses from Mainland China, Hong Kong or Macau who have overstayed in Taiwan due to domestic violence in obtaining resident permits, their residence, assistance with their stay in Taiwan or protection of their resident rights and other related matters.
8. Culture competent authority: Handling of publications in violation of the stipulations of this Act and other related matters.
9. Communications competent authority: Handling of radio, TV, other communication media in violation of the stipulations of this Act and other related matters.
10. Household registration competent authority: Personal status, household registration of the victims of domestic violence and their minors and other related matters.
11. Other measures against domestic violence shall be performed by the competent authority in charge of the relevant activities in accordance with their duties.

Article 5 The central competent authority shall perform the following matters:

1. Study and establishment of legislations and policies against domestic violence.
2. Coordination with and supervision over the relevant authorities concerning the execution of matters related to domestic violence.
3. Increase the service efficiency of relevant institutions for the prevention of domestic violence.
4. Supervision and promotion of education on preventing domestic violence.
5. Coordination of victim protection programs and offender treatment programs.
6. Assist public and private institutions to establish a procedure for handling domestic violence.
7. Consolidated establishment and management of an electronic database of cases of domestic violence for use by judges, prosecutors, police, doctors, nursing staff, psychologists, social workers and other government authorities, while keeping the victims' identities confidential.
8. Assist local governments to promote domestic violence prevention activities, providing assistance and subsidies.
9. Investigation and analysis of issues of domestic violence, current status of prevention and requirements shall be conducted every four years. Regular publication of relevant statistics and analysis data such as the number of deaths caused by domestic violence, various types of subsidies and expenditures for medical care and other related statistical analysis. All relevant authorities should cooperate with the investigation and provide statistics and data analysis.
10. Other matters related to domestic violence prevention.

To perform the activities under the previous paragraph, the central competent authority should invite (assign) scholars and experts and representatives of private organizations and relevant authorities to provide advice. The number of scholars, experts and representatives of private organizations shall represent not less than 1/2. Each gender shall be represented by at least 1/3. The central competent authority shall determine the rules for the establishment, management and use of the electronic database under Subparagraph 7 of the first paragraph.

Article 6 To reinforce the promotion of work related to the prevention of domestic violence and sexual assault, the central competent authority shall establish a fund. The rules for the expenditure, custody and utilization of the fund shall be established by the Executive Yuan.

The sources of the fund under the previous paragraph are as follows:

1. Government budget allocation.
2. Payment for deferred prosecution.
3. Payment for plea bargaining.
4. Profit from the fund.
5. Donations.
6. Fines imposed in accordance with this Act.
7. Other relevant sources of income.

Article 7 To coordinate, study, review, consult, supervise, review and promote domestic violence prevention work, municipal and county (city) competent authorities shall establish a domestic violence prevention committee. The organization of the committee and the meetings thereof shall be determined by the municipal and county (city) competent authorities.

Article 8 The municipal and county (city) competent authorities shall consolidate the activities and manpower of its police, education, health, social policy, civil administration, household registration, and labor and news departments and agencies, establish domestic violence prevention centers, and coordinate with relevant judicial and immigration authorities to perform the following matters:

1. Provision of a 24-hour hotline service.
2. Provision of a 24-hour emergency rescue service, assistance with medical visits, injury certification, evidence collection and emergency placements.

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3. Provision or referral of financial aid, legal services, education services and lodging assistance to the victims, including provision of stage-by-stage, supportive and diversified vocational training and employment services.
4. Provision of short-term, mid-term and long-term shelter placements for the victims and their minors.
5. Provision or referral of physical and mental treatment, counseling, social and psychological evaluation and disposition for the victims and the children, youth or family members who have witnessed domestic violence and who need these services.
6. Referral of offender treatment and follow-up assistance.
7. Follow-up and management of referral service cases.
8. Promotion of domestic violence prevention education, training and promotion.
9. Risk analysis and organization of cross-institutional network meetings.
10. Other matters related to the prevention of domestic violence.

The centers under the previous paragraph may be combined with sexual assault prevention centers. The social work, police, health and other relevant professionals to be put in place and the organization thereof shall be determined by the municipal and county (city) competent authorities.

Chapter 2 Civil Protection Orders

Section 1 Petition and Trial

Article 9 Civil protection orders (hereinafter “protection orders”) are divided into ordinary protection orders, temporary protection orders and emergency protection orders.

Article 10 A victim may file a petition with the court for an ordinary protection order or temporary protection order. If the victim is a minor, or suffers from a physical or mental disability or has difficulty in mandating an agent for any reason, the petition may be filed with the court by the victim’s legal representative or a relative by blood or by marriage within the third degree of kinship.

A prosecutor, the police department or a municipal or county (city) competent authority may file a petition with the court for a protection order.

No court costs is payable for the petition, revocation, alteration, extension or appeal of any protection order. Paragraph 4, Article 77-23 of the Code of Civil Procedure is applicable mutatis mutandis.

Article 11 The district court of the victim’s place of domicile or residence, the place of domicile or residence of the opposite party or the place of occurrence of an offense of domestic violence shall have jurisdiction over the petition of a protection order. In an area with a juvenile and family court, the district court under the previous paragraph refers to the juvenile and family court.

Article 12 The petition for a protection order shall be made in writing. However, in case of imminent danger to the victim suffering from domestic violence, the prosecutor, police department or municipal or county (city) competent authority may file a petition for an emergency protection order verbally, by facsimile or by transmission through other technical equipment and the petition may be filed at nighttime or on a non-working day.

The place of domicile or residence of the petitioner or the victim is not mandatory for the petition under the previous paragraph and only an address for process of service is required.

To determine jurisdiction, the court may investigate the victim’s place of domicile or residence. If the petitioner or victim seeks confidentiality about the victim’s place of domicile or residence, the court shall conduct an interrogation in a confidential manner and the interrogation record and relevant data shall be sealed and viewing prohibited.

Article 13 In case of any omission of procedure or requirement in a petition for a protection order, the court shall enter a ruling to reject the petition. However, if the omission may be corrected, an order should be issued to demand the correction before a set deadline.

The court may investigate evidence and may conduct segregated interrogations if required.

If required, the segregated interrogations under the previous paragraph may be conducted outside the court pursuant to petition or on its own initiative. Any technical equipment allowing two-way transmission of voice and image and other proper segregation measures may also be used.

During a court trial, the victim may file a petition seeking the presence of any family member or social worker or psychologist, who may also state their opinions.

The trial regarding a protection order shall not be public.

Before the court completes the trial, it may listen to the opinions of the municipal or county (city) competent authority or social welfare institutions.

No mediation or settlement is allowed in a case of a protection order.

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After the court accepts a petition for a protection order, the trial should be conducted swiftly. The issuance of a protection order shall not be delayed based on the reason of other cases between the parties that are under investigation or other pending litigation.

Article 14 After the trial, if the court confirms the facts of domestic violence and if the court deems it necessary, any or more of the following ordinary protection orders shall be issued pursuant to a petition or on its own initiative:

1. Prohibit the opposite party from committing acts of domestic violence against the victim or any child, youth or specific family member that witnessed the domestic violence.
2. Prohibit the opposite party from any act of harassment, contact, stalking, communication, correspondence or other unnecessary contact with the victim or any child, youth or specific family member that witnessed the domestic violence.
3. Order the opposite party to relocate from the place of domicile or residence of the victim or any child, youth or specific family member that witnessed the domestic violence and, if required, prohibit the opposite party from any use, collect benefits or disposition of its real property.
4. Order the opposite party to maintain a specific distance from the following locations: The place of domicile or residence of the victim or any child, youth or specific family member that witnessed the domestic violence, their school, workplace or other specific location that they frequent.
5. Determine the right to use any vehicle, motorcycle or other necessities of personal life, profession or education and, if required, order the handover thereof.
6. Make temporary rulings about the exercise the rights and assume the duties in regard to minors, ordering the contents and manner to be fulfilled, exercised or performed by one or both parties in a joint manner. Order the delivery of children if required.
7. Fix the time, location and manner for the opposite party meetings with minors and, if required, prohibit such meetings.
8. Order the opposite party to pay rental for the victim's place of domicile or residence or the living expenses of minors.
9. Order the opposite party to pay expenses for the medical care, assistance, shelter or property damage of the victim or specific family member.
10. Order the opposite party to complete an offender treatment program.
11. Order the opposite party to bear certain attorney's cost.
12. Prohibit the opposite party from viewing relevant information concerning the household registration, school registration or source of income of the victim and the minors under the victim's temporary custody.
13. Issue other orders required for the protection of the victim or any child, youth or specific family member that witnessed the domestic violence.

Before the court makes a ruling under Subparagraph 6 or 7 of the previous paragraph, it shall take into consideration the best interest of the minors and shall seek opinions of the minors or their social workers if required.

Under the offender treatment program under Subparagraph 10 of the first paragraph, the court may order the opposite party to receive awareness education and assistance, parenting education and assistance and other assistance. The court may also order the opposite party to receive an appraisal regarding the necessity to provide other disposition programs. The municipal or county (city) competent authority may provide recommendations concerning the disposition program before the court makes its ruling.

The ruling under Subparagraph 10 of the first paragraph shall specify a period to complete the disposition program.

Article 15 An ordinary protection order is valid for two years or less and shall become effective from the time of issuance.

Before the ordinary protection order expires, the court may revoke, alter or extend the order pursuant to the litigant's or victim's petition. Each petition for an extension of a protection order shall not exceed two years.

The petition for an extension of the protection order may be filed by a prosecutor, police department or municipal or county (city) competent authority.

An ordinary protection order shall expire unless the court makes a confirmed ruling otherwise before its expiry.

Article 16 The court may issue a temporary protection order or emergency protection order without a trial.

In order to protect the victim, the court may issue a temporary protection order pursuant to a petition or on its own initiative before the trial for an ordinary protection order is completed.

When a court issues a temporary protection order or emergency protection order, it may issue an order under Subparagraphs 1 to 6, 12 or 13 of the first paragraph of Article 14 pursuant to a petition or on its own initiative.

After accepting a petition for an emergency protection order, if the court determines that the victim is subject to imminent danger of domestic violence based on the petitioner's statement in court or by telephone, it shall issue an emergency protection order in writing within four hours. The court may also send the emergency protection order to the police department by telefax or through other technical equipment.

When a petitioner files a petition for a temporary protection order or emergency protection order before a petition for an ordinary protection order is filed, a petition for an ordinary protection order shall be deemed to have been filed when the court grants the petition.

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A temporary protection order or emergency protection order is effective from the time of issuance and shall cease to be effective when the petitioner revoke the petition for an ordinary protection order, when the court completes the trial and issues an ordinary protection order or when the court rejects the petition.

Before a temporary protection order or emergency protection order expires, the court may revoke or alter the order pursuant to the litigant's or victim's petition or on its own initiative.

Article 17 Any protection order issued by a court to the opposite party in accordance with Subparagraph 3 or 4 of the first paragraph of Article 14 shall remain valid even if the victim or any child, youth or specific family member that has witnessed domestic violence agrees that the opposite party does not need to relocate or remain at a distance.

Article 18 Other than an emergency protection order, a protection order shall be sent to the litigant, the victim, the police department and the municipal or county (city) competent authority within 24 hours from issuance.

The municipal or county (city) competent authority shall register protection orders issued by the court for consultation by judicial and other authorities that enforce the protection orders.

Article 19 The court shall provide the environment and measures for the victim and witnesses to attend court hearings in a safe manner.

The municipal or county (city) competent authority shall establish or mandate a private organization to establish a service location to handle domestic violence cases in the local district court. The court shall provide the premises, any required software and hardware equipment and other relevant assistance, except in cases of difficulty for offshore courts.

In an area where there is a juvenile or family court in a district court, the court under the previous paragraph refers to the juvenile or family court.

Article 20 Unless otherwise provided in this chapter, the relevant provisions under the Family Affairs Act are applicable to the procedure for protection orders.

Unless otherwise provided, rulings concerning protection orders are subject to interlocutory appeals. Enforcement shall not be suspended during an interlocutory appeal.

Section 2 Enforcement

Article 21 The litigant and the relevant authorities shall duly comply with a protection order once it is issued, as well as the following provisions:

1. A protection order that prohibits the use, collect benefits or disposition of real property or a protection order for monetary payment may be used as entitlement foreclosure. The victim may petition the court for compulsory enforcement in accordance with the Compulsory Enforcement Act. The enforcement fee may be exempted temporarily.

2. The application for the enforcement of any protection order regarding visitation with minors in any location put in place by the municipal or county (city) competent authority or any protection order regarding visitation with minors under the supervision of the municipal or county (city) competent authority or its personnel shall be filed by the opposite party with the municipal or county (city) competent authority.

3. Any protection order to complete an offender treatment program shall be enforced by the municipal or county (city) competent authority.

4. The application to enforce any protection order that prohibits viewing of relevant information shall be filed by the victim with the relevant authority.

5. Other protection orders shall be enforced by the police department.

A request for assistance may be filed with the police department as required for enforcement under Subparagraph 2 or 3 under the previous paragraph.

Article 22 The police department shall protect victim to the victim's or the opposite party's place of domicile or residence in accordance with the protection order and shall ensure their secure possession of their place of domicile or residence, vehicle, motorcycle or other necessities of personal life, profession or education.

If the opposite party fails to handover any deliverable items in accordance with a protection order, the police department may enter into any residence, building or other places where the deliverable items are located pursuant to the victim's requirements, in order to remove the deliverable items from the opposite party's possession or to seize the deliverable items and hand them over to the victim.

Article 23 If the opposite party fails to deliver any relevant certificate, document, seal or other proof together with any items referred to under the previous article, the police department may also collect and hand it /them over to the victim.

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If any item of proof under the previous paragraph is not collected and handed over, the victim may file an application with the relevant competent authority for alteration, annulment or re-issuance, if the deliverable item belongs to the victim. If the deliverable item belongs to the opposite party and has been issued by an administrative authority, the victim may ask the original issuing authority to issue a replacement certificate or document during the validity period of the protection order.

Article 24 If the obligor fails to deliver any minors in accordance with a protection order, the obligee may petition the police department to order the delivery by the obligor before a deadline. If the obligor fails to deliver the child before the deadline, the protection order that requires the delivery of the minors may serve as entitlement foreclosure and the obligee may petition the court for compulsory enforcement. The execution fees may be exempted temporarily.

Article 25 If the obligor fails to visitation with minors in accordance with a protection order, the enforcement authority or the obligee may proceed in accordance with the previous article and may petition the court for a alteration to the protection order.

Article 26 When a litigant is granted temporary exercise the rights and assume the duties in regard to a minors in accordance with Subparagraph 6 of the first paragraph, Article 14, such litigant may file an application with the household registration authority through the protection order to seek alteration of the minors movements registration.

Article 27 Before the end of the enforcement procedure, a litigant or any interested person may file an motion of objection with the enforcement authority against the manner of enforcement of the protection order, the procedure to be followed or other infringements upon his/her interests.

If the enforcement authority considers that the motion of objection under the previous paragraph to be meritorious, it shall immediately suspend the enforcement and shall revoke or correct any enforcement that is already being carried out. If the authority considers the objection meritless, it shall provide its opinion and submit the matter to the court that issued the protection order within 10 days for a ruling to be rendered by the court.

The court ruling under the previous paragraph is non-appealable.

Article 28 A protection order against domestic violence issued by a foreign court may be enforced after a petition is filed with a court of the Republic of China and after a ruling of recognition has been rendered by the court.

If the protection order against domestic violence issued by a foreign court and recognized by the court following the litigant's petition has any of the events listed under Subparagraphs 1 to 3 of the first paragraph, Article 402 of the Taiwan Code of Civil Procedure, the court shall dismiss the petition.

If the protection order against domestic violence is issued by a foreign court in a country where the protection orders issued by the courts of the Republic of China are not recognized, the court may dismiss the petition.

Chapter 3 Criminal Procedure

Article 29 A police officer shall arrest any offender that is found to be committing an offense of domestic violence and Article 92 of the Code of Criminal Procedure shall apply.

During the criminal investigation, a prosecutor, judicial police sergeant or judicial police officer may arrest a defendant or suspect in emergency cases where there is material suspicion of an offense of domestic violence or breach of a protection order and where there is a danger of continuous infringements upon the life, body or freedom of any family member.

No arrest warrant is required if the arrest under the previous paragraph is enforced by a prosecutor. If it is enforced by a judicial police sergeant or judicial police officer, the arrest warrant is not needed only in emergency situations which do not allow reporting to the prosecutor. After enforcement, a report shall be filed with the prosecutor for the issuance of an arrest warrant. If the arrest warrant is not issued by the prosecutor, the arrestee shall be released immediately.

Article 30 When a prosecutor, judicial police sergeant or judicial police officer makes an arrest or issues an arrest warrant in accordance with the second or third paragraph of the previous article, all circumstances of the matter should be taken into consideration, particularly the following:

1. The act of violence by the defendant or suspect has caused physical or mental harm or harassment against the victim, and the life, body or freedom of the victim or a family member thereof is subject to danger of harm if segregation is not put in place immediately.
2. The defendant or suspect has committed domestic violence or breached of a protection order in a long-term and repeated manner or has the habit of alcohol abuse, use of narcotics or drug abuse.
3. The defendant or suspect has a prior record of intimidating or imposing violence on the victim through use of a weapon or other dangerous object, and there is a risk that the victim may be subject to harm again.
4. The victim is a child, youth, old person, physically or mentally disabled person or any other person who cannot ensure his/her own security.

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Article 30-1 Following interrogation, if a judge determines that there is material suspicion that the defendant has breached a protection order or has committed a willful offense of domestic violence against any family member and that there is evidence that justifies concern over repeated offenses of such acts and detention is necessary, the defendant may be detained.

Article 31 Following interrogation of a defendant accused of an offense of domestic violence or breach of a protection order, if the prosecutor or the court deems that detention is not necessary and release on bail, to the custody of another, with a limitation on his residence restriction or release, the defendant may be ordered to comply with the following one or more conditions in relation to the victim, any child, youth that has witnessed domestic violence or any other specific family member:

1. Prohibition against commitment of domestic violence offenses.
2. Prohibition against harassment, contact, stalking, communication, correspondence or other unnecessary contact.
3. Relocation from the place of domicile or residence.
4. Order the opposite party to maintain a specific distance from the place of domicile or residence, school, workplace or other specific location that is frequented by the victim.
5. Other matters needed to ensure security.

The conditions under the previous paragraph shall become effective from the time of bail, custody, residence restriction or release and shall expire at the time of completion of criminal proceedings. The period shall not exceed a maximum of one year. The prosecutor or the court may revoke or alter the conditions under the first paragraph pursuant to a party's petition or on its own initiative.

Article 32 When a defendant breaches any condition imposed by the prosecutor or the court under the first paragraph of the previous article, the prosecutor or the court may revoke the prior ruling and issue a new ruling. The guarantee deposit, if any, shall be forfeited.

When a defendant breaches any condition imposed by the prosecutor or the court under the first paragraph of the previous article, and there is material relating to criminal suspicion, with facts justifying concerns over the defendant's repeated commitment of domestic violence and the necessity for detention, the prosecutor may petition the court to detain the defendant during investigation. The court may also order detention during the trial.

Article 33 Article 31 and the first paragraph of the previous article apply mutatis mutandis to defendants under detention after the court issues a ruling to stop the detention.

After detention is stopped, if the defendant breaches any condition imposed by the court under the previous paragraph and if the court deems it necessary to detain the defendant, the court may order detention again.

Article 34 When a prosecutor or court imposes a condition or issues a ruling in accordance with the first paragraph of Article 31 or the first paragraph of the previous article, the condition or ruling shall be imposed or issued in writing and shall be served on the defendant, the victim and the police department of the place where the victim's domicile or residence is located.

Article 34-1 In case of any of the following events, the court or prosecutors office shall give timely notice to the police department and the domestic violence prevention center of the place where the victim's residence is located:

1. After the defendant accused of an offense of domestic violence or breach of protection order is turned over to the court or prosecutors office, and following interrogation by the prosecutor or the judge, it is determined that detention is not necessary and an release on bail, to the custody of another, with a limitation on his residence restriction or release has been issued.
2. The court has revoked or stopped the detention of the defendant.

Upon receipt of the notice, the police department and domestic violence prevention center shall give immediate notice to the victim or the family member thereof.

The notice under the previous two paragraphs shall be given before the release of the defendant and notice may be given verbally, by telefax or by transmission through other technical equipment, except if the whereabouts of the victim or family member is unknown or in cases when it is clearly difficult to give notice.

Article 35 When the police personnel discovers that a defendant has breached any condition imposed by the prosecutor or the court in accordance with the first paragraph of Article 31 or the first paragraph of Article 33, an immediate report shall be filed with the prosecutor or the court. Article 29 applies mutatis mutandis to the situation in this article.

Article 36 Interrogation or examination of the victim may be done outside the court or proper segregation measures may be adopted pursuant to a petition or in the court's own initiative.

When the police department interrogates the victim, proper protection and segregation measures may be adopted.

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Article 36-1 During interrogation, the victim may request the presence of a family member, physician, psychiatrist, counselor or social worker, who may also state their opinions.

The victim's request under the previous paragraph shall not be rejected unless the prosecutor deems that the presence of such persons may interfere with the investigation.

The person chosen by the victim should be seated next to the victim.

Article 36-2 Before interrogation of the victim, the prosecutor shall inform the victim of the possibility of choosing one of the qualified persons under Article 36-1 to be with the victim.

Article 37 The indictment, petition for summary judgment, non-prosecutorial disposition, deferred prosecution, revocation of deferred prosecution, ruling or judgment in relation to any offense of domestic violence or breach of protection order shall be served on the victim.

Article 38 Any person subject to probation following conviction of an offense of domestic violence or breach of protection order shall be turned over to protective custody measures during the probation period.

Unless it is clearly not necessary, in granting the probation, the court shall order the defendant to comply with one or more of the following instructions during probation period:

1. Prohibition against domestic violence.
2. Prohibition against any act of harassment, contact, stalking, communication, correspondence or other unnecessary contact with the victim or any child, youth or specific family member that has witnessed domestic violence.
3. Relocation from the place of domicile or residence of the victim or any child, youth or specific family member that has witnessed domestic violence.
4. Order the respondent to maintain a specific distance from the following locations: The place of domicile or residence of the victim or any child, youth or specific family member that has witnessed domestic violence, their school, workplace or other specific location that they frequent.
5. Complete an offender treatment program.
6. Other matters to ensure the security of the victim or any child, youth or specific family member that has witnessed domestic violence.

The third paragraph of Article 14 may apply mutatis mutandis before the court orders the defendant to complete the offender treatment program in accordance with Subparagraph 5 of the previous paragraph.

When the court grants probation in accordance with the first paragraph, it shall give immediate notice to the victim and the police department of the place where the victim's domicile or residence is located.

If a probationer commits a serious breach of matters of instructions under the second paragraph, the probation shall be revoked.

Article 39 The previous article applies mutatis mutandis after the sentenced person is handed over to probation after parole.

Article 40 The prosecutor or the court may give notice to the municipal or county (city) competent authority or the police department to enforce the conditions imposed in accordance with the first paragraph of Article 31, the first paragraph of Article 33, the second paragraph of Article 38 or the previous article.

Article 41 The Ministry of Justice shall establish and enforce disposition programs for sentenced persons who have committed offenses of domestic violence or who have breached protection orders.

The persons related to the establishment and enforcement of the programs under the previous paragraph shall receive domestic violence prevention education and training.

Article 42 The correction authority shall give notice to the victim and the police department and the domestic violence prevention center of the place where the victim's domicile or residence is located concerning the scheduled date for the release from prison of a sentenced person who has committed an offense of domestic violence or who has breached a protection order, except if the whereabouts of the victim is unknown.

If the sentenced person has escaped, the correction authority shall give immediate notice under the previous paragraph.

Chapter 4 Parents and Children

Article 43 When a court determines or alters the person to exercise the rights and assume the duties in relation to minors in accordance with the law, if domestic violence has occurred, it shall be presumed that the exercise the rights and assume the duties by the infringer is to the detriment of the child.

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Article 44 After the court renders a judgment to determine or alter the person to exercise the right and assume the duties in relation to minors or a judgment concerning meetings and dealings with the minor child in accordance with the law, if domestic violence has occurred, the court may alter the judgment based on the best interest of the child pursuant to a request by the victim, the minors, the municipal or county (city) competent authority, the social welfare institution or any interested person.

Article 45 In allowing an infringer of domestic violence to have visitations with minors in accordance with the law, the court shall consider the security of the child and the victim and may issue one or more of the following orders:

1. Delivery of the child in a specific secure place.
2. Visitation under the supervision of a third party, authority or organization and instructions to be complied with during visitation period.
3. Completion of an offender treatment program or other specific assistance as a condition to the visitation.
4. Payment of the cost for the supervision of visitation.
5. Prohibition against meetings and dealings overnight.
6. Timely and secure handover of the child and payment of a guarantee deposit.
7. Other conditions for the protection of the security of the child, the victim or other family members.

If the court determines that any order under the previous paragraph has been breached or that the security of the victim or the child cannot be assured under allowed visitation, the court may prohibit the visitation pursuant to a petition or its own initiative. The guarantee deposit may be forfeited if the order under Subparagraph 6 of the previous paragraph is breached.

If required, the court may order the relevant authority or relevant person to maintain the confidentiality of the place of domicile or residence of the victim or his/her child.

Article 46 The municipal or county (city) competent authority shall arrange the locations or mandate other authorities (institutions) or organizations to arrange the locations for visitation with minors.

The locations under the previous paragraph shall have personnel that have received domestic violence security and prevention training. The rules concerning the enforcement and fee charges for the arrangements of and supervision of visitation and the delivery of the child shall be determined by the municipal or county (city) competent authority.

Article 47 If the court determines that there is an event of domestic violence during litigation or mediation proceedings, the court shall not carry out settlement or mediation, except if any of the following events occur:

1. The person performing the settlement or mediation has received training in domestic violence prevention and carries out the settlement or mediation in a manner that ensures the security of the victim.
2. The victim is allowed to select a person to assist and participate in the settlement or mediation.
3. Other procedures that can protect the victim from harm by the offender as determined by the person performing the settlement or mediation.

Chapter 5 Prevention and Disposition

Article 48 In handling any domestic violence case, the police personnel shall adopt the following measures as required to protect the victim and to prevent the occurrence of domestic violence:

1. Provide guardianship at the victim's place of domicile or residence or adopt other security measures required for the protection of the victim and his/her family members before the court issues an emergency protection order.
2. Protect the victim and his/her children in a shelter or medical organization.
3. Inform the victim of the rights, remedies and service measures that may be exercised.
4. Visit and warn the opposite party.
5. Visit the victim and his/her family members and provide required security measures.

In handling domestic violence cases, the police personnel shall prepare written records in the formats determined by the central police competent authority.

Article 49 In order to prevent acts of domestic violence or to protect the interests of the victim of domestic violence and when there is a concern that the victim may suffer from illegal physical or mental infringement, medical personnel, social workers, educational personnel and daily-life guidance personnel may seek required assistance from the police department.

Article 50 In performing their duties, if any medical personnel, social worker, educational personnel, daily-life guidance personnel, police personnel, immigration personnel or any other person enforcing prevention against domestic violence learns of any suspicious case of domestic violence, a report shall be filed with the local competent authority immediately within 24 hours.

The central competent authority shall determine the manner and contents of the report under the previous paragraph. The identity and any information relating to the reporter shall be kept confidential.

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Upon receipt of a report, the competent authority shall handle the matter immediately and shall also evaluate whether any child or youth has witnessed domestic violence. If required, the competent authority may conduct or mandate another authority (institution) or organization to conduct visits and investigations.

In conducting visits and investigations, the competent authority or the mandated authority (institution) or organization may seek assistance from the police department, medical (healthcare) institutions, schools, condominium management committees and other relevant authorities (institutions), who shall provide cooperation.

Article 50-1 No promotional material, publications, radio, TV, Internet or other media shall report or record the name of any victim or his/her minors or any information that can be used to identify the victim or his/her minors, except with the consent of a victim with capacity to make juridical acts or if it is deemed necessary by the criminal investigation authority or judicial authority in accordance with law.

Article 51 If any of the following events occur with any call to the 24-hour hotline under Subparagraph 1 of the first paragraph, Article 8, the municipal or county (city) competent authority may trace the telephone number and address:

1. In order to eliminate imminent danger to the party's life, body, freedom or property.
2. In order to prevent serious harm to any other person's interests.
3. If the call to the hotline was made without justification, causing an interference with the performance of public duties.
4. In order to promote public interest or to prevent harm.

Article 52 No medical institution shall refuse treatment for any victim of domestic violence or refuse to issue any certificate of verification of injury diagnosis without justification.

Article 53 The central health competent authority shall establish and promote health education and promotion programs related to domestic violence prevention.

Article 54 The central health competent authority shall establish the regulations regarding domestic violence offender treatment programs, including the following:

1. Evaluation standards of the treatment programs.
2. Contacts and evaluation systems for the judicial authority, the enforcement authorities (institutions) of domestic violence victim protection programs and the enforcement authorities (institutions) of domestic violence offender treatment programs.
3. Qualifications of the enforcement authorities (institutions).

The central health competent authority together with the other relevant authorities shall be responsible for the promotion, development, coordination, supervision and other matters related to the domestic violence offender treatment programs.

Article 55 The enforcement authorities (institutions) of offender treatment programs may engage in the following:

1. Inform the judicial authority, the victim and his/her defender of the treatment programs received by the infringer.
2. Consult the information about the infringer's treatment in other institutions.
3. Provide information on the infringer to the judicial authority, prison management committee, domestic violence prevention center and other relevant institutions.

If the infringer does not receive a treatment program, or if the number of hours received is insufficient, or if the infringer fails to comply with the requirements of the treatment program or engages in any conduct of intimidation or violence, the enforcement authority (institution) of the offender treatment program shall give notice to the municipal or county (city) competent authority and may also, if required, ask the municipal or county (city) competent authority to coordinate and handle the issue.

Article 56 The municipal and county (city) competent authorities shall prepare and make available to the victims of domestic violence written materials about their rights, remedies and services and shall also provide such materials to medical institutions and police authorities.

In performing their professional duties, medical personnel shall provide the materials under the previous paragraph to any patient known to be a victim of domestic violence.

No address of any shelter shall be identified in the materials under the first paragraph.

Article 57 The municipal and county (city) competent authorities shall provide medical institutions, public and private elementary schools and household registration authorities with information about domestic violence prevention so that the medical institutions, public and private elementary schools and household registration authorities can provide such relevant information to parents of newborns, parents of new students registering with elementary schools, persons of marriage registration or birth registration.

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The information under the previous paragraph shall include the impact of domestic violence on children and family and domestic violence prevention services.

Article 58 The municipal and county (city) competent authorities may issue the following subsidies to the victims of domestic violence:

1. Emergency aid for living expenses.
2. Medical costs and the costs for physical and mental treatment, consultation and counseling beyond the scope of national health insurance.
3. Litigation and attorney's costs.
4. Accommodation costs and housing rental.
5. Costs of children's education, living expenses and nursing and childcare services.
6. Other required expenses.

The provisions under Subparagraphs 1 and 2 of the first paragraph apply mutatis mutandis to children and youths who have witnessed domestic violence.

The subjects, conditions and amounts of subsidies under the first paragraph shall be determined by the municipal and county (city) competent authorities.

Any victim of domestic violence who has reached the age of 20 may apply for an entrepreneurial loan. The application qualifications, procedure, amount of interest subsidy, number of applicants and durations allowed shall be determined by the central competent authorities in charge of the relevant activities.

The competent authorities may request the relevant authorities (institutions), organizations, legal persons or individuals to provide the information required for the subsidy activities under the first and the fourth paragraphs. Such requests shall not be refused.

The competent authorities shall exercise due care as good administrators in relation to the information acquired in accordance with the previous paragraph and shall duly perform information security audit procedures. The custody, processing and use of the information shall be consistent with the provisions of the Personal Information Protection Act.

Article 58-1 The labor competent authority shall provide preparatory employment or supporting employment services to the victims of domestic violence who wish to be employed but who do not have sufficient working capabilities.

The regulations related to the preparatory or supporting employment services under the previous paragraph shall be established by the labor competent authority.

Article 59 The social administration competent authority shall provide on-the-job education concerning domestic violence prevention to social workers, family day care providers, childcare personnel, daily-life guidance personnel and other relevant social administration personnel.

The police competent authority shall provide on-the-job education concerning domestic violence prevention to police personnel.

The Judicial Yuan and the Ministry of Justice shall provide on-the-job education concerning domestic violence prevention to relevant judicial personnel.

The health competent authority shall provide or procure that the relevant healthcare organizations provide on-the-job education concerning domestic violence prevention to healthcare personnel.

The education competent authority shall provide on-the-job education concerning domestic violence prevention to guidance counselor, administration personnel, teachers, preschool educator and students of schools and kindergartens.

The immigration competent authority shall provide on-the-job education concerning domestic violence prevention to immigration personnel.

Article 60 High schools or lower level schools should have at least 4 hours of domestic violence prevention courses every school year. However, these courses may be provided under flexible arrangements throughout each school year as long as the total number of hours is respected.

Chapter 6 Penalties

Article 61 The breach of any of the following court rulings rendered in accordance with the first paragraph of Article 14 or the third paragraph of Article 16 is a violation of protection order referred to in this Act and shall be penalized by a term of imprisonment of no more than three years, short-term imprisonment and/or a fine of not more than NT\$100,000:

1. Prohibition against domestic violence.
2. Prohibition against harassment, contact, stalking, communication, correspondence or other unnecessary contact.
3. Relocation from a place of domicile or residence.
4. Keeping a distance from a place of domicile or residence, workplace, school or other specific location.
5. Completion of an offender treatment program.

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Article 61-1 Any radio or TV corporation that breaches Article 50-1 shall be subject to a fine of no less than NT\$30,000 and no more than NT\$150,000 imposed by the competent authority in charge of its activities and an order for correction before a deadline. If the correction is not made before the deadline, the penalties may be repeated.

Any responsible person for any promotional material, publication, Internet or other media other than mentioned in the previous paragraph that breaches Article 50-1 shall be subject to a fine of no less than NT\$30,000 and no more than NT\$150,000 imposed by the competent authority in charge of its activities and may also be subject to forfeiture of the objects under Article 50-1, order for removal, recall or other necessary methods of dispossession of the contents before a deadline. In case of failure to perform the aforementioned before the deadline, the penalties may be repeated until it is performed, except if the victim is deceased and the competent authority in charge of the relevant activities determines that reporting is required in consideration of social public interest.

If the promotional materials, publication, Internet or other media do not have a responsible person or if the responsible person does not supervise the conduct of the offender, the penalties under the second paragraph shall be imposed on the offender.

Article 62 Any breach of the first paragraph of Article 50 shall be subject to a fine of no less than NT\$6,000 and no more than NT\$30,000 by the municipal or county (city) competent authority, except for a breach by medical personnel in order to avoid imminent physical harm to the victim.

Any breach of Article 52 shall be subject to a fine of no less than NT\$6,000 and no more than NT\$30,000 by the municipal or county (city) competent authority.

Article 63 Any breach of Subparagraph 3, Article 51 that is not remedied despite a request shall be subject to a fine of not less than NT\$3,000 and not more than NT\$15,000 by the municipal or county (city) competent authority.

Article 63-1 If the victim is over the age of 16 and has been subjected to an illegal physical or mental infringement by a current or former partner in an intimate relationship who does not live with the victim, Articles 9 to 13, Subparagraphs 1, 2, 4 and 9 to 13 of the first paragraph, the third and the fourth paragraphs of Article 14, Articles 15 to 20, Subparagraphs 1 and 3 to 5 of the first paragraph and the second paragraph of Article 21, Articles 27, 28, 48, 50-1, 52, 54, 55 and 61 apply *mutatis mutandis*.

An intimate relationship referred to under the previous paragraph means a relationship of social interaction based on feelings or sexual intimacy.

This article shall be implemented one year after publication.

Chapter 7 Supplementary Provisions

Article 64 The central competent authority shall establish the regulations for the enforcement of protection orders and dealing with domestic violence cases by the administrative authorities.

Article 65 The enforcement rules of this Act shall be established by the central competent authority.

Article 66 This Act shall be implemented from its date of publication.

25. TAJIKISTAN

[Law on Prevention of Family Violence, 2013](#) ⁵⁶

This Law regulates social relations related to the prevention of domestic violence and defines the tasks of the subjects that prevent domestic violence to identify, prevent and eliminate the causes and conditions that contribute to domestic violence.

CHAPTER 1. GENERAL PROVISIONS

Article 1. Basic Terms

The following basic concepts are used in this Law:

⁵⁶ Law on Prevention of Family Violence, Law No. 954 (19 March 2013), available at http://inis.tj/load/zakony_rt/zakon_respubliki_tadzhikistan_o_preduprezhdenii_nasilija_v_seme/2-1-0-40 (last visited December 30, 2018). Unofficial translation by World Bank.

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- violence in the family is a physical, mental, sexual and economic mental act committed in the context of one family member's relationship to another family member, which causes violation of his rights and freedoms, physical injury or harm to his health or threat causing such harm to health;
- prevention of domestic violence - a set of legal, economic, social and organizational measures implemented by entities that prevent domestic violence, aimed at protecting the rights, freedoms and legitimate interests of a person and citizen within the framework of family relations, preventing domestic violence, identifying and eliminating causes and conditions conducive to domestic violence;
- physical violence in the family - the deliberate wrongful act of one family member in relation to another family member, as a result of the use of physical force, which causes physical pain or harm to his health;
- mental violence in the family - the deliberate mental impact, humiliation of the honor and dignity of one family member by another family member by threatening, insulting, blackmailing or forcing to commit offenses or acts dangerous to life and health, as well as resulting in impaired mental, physical or personal development;
- sexual violence in the family - the deliberate wrongful act of one family member in relation to another family member, infringing on the sexual integrity and sexual freedom of a person, as well as sexual acts committed against a minor family member;
- economic violence in the family - the intentional wrongful act of one family member in relation to another family member in order to deprive him of housing, food, clothing, property or funds to which the victim has the right provided by the legislation of the Republic of Tajikistan, and this act may cause a violation of physical or mental health or entail other adverse conditions;
 - a person who has suffered from domestic violence (hereinafter referred to as "victim") is a family member who has intentionally suffered physical, moral or material harm to another family member;
 - protective order - a document issued by the internal affairs bodies to the person who committed violence in the family, or to the person threatening to use it;
 - subjects that prevent domestic violence - government agencies, public amateur activities, enterprises, institutions, other organizations and citizens of the Republic of Tajikistan responsible for the prevention of domestic violence.

Article 2. Purposes of this Law

The objectives of this Law are:

- legal protection of the family as the basis of society;
- legal regulation of relations related to the prevention of domestic violence;
- promoting the implementation of state policy on the prevention of domestic violence;
- shaping a climate of social intolerance towards violence family;
- identification, prevention and elimination of the causes and conditions conducive to domestic violence;
- promoting parental responsibility for the education and upbringing of children.

Article 3. Legislation of the Republic of Tajikistan on the Prevention of Domestic Violence

The legislation of the Republic of Tajikistan on the prevention of domestic violence is based on the Constitution of the Republic of Tajikistan and consists of this Law, other regulatory legal acts of the Republic of Tajikistan, as well as international legal acts recognized by Tajikistan.

Article 4. The scope of this Law

The effect of this Law applies to citizens of the Republic of Tajikistan, foreign citizens and stateless persons residing in the Republic of Tajikistan and married members of their families, as well as co-residents living a common household.

Article 5. Principles for the Prevention of Domestic Violence

Prevention of domestic violence is based on the principles of:

- respect for the rights and freedoms of man and citizen;
- legality;
- humanism;
- confidentiality of domestic violence information;
- support and strengthen the family;
- participation of the public, state bodies, private and public organizations in the social and legal system of protecting the life and health of family members;
- advantages of preventive measures over measures of responsibility;
- inevitability of responsibility for domestic violence.

Article 6. Rights of the victim

The victim has the following rights:

- to receive medical, psychological, legal and social assistance;
- to access support centers, centers or departments for medical and social rehabilitation of victims;

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- to receive legal advice and other information on the protection of their own security;
- to appeal to bodies of public initiative for the purpose of public condemnation of the behavior of the person who committed violence in the family;
- to appeal to the internal affairs bodies, the prosecutor's office or the court to prosecute the person who committed domestic violence.

CHAPTER 2. SUBJECTS PREVENTING FAMILY VIOLENCE

Article 7. Competence of the Government of the Republic of Tajikistan to prevent domestic violence

The competence of the Government of the Republic of Tajikistan in the field of prevention of domestic violence includes:

- ensuring state policy in the field of prevention of domestic violence;
- approval of state programs to prevent domestic violence;
- coordination of activities of entities that prevent domestic violence;
- approval of an approximate position and statute of support centers;
- the exercise of other powers determined by the normative legal acts of the Republic of Tajikistan.

Article 8. Powers of local government bodies to prevent domestic violence

Local governments for the prevention of domestic violence have the following powers:

- ensuring the implementation of state programs to prevent domestic violence;
- development, approval and implementation of local programs for the prevention of domestic violence and cooperation with other entities that prevent domestic violence;
- taking measures to prevent domestic violence;
- creation of institutions that carry out social and legal protection of citizens against domestic violence;
- the exercise of other powers determined by the normative legal acts of the Republic of Tajikistan.

Article 9. Powers of state bodies for the affairs of women and families for the prevention of domestic violence

Government agencies for women's and family affairs have the following powers to prevent domestic violence:

- participation in the development and implementation of programs for the prevention of domestic violence and cooperation with other actors that prevent domestic violence;
- analysis of the causes and conditions conducive to domestic violence;
- submission of proposals to local government authorities to develop measures related to the prevention of violence in family;
- implementation of information and campaigning measures to prevent domestic violence;
- the exercise of other powers determined by the regulatory legal acts of the Republic of Tajikistan.

Article 10. Powers of commissions for the protection of the rights of the child to prevent domestic violence

The Commission for the Protection of the Rights of the Child has the following powers to prevent domestic violence:

- participation in the development and implementation of programs for the prevention of domestic violence and cooperation with other actors that prevent domestic violence;
- submission of proposals to local government authorities for the adoption of measures related to the prevention of domestic violence among minors;
- implementation of necessary measures in respect of minors who have been injured and their rehabilitation in cooperation with other subjects that prevent domestic violence;
- representing the legitimate interests of minors who are exposed to violence in the family in the bodies of the preliminary investigation and the court;
- consideration of the issue of sending children systematically exposed to domestic violence to orphanages;
- the submission of information to the internal affairs authorities with a view to taking appropriate measures in relation to persons who have committed violence against a minor family member, or who threaten to commit such an act;
- the exercise of other powers determined by the regulatory legal acts of the Republic of Tajikistan.

Article 11. Powers of internal affairs bodies for the prevention of domestic violence

Internal affairs agencies for the prevention of domestic violence have the following powers:

- participation in the development and implementation of programs for the prevention of domestic violence and cooperation with other entities that prevent domestic violence;
- receiving, consideration of appeals and other information about violence or the threat of domestic violence in the manner prescribed by the legislation of the Republic of Tajikistan;
- identifying the causes and conditions conducive to the commission of domestic violence;

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- registration of a person who has committed domestic violence, and the implementation of educational and preventive measures in relation to him;
- an explanation to the victim of his rights when applying and sending him, if necessary, for a medical examination; referral of the victim on the basis of his written consent to the centers of support, centers or departments of medical and social rehabilitation of the victims;
- issuing a protective order to the person who committed domestic violence;
- preparation of materials, initiation of cases of administrative offenses or criminal cases against the person who committed domestic violence, in the manner prescribed by the legislation of the Republic of Tajikistan;
- registration of families in which cases of violence are systematically observed and preventive measures are taken to strengthen the family;
- keeping records of domestic violence cases;
- organization of special training courses on the prevention of domestic violence for employees of internal affairs bodies;
- the exercise of other powers determined by the normative legal acts of the Republic of Tajikistan.

Article 12. Powers of education authorities to prevent domestic violence

The educational authorities for the prevention of domestic violence have the following powers:

- participation in the development and implementation of programs for the prevention of domestic violence and cooperation with other actors that prevent domestic violence;
 - cooperation with parents and other legal representatives of a minor on issues of education and upbringing of children;
 - identification and submission to the relevant state authorities for the implementation of measures of information about pupils and students exposed to domestic violence;
 - the adoption of information and propaganda measures to prevent domestic violence;
- the exercise of other powers determined by the normative legal acts of the Republic of Tajikistan.

Article 13. Powers of health authorities to prevent domestic violence

The public health authorities for the prevention of domestic violence have the following powers:

- participation in the development and implementation of programs for the prevention of domestic violence and cooperation with other actors that prevent domestic violence;
- development and practical implementation in health care institutions of methodological recommendations on the provision of primary medical and psychological assistance to victims;
- rendering primary medical, as well as psychological, narcological and therapeutic and preventive care to the victim and the person who committed domestic violence;
- submission to the internal affairs bodies of information about the treatment of the victim and the medical care provided to him;
- the exercise of other powers determined by the normative legal acts of the Republic of Tajikistan.

Article 14. Powers of the bodies of the sphere of social protection of the population but the prevention of domestic violence

The social protection authorities for the prevention of domestic violence have the following powers:

- participation in the development and implementation of programs for the prevention of domestic violence and cooperation with other actors,
- preventive domestic violence;
- an explanation to the victim of his social rights and the provision of social assistance during the treatment;
- in collaboration with state employment agencies, the development of measures for the employment of the victim and the person who committed domestic violence;
- the exercise of other powers determined by the normative legal acts of the Republic of Tajikistan.

Article 15. Powers of self-government bodies of settlements and villages, public initiative, enterprises, institutions and other organizations for the prevention of domestic violence

1. The self-government bodies of villages and villages coordinate the activities of entities that prevent domestic violence in the territory of villages and villages, participate in the development and implementation of local programs for the prevention of domestic violence, and take the necessary measures to prevent and eliminate its consequences.

2. The bodies of public initiative in the relevant territory carry out explanatory and propaganda work to prevent domestic violence and take measures to strengthen the family.

3. Enterprises, institutions and other organizations, regardless of their organizational and legal forms, take the necessary measures to prevent domestic violence and eliminate its consequences, and can assist victims who are their employees and members in restoring their health.

Article 16. Support Centers

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1. Support centers are created by government agencies, individuals or legal entities in the form of an institution. Support centers are legal entities, as an institution belong to non-profit organizations and operate on the basis of a provision or charter.
2. Support centers for the prevention and social and legal protection from domestic violence perform the following tasks:
 - participation in the implementation of programs for the prevention of domestic violence and cooperation with other actors that prevent domestic violence;
 - receiving victims;
 - provision of necessary free medical, psychological, legal and social assistance to the victim;
 - the granting of asylum for the temporary stay of the victim;
 - submission to the internal affairs bodies of information on the revealed facts and the real threat of domestic violence or the facts of such violence with the consent of the victim;
 - analysis and synthesis of the causes and conditions conducive to the commission of domestic violence;
 - taking measures to raise public awareness about the prevention of domestic violence;
 - presenting cases of domestic violence at the request of other entities that prevent domestic violence;
 - performing other tasks stipulated by the regulation or statute of the support center.

Article 17. Centers or departments of medico-social rehabilitation of victims

1. Centers or departments of medical and social rehabilitation of victims, depending on their specific needs, are created by a decision of the local executive body of state power in coordination with the health care authorities in central, city, district hospitals or city and district polyclinics and are not a legal entity. The work schedule of the centers or departments of medical and social rehabilitation of victims should correspond to the work schedule of hospitals and clinics.
2. The costs associated with the medical and social rehabilitation of victims are reimbursed by the person who committed domestic violence, according to the price list established for health care facilities.
3. The victim is housed in medical units or social rehabilitation centers on the basis of his application or the direction of the relevant state bodies. To accommodate a minor victim in these centers, the consent of the parents, or their substitute, of the guardianship authorities is required.
4. The victim is held in medical units or social rehabilitation centers during the period necessary for their treatment, psychological and social rehabilitation.
5. Centers or departments of medical and social rehabilitation of victims perform the following tasks:
 - provision of primary health care, social, psychological and other types of assistance;
 - referral, if necessary, of the victim for appropriate treatment;
 - submission, if necessary, of information to the relevant law enforcement authorities on the violence committed with the consent of the victim;
 - submission of information on cases of domestic violence at the request of other subjects that prevent domestic violence.

CHAPTER 3. INDIVIDUAL MEASURES TO PREVENT FAMILY VIOLENCE FINANCING OF ACTIVITIES RELATED TO THE PREVENTION OF FAMILY VIOLENCE

Article 18. Individual measures to prevent violence in family

Individual measures to prevent domestic violence, as a targeted impact on the consciousness and behavior of the person who committed domestic violence, are used to prevent the commission of an offense and to ensure the safety of the victim.

1. Individual measures to prevent domestic violence include:
 - educational conversations;
 - delivery to the internal affairs bodies of the perpetrator of domestic violence;
 - protective order;
 - administrative detention;
 - implementation of measures stipulated by the legislation of the Republic of Tajikistan, including coercive measures of a medical nature;
 - deprivation of parental rights, cancellation of adoption, guardianship and guardianship in accordance with the procedure established by the legislation of the Republic of Tajikistan;
 - placement of the victim in support centers, centers or departments of medical and social rehabilitation of victims.
2. Individual measures to prevent domestic violence are applied taking into account the individual characteristics of the person against whom these measures are applied, and the dangers of the act committed by him.

A decree on the application of individual measures to prevent domestic violence can be appealed by interested parties in the manner prescribed by the legislation of the Republic of Tajikistan.

Article 19. Grounds for applying individual measures to prevent domestic violence

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1. The basis for applying individual measures to prevent domestic violence can be:

- statement of the victim or information of the physical and legal persons;
- the identification of cases of domestic violence by internal affairs agencies;
- information provided by other subjects for warning of violence in family.

2. The application and information on the commission of violence in the family or on the threat of its commission are considered by the relevant state body in the manner established by the legislation of the Republic of Tajikistan.

Article 20. Conversation of educational nature

1. Educational conversations with the person who committed domestic violence and the victim are conducted by the subjects who prevent domestic violence in order to identify the causes and conditions that contributed to the commission of domestic violence, explain its social and legal consequences, and restore and strengthen the strength of the family.

2. Educational conversations are conducted in the office premises of the subjects that prevent violence in the family, as well as at the place of residence, school or work.

3. The person with whom the conversation is educational in nature, is warned about the termination and the inadmissibility of the repeated commission of an illegal act.

Educational conversations with minors are conducted in the presence of parents, a teacher, or another legal representative.

Article 21. Protective order

1. The basis for issuing a protective order is an appeal on the fact of committing an act of domestic violence or the threat of its use.

2. A person who has received a protective order must fulfill all the conditions specified in it. In case of non-compliance with these requirements, the said person shall be brought to administrative responsibility in the manner established by the legislation of the Republic of Tajikistan.

3. A protective order is issued to the sane person who has committed domestic violence, who at the time of its adoption was 16 years old.

4. The protective order is issued by the head or deputies to the head of the internal affairs department at the place where the violence was committed within the family and issued within 24 hours from the moment the violence was committed in the family, or from the moment of filing a statement about the fact of violence in the family or the threat of its use to the person who committed violence respect of a family member.

5. A protective order is issued for a period of up to 15 days. Based on the application of the victim or his legal representative, the term of validity of a protective order may be extended to 30 days at the request of the head of the internal affairs body and the permission of the prosecutor.

6. The protective order shall contain the surname, name and patronymic of the person who committed domestic violence or the threat of domestic violence, information about the time and place of its removal, place, time and circumstance of the commission or threat of violence, stipulated requirements and terms of their action, in case of continuation of unlawful actions and non-compliance with the requirements of this protective order, position, surname, name and patronymic of the authorized person who issued the protective order.

7. A protective order against a person who committed domestic violence may include the following requirements:

- the prohibition of any kind of violence against the victim, the implementation, contrary to his desire, to search, spy, visit, negotiate and other relations that restrict the rights and freedoms of the victim;

- recommendation for timely return to the home;

- prohibition of the use of alcoholic beverages and stupefying substances for the duration of the protective prescription.

8. Failure to comply with the requirements specified in part 7 of this article, resulting in administrative liability, does not interrupt the term of the protective order.

9. A protective order may be appealed to a court. The complaint is subject to review within three days. An appeal to a court does not suspend the effect of a protective order.

10. A copy of the protective order is issued to the victim.

Control over the fulfillment of the requirements of a protective order is carried out by the internal affairs body that issued the protective order.

Article 22. Administrative detention

In order to prevent domestic violence containing the composition of an administrative offense and insufficient protective prescription to ensure the safety of the victim, an official of the internal affairs bodies, in accordance with the legislation of the Republic of Tajikistan, carries out administrative detention of the person who committed domestic violence.

Article 23. Financing the activities of entities that prevent domestic violence

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The activities of entities that prevent domestic violence are financed from the state budget, individuals and legal entities, and other sources not prohibited by the legislation of the Republic of Tajikistan.

CHAPTER 4. FINAL PROVISIONS

Article 24. Respect for confidentiality of information related to domestic violence

Information about the personal and family life of the victims is confidential and not subject to disclosure. The disclosure of such information by a person to whom domestic violence has become known due to his official position entails liability established by the legislation of the Republic of Tajikistan.

Article 25. Responsibility for non-compliance with the requirements of this Law

Individuals and legal entities for non-compliance with the requirements of this Law are brought to responsibility in the manner established by the legislation of the Republic of Tajikistan.

Article 26. The procedure for the enactment of this Law

This Law shall enter into force after its official publication.

[...]

26. TANZANIA

[The Law of Marriage Act, 1971 \(As amended\)](#)⁵⁷

65. Husband and wife and the law of tort

As from the commencement of this Act–

[...]

(c) a husband and wife shall have the same liability in tort towards each other as if they were unmarried;

[...]

66. No right of spouse to inflict corporal punishment. For the avoidance of doubt, it is hereby declared that, notwithstanding any custom to the contrary, no person has any right to inflict corporal punishment on his or her spouse.

107. Evidence that marriage has broken down

[...]

(2) Without prejudice to the generality of subsection (1), the court may accept any one or more of the following matters as evidence that a marriage has broken down but proof of any such matter shall not entitle a party as of right to a decree–

[...]

(c) cruelty, whether mental or physical, inflicted by the respondent on the petitioner or on the children, if any, of the marriage;

(d) wilful neglect on the part of the respondent;

(e) desertion of the petitioner by the respondent for at least three years, where the court is satisfied that it is wilful;

[...]

139. Injunctions against molestation

The court shall have power during the pendency of any matrimonial proceedings or on or after the grant of a decree of annulment, separation or divorce, to order any person to refrain from forcing his or her company on his or her spouse or former spouse and from other acts of molestation.

⁵⁷ The Law of Marriage Act, Act No. 5 of 1971 (last amended by Act No. 9 of 1996), available at [http://www.rita.go.tz/eng/laws/History%20Laws/Marriage%20Ordinance.%20\(cap%2029\).pdf](http://www.rita.go.tz/eng/laws/History%20Laws/Marriage%20Ordinance.%20(cap%2029).pdf) (last visited December 30, 2018).

27. THAILAND

[Domestic Violence Protection Act, 2007](#)⁵⁸

[...]

§ 1

This Act shall be cited as the "Domestic Violence Victim Protection Act, BE 2550 (2007)".

§ 2

This Act shall come into force upon elapse of ninety days from the date of its publication in the Government Gazette.

§ 3

In this Act:

"Domestic violence" means any act done with the intention to or in the manner likely to cause harm to the body, mind or health of a family member or to exert coercion or immoral influence over a family member in order to wrongfully cause him to do, not to do or yield to any act, but not including an act done negligently;

"Family member" means a spouse, a former spouse, a person cohabiting or having cohabited with another husband and wife without civil marriage, a child, an adopted child, a member of a household, as well as any person counting on and living in a family;

"Court" means a juvenile and family court under the law on establishment of juvenile and family courts and procedure thereof;

"Relief money" means preliminary compensation for the loss of any money or property incurred by a domestic violence victim in consequence of domestic violence, including the loss of earnings, medical expenses, expenses for new residence and other necessary expenses;

"Psychologist" means a psychologist under the Code of Criminal Procedure;

"Social worker" means a social worker under the Code of Criminal Procedure;

"Competent authority" means a person authorised by the Minister to execute this Act and includes an administrative or police officer under the Code of Criminal Procedure;

"Inquirer" means a competent authority authorised as a judicial police officer under the Code of Criminal Procedure by the Minister; prescribed that in any locality for want of a competent officer authorised by the Minister, a judicial police officer under the Code of Criminal Procedure shall become an inquirer under this Act;

"Minister" means the Minister in charge of this Act.

§ 4

Any person who commits an act of domestic violence is said to commit an offence of domestic violence and shall thereby be liable to imprisonment for not more than six months, or a fine of not exceeding six thousand baht or both.

The offence under paragraph 1 shall be compoundable, without nullifying the offences under the Criminal Code or other laws.

Should the act under paragraph 1 also constitute an offence of causing bodily harm pursuant to section 295 of the Criminal Code, this offence shall be compoundable.

§ 5

A domestic violence victim or a person finding out or aware of an act of domestic violence shall bear the duty to inform a competent authority who shall further take certain measures under this Act.

When the information under paragraph 1 is made in good faith, the informant shall be protected and shall incur no liability, whether civil, criminal and administrative.

§ 6

The information under paragraph 5 may be made orally, in writing, by telephone, by electronic means or by any other means.

When a competent authority becomes aware of an act of domestic violence or receives the information under paragraph 5, he shall be empowered to enter the relevant residences or scenes of action and inquire the person committing the act of domestic violence, the domestic violence victim or other persons present thereat as to the facts concerned. The competent authority shall also have the power to arrange medical examinations and treatments for the victim and direct the victim to take counsel with a psychiatrist, psychologist or social worker. If the victim wishes for a prosecution, the competent authority shall extract his complaint in pursuance of the Code of Criminal Procedure. If the victim is unable or had no opportunity to complain in person, the competent authority shall enter a complaint on his behalf.

The criteria and procedure for the execution of paragraph 2 shall be set forth in the rules of the Minister.

§ 7

If no information under section 5 or complaint under section 5 is made within three months from the time the domestic violence victim is able or has the opportunity to inform or complain in person, prescription shall take effect. This shall,

⁵⁸ Domestic Violence Protection Act, B.E. 2550 (25 July 2007), available at http://thailaws.com/law/t_laws/tlaw0403.pdf (last visited December 30, 2018).

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however, not debar the victim or any interested person from seeking welfare protection in accordance with the law on establishment of juvenile and family courts and procedure thereof.

§ 8

Where a complaint is entered before the expiry of the prescription period under section 7, the inquirer shall hold an inquiry without delay and shall send the domestic violence victim, inquiry files and his opinion to a public prosecutor who must then file a charge with the court within forty eight hours from the time the person committing the act of domestic violence is seized. If the charge cannot be filed within such period of time owing to whatever necessity, the public prosecutor may apply to the court for several extensions not exceeding six days each; prescribed that the court may not grant more than three successive extensions. The law on establishment of municipal courts and criminal procedure thereof shall also apply mutatis mutandis.

Should the act constituting the offence under section 4, paragraph 1, also lead to an offence under other law, the former and latter offences shall jointly be brought to the court. But if the offence under other law is subject to a higher rate of penalty, these offences shall be brought to the court competent under such other law and all provisions of this Act shall also apply mutatis mutandis.

In interrogating a domestic violence victim, the inquirer must permit the presence of a psychiatrist, psychology, social worker or person sought by the victim, who shall be entitled to provide advice to the victim.

In case of an urgent need by which the participation of the psychiatrist, psychology, social worker or person sought by the victim cannot be expected, the inquirer shall conduct the interrogation in his absence, but the inquirer must record the grounds therefor in the inquiry files.

The criteria and procedure for the activities of the inquirers shall be set forth in the rules of the Minister.

§ 9

Upon information under section 5 or complaint under section 6, no person may print, publish or distribute to the public by whatever means any picture, account or information likely to negatively affect the person committing the act of domestic violence or the domestic violence victim who is party to a case under this Act.

Any person who contravenes the provision of paragraph 1 shall be liable to imprisonment for not more than six months, or a fine of not exceeding sixty thousand baht or both.

§ 10

In executing section 8, a competent authority who ranks not lower than a senior administrative or police officer under the Code of Criminal Procedure and who is authorised by the Minister shall be invested with the power to, by order, indicate certain provisional measures or reliefs in favour of the domestic violence victim, whether or not the victim requests therefor. The provisional measures or reliefs shall only be indicated to the extent necessary and appropriate. They shall include the requirement that the victim be medically examined, the person committing the act of domestic violence provide relief money in agreement with his living condition, or the person committing domestic violence be prohibited from entering the residence of the family in question or from being near any of its members, and shall include the methods of child custody.

When a competent authority indicates one or several provisional measures or reliefs in keeping with paragraph 1, he shall refer those provisional measures or reliefs to the court within forty eight hours from the issuance of the order thereof. If the order is approved by the court, it shall continue to be in force.

In cases the court does not concur on the whole or part of the order indicating provisional measures or reliefs or if certain facts or circumstances have changed, the court shall forthwith hold an examination and issue any order. When the facts or circumstances ascertained do suffice to adopt any order, the court may amend, change or cancel the order indicating provisional measures or reliefs, render a different order, or stipulate additional conditions.

A person interested by an order of a competent authority or court under this section may, by written appeal, request the court to review the order; prescribed that the appeal must be entered within thirty days from the appellant's awareness of the order. Any judgment or order adopted by the court shall be final.

Any person who contravenes or fails to abide by an order given by a competent authority or court shall be liable to imprisonment for not more than three months, or a fine of not exceeding three thousand baht or both.

§ 11

In the course of an inquiry or trial, a court may issue an injunction indicating certain provisional measures or reliefs under section 10 or may issue any different injunction as it deems expedient.

In cases the situation or circumstances concerning the person committing the act of domestic violence or the domestic violence victim have changed, the court may amend, change or cancel the injunction indicating provisional measures or reliefs or the different injunction, or may stipulate additional conditions.

Any person who contravenes or fails to comply with a judicial injunction shall be liable to imprisonment for not more than six months, or a fine of not exceeding six thousand baht or both.

§ 12

In the event that the court holds a person committing an act of domestic violence guilty of the offence under section 4, the court may, instead of sentencing him to any penalty, apply certain measures of reformation, treatment or correction to him,

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may direct him to pay an amount of relief money, carry out community service or refrain from the acts giving rise to domestic violence, or may place him under a peace bond, subject to the procedure and period of time determined by the court. In the event that the offence under section 4 is to be compounded or the complaint or charge is to be withdrawn, the inquirer or court, whichever applies, shall record the preliminary agreement prior to endorsing the said compound or withdrawal, whilst the measures under paragraph 1 shall *mutatis mutandis* become the conditions governing the execution of such agreement. In this respect, the inquirer or court may take into account the opinions of the victim or family members concerned. When the agreement and conditions are fulfilled, the compound or withdrawal may then be endorsed. Should the accused or defendant contravene or fail to observe the mentioned conditions, the inquirer or court may resume the prosecution.

The criteria and procedure for the execution of paragraphs 1 and 2 shall be set forth in the rules laid down and published in the Government Gazette by the President of the Central Juvenile and Family Court or the Minister, as the case may be.

§ 13

The Ministry of Social Development and Human Security shall, by ministerial regulation, set up a working system in support of the activities under and the execution of sections 10, 11 and 12.

§ 14

With respect to the procedure, entry of documents and taking of evidence, where no provision of this Act is specifically applicable, the law on establishment of juvenile and family courts and procedure thereof shall apply *mutatis mutandis*.

§ 15

Irrespective of to whatever extent the trial of a domestic violence case has progressed, the court shall attempt to arrange an agreement or settlement on the matters in issue between the parties, for the sake of the peaceful coexistence of the family members. For this purpose, the court shall also adhere to the following principles:

- (1) The rights of the domestic violence victims need to be protected;
- (2) The marital status, as the source of a male and a female who willingly live together as husband and wife, needs to be conserved and protected; prescribed that in case of impossibility, the divorce ought to be fair and should result in the most lenient injury, having due regard to the welfare and future of their children;
- (3) The family needs to be protected and supported, especially when it is bound to provide maintenance and education to its members who are still minor;
- (4) Certain measures need to be taken for the purpose of enabling the husband and wife to be reconciled and to reform the relationships between themselves and between them and their children.

§ 16

For the purpose of compounding an offence of domestic violence, a competent authority or court, whichever applies, may appoint a mediator or panel of mediators, consisting of the fathers, mothers, guardians or relatives of the parties or other persons found appropriate by the competent authority or court; prescribed that these mediators shall provide advice or assistance in adopting a compromise between the parties. Otherwise, the competent authority or court may direct any social worker, social work agency or person to assist in adopting a compromise between the parties.

Upon having fulfilled the order of the competent authority or court, the mediators under paragraph 1 shall report the mediation outcome to the competent authority or court, as the case may be. If the mediation is successful, the mediators shall draw up a compromise or may request the competent authority or court to direct the parties to conclude a compromise in the presence of the competent authority or court.

Should the competent authority or court find that the compromise is lawful and not contrary to public order or good morals, the competent authority or court shall set the compromise in operation.

§ 17

The Ministry of Social Development and Human Security shall draw up an annual report stating the amount of domestic violence cases, the amount of the orders indicating provisional measures or reliefs, the amount of the violations of the orders indicating provisional measures or reliefs rendered by the competent authorities and courts, as well as the amount of the compromises adopted. The Ministry shall also once a year submit the report to the Council of Ministers and the National Assembly for their acknowledgement.

§ 18

The Minister of Social Development and Human Security shall be in charge of this Act and be empowered to appoint the competent authorities as well as issue the ministerial regulations and rules for the execution of this Act.

Those ministerial regulations and rules shall take effect upon their publication in the Government Gazette.

[...]

Statement of Grounds

The grounds for promulgation of this Act are as follows: The domestic violence problems are of delicate and complicated nature, involve many intimate persons, and have special characteristics which distinguish them from the cases of causing bodily harm in general. These problems cannot be dealt with perfectly by the criminal measures under the Criminal Code which are intended to penalise the offenders, rather than to reform them or protect the domestic violence victims. For these

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reasons, the establishment of a law on protection of domestic violence victims would be more appropriate than the enforcement of the criminal measures. Under such law, the exceptional forms, methods and processes of criminal prosecution could also be adopted, with a view to enabling the offenders to reform themselves, preventing them from relapsing into offences, maintaining good relations amongst families, and entitling the children, juveniles and family members to the State-provided protection from the acts of violence and unfair treatments. It is therefore necessary to enact this Act.

[Penal Code Amendment Act, 2007](#)⁵⁹

Section 3

The provisions of [section 276](#) of the *Penal Code*, which has been amended by the *Penal Code Amendment Act (No. 5) 1982*, and [section 277](#) of the *Penal Code*, which has been amended by the *Penal Code Amendment Act (No. 8) 1987*, shall be repealed and replaced by the following:

Section 276

1. Anyone who forcibly performs sexual intercourse with another by threatening the latter in whatever manner, by exercising forcible violence, by taking advantage of the latter being in a state of irresistibility, or by causing the latter to mistake him for a different person, shall be liable to imprisonment from four years to twenty years and a fine from eight thousand baht to forty thousand baht.
2. **To perform sexual intercourse**, in paragraph 1, means to satisfy the desire of the performer by using the genital organ of the performer to do something against the genital organ, anus, or oral cavity of another person, or using any other thing to do something against the genital organ or anus of another person
3. [...]
4. If the offence under paragraph 1 has been committed between spouses and those spouses still wish to cohabit as husband and wife, the court may impose a punishment more lenient than that provided by the law to whatever extent or may prescribe probation conditions instead of imposing the punishment. In case the court gives a judgment imposing the punishment of imprisonment and either spouse no longer wishes to cohabit with the other as husband and wife but wishes to divorce, the spouse shall notify the court of the wish and the court shall then notify a public prosecutor for further entry of a divorce claim for that spouse.

28. TIMOR LESTE

[Law on Domestic Violence, 2010](#)⁶⁰

Preamble

Domestic violence is a problem that has occurred in all historical periods and it is probably one of the most complex social problems of our times.

Over the past three decades, various guidelines from international legal instruments have raised the awareness for the need to prevent and investigate crimes of domestic violence.

Those legal instruments have also established reparations for victims of domestic violence, namely with regard to equality and discrimination in the International Covenant on Civil and Political Rights and the Convention on the Elimination of all Forms of Discrimination Against Women, both of which have already been ratified by the State of Timor-Leste.

The principles of human rights enshrined in the international law instruments that were ratified by Timor-Leste, including those of the Convention on the Rights of the Child, are reflected in this law.

Moreover, and pursuant to the Constitution of the Democratic Republic of Timor-Leste, the measures provided in this law are designed to ensure respect for human rights and the wholeness of families as a fundamental social and cultural unit in Timor-Leste. The law acknowledges that families have, first and foremost, a special duty to protect and defend groups that are particularly vulnerable, such as women, children, the elderly and the disabled, against all forms of violence, exploitation, discrimination, abandonment, oppression, sexual abuse and other forms of ill-treatment.

However, the protection of the most vulnerable shouldn't just be provided within families. All citizens are bound by the obligation to prevent acts of domestic violence and to facilitate assistance to the victims of such violence.

⁵⁹ Penal Code Amendment Act, Act No. 19/2007 (31 July 2007), available at [https://en.wikisource.org/wiki/Translation:Penal_Code_Amendment_Act_\(No._19\)_2007](https://en.wikisource.org/wiki/Translation:Penal_Code_Amendment_Act_(No._19)_2007) (last visited December 30, 2018).

⁶⁰ Law on Domestic Violence, Law No. 7/2010 (3 May 2010), available in English at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf, in Portuguese at http://www.mj.gov.tl/jornal/public/docs/2010/serie_1/serie1_no25.pdf (last visited December 30, 2018).

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Finally, the State cannot but provide protection to its citizens. The State has a role to play in coordinating with public and private entities and community leaders the implementation of policies aimed at preventing domestic violence and the support to its victims.

Pursuant to articles 92 and 95(1) of the Constitution of the Republic, the National Parliament enacts the following that shall have the force of law:

CHAPTER I
GENERAL PROVISIONS

Article 1

Object

This law establishes the legal regime applicable to prevention of domestic violence and protection and assistance to its victims.

Article 2

Concept of domestic violence

1. For the purposes of this law, domestic violence shall mean any act or sequence of acts committed within a family context, with or without cohabitation, by a family member against any other member of that family, where there is a situation of ascendancy, notably physical or economic, in the family relationship, or by a person with regard to another person with whom the former has had an intimate relationship which resulted, or may result, in physical, sexual or psychological injuries or suffering, economic abuse, including threats such as intimidating acts, bodily harm, aggression, coercion, harassment, or deprivation of freedom.

2. The following, *inter alia*, shall be considered forms of domestic violence:

- a) Physical violence understood to be any conduct that causes bodily harm or harms a person's health;
- b) Sexual violence, understood to be any conduct that constrains any person to witness, engage, or take part in an undesired sexual relation, even if within marriage, through intimidation, threat, coercion or use of force, or that limits or annuls the exercise of one's sexual and reproductive rights;
- c) Psychological violence, understood to be any conduct that causes emotional harm and reduces self-esteem, aimed at degrading or controlling the actions, behaviour, beliefs and decisions of another person through threats, coercion, humiliation, manipulation, isolation, constant surveillance, systematic persecution, insults, blackmail, ridiculing, exploitation, restrictions to the right to move freely or by any other means that cause harm to the psychological wellbeing and to self-determination.
- d) Economic violence, understood to be any conduct that results in the retention, subtraction, partial or total destruction of personal effects, working instruments, impediment to work or outside the home, personal documents, assets, valuables and rights or economic resources, including those intended to meet personal needs and the needs of the household.

Article 3

Family

For the purposes of this law, members of a family shall refer to people in the following family relationships:

- a) Spouses or ex-spouses;
- b) Persons who live or have lived under conditions analogous to spouses, even though without cohabitation;
- c) Relatives in the ascending and descending line of one or both spouses or of anyone in the situation referred to in the preceding paragraph, as long as they are the same relationship of dependency and part of the household economy;
- d) Any other person who is part of the same context of dependency or household economy, including any person who carries out an activity in the household continuously and with a subordinated status.

Chapter II

Fundamental principles

Article 4

Principle of equality

Any individual, irrespective of his or her origin, nationality, social status, sex, ethnicity, language, age, religion, disability, political or ideological beliefs, culture and educational level shall enjoy the fundamental rights inherent to the dignity of the human person and shall be guaranteed equality of opportunities to live free of violence, including the right to preserve his or her physical and mental integrity.

Article 5

Principle of consent

1. Without prejudice to other applicable provisions under criminal law and criminal procedural law, any intervention in support of a victim shall take place after the victim has given his or her free and informed consent and shall be limited by the full respect for his or her will.

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2. A specific intervention in support of a young victim of domestic violence aged 16 years or more pursuant to this law shall depend only on his or her consent.
3. A specific intervention in support of a child or youth victim of domestic violence aged less than 16 years pursuant to this law shall depend on the consent of a legal representative thereof or, in the absence of the latter, or where the latter is the perpetrator of the crime, of the entity designated by law and the consent of the child or youth aged 12 years or more.
4. The consent of a child or youth aged between 12 and 16 years shall suffice to legitimate a specific intervention to support him or her pursuant to this law, where the circumstances prevent the timely reception of a statement on consent by his or her legal representative or, in the absence of the latter, or where the latter is the perpetrator of the crime, of the entity designated by law.
5. A child or youth victim of domestic violence aged less than 12 years shall be entitled to give his or her views on the specific support to be provided to him or her pursuant to this law, having regard to his or her age and maturity.
6. The victim may freely revoke his or her consent at any time, by himself or herself or through his or her legal representative.

Article 6

Protection of a victim lacking capacity to give his or her consent

1. Outside of the framework of criminal proceedings, any intervention in support of a victim lacking capacity to give his or her consent shall only take place to directly benefit him or her.
2. Whenever, pursuant to the law, and by virtue of mental disorder, illness, or a similar reason, an adult lacks capacity to give his or her consent to an intervention, such intervention shall not take place without the authorization of his or her representative or, in the absence of the latter, or where the latter is the perpetrator of the crime, of an authority or a person or instance designated pursuant to the law.
3. A victim under such circumstances shall, to the extent possible, take part in the authorization process.

Article 7

Principle of information

The State shall, through the criminal investigation police and the Public Prosecution Service, the Office of Public Defender and the medical and social services, ensure that the victim is provided with information deemed appropriate to the protection of his or her rights.

Article 8

Professional obligations and rules of conduct

Any expert intervention in support of a victim shall take place in full observance of the professional standards and obligations, codes of conduct, standard operating procedures, universal principles of human rights, as well as rules of conduct applicable to the specific case.

Article 9

Awareness-raising of public opinion

The Government shall conduct awareness-raising campaigns aimed at public opinion through the media in order to promote a culture of non-violence and to fight gender-based stereotypes grounded on the respect for the rights and duties of all and aimed at changing behaviours conducive to violence against especially vulnerable groups.

Article 10

Information

1. The Government shall prepare information and training resources on the prevention, identification and domestic violence factors, with a particular focus on materials intended for professionals, as well as on the transcription, publication and dissemination of international documents on this matter.
2. The Government shall also prepare and freely distribute throughout the country a guide intended for victims of domestic violence. Such guide shall contain practical information on their rights and on the tools and resources available to them.
3. The Government shall prepare training sessions and information resources specifically aimed for suco chiefs (chefes de suco) and hamlet chiefs (chefes de aldeia), bearing in mind the privileged position of community leaders for the dissemination of information.

Article 11

Education

1. As a way of fighting violence, the Government shall include topics relating to human rights in school curricula, particularly topics related to gender, including references to the importance of love, sexuality, and the principle of the negotiated settlement of conflicts.

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2. It shall be incumbent upon the member of the Government in charge of education to prepare the school curricula for every cycle of education.

Article 12

Studies and research

The State, by itself or in cooperation with other institutions, shall support and encourage studies and research into the factors underlying domestic violence of a physical, psychological, sexual and economic nature.

CHAPTER III

INSTITUTIONAL COOPERATION

Article 13

Role of the State

1. It shall be incumbent upon the Government to promote and develop a National Plan of Action for preventing and extending support in the field of domestic violence, in collaboration with society in general and, in particular, with families and local government bodies, pursuant to this law.

2. It shall be incumbent upon the Government to coordinate policies, measures and sectoral actions at national and community level.

3. The programmes provided for in this chapter shall be executed in phases, as set out in the National Plan of Action against domestic violence.

4. Medical services and legal and police support shall be made available from the time this law comes into force.

Article 14

Coordinating entities

1. The Government shall ensure that there is a public entity that collaborates in the definition, coordination and follow-up of the National Plan of Action referred to in article 13 above.

2. The public entity referred to in the preceding paragraph and the member of the Government in charge of the promotion of equality shall collaborate with the Government members in charge of security, health, education, justice and social solidarity.

3. The Government shall prepare an annual report on the activities undertaken as well as a programme for the ensuing year, which shall be submitted to the National Parliament.

CHAPTER IV

SUPPORT AND ASSISTANCE TO VICTIMS

SECTION I

Support to victims

Article 15

Receiving victims

1. The Government, through its member in charge of social solidarity, shall establish, manage and supervise the national network of support centers for victims of domestic violence. Such centers shall be responsible for directly assisting, providing shelter and guiding victims.

2. The support centers shall comprise reception centers and shelters, which shall work in coordination.

3. In those districts where no shelters exist, the reception centers shall operate in coordination with the closest shelter.

4. The Government, through its member in charge of social solidarity, shall prepare a set of operational directives for supervising the establishment and management of the support centers referred to in the previous paragraphs.

Article 16

Purpose of the shelters

1. The shelters shall have the following purposes:

a) To temporarily house victims of domestic violence, accompanied or not by their children who are minors, whenever for security reasons they cannot remain in their habitual residence;

b) To provide psychological support and/or medical care, social assistance and legal support deemed appropriate to the situation of the victim;

c) In cases where it is justifiable, to promote the personal, professional and social skills of users of a shelter during their stay therein that may help prevent situations of social exclusion and contribute to their successful social reintegration.

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2. The Government, through its member in charge of social solidarity, shall define, by means of complementary legislation, the common procedures to be adopted by all shelters, notably insofar as the rights of the victims are concerned, including access to information, admissions, maximum duration of stay in the shelter and out-patient treatment.

Article 17

Rights and duties

1. The users and their children who are minors that are being housed in a shelter shall enjoy the following rights in particular:

- a) The right to accommodation and to food under conditions of dignity;
- b) The right to privacy and to enjoy a certain degree of autonomy in the conduct of their personal life appropriate to their age and status;
- c) The right to benefit from a safe and healthy environment inside the shelter;
- d) The right to attend the school that is closer to the shelter.

2. It shall be a special duty of the users and minors housed in a shelter to comply with the established rules.

Article 18

Cost-free nature of the services

Services provided through the national network of centers for supporting victims of domestic violence shall be dispensed free of charge.

Article 19

Reporting

Reception centers shall report to the National Police of Timor-Leste (Polícia Nacional de Timor-Leste, PNTL) or to the Public Prosecution Service any case regarding victims of domestic violence that comes to their knowledge for purposes of criminal prosecution. They shall do so in keeping with the confidentiality and the privileged nature of the information shared between the victim and his/her counselor, analogous to the relation established between a medical officer and a patient.

SECTION II

ASSISTANCE TO VICTIMS

Article 20

Emergency assistance service

1. An emergency assistance service is hereby established for providing assistance to victims of domestic violence with the aim of informing them of the adequate measures for their situation.
2. The emergency assistance services shall make available an anonymous telephone line (hotline) for a time period and under conditions to be set out in a ministerial order.
3. In the cases of emergency, the service shall convey to the competent police authorities the need for an immediate intervention and, if need be, shall refer the victims to shelters.

Article 21

Direct assistance to victims

1. Specialized assistance services are hereby established for filing complaints related to the commitment crimes of domestic violence, for providing assistance to and guiding victims when dealing with hospital services and organizations pertaining to the network of referral services supporting victims of domestic violence, and PNTL.
2. The implementation of the services referred to in the preceding paragraph shall take place in a phased manner, through joint ministerial orders by the members of the Government in charge of domestic violence and of security, health and social solidarity.
3. The Government, through the entity in charge of social security, shall guarantee information and specialized training for the officials working in the services referred to in paragraph 1.

Article 22

Assistance in hospitals

Whenever a patient reveals to have been a victim of domestic violence, or the clinical diagnosis shows that a crime of domestic violence has been committed, the specialized service for hospital assistance shall be called to intervene in order, notably:

- a) to provide assistance and medical follow-up to the victims of domestic violence taking into account the needs of the victims, particularly of children;
- b) to protect any evidence relating to a possible crime, notably through medical-forensic examinations or investigations, or by adopting other precautionary measures appropriate to the specific circumstances of the case;

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- c) to inform the victim of his or her rights and of the measures that may be adopted, as well as of the duty that is incumbent upon the hospital authorities to inform the police authorities of the facts;
- d) to immediately convey the facts to the police authorities or the Public Prosecution Service;
- e) to prepare a report about the situation and the measures taken and to submit it to the competent authorities;
- f) to refer the victim to a shelter where the circumstances justify such a referral, and the victim requests it.

Article 23

Duties of the social assistance services

It shall be incumbent upon the assistance and support services, notably:

- a) to provide services that meet the needs of victims of domestic violence in accordance with their code of professional conduct and standard operating procedures;
- b) to provide special services to children who have been victims of domestic violence.
- c) to report cases of domestic violence to members of the police in full respect for their code of professional conduct;
- d) to undertake counselling sessions with victims of domestic violence;
- e) to facilitate, where needed, the removal of the victim to a place that is adequate to his or her needs, particularly in the case of children victims;
- f) to prepare reports and other documents relating to the cases where they have provided assistance for use by the police, the Public Prosecution Service and the Courts;
- g) at the request of the victim, to provide support and follow-up the case in court;
- h) to take part in the establishment of security networks for victims of domestic violence at community level.

Article 24

Police assistance

1. The specialized assistance services of the police shall intervene in cases of crimes relating to domestic violence in the wake of a communication by the hospital services and victim support services.
2. It shall be incumbent upon the specialized assistance services of the police within PNTL's district structures:
 - a) to provide the victim with all the necessary assistance, notably by informing him or her of his or her rights;
 - b) to refer the victim, whenever necessary, to a shelter or support center;
 - c) to take measures, whenever necessary, to ensure that the victim receives immediate medical and psychological support by specialized staff;
 - d) in case of danger to the mental stability of the victim, to take measures with a view to ensuring that a mental health professional undertakes an evaluation so that the victim may continue to benefit from the necessary support from the competent bodies;
 - e) to prepare a summary report about the observation made, the measures adopted, and the evidence collected, to be attached to the complaint to be submitted to the Public Prosecution Service within five days from the date when it became aware of the facts;
 - f) to inform the Office of the Public Defender by means of the summary report in case the victim lacks the financial means to hire the services of a lawyer without hindering his or her means of subsistence, within five days from the date of becoming aware of the facts.

Article 25

Legal assistance

1. The victims of domestic violence shall be accompanied in any proceedings by a lawyer or public defender, in case he or she lacks the financial conditions to hire the services of a legal counsel.
2. It shall be incumbent upon the lawyer or public defender, notably:
 - a) to provide legal counselling to victims of domestic violence;
 - b) to report the occurrence of cases of violence to the police and the Public Prosecution Service whenever such reporting does not imply a breach of professional secrecy;
 - c) to advise the victims, witnesses and family members on the progress being made in the judicial proceedings relating to cases of domestic violence;
 - d) to monitor the way the cases of domestic violence are dealt with by the authorities and judicial operators, i.e., the police, the Public Prosecution Service and the Courts;
 - e) to get in touch with relevant entities, bodies and community groups for the purpose of dealing with cases of domestic violence;
 - f) to advise the victims on their access to other services that may be necessary;
 - g) to facilitate access by the parties to information relating to specific cases under the terms provided in this law and in other applicable legal provisions.

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Article 26

Measures for the social reintegration of the victims

1. It shall be incumbent upon the Government to promote and support the establishment and functioning of associations or other organizations if it considers that the existing conditions are insufficient.
2. The objective of the supporting associations is to protect victims of domestic violence by giving priority to programmes aimed at assisting and monitoring them and at promoting their personal and professional development in accordance with their social needs.

Article 27

Measures in support of offenders

The member of the Government that is in charge of promoting equality shall foster the development of public or private projects and initiatives catering to offenders and designed to raise their awareness and induce them to adopt a non-violent behaviour.

Article 28

Assistance by the Public Prosecution Service

In addition to its obligations under criminal procedural law, it shall be incumbent upon the Public Prosecution Service in the context of the fight against domestic violence:

- a) to provide direct assistance the victims seeking its services and to inform them of their rights and forms of exercising such rights, notably through the services of the Office of the Public Defender, in case the victims lack the conditions to hire the services of a legal counsel without hindering their own means of subsistence and those of their respective family;
- b) To refer the victims to hospitals for assistance or to shelters in case this hasn't been done yet.

CHAPTER IV
ON ALIMONY

Article 29

Right to alimony

Where the victim is a spouse or ex-spouse, lives or has lived under conditions analogous to spouses, even though without cohabitation, is in the ascending or descending line with regards to the offender, he or she shall be entitled to alimony as long as he or she proves to be in need of that assistance.

Article 30

Amount of the alimony

The amount of the alimony obligation shall be established taking into account the possibilities of the provider and the needs of the recipient, notably the possibility of the latter to partially ensure his or her own subsistence.

Article 31

Modalities of the alimony

1. The actual contents of the obligation to provide support may be established by a written agreement between the provider and the receiver, or his or her legal representative in case the receiver is a minor or in case of incapacity, or it may be established by the competent court.
2. Where, after the amount has been established by mutual agreement or by a judicial decision, a modification occurs in the circumstances that dictated its establishment, the amount of the alimony may be increased or reduced also by mutual agreement or by a judicial decision.

Article 32

Provisional alimony

1. The court may, at any time, grant provisional alimony either on its own initiative or at the request of the victim or the Public Prosecution Service.
2. Under no circumstance shall there be restitution of provisional alimony already received.
3. Where the defendant lacks the economic means to provide alimony, the support due shall be borne by the services of the Ministry of Social Solidarity.

Article 33

Assistance for social reintegration

1. The ministry in charge of social services shall support the victims in the process of social reintegration as well as in the provision of food support whenever deemed necessary.

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2. The scope and nature of the support to be provided shall be defined by a statute issued by the member of the Government in charge of social solidarity.

Article 34

Proceedings

1. The request for provision of alimony may be attached to the corresponding criminal proceedings.
2. In all other issues related to this matter, the provisions contained in articles 831 and following of the Civil Procedure Code shall apply.

CHAPTER IV

CRIMINAL ASPECTS

Article 35

Crimes of domestic violence

For the purposes of this law, the following shall be considered crimes of domestic violence:

- a) the types of crime provided for in articles 153, 154, 155 and 156 of the Criminal Code;⁶¹
- b) the types of unlawful conduct provided for in articles 138, 139, 141, 145, 146, 167, 171, 172, 175, 177, 178 and 179⁶² whenever, in addition to fulfilling the typical elements of fact contained in the incriminating norm, any of the circumstances described in article 2 of this law occur.

Article 36

Crimes of domestic violence as public crimes

The crimes of domestic violence referred to in article 35 above are considered public crimes.

Article 37

Measures of restraint

In addition to the measures of restraint provided for in the Criminal Procedure Code, in the case of a crime of domestic violence, the perpetrator may be subject, by a decision of the trial judge, to the measure of coercive removal from the place of family residence, whenever there are signs of violence which reasonably suggest that acts of aggression may occur again in a manner that will place the life or the physical, mental or sexual integrity of the victim at risk, as well as be barred from having any contact with the latter.

Article 38

Selection and determination of the penalty

1. The court may replace the penalty of imprisonment with a fine as long as the prerequisites provided for in article 67 of the Criminal Code have been met, the security of the victim has been guaranteed, the perpetrator agrees to be subject to treatment or to follow-up by the victim support services, and such replacement is deemed advantageous for maintaining the unity of the family.
2. The defendant may further be sentenced to an accessory penalty of prohibition to maintain contact with the victim for a maximum period of 3 years, whenever it is considered that the application of the principal penalty is insufficient for preventing the repetition of identical acts.

Article 39

Witness protection

Whenever deemed necessary, the competent court shall apply procedural measures for the protection of witnesses in proceedings relating to crimes of domestic violence, of the victims and of individuals with knowledge of the facts behind the proceedings or other information deemed relevant for the decision, pursuant to the applicable law.

Article 40

Professional secrecy

⁶¹ Art. 153 Mistreatment of a disabled person; Art. 154 Mistreatment of a spouse; Article 155 Mistreatment of a minor; Article 156 Aggravation due to results.

⁶² Article 138 Homicide; Article 139 Aggravated homicide; Article 140. Manslaughter; Article 141. Termination of pregnancy; Article 145. Simple offences against physical integrity; Article 146. Serious offences against physical integrity; Article 171. Sexual coercion; Article 172. Rape; Article 175. Child prostitution; Article 177. Sexual abuse of a minor; Article 178. Sexual acts with an adolescent; Article 179. Sexual abuse of a person incapable of resistance.

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1. The technical and non-technical staff working at reception centers, shelters and specialized assistance services is bound by professional secrecy in relation to the facts that come to their knowledge solely by virtue of the professional relationship established with the victims under their care.
2. Once the consent of the victim has been requested and the victim has given the consent on his or her own will, the duty to observe professional secrecy of the personnel referred to in the preceding paragraph ceases in case they are called by judicial entities to make a deposition or to supply other information.

CHAPTER VII
FINAL PROVISIONS

[...]

[Penal Code, 2009](#) ⁶³

Article 52

General aggravating circumstances

1. General circumstances aggravating the responsibility of the perpetrator are all those prior to, during or after the fact that, although not part of the legal description of the act yet reveal a higher degree of unlawfulness of the act, conduct or guilt of the perpetrator, thus increasing the need for punishment.

2. General aggravating circumstances may include the following:

[...]

l) The victim is or was a spouse or is in a de-facto relationship identical thereto, or is a parent or descendant, sibling, adoptee or adopter of the perpetrator.

Article 154

Mistreatment of a spouse

Any person who inflicts physical or mental mistreatment or cruel treatment upon a spouse or person cohabiting with the perpetrator in a situation analogous to that of spouse is punishable with 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision.

Article 171. Sexual coercion

Any person who, by means of violence, serious threat, or after having made, for the purpose of compelling another person to endure or to practice with the same or a third person any act of sexual relief, such a person unconscious or placed the same in a condition where resistance is impossible, is punishable with 2 to 8 years imprisonment.

Article 172

Rape

Any person who, by the means referred to in the previous article, practices vaginal, anal, or oral coitus with another person or forces the same to endure introduction of objects into the anus or vagina is punishable with 5 to 15 years imprisonment.

Article 173

Aggravation

If the sexual offenses referred to in articles 171 and 172 are committed:

- a) Through abuse of authority arising from a family relationship, ward or guardianship, or hierarchical, economic or labor-related dependence;
- b) [...]

29. TOGO

[Penal Code, 2015](#) ⁶⁴

Title II

⁶³ Penal Code, Decree Law No. 19/2009 (18 March 2009), available at <http://www.laohamutuk.org/econ/corruption/CodigoPenalEn.pdf> (last visited December 30, 2018).

⁶⁴ Penal Code, Law No. 2015-010 (24 November 2015), available at http://jo.gouv.tg/sites/default/files/publications/JOS_24_11_15-60e%20ANNEE%20N°30.pdf#page=1 (last visited December 30, 2018). Unofficial translation by Compendium team.

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Offences against persons
Chapter IV

Violation of the physical integrity of the person

Section 3: Sexual Offences
Paragraph 1: Rape

Art. 211:
Rape is the use of fraud, threats, coercion, or violence to impose sexual relations or penetrations on others.

Art. 212 :
Any person who commits rape shall be punished by a prison sentence of five (05) to ten (10) years and a fine of two million (2,000,000) to ten million (10,000,000) CFA francs.
Sexual relations imposed by violence, coercion, or threat by one spouse against the other shall be punishable by a fine of two hundred thousand (200,000) to one million (1,000,000) CFA francs, or seven hundred and twenty (720) hours of community service.
In the event of a repeated offense, the penalty is ten (10) to twelve (12) months' imprisonment, and a fine of one million (1,000,000) to five million (5,000,000) CFA francs.

Paragraph 2: Violence against women

Art. 232:
Violence against women is any act of violence directed at persons of the female sex that causes or is likely to cause physical, sexual, psychological or economic harm or suffering. These include, in particular:

- 1) violence against women in situations of armed conflict or internal unrest;
- 2) violence on a pregnant woman;
- 3) violence related to all forms of forced marriage;
- 4) inhuman and degrading rites of widowhood;
- 5) economic violence.

[...]

Art. 234.:
Any person guilty of physical or psychological violence against a pregnant woman shall be punished by a penalty of five (05) to ten (10) years' imprisonment and a fine of five hundred thousand (500,000) to two million (2,000,000) CFA francs or one of these two penalties. The penalty is five (05) to ten (10) years' criminal imprisonment if the violence resulted in the victim's death.

Art. 235:
Any person who, through violence against a pregnant woman or a child who is being delivered, causes, even unintentionally, the permanent incapacity of the child, shall be punished by a penalty of five (05) to ten (10) years' criminal imprisonment and a fine of five hundred thousand (500,000) to two million (2,000,000) CFA francs of one of these two penalties.
The penalty is five (05) to ten (10) years' criminal imprisonment if the violence caused the child's death.

Art. 236: Inhuman and degrading rituals are any ceremonial or funeral acts imposed on women that cause, or are likely to cause them, serious humiliation or degradation.
Authors or accomplices of inhuman and degrading rituals are sentenced to a term of imprisonment of six (6) months to two (2) years and a maximum of five hundred thousand (500,000) to one million (1,000,000) CFA francs, or one of these two sentences.

Art. 237:
Economic violence is coercion imposed on women in order to deprive them of, or restrict their financial independence. Any person who commits economic violence against a woman shall be punished by imprisonment of one (01) to five (05) years, and a fine of one million (1,000,000) to five million (5,000,000) CFA francs, or by one of these two penalties.

30. TONGA

[Family Protection Act, 2013](#) ⁶⁵

[...]

PART 1 - PRELIMINARY

1 Short title, commencement

(1) This Act may be cited as the Family Protection Act 2013. (2) This Act shall come into force on such date as is specified by Notice made by the Minister, with the consent of Cabinet, and published in the Gazette.

2 Interpretation

(1) In this Act, unless the context otherwise requires —

“access order” means an order issued pursuant to section 18 of this Act granting access to any child or children;

“applicant” means a person who applies for a protection order under this Act, and includes a person on whose behalf an application is made;

“assault” means an action of bodily contact without consent that causes bodily harm from physical pain, injury, illness or any impairment of physical condition;

“child” means a person under the age of 18 years;

“complainant” means a person who applies for or for whose benefit a protection order or other order under this Act is applied for;

“Court” means the Magistrate’s Court or the Supreme Court;

“counsellor” means a counsellor registered under section 6 of this Act;

“custody order” means an order issued pursuant to section 18 of this Act granting custody of any child or children;

“respondent” means a person against whom a protection order or other order under this Act is applied for or is in force;

“domestic relationship” has the meaning assigned by section 5;

“domestic violence” has the meaning set out in section 4;

“domestic violence offence” means an offence provided for in section 28;

“economic abuse” means actions by a person (the “perpetrator”) that are intentional, unjustified and beyond the reasonable expectations and acceptances of family and domestic life; and that cause a person with whom he has a domestic relationship (the “victim”) —

(a) deprivation of all or any economic or financial resources to which the victim is entitled or which the victim or other person at risk requires out of necessity including, but not limited to, household necessities for the victim or person at risk, property, jointly or separately owned by the victim or other person at risk, payment of rent related to the shared household and maintenance;

(b) loss or withholding of household effects or valuables in which the victim or other person at risk has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the victim or other person at risk;

(c) prohibition to, or restriction on, continued access to resources or facilities which the victim or other person at risk is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household;

(d) damage to or destruction of personal property in which the victim or other person at risk has an interest;

“emergency protection order” means an order made in situations of urgency as provided for in section 13;

“family proceedings” includes proceedings under the Divorce Act;

“final order” means a final protection order made under section 15 of this Act that deals with a substantive matter in issue in proceedings on a final basis; “harassment” means engaging in a pattern of conduct that induces psychological abuse or the fear of harm in a person including —

(a) repeatedly watching, or loitering outside of or near the building or place where the person resides, works, carries on business, studies or happens to be;

(b) repeatedly making unwarranted phone calls or inducing another to make such phone calls to the person, whether or not conversation ensues;

(c) repeatedly sending, delivering or causing the delivery of unwanted letters, packages, other objects, facsimiles, text messages or other electronic mail to the person;

“health practitioner” means a doctor, nurse or other health practitioner as defined in the Health Practitioners Review Act 2001 providing medical services to members of the public; “mental abuse” includes verbal abuse, emotional abuse and psychological abuse and means a pattern of degrading, humiliating, aggressive or intimidating conduct towards a victim, including —

⁶⁵ Family Protection Act, Act No. 19/2013 (5 November 2013), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98651/117466/F750788472/TON98651.pdf> (last visited December 30, 2018).

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- (a) repeated insults, ridicule or name calling;
 - (b) repeated threats to cause physical and emotional pain; or
 - (c) the repeated exhibition of obsessive possessiveness, domination or jealousy, which is such as to constitute a serious invasion of the victim's privacy, liberty, integrity or security; "Minister" means the Minister responsible for internal affairs or such other Minister who is assigned responsibility for the administration of this Act; and "Ministry" has a corresponding meaning;
 - "person at risk" means, as the context requires, the complainant and any child or family member residing in the complainant's household, and any person at risk from domestic violence;
 - "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life or health, or impair the health or development of the complainant or person at risk and includes assault, criminal intimidation and force;
 - Police officer" means a member of Tonga Police appointed under the Tonga Police Act 2010; "Police Safety Order" means an on-the-spot order issued by a police officer under section 22; "protection order" means an emergency, temporary or final protection order made under Part 2 of this Act;
 - "sexual abuse" includes any conduct of a sexual nature without consent that abuses, humiliates, degrades or otherwise violates the dignity of a person;
 - "social service provider" means a person approved as such by the Minister.
- (2) Notes and examples included in this Act are provided to aid in interpretation only and do not form part of this Act.

3 Objects of the Act

The objects of this Act are to —

- (a) ensure the safety and protection of all persons, including children, who experience or witness domestic violence;
- (b) provide support and redress for all victims of domestic violence and economic abuse;
- (c) implement programmes for victims of domestic violence to assist their recovery to lead a safe and healthy life;
- (d) facilitate the making and enforcement of court orders and Police Safety Orders issued to stop acts of domestic violence.

4 Meaning of domestic violence

For the purposes of this Act, a person (the "perpetrator") causes domestic violence to another person (the "victim") if —

- (a) the perpetrator and the victim are in a domestic relationship; and
- (b) beyond the reasonable expectations and acceptances of family and domestic life, an act or omission or threat thereof by the perpetrator —
 - (i) causes physical abuse, sexual abuse, or mental abuse to the victim or other person at risk; or
 - (ii) otherwise harms or endangers the health, safety or well-being of the victim or other person at risk.

5 Meaning of domestic relationship

A person has a domestic relationship with another person if any of the following apply —

- (a) they were or are married to each other;
- (b) they live or have lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other;
- (c) they are the parents of a child or are persons who have or had parental responsibility for that child; Family Protection Act 2013 Section 6 to Act 19 of 2013 Page 11
- (d) they are family members living in the same household and including those related by legal or customary adoption;
- (e) they are or were in an engagement, courtship, including an actual or perceived intimate or sexual relationship;
- (f) they share or recently shared the same residence;
- (g) one person is wholly or partially dependent upon on-going care by the other person residing in the same household;
- (h) one person is a housekeeper in the same household.

6 Registered counsellors

(1) For the better implementation of this Act, the Minister in consultation with the Family Protection Advisory Council shall appoint a panel of counsellors consisting of persons approved by the Minister as —

- (a) qualified counsellors;
- (b) community workers experienced in family and domestic violence counselling;
- (c) counsellors in voluntary organisations, to be registered on a panel of counsellors and who shall carry out the duties of family and anti-domestic violence counselling and addressing the causes of domestic violence under this Act.

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(2) Subsection (1) does not limit the right of any complainant or respondent to obtain counselling from any person other than those on the counselling panel.

(3) A registered counsellor shall have the following functions —

- (a) counselling and advising on the problems in personal relationships that are likely or have led to the use of domestic violence;
- (b) carrying out, upon the directions of a Court, any counselling, assessment or investigation relating to the children and the family of the parties and providing reports accordingly;
- (c) facilitating arrangements for accommodation of the complainant and other persons at risk, as necessary;
- (d) facilitating immediate arrangements for medical or other examination of a child of the household;
- (e) performing any other function which the Minister may assign for the purposes of this Act.

(4) Any counsellor may, in carrying out his duties, seek the assistance of any police officer.

7 Register

(1) The Chief Executive Officer of the Ministry shall —

- (a) establish a register of persons appointed under section 6(1); and
- (b) keep the register up to date.

(2) The register is to be located at —

- (a) the offices of the Ministry; and
- (b) a copy of the register is also to be kept at the office of each District and Town Office.

(3) The register may be kept wholly or partly by computer.

(4) Any person may inspect the register or a copy of it free of charge during normal office hours.

PART 2 - PROTECTION ORDERS

8 Objects of this Part

The objects of this Part are —

- (a) to prevent domestic violence and economic abuse between family members and others in a domestic relationship; and
- (b) to facilitate and maximise the safety and protection of persons who experience or fear domestic violence.

DIVISION 1- APPLICATION FOR A PROTECTION ORDER

9 Who can apply

(1) An application for a protection order may be made to a Court by or on behalf of a person in respect of domestic violence or economic abuse.

(2) If a complainant is unable to make an application personally due to physical incapacity, immature age, fear of harm or for any other reasonable cause, the following persons may apply to the Court on behalf of such a person —

- (a) a family member, guardian or friend;
- (b) a registered counsellor;
- (c) a law practitioner;
- (d) a health practitioner;
- (e) a head of school; or
- (f) a police officer.

(3) Where a person is unable to give oral or written consent due to immature age, or mental or any other form of incapacity or disability to the filing of an application for a protection order, any person making an application on behalf of such a person in such a situation is authorised to act in the best interests of that person.

(4) No person who in good faith makes an application for a protection order or provides to a Court any evidence or information in support of such an application, shall incur any civil or criminal liability in respect of the application or the giving of such information.

(5) An application under subsection (1) may be made by or on behalf of more than one person. (6) An application for a protection order may be made ex parte, unless the Court otherwise orders it to be on notice.

(7) A Court shall give priority to applications for protection orders.

10 Form of application for protection order

(1) An application to a Court for a protection order may be made —

- (a) in person orally;
- (b) in writing;
- (c) by telephone, radio or similar facility; or

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- (d) by facsimile or e-mail or similar facility.
- (2) A written application shall comply with Form 1 in the Schedule.
- (3) If the application is made orally under subsection (1)(a) or (c), the court clerk shall reduce the application to writing on Form 1 in the Schedule.
- (4) A written application made by other persons on behalf of the complainant shall comply with Form 2 in the Schedule.
- (5) A Court shall keep a written register of —
 - (a) all applications for protection orders made to it;
 - (b) all protection orders granted by it; and
 - (c) all application for protection orders that have been refused, and record the reasons for refusing to make a protection order.
- (6) An application for a protection order may be brought outside ordinary court hours or on a day which is not an ordinary court sitting day, if the Court is satisfied that the complainant or other person at risk may suffer undue hardship if the application is not dealt with immediately.
- (7) The Court shall explain the effects of any protection order made or refused to the parties to the proceedings.

11 Protection order in family or criminal proceedings

- (1) If family or criminal proceedings are pending, a Court may on its own motion or on an application by or on behalf of the complainant, issue a protection order upon such terms and conditions as the Court considers appropriate.
- (2) In considering whether to grant a protection order, the Court shall take into account the safety, health and well-being of the complainant, the matters set out in section 12(3) and the interests of any other person at risk.

Note: Domestic violence may be raised in family or criminal law proceedings, although this may not be the principal reason why the parties are before the Court. Section 11 enables the Court to issue protection orders in such proceedings.

DIVISION 2 - POWER TO MAKE PROTECTION ORDERS

12 Court may make protection order

- (1) The Court may, on an application made under section 10, make a protection order if it is satisfied that —
 - (a) the respondent and the complainant are in a domestic relationship;
 - (b) the respondent has committed or in the opinion of the Court is a risk to commit, domestic violence against the complainant, or other person at risk; and
 - (c) the making of an order is necessary or desirable for the protection of the complainant, or other person at risk.
- (2) The Court may also, on an application made under section 10, make a protection order if it is satisfied that —
 - (a) the respondent and the complainant are in a domestic relationship;
 - (b) the respondent uses or has used economic abuse against the complainant or other person at risk; and
 - (c) the making of an order is necessary or desirable for the protection of the complainant, or other person at risk.
- (3) In deciding whether to make a protection order, the Court shall take into account the following —
 - (a) the need to ensure that the complainant or other person at risk is protected from domestic violence or economic abuse;
 - (b) the well-being and the accommodation needs of the complainant or other person at risk; and (c) any other matter that the Court considers relevant.
- (4) The Court may include in the protection order the names of other family members, if the Court is satisfied the respondent has committed or is likely to commit an act of domestic violence or economic abuse against other family members.
- (5) Without limiting subsections (1)(b) or (2)(b), the Court may consider whether the behaviour of the respondent forms part of a pattern of behaviour in respect of which the complainant or other person at risk need protection.
- (6) Without limiting the matters that the Court may consider when determining whether to grant a protection order, the Court shall have regard to —
 - (a) the opinion of the complainant, or other person at risk, of the nature and seriousness of the behaviour in respect of which the application is made; and
 - (b) the effect of that behaviour on the complainant or other person at risk.

DIVISION 3 - TYPES OF PROTECTION ORDERS

13 Emergency protection order

- (1) A Court may make an emergency protection order where an ex parte application for a protection order is made orally or in writing on Form 1 or Form 2 in the Schedule of this Act.
- (2) In determining whether to grant an emergency protection order, the Court shall consider and be satisfied that there are reasonable grounds for believing that if an emergency protection order is not made —
 - (a) the respondent may commit domestic violence against the complainant or other person at risk;

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- (b) the respondent may cause economic abuse or damage to or removal of the property of the complainant or child or any other member of the family or person at risk living in the same household; or
- (c) the complainant will be prevented or deterred from pursuing the application if the order is not made immediately.

(3) An emergency protection order may contain any conditions set out in Division 4 of this Part of the Act.

(4) A copy of the emergency protection order shall be immediately sent by the Court to the Police in the area nearest to where the complainant is currently residing, whether temporarily or permanently, and the Police shall try to effect service of the order as soon as possible upon the respondent.

(5) An emergency protection order shall be in Form 4 of the Schedule to this Act and shall be effective for the period specified in the order (not exceeding 28 days).

(6) A Court shall determine an application for an emergency protection order on the same day on which the application is made unless there are exceptional circumstances.

14 Court may make temporary protection order

(1) The Court may grant a temporary protection order and include any conditions listed in Division 4 of this Part of the Act if it considers it to be in the best interest of the complainant or other person at risk.

(2) In determining whether it is in the best interest of the complainant or other person at risk to issue a temporary protection order, the Court shall consider whether there is risk of domestic violence or economic abuse to the complainant or other person at risk if the order is not granted immediately.

(3) If the Court makes a temporary protection order under this Act, the Court shall order immediate service on the respondent by the police of the temporary protection order together with —

- (a) the notice of the date of hearing in accordance with Form 3 in the Schedule to this Act; and (b) a notice to the respondent that clearly states that if the respondent does not take any steps in the proceedings, the temporary protection order will become final.

(4) Where the respondent fails to appear before the Court in accordance with subsection (3)(a) and the Court is satisfied on the evidence that the respondent has been served with a temporary protection order, the Court may —

- (a) give further directions; or
- (b) order that the temporary protection order becomes final.

(5) Where a temporary protection order becomes a final order pursuant to subsection (4)(b), the final order comes into effect immediately.

(6) Temporary protection orders shall be in Form 4 of the Schedule to this Act and shall be effective for such period (not exceeding 90 days) that the Court orders.

(7) A temporary protection order may be made by the Court on an ex parte basis.

15 Final Order

(1) Where an application is made on notice to a Court for a protection order and the Court is satisfied on the evidence that notice has been served on the respondent in accordance with Form 3 in the Schedule of this Act, the Court may —

- (a) give further directions as to the hearing of the application or generally; or
- (b) make any order that it considers appropriate, including a final order, and include any condition set out in Division 4 of this Part of the Act as it considers appropriate, on Form 4 in the Schedule.

(2) A final protection order shall remain in force unless varied or cancelled by the Court on an application by a party, if there is good cause.

(3) In considering the application, the Court shall take into account the best interest of the complainant and any other person at risk.

DIVISION 4 - CONDITIONS IN PROTECTION ORDERS

16 Standard conditions in a protection order

(1) Every protection order granted under this Act shall be deemed to include the following conditions, namely that the respondent shall not —

- (a) commit domestic violence or physically or sexually abuse the complainant, or other person at risk;
- (b) encourage any other person to engage in behaviour against a complainant or other person at risk where the behaviour, if engaged in by the respondent, would be prohibited by the order;
- (c) approach the complainant while under the influence of alcohol or nonprescription drugs, and likewise neither shall the complainant so approach the respondent;
- (d) be in possession of any firearm, and the respondent shall surrender any weapon to the nearest police station or dispose of any weapon that has been used or threatened to be used to commit domestic violence.

(2) Without limiting subsection (1), it is a condition of every protection order that at any time other than when the complainant and the respondent are living in the same dwelling house, the respondent shall not —

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- (a) watch, loiter near, or prevent or hinder access to or from, the complainant's place of residence, business, employment, educational institution, or any other place that the complainant visits often;
 - (b) follow the complainant about or stop or accost the complainant in any place;
 - (c) where the complainant is known to be present on any land or building, enters or remains on that land or building without the complainant's express consent; and
 - (d) make any other contact with the complainant (whether by telephone, electronic message, correspondence, or otherwise), except such contact —
 - (i) as is reasonably necessary in any emergency; or
 - (ii) as is permitted under any order or written agreement relating to the role of providing day-to-day care for, or contact with, or custody of or access to any children.
- (3) The Court may order that any condition referred to in subsection (2) extends also to any other person at risk.

17 Conditions relating to property and accommodation

A Court may include any or all of the following conditions in a protection order —

- (a) prohibit the respondent from taking, damaging, destroying, burning, selling or giving away any property of the complainant or other person at risk;
- (b) direct the respondent —
 - (i) to return through a third party any specific personal property of the complainant or other person at risk; or
 - (ii) to allow the complainant or other person at risk to recover, have access to, or make use of any specified personal property;
- (c) grant the complainant or other person at risk temporary occupancy to a residence or specified part of it whether or not the residence is solely owned or leased by the respondent.

18 Custody, access and maintenance orders

A protection order may include, where appropriate, all or any of the following conditions —

- (a) a custody order granting temporary or final custody of any dependent child to the complainant or to another appropriate person if the Court is satisfied that it is in the best interests of the child and for the safety and welfare of the child in question;
- (b) an access order to the respondent under such terms and conditions the Court considers appropriate and in the best interests of the child;
- (c) a maintenance order directing the respondent to pay maintenance in cash or kind or both to the complainant and any dependent children.

19 Urgent maintenance order

- (1) Where the Court makes a protection order, it may also make an order for urgent maintenance where it appears that the party is in need of immediate financial assistance, until further orders of the Court are made.
- (2) The Court may order payment of a weekly, monthly or other periodic amount as the Court considers reasonable.

DIVISION 5 - VARIATION AND CANCELLATION OF PROTECTION ORDER

20 Application by either party

- (1) A complainant or respondent may, upon written notice to the other party and the Court on Form 3 in the Schedule, apply for the variation or cancellation of a protection order.
- (2) If the Court is satisfied that good cause has been shown for the variation or cancellation of the protection order, and the application has been made freely and voluntarily, it may issue an order to this effect and set out the order on Form 5 in the Schedule of this Act.
- (3) The Registrar or clerk of the Court as the case may be shall forward the order and any variations made to the original protection order to the complainant and the respondent.

PART 3 - PREVENTION

21 Public awareness, education, training, research

- (1) The Minister shall promote the introduction of public awareness campaigns and other programmes on the prevention, causes and consequences of domestic violence in the family and in the community.
- (2) Programmes for preventing and reducing the prevalence of domestic violence may include, but are not be limited to —
 - (a) sensitisation and training in human rights, gender equality, and causes and consequences of domestic violence for judicial officers, police officers, health practitioners, community workers, counsellors, other personnel in relevant Government agencies, youth groups, media personnel and civil society organisations;

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- (b) educating officials about the importance of human rights and gender equality in the curricula of all levels of education;
- (c) promoting and conducting educative campaigns regarding the National Action Plan on violence against women and on sexual and gender based violence;
- (d) government officials promoting national plans of action and strategy, policies and public awareness programmes to reduce, prevent and eliminate domestic violence;
- (e) the Minister presenting a report to the Legislative Assembly on measures taken under this section; and Section 22 Family Protection Act 2013 Page 20 Act 19 of 2013 to
- (f) encouraging civil society organizations to support Government Ministries and Departments in any awareness raising campaigns.

PART 4 – POLICE POWERS AND DUTIES
DIVISION 1 - POLICE SAFETY ORDERS

22 Police Safety Order

- (1) If a Police officer suspects on reasonable grounds that a person who is or has been in a domestic relationship with a person at risk —
 - (a) has committed or is about to commit a domestic violence offence relating to that person at risk; or
 - (b) has breached a protection order, the police officer may issue a Police Safety Order
- (2) A Police Safety Order may be issued without the consent of a person at risk for whose safety the Order is proposed to be issued.
- (3) A police officer who issues a Police Safety Order shall explain to the person against whom the Order is issued —
 - (a) the purpose, duration and effect of the Order;
 - (b) the consequences that may follow if the person against whom the Order is issued contravenes the Order.
- (4) If a Police Safety Order has not been served within 48 hours from the time of issue, the order lapses.
- (5) A Police Safety Order may be issued by a police constable or any police officer above the rank of constable.
- (6) A police officer shall give priority to domestic violence cases.

24 Effect of Police Safety Order

- (1) A person against whom a Police Safety Order is issued shall —
 - (a) immediately surrender any weapons in his possession or control, that could be used to commit domestic violence; and
 - (b) vacate any land or building occupied by a person at risk, whether or not he has a legal or equitable interest in the land or building.
- (2) It is a condition of every Police Safety Order that the person against whom the Order is issued shall not —
 - (a) physically or sexually abuse or threaten to abuse a person at risk;
 - (b) remove, damage or threaten to damage, property or any animal belonging to a person at risk; (c) harass, stalk, intimidate, follow or verbally abuse a person at risk; or
 - (d) make any contact with a person at risk except where it is reasonably necessary in any emergency.

25 Contravention of Police Safety Order

- (1) Where a person who has been served with a Police Safety Order fails to comply with the Order or any condition of the Order, a police officer shall —
 - (a) take the person into custody; and
 - (b) apply to the Magistrate’s Court on behalf of the person at risk for an emergency protection order under section 13.
- (2) A person taken into custody shall, subject to subsection (3), be brought before the Magistrate’s Court within 24 hours.
- (3) If a person is taken into custody under subsection (1) and it is not practicable to bring the person arrested before a Magistrate within 24 hours after he has been taken into custody, a police officer of the rank of sergeant or above or the Police officer in charge of the police station shall inquire into the case and, at or before the expiry of that period —
 - (a) grant or withhold bail in accordance with the Bail Act; or
 - (b) release the person and serve him with a summons requiring him to appear before the Magistrate’s Court at the place and time specified in the summons.
- (4) If the person who has been served with the summons under subsection (3)(b) does not attend personally at the place and time specified in the summons, the Magistrate’s Court may issue a warrant to arrest him and bring him before the Court.

DIVISION 2 - POLICE DUTIES

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26 Duty to prosecute and assist

- (1) Where there is a report of domestic violence and provided that there is sufficient evidence for doing so and either the complainant or the Attorney General supports the prosecution of the offence, every police officer handling the matter shall ensure and undertake to do all things necessary in order that a charge is laid with the Court to commence prosecution of the matter in Court.
- (2) In any incident that comes to their notice, the police shall where necessary make arrangements for persons at risk to find suitable shelter and obtain medical treatment or counselling services.
- (3) In every case prosecuted before the Court, it is the duty of the police —
 - (a) to provide information to the parties about court processes and procedures in a language that they understand, the remedies available under this Act and the right to have access to a lawyer and lodge an appeal;
 - (b) as far as practicable, to provide specialist female police officers to assist female victims and persons at risk of domestic violence; and
 - (c) where necessary, make arrangements for the complainant and persons at risk to find suitable shelter, and to obtain medical treatment or counselling services where needed.

PART 5 – ROLE OF HEALTH PRACTITIONERS AND SOCIAL SERVICE PROVIDERS

27 Duty of care and response to reports of domestic violence

- (1) A duty of care is hereby placed on any health practitioner and social service provider who has been or is notified by a complainant or other person at risk that they have been a victim of domestic violence to —
 - (a) examine and refer the complainant or other person at risk to counselling or medical treatment as appropriate; and
 - (b) advise the complainant about filing a complaint with the police or refer any child victim for counselling or medical treatment and file a report with the police on their behalf.
- (2) In the event the police receive a report under subsection (1)(b), the police shall —
 - (a) start the processes required to investigate the incident and take action;
 - (b) ensure that the complainant or other person at risk is duly informed about the outcome of the investigations and of their rights and the remedies available under this Act.
- (3) The health practitioner shall examine the complainant or person at risk and, applying the protocol established by the Ministry of Health providing for professional standards and confidential treatment, further advise the victim of support options and medical treatment available.
- (4) Any social service provider who has been notified by a complainant or person at risk that he has been or is a victim of domestic violence shall —
 - (a) examine the causes of domestic violence and refer the victim or other persons at risk as appropriate;
 - (b) advise the person at risk of the support options available;
 - (c) refer the person at risk to counselling if required;
 - (d) refer the person at risk for medical treatment if required;
 - (e) advise the person at risk about filing a complaint with the police;
 - (f) advise the person at risk of their rights and the remedies available under this Act; and
 - (g) assist the person at risk, where necessary, by taking them to a shelter, where available or a house of a relative or friend and further liaise with the police in ensuring that protection orders are applied for and are obtained and enforced.
- (5) Any health practitioner or social service provider shall not, without the consent of the complainant or other person at risk, give to any other person, whether directly or indirectly, any information acquired by reason of performing the duty of a health practitioner or social service provider under this Act.

PART 6 – OFFENCES AND PENALTIES

28 Domestic violence offence and breach of protection order

- (1) A person who —
 - (a) commits domestic violence;
 - (b) breaches a protection order;
 - (c) fails to comply with a Police Safety Order; or
 - (d) threatens, intimidates or assaults a health practitioner or social service provider who is acting in pursuance of a duty of care under section 27 of this Act, commits a domestic violence offence.
- (2) A person who commits a domestic violence offence referred to in subsection (1) shall be liable on conviction —
 - (a) for a first offence, a term of imprisonment not exceeding 12 months or a fine not exceeding \$2,000 or both;

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- (b) for a second or subsequent offence, a term of imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both, and, in addition to any other penalty, the Court may make an order that the respondent pays compensation in accordance with section 30.
- (3) It is not a defence to a domestic violence offence that the respondent has paid compensation or reparation to the complainant or to the complainant's family.
- (4) If a person instigates, counsels or procures another person to commit an act of domestic violence, that person is taken to have committed the act and subsection (1) applies.
- (5) In relation to an act that constitutes domestic violence, the following circumstances shall be considered as aggravated circumstances, that the Court may take into account in ordering enhanced penalties for the offender, where —
- (a) domestic violence is committed against a child, or the action of domestic violence is performed in the presence of a child;
 - (b) domestic violence is committed against a person with special needs, a pregnant woman, or a woman who, due to whatever reason, is incapable of resisting;
 - (c) the violence is severe or life threatening;
 - (d) a weapon is used; or
 - (e) the respondent has committed repeated incidents of domestic violence.
- (6) A person who makes a misleading or false application for a protection order commits an offence and shall be liable on conviction to a term of imprisonment not exceeding 12 months or a fine not exceeding \$4,000, or both.

29 Relationship with Criminal Offences Act and other laws

Subject to clause 12 of the Constitution, in addition to liability under this Act, a respondent may also be prosecuted under other criminal laws for the time being in force for his acts if the facts disclose the commission of a separate criminal offence under those provisions.

Note: For example, (without limitation), assault, offences endangering life and health, grievous bodily harm, rape, other sexual offences, murder and manslaughter and sexual exploitation through people trafficking and smuggling.

30 Order for compensation

- (1) A Court may make an order that the respondent pay reasonable and fair compensation if the victim as a result of an act of domestic violence suffered —
- (a) personal injury;
 - (b) damage to property; or
 - (c) financial loss.
- (2) The Court, in considering whether to make an order for compensation, shall take into account —
- (a) any pain and suffering of the victim or other person at risk, including psychological harm, shame and humiliation suffered;
 - (b) the value of any property of the victim that has been taken, destroyed or damaged;
 - (c) the loss of earnings suffered by the victim.
- (3) The Court in considering any expenses under subsection (2) shall have regard to —
- (a) the time that has elapsed between the domestic violence occurring and the hearing of the application for compensation;
 - (b) the financial position of the parties;
 - (c) the ability of the respondent to pay compensation;
 - (d) the relationship between the parties;
 - (e) any other order made under this Act including any order that the respondent pay maintenance to the complainant and any dependent children;
 - (f) any other order the Court considers relevant to the issues to be determined in relation to the claim for compensation.

PART 7 – PROCEDURES

31 Service

- (1) Where an application is made to the Court for a protection order, the Court shall issue as soon as practicable after filing —
- (a) a summons directing the respondent to appear at the time and place set out in the summons on Form 3 in the Schedule; or
 - (b) a warrant in accordance with subsection (2) for the arrest of the respondent.
- (2) Where an application is being made to the Court for a protection order the Court may issue a warrant of arrest if the Court is satisfied that the personal safety of the complainant would be seriously threatened unless the respondent is apprehended and brought into custody.

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- (3) The Court shall give two copies of the application and any summons or warrants to the police officer in charge of the police station nearest to where the respondent lives or was last known to live.
- (4) A police officer shall personally serve the application and summons or warrant on the respondent.
- (5) Where service is completed by the police officer, an affidavit of service shall be completed by the police officer who served the respondent and the affidavit shall be promptly returned to the Court for filing.
- (6) In the case of a warrant, the Police officer shall arrest the respondent and take him into custody.

32 Withdrawal of complaint

Where a complainant makes an oral or written application for withdrawal of an application for a protection order against the respondent, the Court —

- (a) shall investigate the reasons for withdrawal;
- (b) shall consider the safety and wellbeing of the complainant and any person at risk;
- (c) may make further directions; or
- (d) may either grant or refuse the application.

33 Rights of complainant in domestic violence proceedings

In proceedings for domestic violence, the prosecutor or any other person acting for the complainant, shall consult with the complainant and fully explain proceedings in order to ensure that the complainant fully understands his rights, the Court procedure and orders made, in order to lessen the impact of the Court hearing on the complainant and any other person at risk.

PART 8 – APPEALS

34 Appeals

- (1) An appeal may be made to the Supreme Court against a decision of a Magistrate’s Court — (a) to make a protection order;
- (b) to revoke or vary a protection order (including a variation of the conditions imposed by the order); or
- (c) to refuse to make, vary or revoke a protection order.
- (2) An appeal —
- (a) may be made by the complainant or the respondent; and
- (b) shall be instituted within 28 days after the day on which the Court’s decision is made.

35 Institution and nature of appeal

- (1) An appeal shall be instituted by —
- (a) lodging a notice of appeal in writing with the Registrar of the Supreme Court;
- (b) serving a copy of the notice of appeal on each person who is a party to the proceedings (other than the appellant); and
- (c) giving a copy of the notice of appeal to the Commissioner of Police or his representative.
- (2) A notice of appeal shall specify with particularity the grounds of appeal and the facts that are relied upon.
- (3) Unless a Judge of the Supreme Court orders otherwise, an appeal is to be by way of re-hearing, and shall be in accordance with the rules of the Supreme Court.
- (4) An appeal against an order shall not stay the operation of that order, unless a Judge so orders.

36 Decision on appeal

- (1) If the Supreme Court allows an appeal, it may —
- (a) confirm, dismiss or vary any order to which the appeal relates, as it considers appropriate; or (b) make such order or decision as it considers should have been made, and every such order or decision takes effect on and from the day on which it is made.
- (2) A person aggrieved by an order or decision of the Supreme Court may appeal to the Court of Appeal against that order or decision.
- (3) Neither the Supreme Court nor the Court of Appeal is bound by the rules of evidence in determining an appeal.

PART 9 – FAMILY PROTECTION ADVISORY COUNCIL

37 Establishment, membership and functions

- (1) The Minister may establish a Family Protection Advisory Council consisting of persons appointed by the Minister in accordance with subsection (3).

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- (2) The purpose of the Council is to act in an advisory capacity to the Minister to assure the safety of victims of domestic violence and to carry out functions set out in subsection (4) and otherwise in this or any other Act.
- (3) The Council shall consist of representatives of the Ministry, the Division of Women's Affairs, the Attorney General's Office, Tonga Police, the Ministry of Education, the Forum of Church Leaders, and other relevant groups as the Minister thinks fit.
- (4) It is the function of the Council to advise and make recommendations to the Minister, either of its own motion or upon request made to it by the Minister, concerning —
- (a) the effective operation of this Act and other legislation relating to domestic violence;
 - (b) the adequacy of preventative measures, responses, shelters, healthcare and counselling support services provided to victims and children of domestic violence; and
 - (c) any other matter relating to domestic violence and violence against women and children.
- (5) The members of the Council shall appoint a member to be Chairperson of the Council, and until such a Chairperson is elected, the representative of the Attorney General's Office shall be the interim Chairperson.
- (6) A member of the Council holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for reappointment.
- (7) A member may resign by writing to the Minister.
- (8) The Minister may terminate the appointment of a member because of misbehaviour, or physical or mental incapacity of the member.
- (9) Meetings of the Council shall be convened by the Chairperson.
- (10) The Council shall keep records of its meetings.
- (11) The Council shall, as soon as practicable after 31st December in each year, prepare and furnish to the Minister a report of the operations of the Council during the year that ended on 31st December the previous year.
- (12) The Minister shall cause a copy of a report furnished under subsection (11) to be laid before the Legislative Assembly after the receipt of the report by the Minister.

PART 10 – FAMILY PROTECTION TRUST FUND

38 Establishment of Family Protection Trust Fund

- (1) This section hereby establishes the Family Protection Trust Fund.
- (2) The Fund shall be under the control and supervision of the Ministry responsible for finance and shall be administered in accordance with the Public Finance Management Act.
- (3) Directions for withdrawal of funds to assist shelters and safe houses for victims of domestic violence and dependent children, community awareness and education programmes, counselling and healthcare services, transportation services and for any other purpose under this Act shall be the responsibility of the Ministry acting in consultation with the Family Protection Advisory Council.
- (4) The Fund shall be subject to audit by the Auditor General.

PART 11 – MISCELLANEOUS

39 Proceedings not open to public

- (1) The Court hearing an application for a protection order is not open to the public.
- (2) Subject to subsection
- (3) a person may not be present during the hearing of an application unless he is —
- (a) a party to the proceedings;
 - (b) an officer of the Court;
 - (c) a legal or other representative of the party;
 - (d) a witness (if allowed by the Court); or
 - (e) any other particular person whom the Court permits to be present.
- (3) A complainant is entitled to have a person with him throughout the proceedings to provide support and other assistance.

40 Confidentiality

Police officers shall not disclose the identity of any person who reports to the police the possible occurrence of domestic violence and, if it is necessary in court proceedings to disclose this information, the Court shall so far as possible respect the confidentiality of such person and their need for protection.

41 Power to make rules

The Lord Chief Justice may from time to time make rules providing for and in relation to procedures to be followed in domestic violence cases and —

- (a) forms and the use of forms as necessary for the purposes of this Act;

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(b) applications for protection orders made by telephone and other similar facilities.

42 Power to make regulations

The Minister may make regulations not inconsistent with this Act for all matters required or necessary to give effect to this Act. Passed by the Legislative Assembly on this 4 th day of September 2013.

31. TRINIDAD AND TOBAGO

[Domestic Violence Act, 1999 \(As amended\)](#) ⁶⁶

CHAPTER I
Preliminary

Section 1 - Short Title

This Act may be cited as the Domestic Violence Act

Section 2 - Objects

The objects of the Act are inter alia to:

1. provide immediate injunctive relief to victims of domestic violence; and
2. ensure a prompt and just legal remedy for victims of domestic violence.

Section 3 - Definitions

Under the meaning of this law, unless specified otherwise in specific provisions thereof, by the following terms we shall understand:

1. "Applicant" means a person described in section 4 who applies or on whose behalf an application is made for a Protection Order;
2. "Attorney-at-law" means a person whose name is entered on the Roll in accordance with the Legal Profession Act;
3. "Child" means a person under the age of eighteen years who ordinarily or periodically resides with the applicant, whether or not the child is a child of the applicant and the respondent or either of them, and includes an adopted child, stepchild, or a child who is treated as a child of the family but not a person who is or has been married;
4. "Clerk" means the Clerk or Deputy Clerk of the Court;
5. "Cohabitant" means a person who has lived with or is living with a person of the opposite sex as a husband or wife although not legally married to that person;
6. "Court" means a Court of Summary Jurisdiction;
7. "Dependant" means a person over the age of eighteen years who by reason of physical or mental disability, age or infirmity is reliant on either the applicant or respondent for his welfare;
8. "Domestic violence" includes physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, child, any other person who is a member of the household or dependant;
9. "Emotional or psychological abuse" means a pattern of behaviour of any kind, the purpose of which is to undermine the emotional or mental well-being of a person including:
 - a. persistent intimidation by the use of abusive or threatening language;
 - b. persistent following of the person from place to place;
 - c. depriving that person of the use of his property;
 - d. the watching or besetting of the place where the person resides, works, carries on business or happens to be;
 - e. interfering with or damaging the property of the person
 - f. the forced confinement of the person;
 - g. persistent telephoning of the person at the person's place of residence or work; and
 - h. making unwelcome and repeated or intimidatory contact with a child or elderly relative of the person,
10. "Financial abuse" means a pattern of behaviour of a kind, the purpose of which is to exercise coercive control over, or exploit or limit a person's access to financial resources so as to ensure financial dependance;
11. "Guardian" in relation to a child includes a person who has custody of that child within the meaning of the Family Law Ch. 46:08. (Guardianship of Minors, Domicile and Maintenance) Act;
12. "Interim Order" means an Order made under section 8;
13. "Member of the household" means a person who habitually resides in the same dwelling house as the applicant or the

⁶⁶ Domestic Violence Act (Ch. 45:56), Act No. 27 of 1999 (as amended by No. 8 of 2006), available at https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/45.56.pdf as on 24/09/2018 (last visited December 30, 2018).

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respondent and is related to the applicant or respondent by blood, marriage or adoption;

14. "Minister" means the Minister to whom responsibility for Social Development and Family Services is assigned;

15. "Order" includes an Interim Order and Protection Order;

16. "Parent" means a person who is a parent or grandparent in relation to a child, dependent, spouse or respondent as the case may be:

a. by blood;

b. by marriage;

c. by adoption; or

d. within the meaning of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act.

17. "Physical abuse" means any act or omission which causes physical injury and includes the commission of or an attempt to commit any of the offences listed in the First Schedule.

18. "Protection Order" means an Order made pursuant to section 5.

19. "Respondent" means a person against whom an application for a Protection Order is made.

20. "Sexual abuse" includes sexual contact of any kind that is coerced by force or threat of force and the commission of or an attempt to commit any of the offences listed under the Sexual Offences Act in the First Schedule.

21. "Spouse" includes a former spouse, a cohabitant or former cohabitant.

22. "Visiting relationship" means a non-cohabitational relationship which is otherwise similar to the relationship between husband and wife.

CHAPTER II
PROTECTION ORDERS

Section 4 – Persons entitled to apply

1. A person referred to in subsection (2) may apply to the Court for a Protection Order on the ground that the respondent engaged in domestic violence.

2. An application for a Protection Order may be made by:

a. the spouse of the respondent;

b. a member of the household of the spouse or respondent, either on his own behalf or on behalf of any other member of the household;

c. a child:

i. by consanguinity or affinity of either the spouse or respondent;

ii. of whom either the spouse or respondent is a guardian; or

iii. who is or has been a member of the household of the spouse or the respondent;

d. a dependant;

e. a parent or sibling by consanguinity or affinity of either the spouse or respondent not being a member of the household;

f. a person who has a child in common with the respondent; and

g. a person who is or has been in a visiting relationship with a person of the opposite sex for a period exceeding twelve months.

3. A child or dependant may apply for a Protection Order through:

a. a person with whom the child or dependant normally resides or resides with on a regular basis or any adult member of his household; or

b. a parent or guardian or, a person who is in loco parentis to the child.

4. A police officer, probation officer or approved social worker may apply for a Protection Order on behalf of:

a. any person referred to in subsection (2); or

b. a person or child who is in a residential institution.

5. For the purposes of this Act "an approved social worker" is a person experienced or qualified in social welfare and approved by the Minister in writing.

Section 5 – Power to make a Protection Order

1. Where, on an application made by a person described in section 4, the Court determines, on a balance of probabilities, that domestic violence has occurred, it may issue a Protection Order containing any or all of the prohibitions or directions referred to in section 6.

2. The Court shall grant a Protection Order where it is satisfied that the respondent:

a. is engaging in or has engaged in domestic violence against the applicant; or

b. is likely to engage in conduct that would constitute domestic violence,

and in either case, having regard to all the circumstances, the Order is necessary for the protection of the applicant.

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Section 6 – Terms of Protection Order

1. A Protection Order may:

- a. prohibit the respondent from:
 - i. engaging or threatening to engage in conduct which would constitute domestic violence towards the applicant;
 - ii. being on premises specified in the Order, that are premises frequented by the applicant including any residence, property, business, school or place of employment;
 - iii. being in a locality specified in the Order;
 - iv. engaging in direct or indirect communication with the applicant;
 - v. taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in, or is reasonably used by the applicant, as the case may be;
 - vi. approaching the applicant within a specified distance;
 - vii. causing or encouraging another person to engage in conduct referred to in paragraphs (i) to (vi).
- b. direct that the Order be applied for the benefit of a child or dependant of the applicant or respondent; and
- c. direct that the respondent:
 - i. return to the applicant specified property that is in his possession or under his control;
 - ii. pay compensation for monetary loss incurred by an applicant as a direct result of conduct that amounted to domestic violence;
 - iii. pay interim monetary relief to the applicant for the benefit of the applicant and any child, where there is no existing order relating to maintenance until such time as an obligation for support is determined, pursuant to any other written law;
 - iv. immediately vacate any place or residence for a specified period, whether or not the residence is jointly owned or leased by the respondent and the applicant, or solely owned or leased by the respondent or the applicant;
 - v. relinquish to the police any firearm licence, firearm or other weapon which he may have in his possession or control and which may or may not have been used;
 - vi. make or continue to make payments in respect of rent or mortgage payments for premises occupied by the applicant;
 - vii. ensure that reasonable care is provided in respect of a child or dependant person;
 - viii. or applicant or both, receive professional counselling or therapy from any person or agency or from a programme which is approved by the Minister in writing.

2. A Protection Order may contain such other prohibitions and directions as consented to by the applicant or respondent or both.

3. Where the Court makes an Order which, inter alia, directs counselling under subsection (1)(c)(viii), the Order shall specify—

- a. that the Court receive written notification from the counsellor or therapist of sessions missed without reasonable excuse; and
- b. the date by which the counsellor or therapist shall submit a report to the Court in respect of the counselling or therapy, such report to include a prognosis for recovery.

4. Where the Court makes an Order which, inter alia, directs the payment of compensation under subsection (1)(c)(ii), such compensation shall include, but not be limited to:

- a. loss of earnings;
- b. medical and dental expenses;
- c. moving and accommodation expenses;
- d. reasonable legal costs, including the cost of an application pursuant to this Act.

5. The Court shall have jurisdiction to award compensation not exceeding fifteen thousand dollars and the payment of such compensation shall be received by the Court on behalf of the applicant.

6. Where the Court makes an Order which inter alia:

- a. directs that the respondent vacate any place or residence; or
- b. directs the respondent to return to the applicant specified property that is in his possession or control, the Court may, in that same Order, if it thinks necessary and notwithstanding any other law, in the same Order, direct the police to remove the respondent either immediately or within a specified time from the said place or residence, or to accompany the applicant, as the case may be, either immediately or within a specified time to specified premises in order to supervise the removal of property belonging to the applicant and to ensure the protection of that person.

7. The Court, when making a Protection Order, may also make an Order under section 25 of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act for the duration of the Protection Order where no order under that Act is already in force and an Order so made under this Act shall be deemed to be an Order made in accordance with an application under section 25 of that Act.

8. A breach of an Order made under subsection (7) shall be deemed to be a breach of an Order made under the Family Law

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(Guardianship of Minors, Domicile and Maintenance) Act and shall be dealt with in accordance with that Act.

9. A Protection Order may be made for such period as the Court considers necessary but shall not exceed three years.

10. Where the Order contains any prohibitions or directions, the Court may specify different periods, none of which shall exceed three years as the period for which each prohibition or direction shall remain in force.

Section 7– Matters to be considered

1. In determining whether or not to impose one or more of the prohibitions or directions specified under section 6, the Court shall have regard to the following:

- a. the nature, history or pattern of the violence that has occurred and whether a previous Protection Order or Interim Order has been issued;
- b. the need to protect the applicant and any other person for whose benefit the Protection Order has been granted from further domestic violence;
- c. the welfare of any child;
- d. the accommodation needs of the applicant and any other person;
- e. the hardship that may be caused as a result of the making of the Order;
- f. the income, assets and financial obligations of the respondent, the applicant and any other person affected by the Order;
- g. the need to preserve and protect the institution of marriage and other relationships whilst affording protection and assistance to the family as a unit;
- h. any other matter, that in the circumstances of the case, the Court considers relevant.

Section 8– Interim Orders

1. On an application for a Protection Order, the Court may make an Interim Order, pending the hearing and determination of the proceedings, if it appears necessary or appropriate to do so in order to ensure the safety and protection of the applicant.

2. An Interim Order may be made by the Court at any time either before or during the hearing of the application whether or not:

- a. the respondent is present at the proceedings; or
- b. the respondent has been given notice of the proceedings.

3. An Interim Order may be made for such period of time as the Court considers necessary but shall not exceed a period of twenty-one days.

4. An Interim Order may contain any or all of the prohibitions or directions specified in section 6.

5. Where an Interim Order is made by the Court, it shall summon the respondent to appear at a further hearing of the matter as soon as possible after the making of the Interim Order, and at such further hearing the Court may:

- a. extend the period of the Interim Order for such further period or until the date fixed for the hearing of the application, such period not to exceed forty-two days from the date of the application;
- b. revoke the Interim Order; or
- c. hear the application and make a Protection Order under section 5 in substitution for the Interim Order, whether or not the respondent appears at the proceedings.

Section 9– Undertakings

1. In proceedings under this Act the Court may at any time before the taking of evidence, accept an Undertaking from the respondent given under oath, that the respondent shall not engage in conduct specified in the application or any other conduct that constitutes domestic violence.

2. Where an Undertaking is given under subsection (1) the Court shall make a Protection Order or Interim Order, as it deems fit, in respect of the Undertaking.

3. An Undertaking may deal with all matters that may be dealt with under a Protection Order or Interim Order as the Court sees fit, having regard to the matters referred to in section 7.

4. An Undertaking remains in force for the period stated in the Undertaking, but shall not exceed three years.

5. Sections 15, 16, 17 and 18, Part IV and Part V apply in relation to an Undertaking as they do to a Protection Order and Interim Order.

CHAPTER III
PROCEEDINGS IN RESPECT OF AN APPLICATION FOR A PROTECTION ORDER

Section 10– Application Form 1, Second Schedule

1. An application for a Protection Order shall be made on the prescribed form, being “Form 1” in the Second Schedule, and shall be filed with the Clerk.

2. Except as otherwise provided for by this Act, the Summary Courts Act shall apply mutatis mutandis in respect of proceedings

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under this Act.

3. Proceedings in respect of an application for a Protection Order shall be held in camera unless the Court directs otherwise.

4. Where an application is made on behalf of a child or dependent, the parent or guardian of that child or dependent or the person with whom the child or dependent normally resides or resides with on a regular basis is entitled to be a party to the proceedings.

5. Nothing in subsection (4) shall prevent a child or dependent, on whose behalf an application for an Order is made, from being heard in the proceedings and where the child or dependent expresses views, the Court shall take account of those views having regard to the age and maturity of the child or dependent and ability of the child or dependent to express such views.

Section 11 – Date of hearing of application

The Clerk shall fix a date for the hearing of the application which shall be no more than seven days after the date on which the application is filed.

Section 12 – Notice of Proceedings

1. A copy of the application for a Protection Order together with the notice of the date on which, and the time and place at which, the application is to be heard, shall be served on the respondent.

2. A notice of proceedings shall be issued on the form described as “Form 2” in the Second Schedule.

3. Where an application is filed in respect of a child or dependent, a copy of the application, together with notice of the date on which, and the time and place at which, the application is to be heard, shall as soon as practicable, be served on the parent or guardian or other person with whom the child or dependent normally resides or resides with on a regular basis.

4. A notice of proceedings which is issued and served under this section is deemed to be a summons that is duly issued and served under the Summary Courts Act and compels the respondent to appear in Court to answer the application as if it were a complaint to which that Act applies.

5. A notice of proceedings issued under this section may be served by the applicant or his agent and the Court shall receive proof of such service by affidavit in accordance with the prescribed form, described as “Form 3” in the Second Schedule.

6. Where the hearing of an application is adjourned because the application and the notice of proceedings have not been served on the respondent, the time and place fixed by the Court for the adjourned hearing, shall be the date, time and place stated in the new notice of proceedings.

Section 13 – Absence of Respondent

1. Where notice of the proceedings has been served on the respondent in accordance with section 12 and the respondent fails to appear in person at the time fixed for the hearing the Court may:

a. proceed to hear and determine the matter in the respondent’s absence; or

b. where the Court is satisfied, having regard to the materials before it, that it is appropriate to do so, adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the Court.

Section 14 – Absence of Applicant

1. If, on the date of the hearing of an application for a Protection Order, the respondent appears in Court, but neither the applicant nor the person on whose behalf the application is made appears either in person or represented by his Attorney-at-law, the Court may:

a. dismiss the application; or

b. having received a reasonable excuse for the non-appearance of the applicant or other person, adjourn the hearing upon such terms as it deems just; or

c. where it is satisfied, having regard to the submissions before it, that it is appropriate for evidence to be given by affidavit, the Court may so direct, but the Court shall, on the application of any other party, order the attendance for cross-examination of the person making any such affidavit.

Section 15 – Explanation of Orders

1. Where the Court proposes to make a Protection Order or an Interim Order, and the respondent is before the Court, the Court shall explain to the respondent:

a. the purpose, terms and effect of the Order;

b. the consequences of failing to comply with the Order; and

c. the means by which the Order may be varied or revoked.

Section 16 – Service of Orders

1. Where a Protection Order or Interim Order is made or varied by the Court:

a. the clerk shall arrange for the Order to be drawn up on the prescribed form, described as “Form 4” in the Second

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- Schedule and filed in the Court; and
- b. the Court shall cause a copy of the Order to be served on:
 - i. the respondent;
 - ii. any other person to whom the Order is to apply whether or not the person is a party to the proceedings; and
 - iii. the police officer in charge of the station located nearest to the area where the respondent or applicant resides.
 - c. where it relates to real property, it shall be filed in the Land Registry by the applicant as a *lis pendens*.

Section 17 – Service other than Personal Service

1. Where, the Court has not been able to serve notice of proceedings or the Order, as the case may be, upon the respondent personally, it may make an Order for substituted service of the notice of proceedings or Order, as the case may be.
2. For the purpose of subsection (1) “substituted service” means:
 - a. registered post to the last known address of the respondent;
 - b. leaving the document at the last known address of the respondent;
 - c. service by advertisement in two daily newspapers which service is deemed to have been effected at midnight on the date of the later advertisement, the cost to be borne by the applicant; or
 - d. such other manner as the Court may direct.

Section 18 – Respondent to have notice

1. A respondent shall not be bound by a Protection Order or Interim Order:
 - a. where he was not present at the time of the making of the Order; or
 - b. where the Order has not been served on him personally or in accordance with section 17.

CHAPTER IV
VARIATION, DURATION AND REVOCATION OF ORDERS

Section 19 – Variation and Revocation of Orders

1. Where an Order is in force, a party to the proceedings in respect of whom the Order was made may apply to the Court on the form described as “Form 5” in the Second Schedule, for an Order varying or revoking the original Order.
2. On an application under subsection (1), the Court may, by Order, vary or revoke the Order.
3. A copy of an application under this section shall be served on each person who was a party to the proceedings in respect of which the original Order was made.
4. In determining whether to vary or revoke an Order the Court shall have regard to the matters specified in section

CHAPTER V
ENFORCEMENT OF ORDERS

Section 20 – Breach of Orders

1. Subject to subsection (2) a person against whom an Order has been made and who:
 - a. has had notice of the Order; and
 - b. contravenes any provision of the Order or fails to comply with any direction of the Court, commits an offence and is liable:
 - i. on a first conviction to a fine not exceeding nine thousand dollars or imprisonment for a period not exceeding three months;
 - ii. on a second conviction to a fine not exceeding fifteen thousand dollars or imprisonment for a period not exceeding twenty-four months or both;
 - iii. on any subsequent conviction to a period of imprisonment not exceeding five years.
2. Where an Order contains a direction of the Court pursuant to subsection (1)(c)(viii) that the respondent seek counselling or therapy and it is brought to the attention of the Court that the respondent has refused or neglected to comply with such a direction and the Court finds that such refusal or neglect was unreasonable, the respondent commits an offence and is liable to a fine not exceeding three thousand dollars.

CHAPTER VI
POLICE POWERS OF ENTRY AND ARREST

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Section 21 – Duties of Police officers

1. A police officer shall respond to every complaint or report alleging domestic violence whether or not the person making the complaint or the report is the victim.
2. It shall be the duty of a police officer responding to a domestic violence complaint to complete a domestic violence report which shall form part of a National Domestic Violence Register to be maintained by the Commissioner of Police.
3. A domestic violence report shall be in the form prescribed as “Form 7” of the Second Schedule and shall include but not be limited to:
 - a. the name of the parties;
 - b. the relationship and sex of the parties;
 - c. information relating to the history of domestic violence between the parties;
 - d. the date and time the complaint was received;
 - e. the type of the abuse and the weapon used, if any.

Section 22 – House of Warrant

1. Where a Magistrate is satisfied, by information on oath, that—
 - a. there are reasonable grounds to suspect that a person on premises has suffered or is in imminent danger of physical injury at the hands of another person in a situation amounting to domestic violence and needs assistance to deal with or prevent the injury; and
 - b. a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person in paragraph (a), the Magistrate may issue a warrant in writing authorising a police officer to enter the premises specified in the warrant at any time within twenty-four hours after the issue of the warrant and subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace or to protect life or property.

Section 23 – Police powers of entry and arrest without warrant

1. For the avoidance of doubt, a police officer may act in accordance with the provisions of the Criminal Law Act where he has reasonable cause to believe that a person is engaging in or attempting to engage in conduct which amounts to physical violence and failure to act immediately may result in serious physical injury or death.
2. Nothing in this section authorises the entry onto premises by a policeman, for the purpose of any search or the arrest of any person, otherwise than in connection with the conduct referred to in subsection (1).
3. Where a police officer exercises a power of entry under subsection (1) he shall immediately submit a written report to the Commissioner of Police, through the Head of the Division where the incident occurred, such report to contain the following information:
 - a. the reasons for entering the premises without a warrant;
 - b. the offence being committed or about to be committed; and
 - c. the manner in which the investigation was conducted and the measures taken to ensure the protection and safety of the person at risk.
4. The report referred to in subsection (3) shall be submitted to the Director of Public Prosecutions by the Commissioner of Police within seven days of receiving the report.
5. Where a complaint is made against a police officer by a person resident in premises alleging that the officer’s entry onto the premises under subsection (1) was unwarranted, the Police Complaints Authority shall investigate the complaint and submit a copy of its report to the Commissioner of Police and the Director of Public Prosecutions within fourteen days of the complaint having been made.
6. Where upon an investigation under subsection (5) the Police Complaints Authority finds that the entry under subsection (1) was unwarranted, the Authority shall submit a copy of its report to the Commissioner and such report may form the basis of disciplinary action against the officer.

Section 23A – Duty of Police officers to assist victims

1. Where a police officer has entered on to premises in furtherance of sections 22 and 23(1) he shall:
 - a. give assistance to a person who has suffered injury;
 - b. ensure the welfare and safety of a child who may be on the premises; and
 - c. prevent any further breach of the law.

Section 24 – Powers of arrest where a Protection Order is in force

1. Where an Order is in force and a police officer believes on reasonable grounds that a person has committed or is committing a breach of the Order he may detain and arrest that person without a warrant.

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Section 25 – Existing criminal law to apply

1. Subject to subsection (2), where a person is arrested under section 22 or 23, the person shall be charged in accordance with the relevant provisions of the criminal law for committing or attempting to commit any of the offences listed in the First Schedule and shall be dealt with accordingly.
2. Where an application for a Protection Order has been made or where a person has been arrested and charged under section 22 or 23 and after hearing all the evidence the Court is satisfied that:
 - a. the incident was an isolated one;
 - b. there are circumstances which make it desirable to preserve the family unit; and
 - c. the conduct complained of is not sufficiently grave to warrant the imposition of either the Order or the penalty, as the case may be, it may, with the consent of the applicant or complainant, as the case may be, withhold the granting of a Protection Order or the imposition of any penalty as prescribed by law and require the respondent or defendant to enter into a bond of good behaviour for a period not exceeding six months.
3. Where a bond of good behaviour has been entered into under subsection (2) the Court may prescribe such additional conditions as follows:
 - a. that the parties receive professional counselling, including family counselling;
 - b. that the parties report to a probation officer at certain fixed intervals;
 - c. that the matter be reviewed by the Court within three months.
4. A bond of good behaviour entered into under subsection (2) shall be forfeited where the Court is satisfied that:
 - a. the respondent or defendant has continued to engage in conduct amounting to domestic violence against the complainant;
 - b. based on a report from a probation officer, social worker, police officer or such other person, domestic violence is likely to be perpetrated against the applicant or complainant; or
 - c. the applicant or complainant has become fearful of the respondent or defendant to the extent that he is no longer willing to continue the relationship.

Section 26 – Refractory witnesses

1. Where direct oral evidence of a fact would be admissible in any proceedings under this Act, a document containing a statement made by the complainant which forms part of the record compiled by the police and tending to establish that fact, shall be admissible in circumstances where:
 - a. the complainant refuses to be sworn as a witness; or
 - b. having been sworn as a witness, gives oral evidence which is inconsistent or contradictory to the statement forming part of the police record.
2. A statement admitted as evidence by virtue of subsection (1), shall be treated by the Court as a statutory declaration made under the Statutory Declarations Act and the Court may draw any reasonable inference from the form or content of that statement and determine the weight, if any, to be attached to the evidence of any fact stated therein.

Section 27 – Bail

1. Notwithstanding the Bail Act, where the Court is required to determine whether to grant bail in respect of an offence under this Act, the Court shall consider:
 - a. the need to protect the applicant from domestic violence;
 - b. the welfare of a child where the defendant or victim of the alleged offence has custody of that child;
 - c. the welfare of any child being a member of the household; and
 - d. any hardship that may be caused to the defendant or other members of the family if bail is not granted.
2. Notwithstanding the Bail Act, the Court in granting bail, may order that the recognisance be subject to such of the following conditions as the Court considers appropriate:
 - a. that the defendant not harass or molest or cause another person to harass or molest the victim of the alleged offence;
 - b. that the defendant not be on the premises in which the victim resides or works;
 - c. that the defendant not be in a locality in which are situated the premises in which the victim resides or works; and
 - d. where the defendant continues to reside with the victim that the defendant not enter or remain in the place or residence while under the influence of alcohol or a drug.
3. Where a police officer believes on reasonable grounds that a person, who has been admitted to bail subject to one or more conditions, has failed to comply with a condition of the recognisance, the police officer may arrest the person without a warrant.

Section 28 – Appeals

1. An appeal shall lie to the Court of Appeal from any Order or Judgment of the Court and the procedure in respect of such an

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appeal shall be as is laid down in the Summary Courts Act.

2. Notwithstanding subsection (1) a notice of appeal from an Order or Judgment under this Act shall not operate as a stay of proceedings unless the Court of Appeal orders otherwise

Section 29 – Jurisdiction

1. Nothing in this Act shall be regarded as removing any jurisdiction which the High Court may have in respect of the matters referred to under this Act

Section 30 – Repeal and Savings

1. The Domestic Violence Act, 1991 is repealed.

2. Nothing in this Act affects any proceedings instituted prior to the coming into force of this Act and existing Orders made under the Domestic Violence Act, 1991.

[Sexual Offences Act, 1986 \(As amended\)](#) ⁶⁷

5. Rape. [31 of 2000]

[...]

S. 4(5): This section also applies to a husband in relation to the commission of the offence of rape on his wife.

4(6) : In subsection (5) “husband “or “wife” includes a cohabitant within the meaning of the Cohabital Relationships Act.

4 A. Grievous sexual assault. [31 of 2000]

[...]

This section also applies to a husband in relation to the commission of the offence of grievous sexual assault on his wife.

(3) In subsection (3) “husband” or “wife” includes a cohabitant within the meaning of the Cohabital Relationships Act.

32. TUNISIA

[Penal Code, 1913](#) ⁶⁸

Chapter I - Offenses against the Person

Section II – Violence, Threats

Article 218 (As amended by Law No. 93-72 of 12 July 1993).

Anyone who intentionally harms, beats, or commits any other violence or assault that does not fall within the provisions of section 319, shall be punished by imprisonment for one year and a fine thousand dinars (1000d).

If the perpetrator is a descendant or spouse of the victim, the penalty is two years imprisonment and two thousand dinars (2000d) fine.

If there has been premeditation, the penalty is three years imprisonment and three thousand dinars (3000d) fine.

The withdrawal by the victim who is the ascendant or spouse, stops the prosecution, the trial, or the execution of the sentence.

The attempt is punishable.

⁶⁷ Sexual Offences Act (Ch. 11:28), 1986 (as amended by 20 of 1984, 31 of 2000, and 12 of 2012; updated to 31 December 2015), available at: http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/11.28.pdf (last visited December 30, 2018). Unofficial translation by the Ministry of the Attorney General and Legal Affairs.

⁶⁸ Penal Code (9 July 1913), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61250/60936/F1198127290/TUN-61250.pdf> (last visited December 30, 2018).

33. TURKEY

[Law to Protect Family and Prevent Violence Against Women, 2012](#)⁶⁹

FIRST PART

The Aim, Content, Fundamental Principles and Definitions

The Aim, Content and Fundamental Principles

ARTICLE 1- (1) The aim of this law is to protect the women, the children, the family members and the victims of stalking, who have been subject to the violence or at the risk of violence, and to regulate procedures and principles with regard to the measures of preventing the violence against those people.

(2) The following fundamental principles are observed to enforce this law and provide necessary services:

- a) The Constitution of Republic of Turkey, the international agreements to which Turkey is a party, especially the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, and other current regulations shall prevail.
- b) A fair, effective and speedy method, which is based on basic human rights, sensitive to the equality of men and women, applicable to the social state principle, is maintained in providing support and services to the victims of violence.
- c) The cautionary decisions taken for the victims and perpetrators of violence are implemented with respect to human dignity and honor.
- ç) The special measures taken within the scope of this law to prevent the gender based violence against women and protect the women from the gender based violence cannot be interpreted as discrimination.

Definitions

ARTICLE 2- (1) Certain terms used in this law are defined as follows;

- a) Ministry: the Ministry of Family and Social Policies,
- b) Domestic violence: Any physical, sexual, psychological and economical violence between the victim of violence and the perpetrator of violence and between the family members and the people who are considered as a family member whether they live or do not live in the same house.
- c) Judge: The judge of family court,
- ç) Violence against women: The gender- based discrimination directed against a woman just because she is a woman or that affects women disproportionately and any attitude and behavior violating the human rights of women and defined as violence in this Law.
- d) Violence: The acts which results or will probably result in person's having physical, sexual, psychological and financial sufferings or pain and any physical, sexual, psychological, verbal or economical attitude and behavior which include the treat, pressure and arbitrary violation of person's freedom as well and conducted in social, public and private space.
- e) Victim of violence: The person who is directly or indirectly subject to or at the risk of the attitudes and behaviors which are defined as violence in this Law and the people who are affected by violence or at the risk of being affected by violence.
- f) Violence Prevention and Monitoring Centers: The centers which operate on a 7/24 basis and provide support and monitoring services in order to prevent the violence and to carry out the protective and preventive measures efficiently.
- g) Perpetrator of violence: The people who exhibit attitudes and behaviors defined as violence in this Law or entail the risk of exhibiting them.
- ğ) Cautionary decision: The cautionary decision taken in regard to the victims and perpetrators of violence, ex officio or upon a request, by the judge, law enforcement officers and administrative chiefs within the scope of this Law.

SECOND PART

The Provisions on Protective and Preventive Measures

The protective cautionary decisions to be taken by the civilian authority

ARTICLE 3- (1) One of the following measures, several of them or similar measures deemed appropriate shall be decided by the civilian authority in regard to the persons who are protected within the scope of this Law.

- a) To provide an appropriate shelter to the person and if necessary to the person's children in the vicinity or in some other location.

⁶⁹ Law to Protect Family and Prevent Violence Against Women, Law No. 6284 (8 March 2012), available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_235174.pdf (last visited December 30, 2018).

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- b) To provide financial aid to the person, without prejudice to other assistances provided within the scope of other laws.
 - c) To provide psychological, professional, legal and social guidance and counseling services.
 - ç) To provide a temporary protection upon a request of the relevant person or ex officio if there is a life threatening danger for the person.
 - d) If deemed necessary; four months of day care, maximum two months for those who have a job, is provided to children of the protected persons to support the person's integration into worklife; the amount which cannot exceed the half of the net minimum wage paid to those older than 16 years of age with the condition of documenting is covered from the Ministry's related budget.
- (2) In cases where delay is considered to be risky, the measures as contained in the paragraph 1, clauses A and Ç shall be taken by related law enforcement chiefs as well.
- Law enforcement chief shall present the report to the administrative chief for approval not later than the first work day after the decision is taken. The measures which are not approved by the administrative chief within forty-eight hours shall be per se abolished.

The protective cautionary decision to be taken by the judge

ARTICLE 4- (1) One of the following protective measures, several of them or similar measures deemed appropriate shall be decided by the judge in regard to the persons who are protected within the scope of this Law:

- a) To change the work place.
- b) To decide a house settlement different from the shared one if the person is married.
- c) To put an annotation to the title deed as a family house if the conditions are applicable as contained within the Turkish Civil Code no.4721 dated 22/11/2001 and upon the request of the protected person.
- ç) To change the identification and other related information and documents based on the informed consent of the relevant person as per the provisions of the Witness Protection Law No. 5726 dated 27/12/2007 if it is determined that there is a life threatening danger for the protected person and the measures to prevent this danger are inadequate.

The preventive cautionary decisions to be taken by the judge

ARTICLE 5- (1) One of the following preventive measures, several of them or similar measures deemed appropriate shall be decided by the judge with regard to the perpetrators of violence:

- a) Not to exhibit an attitude and behaviors including the threats of violence, insult and humiliation against the victim of violence.
- b) To move from the shared dwelling or the vicinity immediately and to allocate the shared dwelling to the protected person.
- c) Not to approach to the protected persons and their residences, schools and workplaces.
- ç) If there is a previous decision to allow having a personal connection, to have a personal connection with the children together with a company and to restrict the personal connection or to revoke it completely.
- d) Not to approach the friends or relatives and children of the protected person even though they haven't been subject to the violence, without prejudice to the decisions that allows personal connection with children
- e) Not to damage the personal belongings and household goods of the protected person.
- f) Not to cause distress to the protected person by means of communication instruments or alternative channels
- g) To hand over the officially permitted and authorized weapons to the law enforcement officials.
- ğ) To hand over the weapon to the employing institution, even if the person is in a profession of public service that requires carrying a weapon.
- h) Not to use alcohol, drugs or stimulants in places where the protected people are present or not to approach the protected people and whereabouts while under the influence of these substances and to ensure to have a medical examination and treatment including in-patient treatment in case of the addiction.
- i) To apply to the health centre for examination or treatment and to ensure having a treatment.

(2) In cases where delay is considered to be risky, the measures as contained in the clauses of (a), (b), (c) and (d) of the first paragraph shall be taken by the relevant law enforcement chiefs as well. The law enforcement chief shall present the report to the judge for approval no later than the first work day after the decision is taken. The measures which are not approved within the twenty- four hours by the judge shall be per se abolished

(3) With the measures identified within this Law, the judge is authorized to take a decision on protective and preventive measures as contained within the Child Protection Law no. 5395 dated 3/7/2005 and on the issues of guardianship, custody, alimony and personal connection as per the provisions of Law no.4721.

(4) If the perpetrator of violence is the person who at the same time is the provider of or contributor to the family's livelihood, the judge may decide on a temporary alimony by taking into consideration of the living standards of the victim even without request provided that no decision on maintenance had been rendered priorly as per the provisions of Law no. 4721

The provisions remain reserved in regard to the crimes

ARTICLE 6- (1) Due to the fact that the person's possession of a weapon or usage of drug or stimulant constitute a crime or

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result in another crime, the law provisions remain reserved in regard to the followings;

- a) The protective measures or supervised liberty measures during the investigation or prosecution,
- b) The execution of the sentence or security measures in case of conviction and the supervised liberty measures to be applied within this framework.

Reporting

ARTICLE 7- (1) If there has been violence or there is a risk of it, everybody can report this situation to the official authorities and organs. The public officials who receive the report are obliged to fulfill their duties without any delay and inform the authorities for the other measures needed to be taken.

Taking a cautionary decision, its notification and confidentiality

ARTICLE 8- (1) The cautionary decision is taken either upon a request of the relevant person or law enforcement officers or public prosecutor. The cautionary decisions may be requested from the judge, administrative chief or law enforcement unit, whichever is in the nearest and easiest location.

(2) The cautionary decision is taken for the six months period at most initially. However, if it is determined that there is a continued risk of violence, the measures shall be extended, modified, abolished or kept ex officio or upon a request of the protected person or the officials of Ministry or law enforcement agencies,

(3) No evidence or report proving the violence is required in order to take cautionary decision. The preventive cautionary decision is taken without delay. This decision cannot be delayed as to endanger the realization of the aim of this Law.

(4) The cautionary decision is pronounced or notified to the protected person and perpetrator of violence. Regarding to the refusal of the request for a cautionary decision, only the protected person is notified. In cases where the delay is considered to be risky, the perpetrator of violence is immediately notified with an official report on the cautionary decision taken by the related law enforcement unit.

(5), The legal warning stating that the person is subject to the preventive imprisonment in the case of acting contrary to the the cautionary decision is issued when the cautionary decision is pronounced and notified.

(6), If deemed necessary, in addition to the cautionary decision, the identification information of the protected person or other family members or the information to reveal their identification, their addresses and the other information important for the efficiency of protection shall be kept confidential within records upon a request or ex officio. A different address is identified for the notifications to be sent. The person who illegally gives, reveals and discloses the information to somebody else is subject to the related provisions of Turkish Penal Code no. 5237 dated 26/9/2004

(7) If requested, the delivery of personal belongings and documents to the relevant persons is ensured through law enforcement.

Appealing

ARTICLE 9- (1) The decisions taken as per the provision of this Law may be appealed to the family court by the relevant persons within two weeks after the notification is received.

(2) Upon a complaint about the cautionary decisions taken by the judge, if there is more than one family court, the file is transferred to the numerically succeeding family court; if the court taking the decision is numerically the last court, it is transferred to the numerically first court; if there is one family court in that area, it is transferred to the court of first instance; if the judge of family court and judge of the court of first instance are the same person, it is transferred to the nearest court of first instance without delay.

(3) The authority for complaints shall make the decision within a week. The decisions taken by the authority for complaints are the final.

Notification and implementation of the cautionary decisions

ARTICLE 10- (1) The related Province and District directorates of the Ministry and, depending on the nature of decision, the public prosecutor and law enforcement officer are notified of the cautionary decisions taken as per the provisions of this Law through the fastest channels.

(2) The authority to which applied for the cautionary decision immediately shall inform the related Province and District directorates of the Ministry about the applications made to the related authorities and the decisions of acceptance or refusal of the applications within the scope of this Law

(3) The law enforcement unit is responsible and authorized to implement the protective cautionary decision on providing a temporary protection and the preventive cautionary decision taken for the perpetrator of violence and to protect the residential area of the protected persons or its location or the place where the measures shall apply.

(4) On the occasion when the cautionary decision is taken and implemented by the law enforcement chief or when the protected person is in the police station, the person is taken off to the related Province or District directorates of the Ministry urgently. If this is not possible, temporary shelter is provided to the person and her company by covering the expenses from the Ministry's related budget allocation.

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(5) The fact that the cautionary decisions haven't been pronounced or notified to those concerned shall not constitute an impediment to implement the decision.

(6) The persons, for whom a decision for providing a shelter has been taken, shall be settled in places belonging to the Ministry or under the supervision of the Ministry. On the occasions when the shelters are not adequate; the protected persons are sheltered in the social facilities, dormitories or similar lodgings of the state institutions and organizations upon a request of district authority and, when urgent, upon a request of the law enforcement officials or the Ministry

(7) The cautionary decision regarding to changing the workplace shall be implemented by the competent authority or person in accordance with the related regulations the person is subjected to.

Law enforcement duties

ARTICLE 11- (1) The law enforcement duties, in regard to the services specified within this Law, shall be implemented by an adequate number of personnel who have a training on the human rights for the children and women and the equality of men and women, and who are assigned by the related law enforcement units in central and provincial organization.

Monitoring with technical methods

ARTICLE 12- (1) While implementing the cautionary decisions taken as per the provisions of this Law, the technical means and methods may be used with a judicial decision. However, the audio-visuals of the persons cannot be monitored and recorded in this way.

(2) The procedures and principles regarding to monitoring with technical means and methods shall be stipulated by a regulation.

Acting Contrary to the Cautionary Decisions

ARTICLE 13- (1) In case of that the perpetrator of violence for whom a cautionary decision is taken as per the provisions of this Law acts contrary to the requirements of this decision, he shall be subject to the preventive imprisonment from 3 to 10 days by the judicial decision depending on the nature and severity of the violated measure even if the act constitutes another crime.

(2) In each recurring action contrary to the requirements of the cautionary decision, the period of the preventive imprisonment shall be from fifteen to thirty days. But the period of the preventive imprisonment cannot be more than six months.

(3) The decisions regarding to the preventive imprisonment shall be implemented by the public prosecutor. The related Province and District directorates are notified of these decisions.

THIRD PART

Establishing the Centers, the Support Services and the Inter-Agency Coordination

Establishing the Violence Prevention and Monitoring Centers

ARTICLE 14- (1) The Ministry shall establish the Violence Prevention and Monitoring Centers, where necessary qualified personnel especially the women are employed and perform a duty, and where the support and monitoring services are provided to the persons to prevent the violence and efficiently implement the protective and preventive measures. They operate on a basis of seven days and twenty- four hours and their procedures and principles are identified by regulation.

(2) Monitoring studies are conducted and support services are provided to the persons in these centers in order to prevent violence and efficiently implement the protective and preventive measures.

Support Services

ARTICLE 15- (1) The followings are the services to be provided by the violence prevention and monitoring centers in regard to preventing the violence and monitoring the efficient implementation of cautionary decisions within the scope of this Law:

a) To build a data bank by collecting data regarding to the protective and preventive cautionary decisions, the sentences of preventive imprisonment and the implementation of these decisions and acts, and to keep record of the cautionary decisions.
b) To coordinate the services of sheltering, temporary financial aid, medical, judicial assistance and other services provided to the protected person.

c) When deemed necessary, to file an application for cautionary decisions to be taken and implemented.

c) To prepare and implement the programs on an individual and collective scale in regard to preventing the violence within the scope of the Law.

d) To popularize the call centers established within the structure of the Ministry and to ensure the applications monitored in accordance with the aim of this Law

e) To cooperate with the non-governmental organizations working to end violence within the scope of this Law.

(2) The followings are the support services to be provided to the protected persons by the the Violence Prevention and Monitoring Centers;

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- a) To guide the persons about their rights, the institutions where they can receive support, the employment and similar issues and to conduct activities to ensure their attendance at vocational courses.
 - b) To make suggestions and to give an assistance in order to realize the aim of the cautionary decision.
 - c) To monitor the results of the implementation of cautionary decisions and their effects on persons.
 - ç) To assist and counsel on resolving the psHYCO-social and economical problems.
 - d) Upon a request of the Judge; to prepare and present a detailed social research report on the person's background, family, social environment, education, personal, social, economical and psychological status.
 - e) Upon a request of the competent authority, to prepare a report on the results of the implementation of cautionary decisions and their effects on related persons.
 - f) To provide necessary guidance to the persons to receive the financial aid as per the provisions of the Encouragement of Social Assistance and Solidatary Law no.3294 dated 29/5/1986.
- (3) The followings are the support services to be provided to the perpetrator of violence by the violence prevention and monitoring centers:
- a) Upon a request of the Judge; to prepare and present a detailed research report on the person's background, family, social environment, education, personal, social, economical and psychological status and the risks posed to the society.
 - b) Upon a request of the competent authority, to prepare a report on the results of the implementation of cautionary decisions and their effects on related persons.
 - c) To conduct encouraging, enlightening and guiding activities to ensure that the person do the followings;
 - 1) Attending at the anger management, stress management, training and rehabilitation programs which aim to change attitude and behavior by raising awareness to prevent the violence
 - 2) Having medical examination and receiving treatment in a health center in case of addiction to alcohol, volatile substance or situmulants or psYchological disorder.
 - 3) Attending at Vocational courses,
 - (4) The services for the victim and perpetrator of violence are rendered in different units with the exception of compulsory situations.

Inter-agency coordination and training

ARTICLE 16- (1) The ministry is charge of interagency coordination in application of the provisions of this Law.

(2) Public institutions and organizations and other natural and legal persons are responsible for implementing the cautionary decisions without delay and cooperating and assisting to each other in issues related to their agencies in regard to the implementation of this Law. Natural and legal persons are encouraged to support the studies of the Ministry and conduct joint studies within the scope of this Law.

(3) Along with Turkish Radio and Television Corporation, the private radios and television channels broadcasting national, regional and locally have to broadcast informative materials, at least 90 minutes each month, on the integration of women into the work life, the mechanisms and policies to fight against the violence especially related with children and women which are all prepared by the ministry or prepared by other agencies with the consent of the ministry. These materials are broadcast between 0800 and 2200 o'clock including at least 30 minutes broadcasting between 1700 and 2200 o'clock and the copies of these broadcasts are submitted monthly to Supreme Board of Radio and Television. Any broadcast before or after these hours are not considered within the monthly 90 minute timeframe. These hours are inspected by the Supreme Board of Radio and Television. Informative materials to

be broadcast on TVs and radios are prepared by the units of the Ministry with the opinions of universities, related vocational organizations and NGOs.

(4) During the practice of the duties stated in this Law, the staff of public institutions and organizations assists the Ministry personnel.

(5) For an effective application of this Law, the public institutions and organizations and professional organizations with public institution status ensure their personnel and members to attend educational courses prepared and coordinated by the Ministry on the human rights for women and the equality of women and men.

(6) The Educational courses on the human rights for women and the equality of women and men are integrated into primary and secondary education curriculum.

PART FOUR
Financial Provisions

Temporary financial aid

ARTICLE 17 – (1) In case of financial aid decision as per the provisions of this Law, daily payment of one thirtieth of minimum wage identified yearly is made for those over sixteen years of age. In cases where there are multiple protected people an additional sum of twenty percent of this amount is paid to every additional individual. However, the amount to be paid cannot exceed one and a half times of the daily payment. If the protected persons are provided with shelter, the amounts stated in

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these provisions are applied by reducing fifty percent.

(2) These payments are made from the Ministry's fund opened for temporary financial aids. All payments are collected from the perpetrator of violence within one month after notification is received. Other non-collected sum is tracked and collected by tax offices as per the provisions of the Procedures of Collection of Public Receivables Law No. 6189 dated 21/07/1953.

(3) On occasions when a protected person is identified as giving false statement, the total amount of aid is retrieved from the person as per the provisions of law no. 6183.

Alimony

ARTICLE 18 – (1) On occasions when the alimony decision is taken as per the provisions of this Law, a copy of the verdict is sent to directorate of debt collection where the alimony recipient ex officio or payer resides.

(2) In case of an occasion where alimony payer has any ties with Social Security Institution, the alimony is collected from the payer's salary, wage or earnings by directorate of debt collection without seeking alimony recipient's application. The related mailing expenses of

directorate of debt collection on alimony collection is covered from Chief Public Prosecutor's reimbursement pool.

Health expenses

ARTICLE 19 – (1) As per the provisions of this law, those for whom the protective cautionary decision is taken but who do not have general health insurance, who cannot benefit from a dependent insurance, who cannot benefit from general health insurance as a result of due payments and those who cannot benefit from treatment assistance for other provisional reasons are regarded as having general health insurance without an income test within the scope of article 60, paragraph 1, clause C and sub clause 1 of the Social Security and General Health Insurance Law no. 5510 dated 31/05/2006.

(2) As per the provisions of this law, if the person under the preventive cautionary is also decided to take rehabilitation or treatment, the rehabilitation expenses which are not covered by general health insurance and the cost of other health expenses required by rehabilitation services are covered from the related budget of the Ministry.

Exemption from the fees, expenses and taxes and participation to the case

ARTICLE 20 – (1) No court expenses, fees, mailing expenses and etc. are required for applications and for other processes during the execution and implementation of the decisions within the scope of this Law. As per the article 17 of this law, the payments are exempt from income tax, inheritance and transfer tax; also, receipts of these payments are exempt from stamp tax.

(2) The ministry can, if deems necessary, participate in an administrative, punitive and judiciary lawsuit or ex parte proceeding opened due to the violence or violence threat against women, children and family members.

PART FIVE Various and Last Provisions

Personnel

ARTICLE 21 – (1) The personnel listed in the annex are created and added to table 1 of "Ministry of Family and Social Policies" part of Statutory Decree on General Personnel and Procedure No. 190 dated 13/12/1983.

Regulation

ARTICLE 22 – (1) The methods and principles on the application of this Law shall be stipulated by the regulations prepared by the Ministry by taking the opinions of the Ministries of Justice, Interior, Economy, National Education and Health within the six months. **Abolished provisions and references**

ARTICLE 23 – (1) The Family Protection Law no.4320 dated 14/1/1998 has been abolished. **(2)** The references made to the law no.4320 will be considered as references made to this Law in the legislation.

(3) The decisions taken before this law was put into effect as per provisions of Law No.4320 shall continue to be applied.

The Violence Prevention and Monitoring Centers becoming operational

TEMPORARY ARTICLE 1- (1) The Violence Prevention and Monitoring Centers proposed to be established on article 14 of this Law, shall be established for a pilot scheme in cities to be determined by the Ministry within two years after the law is put into effect.

[...]

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[Criminal Code, 2004 \(As amended\)](#) ⁷⁰

CHAPTER II - Offences against the Person
Part 1 - Offences against Life

Qualified cases

Article 82

(1) If the act of intentional killing is committed: [...]

d) Against a direct ascendant, direct descendant, spouse or sibling; [...]

the offender shall be sentenced to aggravated life imprisonment.

Part 2 - Offences Against Physical Integrity

Intentional Injury

Article 86

(1) Any person who intentionally causes another person physical pain or who impairs another person's health, or ability to perceive, shall be sentenced to a penalty of imprisonment for a term of one to three years.

[...]

(3) Where an intentional injury is committed:

a) against a direct antecedent, direct descendant, spouse or sibling; [...]

the penalty to be given shall be increased by one half and shall not require a complaint.

Torment

Article 96

(1) Any person who performs any act which results in the torment of another person shall be sentenced to a penalty of imprisonment for a term of two to five years

(2) Where the acts falling under the above paragraph are committed against:

[...]

b) a direct ascendant, direct descendant, adoptive parent or spouse, a penalty of imprisonment for a term of three to eight years shall be imposed.

Part 6 - Offences against Sexual Integrity

Sexual Assault

Article 102 – (Amended on 18 June 2014 – By Article 58 of the Law no. 6545)

(1) Any person who violates the physical integrity of another person, by means of sexual conduct, shall be sentenced to a penalty of imprisonment for a term of two to ten years, upon the complaint of the victim. If the said sexual behaviour ceases at the level of sexual importunity, the term of imprisonment shall be from two years to five years.

(2) Where the act is committed by means of inserting an organ, or other object, into the body, the offender shall be punished with a term of imprisonment no less than twelve years. If the act is committed against the offender's spouse, conducting an investigation and prosecution shall be subject to a complaint by the victim.

34. UGANDA

[Domestic Violence Act, 2010](#) ⁷¹

35. UKRAINE

[Law on Prevention of Domestic Violence, 2017](#)

[Code of Administrative Offences](#)

Art. 173-2 (Domestic violence, gender-based violence, failure to comply with an urgent prohibition or failure to notify a place of temporary residence)

⁷⁰ Criminal Code, Law No. 5237 (26 September 2004), available at <http://www.lawsturkey.com/law/criminal-code-law-of-turkey-5237> (last visited December 30, 2018).

⁷¹ Domestic Violence Act 2010, Act No. 3 (17 March 2010), available at <https://ulii.org/ug/legislation/act/2015/3-9> (last visited December 30, 2008).

36. UNITED KINGDOM

36.1. ENGLAND AND WALES

[Family Law Act, 1996](#)⁷²

[...]

PART IV

FAMILY HOMES AND DOMESTIC VIOLENCE
Rights to occupy matrimonial or civil partnership home

30. Rights concerning home where one spouse or civil partner has no estate etc.

- (1) This section applies if—
 - (a) one spouse or civil partner (“A”) is entitled to occupy a dwelling-house by virtue of—
 - (i) a beneficial estate or interest or contract; or
 - (ii) any enactment giving A the right to remain in occupation; and
 - (b) the other spouse or civil partner (“B”) is not so entitled.
- (2) Subject to the provisions of this Part, B has the following rights (“home rights”)—
 - (a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by A except with the leave of the court given by an order under section 33;
 - (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling-house.
- (3) If B is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, any payment or tender made or other thing done by B in or towards satisfaction of any liability of A in respect of rent, mortgage payments or other outgoings affecting the dwelling-house is, whether or not it is made or done in pursuance of an order under section 40, as good as if made or done by A.
- (4) B’s occupation by virtue of this section—
 - (a) is to be treated, for the purposes of the Rent (Agriculture) Act 1976 and the Rent Act 1977 (other than Part V and sections 103 to 106 of that Act), as occupation A as A’s residence, and
 - (b) If B occupies the dwelling-house B’s only or principal home, is to be treated, for the purposes of the Housing Act 1985, Part I of the Housing Act 1988, Chapter I of Part 5 of the Housing Act 1996 and the Prevention of Social Housing Fraud Act 2013, as occupation by A as A’s only or principal home.
- (5) If B
 - (a) is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, and
 - (b) makes any payment in or towards satisfaction of any liability of A in respect of mortgage payments affecting the dwelling-house, the person to whom the payment is made may treat it as having been made by A, but the fact

⁷² Family Law Act - Ch. 27 (4 July 1996), available at <https://www.legislation.gov.uk/ukpga/1996/27/part/IV> (last visited December 30, 2018).

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that that person has treated any such payment as having been so made does not affect any claim of B against A to an interest in the dwelling-house by virtue of the payment.

- (6) If B is entitled under this section to occupy a dwelling-house or part of a dwelling-house by reason of an interest of A under a trust, all the provisions of subsections (3) to (5) apply in relation to the trustees as they apply in relation to A.
- (7) This section does not apply to a dwelling-house which
 - (a) in the case of spouses, has at no time been, and was at no time intended by them to be, a matrimonial home of theirs; and
 - (b) in the case of civil partners, has at no time been, and was at no time intended by them to be, a civil partnership home of theirs.
- (8) B's home rights continue—
 - (a) only so long as the marriage or civil partnership subsists, except to the extent that an order under section 33(5) otherwise provides; and
 - (b) only so long as A is entitled as mentioned in subsection (1) to occupy the dwelling-house, except where provision is made by section 31 for those rights to be a charge on an estate or interest in the dwelling-house.
- (9) It is hereby declared that a person—
 - (a) who has an equitable interest in a dwelling-house or in its proceeds of sale, but
 - (b) is not a person in whom there is vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house,

is to be treated, only for the purpose of determining whether he has home rights, as not being entitled to occupy the dwelling-house by virtue of that interest.

31. Effect of home rights as charge on dwelling-house

- (1) Subsections (2) and (3) apply if, at any time during a marriage or civil partnership, A is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest.
- (2) B's home rights are a charge on the estate or interest.
- (3) The charge created by subsection (2) has the same priority as if it were an equitable interest created at whichever is the latest of the following dates—
 - (a) the date on which A acquires the estate or interest;
 - (b) the date of the marriage or of the formation of the civil partnership; and
 - (c) 1st January 1968 (the commencement date of the Matrimonial Homes Act 1967).
- (4) Subsections (5) and (6) apply if, at any time when B's home rights are a charge on an interest of A under a trust, there are, apart from A or B, no persons, living or unborn, who are or could become beneficiaries under the trust.
- (5) The rights are a charge also on the estate or interest of the trustees for A.
- (6) The charge created by subsection (5) has the same priority as if it were an equitable interest created (under powers overriding the trusts) on the date when it arises.
- (7) In determining for the purposes of subsection (4) whether there are any persons who are not, but could become, beneficiaries under the trust, there is to be disregarded any potential exercise of a general power of appointment

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exercisable by either or both of A and B alone (whether or not the exercise of it requires the consent of another person).

- (8) Even though B's home rights are a charge on an estate or interest in the dwelling-house, those rights are brought to an end by—
- (a) the death of A, or
 - (b) the termination (otherwise than by death) of the marriage or civil partnership,
unless the court directs otherwise by an order made under section 33(5).
- (9) If —
- (a) B's home rights are a charge on an estate or interest in the dwelling-house, and
 - (b) that estate or interest is surrendered to merge in some other estate or interest expectant on it in such circumstances that, but for the merger, the person taking the estate or interest would be bound by the charge,

the surrender has effect subject to the charge and the persons thereafter entitled to the other estate or interest are, for so long as the estate or interest surrendered would have endured if not so surrendered, to be treated for all purposes of this Part as deriving title to the other estate or interest under A or, as the case may be, under the trustees for A, by virtue of the surrender.
- (10) If the title to the legal estate by virtue of which A is entitled to occupy a dwelling-house (including any legal estate held by trustees for A) is registered under the Land Registration Act 2002 or any enactment replaced by that Act—
- (a) registration of a land charge affecting the dwelling-house by virtue of this Part is to be effected by registering a notice under that Act; and
 - (b) B's home rights are capable of falling within paragraph 2 of Schedule 1 or 3 to that Act.
- (11) [repealed]
- (12) If—
- (a) B's home rights are a charge on the estate of A or of trustees of A, and
 - (b) that estate is the subject of a mortgage,

then if, after the date of the creation of the mortgage ("the first mortgage"), the charge is registered under section 2 of the Land Charges 1972, the charge is, for the purposes of section 94 of the Law of Property Act 1925 (which regulates the rights of mortgagees to make further advances ranking in priority to subsequent mortgages), to be deemed to be a mortgage subsequent in date to the first mortgage.
- (13) It is hereby declared that a charge under subsection (2) or (5) is not registrable under subsection (10) or under section 2 of the Land Charges Act 1972 unless it is a charge on a legal estate.

32. Further provisions relating to home rights

Schedule 4 (provisions supplementary to sections 30 and 31) has effect.

Occupation orders

33. Occupation orders where applicant has estate or interest etc. or has home rights

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- (1) If
 - (a) a person ("the person entitled")— interest etc. or has
 - (i) is entitled to occupy a dwelling-house by virtue of a matrimonial home beneficial estate or interest or contract or by virtue of any rights, enactment giving him the right to remain in occupation, or
 - (ii) has home rights in relation to a dwelling-house, and
 - (b) the dwelling-house—
 - (i) is or at any time has been the home of the person entitled and of another person with whom he is associated, or
 - (ii) was at any time intended by the person entitled and any such other person to be their home,

the person entitled may apply to the court for an order containing any of the provisions specified in subsections (3), (4) and (5).
- (2) If an agreement to marry is terminated, no application under this section may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.
- (2A) If a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) is terminated, no application under this section may be made by virtue of section 62(3)(eza) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.
- (3) An order under this section may—
 - (a) enforce the applicant's entitlement to remain in occupation as against the other person ("the respondent");
 - (b) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
 - (c) regulate the occupation of the dwelling-house by either or both parties;
 - (d) if the respondent is entitled as mentioned in subsection (1)(a)(i), prohibit, suspend or restrict the exercise by him of his right to occupy the dwelling-house;
 - (e) if the respondent has home rights in relation to the dwelling-house and the applicant is the other spouse (or civil partner), restrict or terminate those rights;
 - (f) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (g) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) An order under this section may declare that the applicant is entitled as mentioned in subsection (1)(a)(i) or has home rights.
- (5) If the applicant has home rights and the respondent is the other spouse or civil partner, an order under this section made during the marriage or civil partnership may provide that those rights are not brought to an end by—
 - (a) the death of the other spouse or civil partner; or
 - (b) the termination (otherwise than by death) of the marriage or civil partnership.
- (6) In deciding whether to exercise its powers under subsection (3) and (if so) in what manner, the court shall have regard to all the circumstances including—

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- (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;
 - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child; and
 - (d) the conduct of the parties in relation to each other and otherwise.
- (7) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this section containing one or more of the provisions mentioned in subsection (3) is not made, the court shall make the order unless it appears to it that—
- (a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and
 - (b) the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.
- (8) The court may exercise its powers under subsection (5) in any case where it considers that in all the circumstances it is just and reasonable to do so.
- (9) An order under this section—
- (a) may not be made after the death of either of the parties mentioned in subsection (1); and
 - (b) except in the case of an order made by virtue of subsection (5)(a), ceases to have effect on the death of either party.
- (10) An order under this section may, in so far as it has continuing effect, be made for a specified period, until the occurrence of a specified event or until further order.

34. Effect of order under section 33 where rights are charge on dwelling-house

- (1) If B's home rights are a charge on the under s. 33 where estate or interest of A or of trustees for A—
- (a) an order under section 33 against A has, except so house. far as a contrary intention appears, the same effect against persons deriving title under A or under the trustees and affected by the charge, and
 - (b) sections 33(1), (3), (4) and (10) and 30(3) to (6) apply in relation to any person deriving title under A or under the trustees and affected by the charge as they apply in relation to A.
- (2) The court may make an order under section 33 by virtue of subsection (1)(b) if it considers that in all the circumstances it is just and reasonable to do so.

35. One former spouse or former civil partner with no existing right to occupy

- (1) This section applies if—
- (a) one former spouse or former civil partner is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract, or by virtue of any enactment giving him the right to remain in occupation;
 - (b) the other former spouse or former civil partner is not so entitled; and
 - (c) the dwelling-house

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- (i) in the case of former spouses, was at any time their matrimonial home or was at any time intended by them to be their matrimonial home, or
 - (ii) in the case of former civil partners, was at any time their civil partnership home or was at any time intended by them to be their civil partnership home.
- (2) The former spouse or former civil partner not so entitled may apply to the court for an order under this section against the other former spouse or former civil partner ("the respondent").
- (3) If the applicant is in occupation, an order under this section must contain provision—
 - (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
 - (b) prohibiting the respondent from evicting or excluding the applicant during that period.
- (4) If the applicant is not in occupation, an order under this section must contain provision—
 - (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
 - (b) requiring the respondent to permit the exercise of that right.
- (5) An order under this section may also—
 - (a) regulate the occupation of the dwelling-house by either or both of the parties;
 - (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
 - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including—
 - (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;
 - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
 - (d) the conduct of the parties in relation to each other and otherwise;
 - (e) the length of time that has elapsed since the parties ceased to live together;
 - (f) the length of time that has elapsed since the marriage was dissolved or annulled; and
 - (g) the existence of any pending proceedings between the parties—
 - (i) for an order under section 23A or 24 of the Matrimonial 1973 (property adjustment orders in connection with divorce proceedings etc.);
 - (ia) for a property adjustment order under Part 2 of Schedule 5 to the Civil Partnership Act 2004;

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- (ii) for an order under paragraph 1 (2)(d) or (e) of Schedule 1 to the Children Act 1989 (orders for financial relief against parents); or
 - (iii) relating to the legal or beneficial ownership of the dwelling-house.
- (7) In deciding whether to exercise its power to include one or more of the provisions referred to in subsection (5) ("a subsection (5) provision") and (if so) in what manner, the court shall have regard to all the circumstances including the matters mentioned in subsection (6)(a) to (e).
- (8) If the court decides to make an order under this section and it appears to it that, if the order does not include a subsection (5) provision, the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent, the court shall include the subsection (5) provision in the order unless it appears to the court that—
- (a) the respondent or any relevant child is likely to suffer significant harm if the provision is included in the order; and
 - (b) the harm likely to be suffered by the respondent or child in that event is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (9) An order under this section—
- (a) may not be made after the death of either of the former spouses; and
 - (b) ceases to have effect on the death of either of them.
- (10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.
- (11) A former spouse or former civil partner who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.
- (12) Subsection (11) does not prejudice any right of such a former spouse to apply for an order under section 33.
- (13) So long as an order under this section remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—
- (a) as if he were B (the person entitled to occupy the dwelling-house by virtue of that section); and
 - (b) as if the respondent were A (the person entitled as mentioned in subsection (1)(a) of that section)

36. One cohabitant or former cohabitant with no existing right to occupy

- (1) This section applies if—
- (a) one cohabitant or former cohabitant is entitled to occupy a right to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation;
 - (b) the other cohabitant or former cohabitant is not so entitled; and
 - (c) that dwelling-house is the home in which they live together as husband and wife or a home in which they cohabit or a home in which they at any time cohabited or intended to cohabit.

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- (2) The cohabitant or former cohabitant not so entitled may apply to the court for an order under this section against the other cohabitant or former cohabitant ("the respondent").
- (3) If the applicant is in occupation, an order under this section must contain provision—
 - (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
 - (b) prohibiting the respondent from evicting or excluding the applicant during that period.
- (4) If the applicant is not in occupation, an order under this section must contain provision—
 - (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
 - (b) requiring the respondent to permit the exercise of that right.
- (5) An order under this section may also—
 - (a) regulate the occupation of the dwelling-house by either or both of the parties;
 - (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
 - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including—
 - (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;
 - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
 - (d) the conduct of the parties in relation to each other and otherwise;
 - (e) the nature of the parties' relationship and in particular the level of commitment involved in it;
 - (f) the length of time during which they have cohabited;
 - (g) whether there are or have been any children who are children of both parties or for whom both parties have or have had parental responsibility;
 - (h) the length of time that has elapsed since the parties ceased to live together; and
 - (i) the existence of any pending proceedings between the parties—
 - (i) for an order under paragraph 1 (2)(d) or (e) of Schedule 1 to the Children Act 1989 (orders for financial relief against parents); or
 - (ii) relating to the legal or beneficial ownership of the dwelling-house.
- (7) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (5) ("a subsection (5) provision") and (if so) in what manner, the court shall have regard to all the circumstances including—

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- (a) the matters mentioned in subsection (6)(a) to (d); and
 - (b) the questions mentioned in subsection (8).
- (8) The questions are—
- (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (5) provision is not included in the order; and
 - (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (9) An order under this section—
- (a) may not be made after the death of either of the parties; and
 - (b) ceases to have effect on the death of either of them.
- (10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.
- (11) A person who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.
- (12) Subsection (11) does not prejudice any right of such a person to apply for an order under section 33.
- (13) So long as the order remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—
- (a) as if he were B entitled to occupy the dwelling-house by virtue of that section; and
 - (b) as if the respondent were A (the person entitled as mentioned in subsection (1)(a) of that section).

37. Neither spouse or civil partner entitled to occupy

- (1) This section applies if—
- (a) one spouse or former spouse and the other spouse or former spouse occupy a dwelling-house which is or was the matrimonial home; but
 - (b) neither of them is entitled to remain in occupation—
 - (i) by virtue of a beneficial estate or interest or contract; or
 - (ii) by virtue of any enactment giving him the right to remain in occupation.
- (2) Either of the parties may apply to the court for an order against the other under this section.
- (3) An order under this section may—
- (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
 - (b) regulate the occupation of the dwelling-house by either or both of the spouses;

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- (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) Subsections (6) and (7) of section 33 apply to the exercise by the court of its powers under this section as they apply to the exercise by the court of its powers under subsection (3) of that section.
- (5) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.

38. Neither cohabitant or former cohabitant entitled to occupy.

- (1) This section applies if—
- (a) one cohabitant or former cohabitant and the other cohabitant or entitled to occupy. former cohabitant occupy a dwelling-house which is the home in which they cohabit or cohabited; but
 - (b) neither of them is entitled to remain in occupation—
 - (i) by virtue of a beneficial estate or interest or contract; or
 - (ii) by virtue of any enactment giving him the right to remain in occupation.
- (2) Either of the parties may apply to the court for an order against the other under this section.
- (3) An order under this section may—
- (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
 - (b) regulate the occupation of the dwelling-house by either or both of the parties;
 - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (3) ("a subsection (3) provision") and (if so) in what manner, the court shall have regard to all the circumstances including—
- (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;
 - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child;
 - (d) the conduct of the parties in relation to each other and otherwise; and
 - (e) the questions mentioned in subsection (5).
- (5) The questions are—
- (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (3) provision is not included in the order; and
 - (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.

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- (6) An order under this section shall be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.

39. Supplementary provisions

- (1) In this Part an "occupation order" means an order under Supplementary section 33, 35, 36, 37 or 38.
- (2) An application for an occupation order may be made in other family proceedings or without any other family proceedings being instituted.
- (3) If—
- (a) an application for an occupation order is made under section 33, 35, 36, 37 or 38, and
 - (b) the court considers that it has no power to make the order under the section concerned, but that it has power to make an order under one of the other sections,
- the court may make an order under that other section.
- (4) The fact that a person has applied for an occupation order under sections 35 to 38, or that an occupation order has been made, does not affect the right of any person to claim a legal or equitable interest in any property in any subsequent proceedings (including subsequent proceedings under this Part).

40. Additional provisions that may be included in certain occupation orders

- (1) The court may on, or at any time after, making an occupation order under section 33, 35 or 36—
- (a) impose on either party obligations as to—
 - (i) the repair and maintenance of the dwelling-house; or
 - (ii) the discharge of rent, mortgage payments or other outgoings affecting the dwelling-house;
 - (b) order a party occupying the dwelling-house or any part of it (including a party who is entitled to do so by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation) to make periodical payments to the other party in respect of the accommodation, if the other party would (but for the order) be entitled to occupy the dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any such enactment;
 - (c) grant either party possession or use of furniture or other contents of the dwelling-house;
 - (d) order either party to take reasonable care of any furniture or other contents of the dwelling-house;
 - (e) order either party to take reasonable steps to keep the dwelling-house and any furniture or other contents secure.
- (2) In deciding whether and, if so, how to exercise its powers under this section, the court shall have regard to all the circumstances of the case including—
- (a) the financial needs and financial resources of the parties; and
 - (b) the financial obligations which they have, or are likely to have in the foreseeable future, including financial obligations to each other and to any relevant child.
- (3) An order under this section ceases to have effect when the occupation order to which it relates ceases to have effect.

41. Additional considerations if parties are cohabitants or former cohabitants

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[repealed]

Non-molestation order

42. Non-molestation orders.

- (1) In this Part a "non-molestation order" means an order containing either or both of the following provisions
 - (a) provision prohibiting a person ("the respondent") from molesting another person who is associated with the respondent;
 - (b) provision prohibiting the respondent from molesting a relevant child.
- (2) The Court may make a non-molestation order
 - (a) if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or
 - (b) if in any family proceedings to which the is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.
- (3) In subsection (2) "family proceedings" includes proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act).
- (4) Where an agreement to marry is terminated, no application under subsection (2)(a) may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.
- (4A) A court considering whether to make an occupation order shall also consider whether to consider the power conferred by subsection (2)(b).
- (4B) In this Part "the applicant", in relation to a non-molestation order, includes (where the context permits) the person for whose benefit such an order would be or is made in exercise of the power conferred by subsection (2)(b).
- (4ZA) If a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) is terminated, no application under this section may be made by virtue of section 62(3)(eza) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.
- (5) In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being—
 - (a) of the applicant; and
 - (b) of any relevant child.
- (6) A non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.
- (7) A non-molestation order may be made for a specified period or until further order.
- (8) A non-molestation order which is made in other family proceedings ceases to have effect if those proceedings are withdrawn or dismissed.

42A. Offence of breaching non-molestation order

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- (1) A person who without reasonable excuse does anything that he is prohibited from doing by a non-molestation order is guilty of an offence.
- (2) In the case of a non-molestation order made by virtue of section 45(1), a person can be guilty of an offence under this section only in respect of conduct engaged in at a time when he was aware of the existence of the order.
- (3) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.
- (4) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.
- (5) A person guilty of an offence under this section is liable –
 - (a) On conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
 - (b) On summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory minimum, or both.
- (6) A reference in any enactment to proceedings under this Part, or to an order under this Part, does not include a reference to proceedings for an offence under this section or to an order made in such proceedings.

“Enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30).

Further provisions relating to occupation and non-molestation orders

43. Leave of court required for application by children under sixteen

- (1) A child under the age of sixteen may not apply for an occupation order or a non-molestation order except with the leave of the court.
- (2) The court may grant leave for the purposes of subsection (1) only if it is satisfied that the child has sufficient understanding to make the proposed application for the occupation order or non-molestation order.

44. Evidence of agreement to marry or form a civil partnership

- (1) Subject to subsection (2), the court shall not make an order under section 33 or 42 by virtue of section 62(3)(e) unless there is produced to it evidence in writing of the existence of the agreement to marry.
- (2) Subsection (1) does not apply if the court is satisfied that the agreement to marry was evidenced by—
 - (a) the gift of an engagement ring by one party to the agreement to the other in contemplation of their marriage, or
 - (b) a ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.
- (3) Subject to subsection (4), the court shall not make an order under section 33 or 42 by virtue of section 62(3)(eza) unless there is produced evidence in writing of the existence of the civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004).
- (4) Subsection (3) does not apply if the court is satisfied that the civil partnership agreement was evidenced by
 - (a) A gift by one party to the agreement to the other as a token of the agreement, or
 - (b) A ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.

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45. Ex parte orders

- (1) The court may, in any case where it considers that it is just and convenient to do so, make an occupation order or a non-molestation order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
- (2) In determining whether to exercise its powers under subsection (1), the court shall have regard to all the circumstances including—
 - (a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately;
 - (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
 - (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved in effecting substituted service.
- (3) If the court makes an order by virtue of subsection (1) it must afford the respondent an opportunity to make representations relating to the order as soon as just and convenient at a full hearing.
- (4) If, at a full hearing, the court makes an occupation order ("the full order"), then
 - (a) for the purposes of calculating the maximum period for which the full order may be made to have effect, the relevant section is to apply as if the period for which the full order will have effect began on the date on which the initial order first had effect; and
 - (b) the provisions of section 36(10) or 38(6) as to the extension of orders are to apply as if the full order and the initial order were a single order.
- (5) In this section—

"full hearing" means a hearing of which notice has been given to all the parties in accordance with rules of court;
"initial order" means an occupation order made by virtue of subsection (1); and
"relevant section" means section 33(10), 35(10), 36(10), 37(5) or 38(6).

46. Undertakings

- (1) In any case where the court has power to make an occupation order or non-molestation order, the court may accept an undertaking from any party to the proceedings.
- (2) No power of arrest may be attached to any undertaking given under subsection (1).
- (3) The court shall not accept an undertaking under subsection (1) instead of making an occupation order in any case where apart from this section a power of arrest would be attached to the order.
- (3A) The court shall not accept an undertaking under subsection (1) instead of making a non-molestation order in any case where it appears to the court that
 - (a) the respondent has used or threatened violence against the applicant or a relevant child; and
 - (b) for the protection of the applicant or child it is necessary to make a non-molestation order so that any breach may be punishable under section 42A.
- (4) An undertaking given to a court under subsection (1) is enforceable as if the court had made an occupation order or a non-molestation order in terms corresponding to those of the undertaking.
- (5) This section has effect without prejudice to the powers of the High Court and the family court apart from this section.

47. Arrest for breach of order

- (1) [repealed]
- (2) If—
 - (a) the court makes an occupation order; and
 - (b) it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child,

it shall attach a power of arrest to one or more provisions of the order unless satisfied that in all the circumstances of the case the applicant or child will be adequately protected without such a power of arrest.
- (3) Subsection (2) does not apply in any case where the occupation order is made by virtue of section 45(1), but in such a case the court may attach a power of arrest to one or more provisions of the order if it appears to it
 - (a) that the respondent has used or threatened violence against the applicant or a relevant child; and
 - (b) that there is a risk of significant harm to the applicant or child, attributable to conduct of the respondent, if the power of arrest is not attached to those provisions immediately.
- (4) If, by virtue of subsection (3), the court attaches a power of arrest to any provisions of an occupation order, it may provide that the power of arrest is to have effect for a shorter period than the other provisions of the order.
- (5) Any period specified for the purposes of subsection (4) may be extended by the court (on one or more occasions) on an application to vary or discharge the occupation order.
- (6) If, by virtue of subsection (2) or (3), a power of arrest is attached to certain provisions of an order, a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of any such provision.
- (7) If a power of arrest is attached under subsection (2) or (3) to certain provisions of the order and the respondent is arrested under subsection (6)—
 - (a) he must be brought before the relevant judicial authority within the period of 24 hours beginning at the time of his arrest; and
 - (b) if the matter is not then disposed of forthwith, the relevant judicial authority before whom he is brought may remand him.

In reckoning for the purposes of this subsection any period of 24 hours, no account is to be taken of Christmas Day, Good Friday or any Sunday.
- (8) If the court —
 - (a) has made an occupation order, or
 - (b) has made an occupation order but has not attached a power of arrest under subsection (2) or (3) to any provision of the order, or has attached that power only to certain provisions of the order, then, if at any time the applicant considers that the respondent has failed to comply with the order, he may apply to the relevant judicial authority for the issue of a warrant for the arrest of the respondent.
- (9) The relevant judicial authority shall not issue a warrant on an application under subsection (8) unless.—
 - (a) the application is substantiated on oath; and

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- (b) the relevant judicial authority has reasonable grounds for believing that the respondent has failed to comply with the order.
- (10) If a person is brought before a court by virtue of a warrant issued under subsection (9) and the court does not dispose of the matter forthwith, the court may remand him.
- (11) Schedule 5 (which makes provision corresponding to that applying in magistrates' courts in civil cases under sections 128 and 129 1980 c. 43. of the Magistrates' Courts Act 1980) has effect in relation to the powers of the High Court and the family court to remand a person by virtue of this section.
- (12) If a person remanded under this section is granted bail, he may be required by the relevant judicial authority to comply, before release on bail or later, with such requirements as appear to that authority to be necessary to secure that he does not interfere with witnesses or otherwise obstruct the course of justice.

48. Remand for medical examination and report

- (1) If the relevant judicial authority has reason to consider that a medical report will be required, any power to remand a person under section 47(7)(b) or (10) may be exercised for the purpose of enabling a medical examination and report to be made.
- (2) If such a power is so exercised, the adjournment must not be for more than 4 weeks at a time unless the relevant judicial authority remands the accused in custody.
- (3) If the relevant judicial authority so remands the accused, the adjournment must not be for more than 3 weeks at a time.
- (4) If there is reason to suspect that a person who has been arrested—
 - (a) Under section 47(6), or
 - (b) Under a warrant issued on an application made under section 47(8),is suffering from mental disorder within the meaning of the Mental Health Act 1983, the relevant judicial authority has the same power to make an order under section 35 of that Act (remand for report on accused's mental condition) as the Crown Court has under that section in the case of an accused within the meaning of that section.

49. Variation and discharge of orders

- (1) An occupation order or non-molestation order may be varied or discharged by the court on an application by—
 - (a) the respondent, or
 - (b) the person on whose application the order was made.
- (2) In the case of a non-molestation order made by virtue of section 42(2)(b), the order may be varied or discharged by the court even though no such application has been made.
- (3) If B's home rights are, under section 31, a charge on the estate or interest of A or of trustees for A, an order under section 33 against A may also be varied or discharged by the court on an application by any person deriving title under A or under the trustees and affected by the charge.
- (4) If, by virtue of section 47(3), a power of arrest has been attached to certain provisions of an occupation order, the court may vary or discharge the order under subsection (1) in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).

[...]

50. Jurisdiction of courts

- (1) For the purposes of this Part "the court" means the High Court or the family court.

51. Contempt proceedings

The powers of the court in relation to contempt of court arising out of a person's failure to comply with an order under this Part may be exercised by the relevant judicial authority.

52. Magistrates' courts

[repealed]

53. Provisions for third parties to act on behalf of victims of domestic violence

- (1) Rules of court may provide for a prescribed person, or any parties to act on person in a prescribed category, ("a representative") to act on behalf of behalf of victims another in relation to proceedings to which this Part applies.
- (2) Rules made under this section may, in particular, authorise a representative to apply for an occupation order or for a non-molestation order for which the person on whose behalf the representative is acting could have applied.
- (3) Rules made under this section may prescribe—
 - (a) conditions to be satisfied before a representative may make an application to the court on behalf of another; and
 - (b) considerations to be taken into account by the court in determining whether, and if so how, to exercise any of its powers under this Part when a representative is acting on behalf of another.
- (4) Any rules made under this section may be made so as to have effect for a specified period and may make consequential or transitional provision with respect to the expiry of the specified period.
- (5) Any such rules may be replaced by further rules made under this section.

54. Appeals

[repealed]

55. Meaning of "cohabitants", "relevant child" and "associated persons"

- (1) For the purposes of this Part—
 - (a) "cohabitants" are two persons who are neither married to each other nor civil partners of each other but are living together as husband and wife or as if they were civil partners; and
 - (b) "cohabit" and "former cohabitants" are to be read accordingly, but the latter expression does not include cohabitants who have subsequently married each other or become civil partners of each other.
- (2) In this Part, "relevant child", in relation to any proceedings under this Part, means—
 - (a) any child who is living with or might reasonably be expected to live with either party to the proceedings;
 - (b) any child in relation to whom an order under the Adoption Act 1976, the Adoption and Children Act 2002 or the Children Act 1989 is in question in the proceedings; and
 - (c) any other child whose interests the court considers relevant.

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- (3) For the purposes of this Part, a person is associated with another person if—
- (a) they are or have been married to each other;
 - (aa) they are or have been married to each other;
 - (b) they are cohabitants or former cohabitants;
 - (c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;
 - (d) they are relatives;
 - (e) they have agreed to marry one another (whether or not that agreement has been terminated);
 - (ea) they have or have had an intimate personal relationship with each other which is or was of significant duration;
 - (eza) they have entered into a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);
 - (f) in relation to any child, they are both persons falling within subsection (4); or
 - (g) they are parties to the same family proceedings (other than proceedings under this Part).
- (4) A person falls within this subsection in relation to a child if—
- (a) he is a parent of the child; or
 - (b) he has or has had parental responsibility for the child.
- (5) If a child has been adopted or falls within subsection (7), two persons are also associated with each other for the purposes of this Part if
- (a) one is a natural parent of the child or a parent of such a natural parent; and
 - (b) the other is the child or any person—
 - (i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or
 - (ii) with whom the child has at any time been placed for adoption.
- (6) A body corporate and another person are not, by virtue of subsection (3)(f) or (g), to be regarded for the purposes of this Part as associated with each other.
- (7) A child falls within this subsection if –
- (a) An adoption agency, within the meaning of section 2 of the Adoption and Children Act 2002, has power to place him for adoption under section 19 of that Act (placing children with parental consent) or he has become the subject of an order under section 21 of that Act (placement orders), or
 - (b) He is freed for adoption by virtue of an order made—
 - (i) In England and Wales, under section 18 of the Adoption Act 1976
 - (ii) ...

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- (iii) In Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987, or
- (c) he is subject of a Scottish permanence order which includes provision granting authority to adopt.
- (8) In subsection 7(c) "Scottish permanence order" means permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4) (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009 (SSI 2009/267).

56. Interpretation of Part V

(1) In this Part—

"adoption order" means an adoption order within the meaning of section 72(1) of the Adoption Act 1976 or section 46(10) of the Adoption and Children Act 2002;

"associated", in relation to a person, is to be read with section 62(3) to (6);

"child" means a person under the age of eighteen years;

"cohabit", "cohabitant" and "former cohabitant" have the meaning given by section 62(1);

"the court" is to be read with section 57;

"development" means physical, intellectual, emotional, social or behavioural development;

"dwelling-house" includes (subject to subsection (4))—

- (a) any building or part of a building which is occupied as a dwelling,
 - (b) any caravan, house-boat or structure which is occupied as a dwelling,
- and any yard, garden, garage or outhouse belonging to it and occupied with it;

"family proceedings" means any proceedings—

- (a) under the inherent jurisdiction of the High Court in relation to children; or
- (b) under the enactments mentioned in subsection (2);

"harm"—

- (a) in relation to a person who has reached the age of eighteen years, means ill-treatment or the impairment of health; and
- (b) in relation to a child, means ill-treatment or the impairment of health or development;

"health" includes physical or mental health;

"ill-treatment" includes forms of ill-treatment which are not physical and, in relation to a child, includes sexual abuse;

"mortgage", "mortgagor" and "mortgagee" have the same meaning as in the Law of Property Act 1925;

"mortgage payments" includes any payments which, under the terms of the mortgage, the mortgagor is required to make to any person;

"non-molestation order" has the meaning given by section 42(1);

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"occupation order" has the meaning given by section 39;

"parental responsibility" has the same meaning as in the Children 1989 c. 41. Act 1989;

"relative", in relation to a person, means—

- (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse or former spouse, civil partner or former civil partner, or
- (b) the brother, sister, uncle, aunt, niece or nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person's spouse, former spouse, civil partner or former civil partner,

and includes, in relation to a person who is cohabiting or has cohabited with another person, any person who would fall within paragraph (a) or (b) if the parties were married to each other or were civil partners of each other;

"relevant child", in relation to any proceedings under this Part, has the meaning given by section 62(2);

"the relevant judicial authority", in relation to any order under this Part, means—

- (a) where the order was made by the High Court, a judge of that court;
 - (aa) where the order was made by the family court, a judge of that court.
- (2) The enactments referred to in the definition of "family proceedings" are—
- (a)
 - (b) this Part;
 - (ba) Part 4A;
 - (c) the Matrimonial Causes Act 1973;
 - (d) the Adoption Act 1976;
 - (e) the Domestic Proceedings and Magistrates' Courts Act 1978;
 - (f) Part III of the Matrimonial and Family Proceedings Act 1984;
 - (g) Parts I, II and IV of the Children Act 1989;
 - (h) Section 54 of the Human Fertilisation and Embryology Act 2008;
 - (i) The Adoption and Children Act 2002.
 - (ia) Part I of Schedule 2 to the Female Genital Mutilation Act 2003, other than paragraph 3 of that Schedule;
 - (j) Schedules 5 to 7 to the Civil Partnership Act 2004.
- (3) Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.
- (4) For the purposes of sections 31, 32, 53 and 54 and such other provisions of this Part (if any) as may be prescribed, this Part is to have effect as if paragraph (b) of the definition of "dwelling-house" were omitted.

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- (5) It is hereby declared that this Part applies as between the parties to a marriage even though either of them is, or has at any time during the marriage been, married to more than one person.

[...]

[Domestic Violence, Crime and Victims Act, 2004 \(As amended\)](#)⁷³

[...]

PART I

Causing or allowing a child or vulnerable adult to die or suffer serious physical harm

5. The offence

- (1) A person (“D”) is guilty of an offence if –
- (a) a child or vulnerable adult (“V”) dies or suffers serious physical harm as a result of the unlawful act of a person who—
 - (i) was a member of the same household as V, and
 - (ii) had frequent contact with him,
 - (b) D was such a person at the time of that act,
 - (c) at that time there was a significant risk of serious physical harm being caused to V by the unlawful act of such a person, and
 - (d) either D was the person whose act caused the death or serious physical harm or—
 - (i) D was, or ought to have been, aware of the risk mentioned in paragraph (c),
 - (ii) D failed to take such steps as he could reasonably have been expected to take to protect V from the risk, and
 - (iii) the act occurred in circumstances of the kind that D foresaw or ought to have foreseen.
- (2) The prosecution does not have to prove whether it is the first alternative in subsection (1)(d) or the second (sub-paragraphs (i) to (iii)) that applies.
- (3) If D was not the mother or father of V—
- (a) D may not be charged with an offence under this section if he was under the age of 16 at the time of the act that caused the death or serious physical harm;
 - (b) for the purposes of subsection (1)(d)(ii) D could not have been expected to take any such step as is referred to there before attaining that age.
- (4) For the purposes of this section—
- (a) a person is to be regarded as a “member” of a particular household, even if he does not live in that household, if he visits it so often and for such periods of time that it is reasonable to regard him as a member of it;

⁷³ Domestic Violence, Crime and Victims Act 2004 (15 November 2004), as amended by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012](#), available at <http://www.legislation.gov.uk/ukpga/2004/28/contents> (last visited December 30, 2018).

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- (b) where V lived in different households at different times, “the same household as V” refers to the household in which V was living at the time of the act that caused the death or serious physical harm.
- (5) For the purposes of this section an “unlawful” act is one that—
- (a) constitutes an offence, or
 - (b) would constitute an offence but for being the act of—
 - (i) a person under the age of ten, or
 - (ii) a person entitled to rely on a defence of insanity.
- Paragraph (b) does not apply to an act of D.
- (6) In this section—
- “act” includes a course of conduct and also includes omission;
- “child” means a person under the age of 16;
- “serious” harm means harm that amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861 (c. 100);
- “vulnerable adult” means a person aged 16 or over whose ability to protect himself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise.
- (7) A person guilty of an offence under this section of causing or allowing a person's death is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or to a fine, or to both.
- (8) A person guilty of an offence under this section of causing or allowing a person to suffer serious physical harm is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine, or to both.

6. Evidence and procedure in cases of death: England and Wales

- (1) Subsections (2) to (4) apply where a person (“the defendant”) is charged in the same proceedings with an offence of murder or manslaughter and with an offence under section 5 in respect of the same death (“the section 5 offence”).
- (2) Where by virtue of section 35(3) of the Criminal Justice and Public Order Act 1994 (c. 33) a court or jury is permitted, in relation to the section 5 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether he is guilty—
- (a) of murder or manslaughter, or
 - (b) of any other offence of which he could lawfully be convicted on the charge of murder or manslaughter,
- if there would otherwise be no case for him to answer in relation to that offence.
- (3) The charge of murder or manslaughter is not to be dismissed under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (c. 37) (unless the section 5 offence is dismissed).
- (4) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of murder or manslaughter is not to be considered before the close of all the evidence (or, if at some earlier time he ceases to be charged with the section 5 offence, before that earlier time).
- (5) An offence under section 5 of causing or allowing a person's death is an offence of homicide for the purposes of the following enactments—
- sections 24 and 25 of the Magistrates' Courts Act 1980 (c. 43) (mode of trial of child or young person for indictable offence);

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section 51A of the Crime and Disorder Act 1998 (sending cases to the Crown Court: children and young persons);
section 8 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (power and duty to remit young offenders to youth courts for sentence)

6A. Evidence and procedure in cases of serious physical harm: England and Wales

- (1) Subsections (3) to (5) apply where a person (“the defendant”) is charged in the same proceedings with a relevant offence and with an offence under section 5 in respect of the same harm (“the section 5 offence”).
- (2) In this section “relevant offence” means—
 - (a) an offence under section 18 or 20 of the Offences against the Person Act 1861 (grievous bodily harm etc);
 - (b) an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit murder.
- (3) Where by virtue of section 35(3) of the Criminal Justice and Public Order Act 1994 a court or jury is permitted, in relation to the section 5 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether the defendant is guilty of a relevant offence, even if there would otherwise be no case for the defendant to answer in relation to that offence.
- (4) The charge of the relevant offence is not to be dismissed under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (unless the section 5 offence is dismissed).
- (5) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of the relevant offence is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 5 offence, before that earlier time).

[...]

7A. Evidence and procedure in cases of serious physical harm: Northern Ireland

- (1) Subsections (3) to (5) apply where a person (“the defendant”) is charged in the same proceedings with a relevant offence and with an offence under section 5 in respect of the same harm (“the section 5 offence”).
- (2) In this section “relevant offence” means—
 - (a) an offence under section 18 or 20 of the Offences against the Person Act 1861 (grievous bodily harm etc.);
 - (b) an offence under Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 of attempting to commit murder.
- (3) Where by virtue of Article 4(4) of the Criminal Evidence (Northern Ireland) Order 1988 a court or jury is permitted, in relation to the section 5 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether the defendant is guilty of a relevant offence, even if there would otherwise be no case for the defendant to answer in relation to that offence.
- (4) Where a magistrates' court is considering under Article 37 of the Magistrates' Courts (Northern Ireland) Order 1981 whether to commit the defendant for trial for the relevant offence, if there is sufficient evidence to put the defendant on trial for the section 5 offence there is deemed to be sufficient evidence to put the defendant on trial for the relevant offence.
- (5) The power of a judge of the Crown Court under section 2(3) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 (entry of “No Bill”) is not to be exercised in relation to a relevant offence unless it is also exercised in relation to the section 5 offence.
- (6) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of the relevant offence is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 5 offence, before that earlier time).

[...]

[Crime and Security Act, 2010](#)⁷⁴

[...]

24. Power to issue a domestic violence protection notice

- (1) A member of a police force not below the rank of superintendent (“the authorising officer”) may issue a domestic violence protection notice (“a DVPN”) under this section.
- (2) A DVPN may be issued to a person (“P”) aged 18 years or over if the authorising officer has reasonable grounds for believing that—
 - (a) P has been violent towards, or has threatened violence towards, an associated person, and
 - (b) the issue of the DVPN is necessary to protect that person from violence or a threat of violence by P.
- (3) Before issuing a DVPN, the authorising officer must, in particular, consider—
 - (a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the issuing of the DVPN (whether or not that person is an associated person),
 - (b) the opinion of the person for whose protection the DVPN would be issued as to the issuing of the DVPN,
 - (c) any representations made by P as to the issuing of the DVPN, and
 - (d) in the case of provision included by virtue of subsection (8), the opinion of any other associated person who lives in the premises to which the provision would relate.
- (4) The authorising officer must take reasonable steps to discover the opinions mentioned in subsection (3).
- (5) But the authorising officer may issue a DVPN in circumstances where the person for whose protection it is issued does not consent to the issuing of the DVPN.
- (6) A DVPN must contain provision to prohibit P from molesting the person for whose protection it is issued.
- (7) Provision required to be included by virtue of subsection (6) may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.
- (8) If P lives in premises which are also lived in by a person for whose protection the DVPN is issued, the DVPN may also contain provision—
 - (a) to prohibit P from evicting or excluding from the premises the person for whose protection the DVPN is issued,
 - (b) to prohibit P from entering the premises,
 - (c) to require P to leave the premises, or
 - (d) to prohibit P from coming within such distance of the premises as may be specified in the DVPN.
- (9) An “associated person” means a person who is associated with P within the meaning of section 62 of the Family Law Act 1996.
- (10) Subsection (11) applies where a DVPN includes provision in relation to premises by virtue of subsection (8)(b) or (8)(c) and the authorising officer believes that—

⁷⁴ Crime and Security Act 2010 (8 April 2010, current to date), available at <http://www.legislation.gov.uk/ukpga/2010/17/contents> (last visited December 30, 2018).

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- (a) P is a person subject to service law in accordance with sections 367 to 369 of the Armed Forces Act 2006, and
 - (b) the premises fall within paragraph (a) of the definition of “service living accommodation” in section 96(1) of that Act.
- (11) The authorising officer must make reasonable efforts to inform P's commanding officer (within the meaning of section 360 of the Armed Forces Act 2006) of the issuing of the notice.

25. Contents and service of a domestic violence protection notice

- (1) A DVPN must state—
 - (a) the grounds on which it has been issued,
 - (b) that a constable may arrest P without warrant if the constable has reasonable grounds for believing that P is in breach of the DVPN,
 - (c) that an application for a domestic violence protection order under section 27 will be heard within 48 hours of the time of service of the DVPN and a notice of the hearing will be given to P,
 - (d) that the DVPN continues in effect until that application has been determined, and
 - (e) the provision that a magistrates' court may include in a domestic violence protection order.
- (2) A DVPN must be in writing and must be served on P personally by a constable.
- (3) On serving P with a DVPN, the constable must ask P for an address for the purposes of being given the notice of the hearing of the application for the domestic violence protection order.

26. Breach of a domestic violence protection notice

- (1) A person arrested by virtue of section 25(1)(b) for a breach of a DVPN must be held in custody and brought before the magistrates' court which will hear the application for the DVPO under section 27—
 - (a) before the end of the period of 24 hours beginning with the time of the arrest, or
 - (b) if earlier, at the hearing of that application.
- (2) If the person is brought before the court by virtue of subsection (1)(a), the court may remand the person.
- (3) If the court adjourns the hearing of the application by virtue of section 27(8), the court may remand the person.
- (4) In calculating when the period of 24 hours mentioned in subsection (1)(a) ends, Christmas Day, Good Friday, any Sunday and any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 are to be disregarded.

27. Application for a domestic violence protection order

- (1) If a DVPN has been issued, a constable must apply for a domestic violence protection order (“a DVPO”).
- (2) The application must be made by complaint to a magistrates' court.
- (3) The application must be heard by the magistrates' court not later than 48 hours after the DVPN was served pursuant to section 25(2).
- (4) In calculating when the period of 48 hours mentioned in subsection (3) ends, Christmas Day, Good Friday, any Sunday and any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 are to be disregarded.

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- (5) A notice of the hearing of the application must be given to P.
- (6) The notice is deemed given if it has been left at the address given by P under section 25(3).
- (7) But if the notice has not been given because no address was given by P under section 25(3), the court may hear the application for the DVPO if the court is satisfied that the constable applying for the DVPO has made reasonable efforts to give P the notice.
- (8) The magistrates' court may adjourn the hearing of the application.
- (9) If the court adjourns the hearing, the DVPO continues in effect until the application has been determined.
- (10) On the hearing of an application for a DVPO, section 97 of the Magistrates' Courts Act 1980 (summons to witness and warrant for his arrest) does not apply in relation to a person for whose protection the DVPO would be made, except where the person has given oral or written evidence at the hearing.

28. Conditions for and contents of a domestic violence protection order

- (1) The court may make a DVPO if two conditions are met.
- (2) The first condition is that the court is satisfied on the balance of probabilities that P has been violent towards, or has threatened violence towards, an associated person.
- (3) The second condition is that the court thinks that making the DVPO is necessary to protect that person from violence or a threat of violence by P.
- (4) Before making a DVPO, the court must, in particular, consider—
 - (a) the welfare of any person under the age of 18 whose interests the court considers relevant to the making of the DVPO (whether or not that person is an associated person), and
 - (b) any opinion of which the court is made aware—
 - (i) of the person for whose protection the DVPO would be made, and
 - (ii) in the case of provision included by virtue of subsection (8), of any other associated person who lives in the premises to which the provision would relate.
- (5) But the court may make a DVPO in circumstances where the person for whose protection it is made does not consent to the making of the DVPO.
- (6) A DVPO must contain provision to prohibit P from molesting the person for whose protection it is made.
- (7) Provision required to be included by virtue of subsection (6) may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.
- (8) If P lives in premises which are also lived in by a person for whose protection the DVPO is made, the DVPO may also contain provision—
 - (a) to prohibit P from evicting or excluding from the premises the person for whose protection the DVPO is made,
 - (b) to prohibit P from entering the premises,
 - (c) to require P to leave the premises, or
 - (d) to prohibit P from coming within such distance of the premises as may be specified in the DVPO.
- (9) A DVPO must state that a constable may arrest P without warrant if the constable has reasonable grounds for believing that P is in breach of the DVPO.

- (10) A DVPO may be in force for—
- (a) no fewer than 14 days beginning with the day on which it is made, and
 - (b) no more than 28 days beginning with that day.

(11) A DVPO must state the period for which it is to be in force.

29. Breach of a domestic violence protection order

- (1) A person arrested by virtue of section 28(9) for a breach of a DVPO must be held in custody and brought before a magistrates' court within the period of 24 hours beginning with the time of the arrest.
- (2) If the matter is not disposed of when the person is brought before the court, the court may remand the person.
- (3) In calculating when the period of 24 hours mentioned in subsection (1) ends, Christmas Day, Good Friday, any Sunday and any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 are to be disregarded

[...]

[Serious Crime Act, 2015](#)⁷⁵

76. Controlling or coercive behaviour in an intimate or family relationship

- (1) A person (A) commits an offence if—
 - (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
 - (b) at the time of the behaviour, A and B are personally connected,
 - (c) the behaviour has a serious effect on B, and
 - (d) A knows or ought to know that the behaviour will have a serious effect on B.
- (2) A and B are “personally connected” if—
 - (a) A is in an intimate personal relationship with B, or
 - (b) A and B live together and—
 - (i) they are members of the same family, or
 - (ii) they have previously been in an intimate personal relationship with each other.
- (3) But A does not commit an offence under this section if at the time of the behaviour in question—
 - (a) A has responsibility for B, for the purposes of Part 1 of the Children and Young Persons Act 1933 (see section 17 of that Act), and
 - (b) B is under 16.
- (4) A's behaviour has a “serious effect” on B if—
 - (a) it causes B to fear, on at least two occasions, that violence will be used against B, or

⁷⁵ Serious Crime Act (3 March 2015), available at <http://www.legislation.gov.uk/ukpga/2015/9/section/76> (last visited December 30, 2018).

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- (b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities.
- (5) For the purposes of subsection (1)(d) A "ought to know" that which a reasonable person in possession of the same information would know.
- (6) For the purposes of subsection (2)(b)(i) A and B are members of the same family if—
- (a) they are, or have been, married to each other;
 - (b) they are, or have been, civil partners of each other;
 - (c) they are relatives;
 - (d) they have agreed to marry one another (whether or not the agreement has been terminated);
 - (e) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
 - (f) they are both parents of the same child;
 - (g) they have, or have had, parental responsibility for the same child.
- (7) In subsection (6)—
- "civil partnership agreement" has the meaning given by section 73 of the Civil Partnership Act 2004;
- "child" means a person under the age of 18 years;
- "parental responsibility" has the same meaning as in the Children Act 1989;
- "relative" has the meaning given by section 63(1) of the Family Law Act 1996.
- (8) In proceedings for an offence under this section it is a defence for A to show that—
- (a) in engaging in the behaviour in question, A believed that he or she was acting in B's best interests, and
 - (b) the behaviour was in all the circumstances reasonable.
- (9) A is to be taken to have shown the facts mentioned in subsection (8) if—
- (a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and
 - (b) the contrary is not proved beyond reasonable doubt.
- (10) The defence in subsection (8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.
- (11) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

36.2. SCOTLAND

[Matrimonial Homes \(Family Protection\) \(Scotland\) Act, 1981](#)⁷⁶

[...]

⁷⁶ Matrimonial Homes (Family Protection) Act 1981 (30 October 1981), available at <http://www.legislation.gov.uk/ukpga/1981/59/contents> (last visited December 30, 2018).

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1. Regulation by court of rights of occupancy of matrimonial home.

- (1) Subject to section 1(7) of this Act, Where there is an entitled and a non-entitled spouse, or where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home, either spouse may apply to the court for an order—
 - (a) declaring the occupancy rights of the applicant spouse;
 - (b) enforcing the occupancy rights of the applicant spouse;
 - (c) restricting the occupancy rights of the non-applicant spouse;
 - (d) regulating the exercise by either spouse of his or her occupancy rights;
 - (e) protecting the occupancy rights of the applicant spouse in relation to the other spouse.
- (2) Where one spouse owns or hires, or is acquiring under a hire-purchase or conditional sale agreement, furniture and plenishings in a matrimonial home, the other spouse, if he or she has occupancy rights in that home, may apply to the court for an order granting to the applicant the possession or use in the matrimonial home of any such furniture and plenishings; but, subject to section 2 of this Act, an order under this subsection shall not prejudice the rights of any third party in relation to the non-performance of any obligation under such hire-purchase or conditional sale agreement.
- (3) The court shall grant an application under subsection (1) (a) above if it appears to the court that the application relates to a matrimonial home; and, on an application under any of paragraphs (b) to (e) of subsection (1) or under subsection (2) above, the court may make such order relating to the application as appears to it to be just and reasonable having regard to all the circumstances of the case including—
 - (a) the conduct of the spouses in relation to each other and otherwise;
 - (b) the respective needs and financial resources of the spouses;
 - (c) the needs of any child of the family;
 - (d) the extent (if any) to which—
 - (i) the matrimonial home; and
 - (ii) in relation only to an order under subsection (2) above, any item of furniture and plenishings referred to in that subsection,
is used in connection with a trade, business or profession of either spouse; and
 - (e) whether the entitled spouse offers or has offered to make available to the non-entitled spouse any suitable alternative accommodation.
- (4) Pending the making of an order under subsection (3) above, the court, on the application of either spouse, may make such interim order as it may consider necessary or expedient in relation to—
 - (a) the residence of either spouse in the home to which the application relates;
 - (b) the personal effects of either spouse or of any child of the family; or
 - (c) the furniture and plenishings:
Provided that an interim order may be made only if the non-applicant spouse has been afforded an opportunity of being heard by or represented before the court.
- (5) The court shall not make an order under subsection (3) or (4) above if it appears that the effect of the order would be to exclude the non-applicant spouse from the matrimonial home.

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- (6) If the court makes an order under subsection (3) or (4) above which requires the delivery to one spouse of anything which has been left in or removed from the matrimonial home, it may also grant a warrant authorising a messenger-at-arms or sheriff officer to enter the matrimonial home or other premises occupied by the other spouse and to search for and take possession of the thing required to be delivered, if need be by opening shut and lockfast places, and to deliver the thing in accordance with the said order:

Provided that a warrant granted under this subsection shall be executed only after expiry of the period of a charge, being such period as the court shall specify in the order for delivery.

- (7) Where it appears to the court—
- (a) on the application of a non-entitled spouse, that that spouse has suffered a loss of occupancy rights or that the quality of the non-entitled spouse's occupation of a matrimonial home has been impaired; or
 - (b) on the application of a spouse who has been given the possession or use of furniture and plenishings by virtue of an order under subsection (3) above, that the applicant has suffered a loss of such possession or use or that the quality of the applicant's possession or use of the furniture and plenishings has been impaired,
in consequence of any act or default on the part of the other spouse which was intended to result in such loss or impairment, it may order that other spouse to pay to the applicant such compensation as the court in the circumstances considers just and reasonable in respect of that loss or impairment.
- (8) A spouse may renounce in writing the right to apply under subsection (2) above for the possession or use of any item of furniture and plenishings.

4. Exclusion orders.

- (1) Where there is an entitled and non-entitled spouse, or where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home, either spouse whether or not that spouse is in occupation at the time of the application] may apply to the court for an order (in this Act referred to as "an exclusion order") suspending the occupancy rights of the other spouse ("the non-applicant spouse") in a matrimonial home.
- (2) Subject to subsection (3) below, the court shall make an exclusion order if it appears to the court that the making of the order is necessary for the protection of the applicant or any child of the family from any conduct or threatened or reasonably apprehended conduct of the non-applicant spouse which is or would be injurious to the physical or mental health of the applicant or child.
- (3) The court shall not make an exclusion order if it appears to the court that the making of the order would be unjustified or unreasonable—
- (a) having regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 3(3) of this Act; and
 - (b) where the matrimonial home—
 - (i) is or is part of an agricultural holding within the meaning of section 1 of the Agricultural Holdings (Scotland) Act 1949; or
 - (ii) is let, or is a home in respect of which possession is given, to the non-applicant spouse or to both spouses by an employer as an incident of employment,
subject to a requirement that the non-applicant spouse or, as the case may be, both spouses must reside in the matrimonial home, having regard to that requirement and the likely consequences of the exclusion of the non-applicant spouse from the matrimonial home.
- (4) In making an exclusion order the court shall, on the application of the applicant spouse,—
- (a) grant a warrant for the summary ejection of the non-applicant spouse from the matrimonial home;
 - (b) grant an interdict prohibiting the non-applicant spouse from entering the matrimonial home without the express permission of the applicant;

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- (c) grant an interdict prohibiting the removal by the non-applicant spouse, except with the written consent of the applicant or by a further order of the court, of any furniture and plenishings in the matrimonial home;
unless, in relation to paragraph (a) or (c) above, the non-applicant spouse satisfies the court that it is unnecessary for it to grant such a remedy.
- (5) In making an exclusion order the court may—
 - (a) grant an interdict prohibiting the non-applicant spouse from entering or remaining in a specified area in the vicinity of the matrimonial home;
 - (b) where the warrant for the summary ejection of the non-applicant spouse has been granted in his or her absence, give directions as to the preservation of the non-applicant spouse's goods and effects which remain in the matrimonial home;
 - (c) on the application of either spouse, make the exclusion order or the warrant or interdict mentioned in paragraph (a), (b) or (c) of subsection (4) above or paragraph (a) of this subsection subject to such terms and conditions as the court may prescribe;
 - (d) on application as aforesaid, make such other order as it may consider necessary for the proper enforcement of an order made under subsection (4) above or paragraph (a), (b) or (c) of this subsection.
- (6) Pending the making of an exclusion order, the court may, on the application of the applicant spouse, make an interim order suspending the occupancy rights of the non-applicant spouse in the matrimonial home to which the application for the exclusion order relates; and subsections (4) and (5) above shall apply to such interim order as they apply to an exclusion order:
Provided that an interim order may be made only if the non-applicant spouse has been afforded an opportunity of being heard by or represented before the court.
- (7) Without prejudice to subsections (1) and (6) above, where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home, it shall be incompetent for one spouse to bring an action of ejection from the matrimonial home against the other spouse.

5. Duration of orders under ss. 3 and 4.

- (1) The court may, on the application of either spouse, vary or recall any order made by it under section 3 or 4 of this Act, but, subject to subsection (2) below, any such order shall, unless previously so varied or recalled, cease to have effect—
 - (a) on the termination of the marriage; or
 - (b) subject to section 6(1) of this Act, where there is an entitled and non-entitled spouse, on the entitled spouse ceasing to be an entitled spouse in respect of the matrimonial home to which the order relates; or
 - (c) where both spouses are entitled, or permitted by a third party, to occupy the matrimonial home, on both spouses ceasing to be so entitled or permitted.
- (2) Without prejudice to the generality of subsection (1) above, an order under section 3(3) or (4) of this Act which grants the possession or use of furniture and plenishings shall cease to have effect if the furniture and plenishings cease to be permitted by a third party to be retained in the matrimonial home.

[...]

Matrimonial interdicts

14. Interdict competent where spouses live together.

- (1) It shall not be incompetent for the court to entertain an application by a spouse for a matrimonial interdict by reason only that the spouses are living together as man and wife.
- (2) In this section of this Act—

“matrimonial interdict” means an interdict including an interim interdict which—

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- (a) restrains or prohibits any conduct of one spouse towards the other spouse or a child of the family, or
 - (b) subject to subsection (3), prohibits a spouse from entering or remaining in—
 - (i) a matrimonial home;
 - (ii) any other residence occupied by the applicant spouse;
 - (iii) any place of work of the applicant spouse;
 - (iv) any school attended by a child in the permanent or temporary care of the applicant spouse.
 - (3) Subsection (4) applies if in relation to a matrimonial home the non-applicant spouse—
 - (a) is an entitled spouse; or
 - (b) has occupancy rights.
 - (4) Except where subsection (5) applies, the court may not grant a matrimonial interdict prohibiting the non-applicant spouse from entering or remaining in the matrimonial home.
 - (5) This subsection applies if—
 - (a) the interdict is ancillary to an exclusion order; or
 - (b) by virtue of section 1(3), the court refuses leave to exercise occupancy rights.
 - (6) In this section “ applicant spouse ” means the spouse who has applied for the interdict; and “ non-applicant spouse ” shall be construed accordingly.
- [...]

Domestic interdicts

18A. Meaning of “domestic interdict”

- (1) In section 18B, “ domestic interdict ” means—
 - (a) an interdict granted on the application of a person (“A”) who is (or was) living with another person (“B”) as if they were husband and wife against B for any of the purposes mentioned in subsection (2); or
 - (b) an interdict granted on the application of a person (“C”) who is (or was) living with another person (“D”) as if they were civil partners against D for any of the purposes mentioned in subsection (2).
- (2) Those purposes are—
 - (a) restraining or prohibiting such conduct of the defender towards—
 - (i) the pursuer; or
 - (ii) any child in the permanent or temporary care of the pursuer, as the court may specify;
 - (b) prohibiting the defender from entering or remaining in—
 - (i) a family home occupied by the pursuer and the defender;
 - (ii) any other residence occupied by the pursuer;
 - (iii) any place of work of the pursuer;

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- (iv) any school attended by a child in the permanent or temporary care of the pursuer.

(3) In this section and in section 18B—

“family home” means, subject to subsection (4), any house, caravan, houseboat or other structure which has been provided or has been made available by the pursuer or the defender (or both of them) as (or has become) a family residence for them and includes any garden or other ground or building usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure; but does not include a residence provided or made available by any person for the pursuer or, as the case may be, the defender to reside in (whether or not with any child of the pursuer and the defender) separately from the defender or, as the case may be, the pursuer; and

“interdict” includes interim interdict.

(4) If the tenancy of a family home is transferred from a pursuer to a defender (or, as the case may be, from a defender to a pursuer) by agreement or under any enactment, the home shall, on such transfer, cease to be a family home.

(5) In subsection (3), “child of the pursuer and the defender” includes any child or grandchild of the pursuer or the defender, and any person who has been brought up or treated by the pursuer or the defender as if the person were a child of the pursuer or, as the case may be, the defender, whatever the age of such a child, grandchild or person.

18B. Domestic interdicts: further provision

(1) Subsection (2) applies if the defender—

- (a) is entitled to occupy a family home;
- (b) is permitted by a third party to occupy it; or
- (c) has, by virtue of section 18(1), occupancy rights in it.

(2) Except where subsection (3) applies, the court may not grant a domestic interdict prohibiting the defender from entering or remaining in the family home.

(3) This subsection applies if—

- (a) the interdict is ancillary to an exclusion order; or
- (b) an order under section 18(1) granting or extending occupancy rights is recalled.

[...]

[Children \(Scotland\) Act, 1995 \(As amended\)](#)⁷⁷

11. Court orders relating to parental responsibilities

[...]

(7A) In carrying out the duties imposed by subsection (7)(a) above, the court shall have regard in particular to the matters mentioned in subsection (7B) below.

(7B) Those matters are—

- (a) the need to protect the child from—
 - (i) any abuse; or
 - (ii) the risk of any abuse,

⁷⁷ Children (Scotland) Act 1995 (19 July 1995), as amended by [Family Law \(Scotland\) Act 2006](#), available at <http://www.legislation.gov.uk/ukpga/1995/36/contents> (last visited December 30, 2018).

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- which affects, or might affect, the child;
- (b) the effect such abuse, or the risk of such abuse, might have on the child;
 - (c) the ability of a person—
 - (i) who has carried out abuse which affects or might affect the child; or
 - (ii) who might carry out such abuse,
- to care for, or otherwise meet the needs of, the child; and
- (d) the effect any abuse, or the risk of any abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has (or, by virtue of an order under subsection (1), would have) those responsibilities.

(7C) In subsection (7B) above—

“abuse” includes —

- (a) violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;
- (b) abuse of a person other than the child; and domestic abuse;

“conduct” includes—

- (a) speech; and
- (b) presence in a specified place or area.

(7D) Where—

- (a) the court is considering making an order under subsection (1) above; and
 - (b) in pursuance of the order two or more relevant persons would have to co-operate with one another as respects matters affecting the child,
- the court shall consider whether it would be appropriate to make the order.

(7E) In subsection (7D) above, “relevant person”, in relation to a child, means—

- (a) a person having parental responsibilities or parental rights in respect of the child; or
- (b) where a parent of the child does not have parental responsibilities or parental rights in respect of the child, a parent of the child.”.

[...]

[Protection from Abuse \(Scotland\) Act, 2001](#)⁷⁸

[...]

1. Attachment of power of arrest to interdict

(1) A person who is applying for, or who has obtained, an interdict for the purpose of protection against abuse may apply to the court for a power of arrest to be attached to the interdict under this Act.

(1A) In the case of an interdict which is—

⁷⁸ Protection from Abuse (Scotland) Act 2001 (6 November 2001), available at <http://www.legislation.gov.uk/asp/2001/14> (last visited December 30, 2018).

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- (a) a matrimonial interdict (as defined by section 14(2) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59)) which is ancillary to—
 - (i) an exclusion order within the meaning of section 4(1) of that Act; or
 - (ii) an interim order under section 4(6) of that Act; or
- (b) a relevant interdict (as defined by section 113(2) of the Civil Partnership Act 2004 (c. 33)) which is ancillary to—
 - (i) an exclusion order within the meaning of section 104(1) of that Act; or
 - (ii) an interim order under section 104(6) of that Act,
the court must, on an application under subsection (1), attach a power of arrest to the interdict.
- (1) In the case of any other interdict, the court must, on such application, attach a power of arrest to the interdict if satisfied that—
 - (a) the interdicted person has been given an opportunity to be heard by, or represented before, the court;
 - (b) [repealed]
 - (c) attaching the power of arrest is necessary to protect the applicant from a risk of abuse in breach of the interdict.
- (2) The court, on attaching a power of arrest, must specify a date of expiry for the power, being a date not later than three years after the date when the power is attached.

2. Duration, extension and recall

- (1) A power of arrest comes into effect only when it has been served on the interdicted person along with such documents as may be prescribed.
- (2) A power of arrest ceases to have effect—
 - (a) on the date of expiry specified by the court;
 - (b) when it is recalled by the court; or
 - (c) when the interdict to which the power is attached is varied or recalled,
whichever is the earliest.
- (3) The duration of a power of arrest must, on the application of the person who obtained it, be extended by the court, if satisfied that—
 - (a) the interdicted person has been given an opportunity to be heard by, or represented before, the court; and
 - (b) the extension is necessary to protect the applicant from a risk of abuse in breach of the interdict.
- (4) The court, on extending the duration of a power of arrest, must specify a new date of expiry for the power, being a date not later than three years after the date when the extension is granted.
- (5) Where the duration of a power of arrest has been extended—
 - (a) the extension comes into effect only when it has been served on the interdicted person along with such documents as may be prescribed; and

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- (b) subsection (2) applies as if the date referred to in paragraph (a) of that subsection were the new date of expiry specified by the court in granting the extension.
- (6) Subsections (3), (4) and (5) apply to further extensions as they apply to an initial extension.
- (7) A power of arrest must be recalled by the court if —
 - (a) the person who obtained it applies for recall; or
 - (b) the interdicted person applies for recall and the court is satisfied that—
 - (i) the person who obtained the power has been given an opportunity to be heard by, or represented before, the court; and
 - (ii) the power is no longer necessary to protect that person from a risk of abuse in breach of the interdict.

3. Notification to police

(1) As soon as possible after—

- (a) a power of arrest has been served;
- (b) an extension of the duration of a power of arrest has been served;
- (c) a recall of a power of arrest has been granted; or
- (d) the relevant interdict has been varied or recalled,
the person who has obtained such power, extension, variation or recall, or such other person as may be prescribed, must deliver such documents as may be prescribed to the chief constable of the Police Service of Scotland.

(2) In this section “relevant interdict” means the interdict to which the power of arrest is or was attached.

4. Powers and duties of police

(1) Where a power of arrest attached to an interdict has effect a constable may arrest the interdicted person without warrant if the constable—

- (a) has reasonable cause for suspecting that person of being in breach of the interdict; and
- (b) considers that there would, if that person were not arrested, be a risk of abuse or further abuse by that person in breach of the interdict.

(2) A person who is arrested under subsection (1) must be detained until—

- (a) [repealed]
- (b) brought before a court under section 5.

(3) [repealed]

(4) [repealed]

(5) [repealed]

(6) When a person has been arrested under this section the facts and circumstances giving rise to the arrest must be reported to the procurator fiscal as soon as is practicable.

5. Court appearance

(1) Where a person is detained under section 4(2), the person must wherever practicable be brought before the sheriff sitting as a court of summary criminal jurisdiction for the district in which the person was arrested not later than in the course of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday for that court.

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- (2) Nothing in subsection (1) prevents the detained person from being brought before the sheriff on a Saturday, a Sunday or a court holiday if the sheriff is sitting on such a day for the disposal of criminal business.
- (2A) Subsections (3) to (5) apply where, on being brought before the sheriff under this section, the detained person is not accused on petition or charged on complaint with an offence in respect of the facts and circumstances giving rise to the arrest.
- (3) When the detained person is brought before the sheriff under this section the procurator fiscal must present to the court a petition—
- (a) giving particulars of the detained person; stating the facts and circumstances which gave rise to the arrest;
 - (b) giving any information known to the procurator fiscal about the circumstances which gave rise to the interdict and the attachment of the power of arrest;
 - (c) giving any other information known to the procurator fiscal and relevant to an assessment of the risk of abuse or further abuse in breach of the interdict; and
 - (d) requesting the court to consider whether, on the information presented, a further period of detention is justified.
- (4) If it appears to the sheriff, after affording the detained person the opportunity to make representations, that—
- (a) the information presented to the court discloses a prima facie breach of the interdict by that person; and
 - (b) there would, if further detention were not ordered, be a substantial risk of abuse or further abuse by that person in breach of the interdict,
- the sheriff may order that person to be detained for a further period not exceeding 2 days.
- (5) If the sheriff does not order further detention the detained person must, unless in custody in respect of any other matter, be released from custody.

6. Amendment of the Matrimonial Homes (Family Protection) (Scotland) Act 1981

[repealed]

7. Interpretation

In this Act, unless the context otherwise requires—

“abuse” includes violence, harassment, threatening conduct, and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;

“conduct” includes—

- (a) speech; and
- (b) presence in a specified place or area;

“court” means the Court of Session or a sheriff;

“documents” includes documents in electronic form;

“interdict” includes interim interdict;

“interdicted person” means—

- (a) in section 1, the person against whom the power of arrest is sought (being the person or one of the persons prohibited by the interdict mentioned in subsection (1) of that section); and

(b) in sections 2 and 4, the person against whom the power of arrest has been granted;
“parental responsibilities and rights” has the same meaning as in the Children (Scotland) Act 1995 (c.36);
“person” means natural person;
“power of arrest” means a power of arrest under this Act; and
“prescribed” means prescribed by rules of court.
[...]

[Abusive Behaviour and Sexual Harm Act \(Scotland\), 2016](#)⁷⁹

[...]

PART 1 **Abusive behaviour**

Abusive behaviour towards partner or ex-partner

1. Aggravation of offence where abuse of partner or ex-partner

- (1) This subsection applies where it is—
 - (a) libelled in an indictment or specified in a complaint that an offence is aggravated by involving abuse of the partner or ex-partner of the person committing it, and
 - (b) proved that the offence is so aggravated.
- (2) An offence is aggravated as described in subsection (1)(a) if in committing the offence—
 - (a) the person intends to cause the partner or ex-partner to suffer physical or psychological harm, or
 - (b) in the case only of an offence committed against the partner or ex-partner, the person is reckless as to causing the partner or ex-partner to suffer physical or psychological harm.
- (3) It is immaterial for the purposes of subsection (2) that the offence does not in fact cause the partner or ex-partner physical or psychological harm.
- (4) Evidence from a single source is sufficient to prove that an offence is aggravated as described in subsection (1)(a).
- (5) Where subsection (1) applies, the court must—
 - (a) state on conviction that the offence is aggravated as described in subsection (1)(a),
 - (b) record the conviction in a way that shows that the offence is so aggravated,
 - (c) take the aggravation into account in determining the appropriate sentence, and
 - (d) state—

⁷⁹ Abusive Behaviour and Sexual Harm (Scotland) Act, (28 April 2016), available at <http://www.legislation.gov.uk/asp/2016/22/contents> (last visited December 30, 2018).

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- (i) where the sentence imposed in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
 - (ii) otherwise, the reasons for there being no such difference.
- (6) For the purposes of this section, a person is a partner of another person if they are—
- (a) spouses or civil partners of each other,
 - (b) living together as if spouses or civil partners of each other, or
 - (c) in an intimate personal relationship with each other,
- and the references to a person's ex-partner are to be construed accordingly.
- (7) In this section—
“cause” includes contribute to causing (and “causing” is to be construed accordingly),
“psychological harm” includes fear, alarm or distress.

[...]

[Domestic Abuse \(Scotland\) Act, 2018](#)⁸⁰

[...]

PART 1

OFFENCE AS TO DOMESTIC ABUSE

Engaging in course of abusive behaviour

1. Abusive behaviour towards partner or ex-partner

- (1) A person commits an offence if—
- (a) the person (“A”) engages in a course of behaviour which is abusive of A’s partner or ex-partner (“B”), and
 - (b) both of the further conditions are met.
- (2) The further conditions are—
- (a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm,
that either—
 - (i) A intends by the course of behaviour to cause B to suffer physical or psychological harm, or
 - (ii) A is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

In the further conditions, the references to psychological harm include fear, alarm and distress.

2. What constitutes abusive behaviour

⁸⁰ Domestic Abuse (Scotland) Act 2018 (9 March 2018), available at http://www.legislation.gov.uk/asp/2018/5/pdfs/asp_20180005_en.pdf (last visited December 30, 2018).

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- (1) Subsections (2) to (4) elaborate on section 1(1) as to A's behaviour.
- (2) Behaviour which is abusive of B includes (in particular)—
 - (a) behaviour directed at B that is violent, threatening or intimidating, behaviour directed at B, at a child of B or at another person that either—
 - i. has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or
 - ii. would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).
- (3) The relevant effects are of—
 - (a) making B dependent on, or subordinate to, A,
 - (b) isolating B from friends, relatives or other sources of support,
 - (c) controlling, regulating or monitoring B's day-to-day activities,
 - (d) depriving B of, or restricting B's, freedom of action,
 - (e) frightening, humiliating, degrading or punishing B.
- (4) In subsection (2)—
 - (a) in paragraph (a), the reference to violent behaviour includes sexual violence as well as physical violence,
 - (b) in paragraph (b), the reference to a child is to a person who is under 18 years of age.

3. Extra-territorial jurisdiction

- (1) An offence under section 1(1) can be constituted by a course of behaviour engaged in by A even if the course of behaviour occurs wholly or partly outside the United Kingdom
- (2) If the course of behaviour occurs wholly outside the United Kingdom—
 - (a) A may be prosecuted, tried and punished for the offence—
 - (i) in a sheriff court district in which A is apprehended or in custody, or
 - (ii) in a sheriff court district that is determined by the Lord Advocate,
as if the offence has been committed entirely in that district,
 - (b) the offence is, for all things incidental to or consequential on trial and punishment, deemed to have been committed entirely in that district.
- (3) Subsections (1) and (2) apply only if A, when the course of behaviour occurs—
 - (a) is habitually resident in Scotland, or

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- (b) is a UK national.
- (4) “UK national” means someone who is, as referred to in the British Nationality Act 1981—
 - (a) a British citizen,
 - (b) a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, or
 - (c) a British subject or a British protected person.

Evidence, aggravation and defence

4. Evidence of impact on victim

- (1) The commission of an offence under section 1(1) does not depend on the course of behaviour actually causing B to suffer harm of the sort mentioned in section 1(2).
- (2) The operation of section 2(2)(b) does not depend on behaviour directed at someone actually having on B any of the relevant effects set out in section 2(3).
- (3) Nothing done by or mentioned in subsection (1) or (2) prevents evidence from being led in proceedings for an offence under section 1(1) about (as the case may be)—
 - (a) harm actually suffered by B as a result of the course of behaviour, or
 - (b) effects actually had on B of behaviour directed at someone.

5. Aggravation in relation to a child

- (1) This subsection applies where it is, in proceedings for an offence under section 1(1)—
 - (a) specified in the complaint or libelled in the indictment that the offence is aggravated by reason of involving a child, and
 - (b) proved that the offence is so aggravated.
- (2) The offence is so aggravated if, at any time in the commission of the offence—
 - (a) A directs behaviour at a child, or
 - (b) A makes use of a child in directing behaviour at B.
- (3) The offence is so aggravated if a child sees or hears, or is present during, an incident of behaviour that A directs at B as part of the course of behaviour.
- (4) The offence is so aggravated if a reasonable person would consider the course of behaviour, or an incident of A’s behavior that forms part of the course of behavior, to be likely to adversely affect a child usually residing with A or B (or both).
- (5) For it to be proved that the offence is so aggravated, there does not need to be evidence that a child –
 - (a) has ever had any –
 - (i) awareness of A’s behavior, or
 - (ii) understanding of the nature of A’s behavior, or
 - (b) has ever been adversely affected by A’s behavior

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- (6) Evidence from a single source is sufficient to prove that the offence is so aggravated.
- (7) Where subsection (1) applies, the court must—
- (a) state on conviction that the offence is so aggravated,
 - (b) record the conviction in a way that shows that the offence is so aggravated,
 - (c) take the aggravation into account in determining the appropriate sentence, and
 - (d) state—
 - (i) where the sentence imposed in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
 - (ii) otherwise, the reasons for there being no such difference.
- (8) Each of subsections (2) to (4) operates separately along with subsection (5), but subsections (2) to (4) may be used in combination along with subsection (5).
- (9) Nothing in subsections (2) to (5) prevents evidence from being led about—
- (a) a child's observations of, or feelings as to, A's behaviour, or
 - (b) a child's situation so far as arising because of A's behaviour.
- (10) In subsections (4) and (5), the references to adversely affecting a child include causing the child to suffer fear, alarm or distress.
- (11) In this section, the references to a child are to a person who—
- (a) is not A or B, and
 - (b) is under 18 years of age.

6. Defence on grounds of reasonableness

- (1) In proceedings for an offence under section 1(1), it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances.
- (2) That is to be regarded as shown if—
- (a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (1), and
 - (b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (1).

Presumption, alternative and penalty

7. Presumption as to the relationship

- (1) In proceedings for an offence under section 1(1), the matter of B being A's partner or ex-partner is to be taken as established—
- (a) according to the stating of the matter in the charge of the offence in the complaint or indictment, and

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(b) unless the matter is challenged as provided for in subsection (2).

(2) The matter is challenged—

(a) in summary proceedings, by—

(i) preliminary objection before the plea is recorded, or

(ii) later objection as the court allows in special circumstances,

(b) in proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of the Criminal Procedure (Scotland) Act 1995.

8. Alternative available for conviction

(1) In proceedings for an offence under section 1(1), A may be convicted of an alternative offence if the facts proved against A—

(a) do not amount to the offence under section 1(1), but

(b) do amount to the alternative offence.

(2) An alternative offence as referred to in subsection (1) is one or other of these—

(a) an offence under section 38(1) (threatening or abusive behaviour) of the Criminal Justice and Licensing (Scotland) Act 2010,

(b) an offence under section 39 (offence of stalking) of that Act.

9. Penalty for offence under section 1(1)

(1) A person who commits an offence under section 1(1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both).

Meaning given to key expressions

10. Meaning of references to behaviour

(1) Subsections (2) to (4) explain what is meant by the references to behaviour in this Part.

(2) Behaviour is behaviour of any kind, including (for example)—

(a) saying or otherwise communicating something as well as doing something,

(b) intentionally failing—

(i) to do something,

(ii) to say or otherwise communicate something.

(1) Behaviour directed at a person is such behaviour however carried out, including (in particular)—

(a) by way of conduct towards property,

- (b) through making use of a third party, as well as behaviour in a personal or direct manner.
- (4) A course of behaviour involves behaviour on at least two occasions.

11. Meaning of partner and ex-partner

- (1) Subsections (2) and (3) describe who is a person's partner or ex-partner as referred to in this Part.
- (2) Someone is a person's partner if they are—
- (a) spouses or civil partners of each other,
 - (b) living together as if spouses of each other, or
 - (c) in an intimate personal relationship with each other.
- (3) Whether someone is a person's ex-partner is to be determined accordingly.

[...]

36.3. NORTHERN IRELAND

[Family Homes and Domestic Violence \(Northern Ireland\) Order, 1998](#)⁸¹

[...]

Introductory

1. Title and commencement

- (2) This Order may be cited as the Family Homes and Domestic Violence (Northern Ireland) Order 1998.
- (2) This Order shall come into operation on such day or days as the Minister of Finance and Personnel may by order appoint.

2. Interpretation

- (1) The 1954 c. 33 (N.I.). Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.
- (2) In this Order—
- “adoption order” has the meaning given by Article 2(2) of the 1987 NI 22. Adoption (Northern Ireland) Order 1987;
 - “associated”, in relation to a person, is to be read with Article 3(3) to (6);
 - “child” means a person under the age of 18;
 - “cohabit,” “cohabitee” and “former cohabitee” have the meaning given by Article 3(1);
 - “the court” is to be read with Article 34;
 - “development” means physical, intellectual, emotional, social or behavioural development;
 - “dwelling-house” includes (subject to paragraph (5))—
- (a) any building or part of a building which is occupied as a dwelling;

⁸¹ Family Homes and Domestic Violence (Northern Ireland) Order No. 1071/ (N.I. 6) (22 April 1998), available at <http://www.legislation.gov.uk/nisi/1998/1071> (last visited December 30, 2018).

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(b) any caravan, houseboat or structure which is occupied as a dwelling,

and any yard, garden, garage or outhouse belonging to it and occupied with it;

“family proceedings” means any proceedings—

(a) under the inherent jurisdiction of the High Court in relation to children; or

(b) under the provisions mentioned in paragraph (3);

“family proceedings court” has the meaning given in Article 38(4);

“harm”

(a) in relation to a person who has reached the age of 18 years, means ill-treatment or the impairment of health; and

(b) in relation to a child, means ill-treatment or the impairment of health or development;

“health” includes physical or mental health;

“home rights” has the meaning given by Article 4;

“ill-treatment” includes sexual abuse and forms of ill-treatment which are not physical;

“legal estate” includes an equity of redemption arising on the conveyance or assignment of a legal estate by way of mortgage;

“matrimonial or civil partnership charge” means a charge created by Article 5;

Definition rep. by 2004 c. 33

“molest” includes incite, procure or assist any person to molest;

“mortgage” includes a charge;

“mortgagor” and “mortgagee” include any person deriving title under the original mortgagor or mortgagee;

“mortgage payments” includes any payments which, under the terms of the mortgage, the mortgagor is required to make to any person;

“non-molestation order” has the meaning given by Article 20(1);

“occupation order” means an order under Article 11, 13, 14, 15 or 16;

“parental responsibility” has the same meaning as in the 1995 NI 2. Children (Northern Ireland) Order 1995;

“purchaser” means any person (including a lessee or mortgagee) who, for valuable consideration, takes an estate in land;

“relative”, in relation to a person, means—

(a) the father, stepfather, stepmother son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse, former spouse, civil partner or former civil partner, or

(b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or the half blood or by affinity) of that person or of that person’s spouse, former spouse, civil partner or former civil partner; or

(c) the father-in-law, mother-in-law, brother-in-law or sister-in-law of that person,

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and includes, in relation to a person who is cohabiting or has cohabited with another person, any person who would fall within paragraph (a), (b) or (c) if the parties were married to each other or were civil partners of each other;

“relevant child”, in relation to any proceedings under this Order, has the meaning given by Article 3(2);

[...]

- (3) Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.
- (4) For the purposes of Articles 5 to 10, 30 and 31 and such other provisions of this Order (if any) as may be specified by order made by the Department of Finance and Personnel, this Order shall have effect as if paragraph (b) of the definition of “dwelling-house” in paragraph (2) were omitted.
- (5) This Order applies as between the parties to a marriage even though either of them is, or has at any time during the marriage been, married to more than one person.
- (6) In this Order references to cancelling the registration of a matrimonial or civil partnership charge shall, where that charge is registered in the Registry of Deeds, be construed as references to vacating the registration of that charge.

3. Meaning of “cohabitees”, “relevant child” and “associated persons”

(1) For the purposes of this Order—

- (a) “cohabitees” are two persons who, although not married to each other, are living together as husband and wife or (if of the same sex) in an equivalent relationship;
- (b) “cohabit” and “former cohabitees” are to be read accordingly, but the latter expression] does not include cohabitees who have subsequently married each other or become civil partners of each other.

(2) In this Order “relevant child”, in relation to any proceedings under this Order, means—

- (a) any child who is living with or might reasonably be expected to live with either party to the proceedings;
- (b) any child in relation to whom an order under the [1987 NI 22.] Adoption (Northern Ireland) Order 1987 or the Children (Northern Ireland) Order 1995 is in question in the proceedings; and
- (c) any other child whose interests the court considers relevant.

(3) For the purposes of this Order a person is associated with another person if—

- (a) they are or have been married to each other;
- (aa) they are or have been civil partners of each other;
- (b) they are cohabitees or former cohabitees;
- (c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;
- (d) they are relatives;
- (e) they have agreed to marry one another (whether or not that agreement has been terminated);
- (eza) they have entered into a civil partnership agreement (as defined by section 197 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);
- (f) in relation to any child, they are both persons falling within paragraph (4); or

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(g) they are parties to the same family proceedings (other than proceedings under this Order).

(4) A person falls within this paragraph in relation to a child if—

- (a) he is a parent of the child; or
- (b) he has or has had parental responsibility for the child.

(5) If a child has been adopted or has been freed for adoption by virtue of any of the provisions mentioned in Article 16(1) of the [1987 NI 22.] Adoption (Northern Ireland) Order 1987, two persons are also associated with each other for the purposes of this Order if—

- (a) one is a natural parent of the child or a parent of such a natural parent; and
- (b) the other is the child or any person—
 - (i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or
 - (ii) with whom the child has at any time been placed for adoption.

(6) A body corporate and another person are not, by virtue of paragraph (3)(f) or (g), to be regarded for the purposes of this Order as associated with each other.

[...]

11. Occupation orders where applicant has estate etc. or has home rights

(1) If—

- (a) a person (“the person entitled”)—
 - (i) is entitled to occupy a dwelling-house by virtue of a beneficial estate or a contract or by virtue of any statutory provision giving him the right to remain in occupation, or
 - (ii) has home rights in relation to a dwelling-house, and

(b) the dwelling-house—

- (i) is or at any time has been the home of the person entitled and of another person with whom he is associated, or
- (ii) was at any time intended by the person entitled and any such other person to be their home,
the person entitled may apply to the court for an order containing any of the provisions specified in paragraphs (3), (4) and (5).

(2) If an agreement to marry is terminated, no application under this Article may be made by virtue of Article 3(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

(2A) If a civil partnership agreement (within the meaning of the Civil Partnership Act 2004) is terminated, no application under this Article may be made by virtue of Article 3(3)(eza) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

(3) An order under this Article may—

- (a) enforce the applicant's entitlement to remain in occupation as against the other person (“the respondent”);
- (b) require the respondent to permit the applicant to enter the dwelling-house or part of the dwelling-house;

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- (c) require the respondent to permit the applicant to have peaceful use and enjoyment of the dwelling-house or part of the dwelling-house;
 - (d) regulate the occupation of the dwelling-house by either or both parties;
 - (e) if the respondent is entitled as mentioned in paragraph (1)(a)(i), prohibit, suspend or restrict the exercise by him of his right to occupy the dwelling-house;
 - (f) if the respondent has home rights in relation to the dwelling-house and the applicant is the other spouse or civil partner, restrict or terminate those rights;
 - (g) require the respondent to leave the dwelling-house or part of the dwelling-house;
 - (h) provide for the respondent to remove from the dwelling-house or part of the dwelling-house personal effects or any furniture or other contents of a kind specified in the order;
 - (i) exclude the respondent from a defined area in which the dwelling-house is included, any other defined area and any premises; or
 - (j) restrain the respondent from disposing of any estate he has in the dwelling-house ("disposing" for this purpose including any dealing mentioned in paragraphs (a) to (f) of section 45(3) of the [1954 c. 33 (N.I.)] Interpretation Act (Northern Ireland) 1954).
- (4) An order under this Article may declare that the applicant is entitled as mentioned in paragraph (1)(a)(i) or has home rights.
- (5) If the applicant has home rights and the respondent is the other spouse or civil partner, an order under this Article made during the marriage or civil partnership may provide that those rights are not brought to an end by—
- (a) the death of the other spouse or civil partner; or
 - (b) the termination (otherwise than by death) of the marriage or civil partnership.
- (6) In deciding whether to exercise its powers under paragraph (3) and (if so) in what manner, the court shall have regard to all the circumstances including—
- (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;
 - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under paragraph (3), on the health, safety or well-being of the parties and of any relevant child; and
 - (d) the conduct of the parties in relation to each other and otherwise.
- (7) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this Article containing one or more of the provisions mentioned in paragraph (3) is not made, the court shall make the order unless it appears to it that—
- (a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and
 - (b) the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.
- (8) The court may exercise its powers under paragraph (5) in any case where it considers that in all the circumstances it is just and reasonable to do so.
- (9) An order under this Article—
- (a) may not be made after the death of either of the parties mentioned in paragraph (1); and

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(b) except in the case of an order made by virtue of paragraph (5)(a), ceases to have effect on the death of either party.

(10) An order under this Article may, in so far as it has continuing effect, be made for a specified period, until the occurrence of a specified event or until further order.

[...]

20. Non-molestation orders

(1) In this Order a “non-molestation order” means an order containing either or both of the following provisions—

(a) provision prohibiting a person (“the respondent”) from molesting another person who is associated with the respondent;

(b) provision prohibiting the respondent from molesting a relevant child.

(2) The court may make a non-molestation order—

(a) if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or

(b) if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.

(3) In paragraph (2) “family proceedings” includes proceedings in which the court has made an emergency protection order under Article 63 of the [1995 NI 2.] Children (Northern Ireland) Order 1995 which includes an exclusion requirement (as defined in Article 63A(3) of that Order).

(4) Where an agreement to marry is terminated, no application under paragraph (2)(a) may be made by virtue of Article 3(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

(4ZA) If a civil partnership agreement (within the meaning of the Civil Partnership Act 2004) is terminated, no application under this Article may be made by virtue of Article 3(3)(eza) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

(5) In deciding whether to exercise its powers under this Article and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being—

(a) of the applicant or, in a case falling within paragraph (2)(b), the person for whose benefit the order would be made; and

(b) of any relevant child.

(6) A non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.

(6A) A non-molestation order may exclude the respondent from a defined area in which a dwelling-house is included, any other defined area and any premises specified in the order.

(7) A non-molestation order may be made for a specified period or until further order.

(8) A non-molestation order which is made in other family proceedings ceases to have effect if those proceedings are withdrawn or dismissed.

21. Leave of court required for applications by children under 16

(1) A child under the age of 16 may not apply for an occupation order or a non-molestation order except with the leave of the court.

(2) The court may grant leave for the purposes of paragraph (1) only if it is satisfied that the child has sufficient understanding to make the proposed application for the occupation order or non-molestation order.

22. Evidence of agreement to marry or form a civil partnership

- (1) Subject to paragraph (2), the court shall not make an order under Article 11 or 20 by virtue of Article 3(3)(e) unless there is produced to it evidence in writing of the existence of the agreement to marry.
- (2) Paragraph (1) does not apply if the court is satisfied that the agreement to marry was evidenced by—
 - (a) the gift of an engagement ring by one party to the agreement to the other in contemplation of their marriage, or
 - (b) a ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.
- (3) Subject to paragraph (4), the court shall not make an order under Article 11 or 20 by virtue of Article 3(3)(eza) unless there is produced to it evidence in writing of the existence of the civil partnership agreement (within the meaning of the Civil Partnership Act 2004).
- (4) Paragraph (3) does not apply if the court is satisfied that the civil partnership agreement was evidenced by—
 - (a) a gift by one party to the agreement to the other as a token of the agreement, or
 - (b) a ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.

23. Ex parte orders

- (1) The court may, in any case where it considers that it is just and convenient to do so, make an occupation order or a non-molestation order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
- (2) In determining whether to exercise its powers under paragraph (1), the court shall have regard to all the circumstances including—
 - (a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately,
 - (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately, and
 - (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved—
 - (i) where the court is a court of summary jurisdiction, in effecting service of proceedings, or
 - (ii) in any other case, in effecting substituted service.
- (3) If the court makes an order by virtue of paragraph (1), it shall specify a date for a full hearing.
- (4) If, at a full hearing, the court makes an occupation order (“the full order”), then for the purposes of calculating the maximum period for which the full order may be made to have effect, the relevant Article shall apply as if the period for which the full order will have effect began on the date on which the initial order first had effect.
- (5) In this Article—

“full hearing” means a hearing of which notice has been given to all the parties in accordance with rules of court;

“initial order” means an occupation order made by virtue of paragraph (1); and

“relevant Article” means Article 11(10), 13(10), 14(10), 15(6) or 16(6).

24. Variation and discharge of orders

- (1) An occupation order or non-molestation order may be varied or discharged by the court on an application by—
 - (a) the respondent, or

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- (b) the person on whose application the order was made.
- (2) In the case of a non-molestation order made by virtue of Article 20(2)(b), the order may be varied or discharged by the court even though no such application has been made.
- (3) If B's home rights are, under Article 12, a charge on the estate of A or of trustees for A, an order under Article 11 against A may also be varied or discharged by the court on an application by any person deriving title under A or under the trustees and affected by the charge.

25. Offences

Any person who without reasonable excuse contravenes—

- (a) a non-molestation order;
 - (b) where there is in force a non-molestation order prohibiting that person from molesting another person, an occupation order or an order under Article 18;
 - (c) an exclusion requirement included by virtue of Article 57A of the Children (Northern Ireland) Order 1995 in an interim care order under Article 57 of that Order; or
 - (d) an exclusion requirement included by virtue of Article 63A of the Children (Northern Ireland) Order 1995 in an emergency protection order under Article 63 of that Order,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both.

26. Power of arrest without warrant

[Repealed]

27. Further powers of court of summary jurisdiction

- (1) Paragraphs (3) to (8) of Article 112 of the [1981 NI 26.] Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of orders other than for the payment of money) apply for the purpose of the enforcement of—
 - (a) a non-molestation order;
 - (b) an occupation order;
 - (c) an order under Article 18;
 - (d) an exclusion requirement included by virtue of Article 57A of the [1995 NI 2.] Children (Northern Ireland) Order 1995 in an interim care order under Article 57 of that Order; or
 - (e) an exclusion requirement included by virtue of Article 63A of the Children (Northern Ireland) Order 1995 in an emergency protection order under Article 63 of that Order,as those paragraphs apply in relation to an order mentioned in paragraph (2) of Article 112.

[...]

35. Provision for third parties to act on behalf of victims of domestic violence

- (1) Rules of court may provide for a prescribed person, or any person in a prescribed category, (“a representative”) to act on behalf of another in relation to any family proceedings.
- (2) Rules made under this Article may, in particular, authorise a representative to apply for an occupation order or for a non-molestation order for which the person on whose behalf the representative is acting could have applied.
- (3) Rules made under this Article may prescribe—
 - (a) conditions to be satisfied before a representative may make an application to the court on behalf of another; and

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- (b) considerations to be taken into account by the court in determining whether, and if so how, to exercise any of its powers under this Order when a representative is acting on behalf of another.
- (4) Any rules made under this Article may be made so as to have effect for a specified period and may make consequential or transitional provision with respect to the expiry of the specified period.
- (5) Any such rules may be replaced by further rules made under this Article.

[...]

[Domestic Violence, Crime and Victims Act, 2004 \(As amended\)](#)⁸²

PART 1 Domestic Violence etc

[...]

Causing or allowing a child or vulnerable adult to die or suffer serious physical harm

5. The offence

- (1) A person (“D”) is guilty of an offence if –
 - (a) a child or vulnerable adult (“V”) dies or suffers serious physical harm as a result of the unlawful act of a person who—
 - (i) was a member of the same household as V, and
 - (ii) had frequent contact with him,
 - (b) D was such a person at the time of that act,
 - (c) at that time there was a significant risk of serious physical harm being caused to V by the unlawful act of such a person, and
 - (d) either D was the person whose act caused the death or serious physical harm or—
 - (i) D was, or ought to have been, aware of the risk mentioned in paragraph (c),
 - (ii) D failed to take such steps as he could reasonably have been expected to take to protect V from the risk, and
 - (iii) the act occurred in circumstances of the kind that D foresaw or ought to have foreseen.
- (2) The prosecution does not have to prove whether it is the first alternative in subsection (1)(d) or the second (sub-paragraphs (i) to (iii)) that applies.
- (3) If D was not the mother or father of V—
 - (a) D may not be charged with an offence under this section if he was under the age of 16 at the time of the act that caused the death or serious physical harm;
 - (b) for the purposes of subsection (1)(d)(ii) D could not have been expected to take any such step as is referred to there before attaining that age.

⁸² Domestic Violence, Crime and Victims Act 2004 (15 November 2004, as amended up to 10 November 2018), available at <http://www.legislation.gov.uk/ukpga/2004/28/contents> (last visited December 30, 2018).

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- (4) For the purposes of this section—
- (a) a person is to be regarded as a “member” of a particular household, even if he does not live in that household, if he visits it so often and for such periods of time that it is reasonable to regard him as a member of it;
 - (b) where V lived in different households at different times, “the same household as V” refers to the household in which V was living at the time of the act that caused the death or serious physical harm.
- (5) For the purposes of this section an “unlawful” act is one that—
- (a) constitutes an offence, or
 - (b) would constitute an offence but for being the act of—
 - (i) a person under the age of ten, or
 - (ii) a person entitled to rely on a defence of insanity.
- Paragraph (b) does not apply to an act of D.
- (6) In this section—
- “act” includes a course of conduct and also includes omission;
- “child” means a person under the age of 16;
- “serious” harm means harm that amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861 (c. 100);
- “vulnerable adult” means a person aged 16 or over whose ability to protect himself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise.
- (7) A person guilty of an offence under this section of causing or allowing a person's death is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or to a fine, or to both.
- (8) A person guilty of an offence under this section of causing or allowing a person to suffer serious physical harm is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine, or to both.

[...]

6A. Evidence and procedure in cases of serious physical harm: England and Wales⁸³

- (1) Subsections (3) to (5) apply where a person (“the defendant”) is charged in the same proceedings with a relevant offence and with an offence under section 5 in respect of the same harm (“the section 5 offence”).
- (2) In this section “relevant offence” means—
- (a) an offence under section 18 or 20 of the Offences against the Person Act 1861 (grievous bodily harm etc);
 - (b) an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit murder.
- (3) Where by virtue of section 35(3) of the Criminal Justice and Public Order Act 1994 a court or jury is permitted, in relation to the section 5 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether the defendant is guilty of a relevant offence, even if there would otherwise be no case for the defendant to answer in relation to that offence.
- (4) The charge of the relevant offence is not to be dismissed under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (unless the section 5 offence is dismissed).

⁸³ Also applicable to Northern Ireland, see “Geographical extent” is original law.

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- (5) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of the relevant offence is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 5 offence, before that earlier time).
7. Evidence and procedure in cases of death: Northern Ireland
- (1) Subsections (2) to (4) apply where a person ("the defendant") is charged in the same proceedings with an offence of murder or manslaughter and with an offence under section 5 in respect of the same death ("the section 5 offence").
- (2) Where by virtue of Article 4(4) of the Criminal Evidence (Northern Ireland) Order 1988 (S.I. 1988/1987 (N.I. 20)) a court or jury is permitted, in relation to the section 5 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether he is guilty—
- (a) of murder or manslaughter, or
- (b) of any other offence of which he could lawfully be convicted on the charge of murder or manslaughter,
- even if there would otherwise be no case for him to answer in relation to that offence.
- (3) Where a magistrates' court is considering under Article 37 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) whether to commit the defendant for trial for the offence of murder or manslaughter, if there is sufficient evidence to put him upon trial for the section 5 offence there is deemed to be sufficient evidence to put him upon trial for the offence of murder or manslaughter.
- (4) At the defendant's trial the question whether there is a case to answer on the charge of murder or manslaughter is not to be considered before the close of all the evidence (or, if at some earlier time he ceases to be charged with the section 5 offence, before that earlier time).
- (5) An offence under section 5 of causing or allowing a person's death is an offence of homicide for the purposes of the following provisions—
- Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) (mode of trial of child for indictable offence);
- Article 32 of that Order (power and duty to remit children to youth courts for sentence).
- 7A. Evidence and procedure in cases of serious physical harm: Northern Ireland
- (1) Subsections (3) to (5) apply where a person ("the defendant") is charged in the same proceedings with a relevant offence and with an offence under section 5 in respect of the same harm ("the section 5 offence").
- (2) In this section "relevant offence" means—
- (c) an offence under section 18 or 20 of the Offences against the Person Act 1861 (grievous bodily harm etc.);
- (d) an offence under Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 of attempting to commit murder.
- (3) Where by virtue of Article 4(4) of the Criminal Evidence (Northern Ireland) Order 1988 a court or jury is permitted, in relation to the section 5 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether the defendant is guilty of a relevant offence, even if there would otherwise be no case for the defendant to answer in relation to that offence.
- (4) Where a magistrates' court is considering under Article 37 of the Magistrates' Courts (Northern Ireland) Order 1981 whether to commit the defendant for trial for the relevant offence, if there is sufficient evidence to put the defendant

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on trial for the section 5 offence there is deemed to be sufficient evidence to put the defendant on trial for the relevant offence.

- (5) The power of a judge of the Crown Court under section 2(3) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 (entry of “No Bill”) is not to be exercised in relation to a relevant offence unless it is also exercised in relation to the section 5 offence.
- (6) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of the relevant offence is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 5 offence, before that earlier time.)]

[...]

37. UNITED STATES

37.1. FEDERAL

[Violence Against Women Act, 1994 \(As amended\)](#)⁸⁴

VIOLENCE AGAINST WOMEN ACT OF 1994

[As Amended Through P.L. 113–4, Enacted March 7, 2013]

[...]

TITLE IV—VIOLENCE AGAINST WOMEN

SEC. 40001. [42 U.S.C. 13701 nt] SHORT TITLE. ⁸⁵

This title may be cited as the “Violence Against Women Act of 1994”. ⁸⁶

SEC. 40002. [42 U.S.C. 13925] DEFINITIONS AND GRANT PROVISIONS.

(a) DEFINITIONS.—In this title:

[...]

(8) DOMESTIC VIOLENCE.—The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

(9) DATING PARTNER.—The term “dating partner” refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, and where the existence of such a relationship shall be determined based on a consideration of—

(A) the length of the relationship;

(B) the type of relationship; and

(C) the frequency of interaction between the persons involved in the relationship.

(10) DATING VIOLENCE.—The term “dating violence” means violence committed by a person—

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

(11) ELDER ABUSE.—The term “elder abuse” means any action against a person who is 50 years of age or older that constitutes the willful—

⁸⁴ Violence Against Women Act 1994 (as amended through P.L. 113–4, enacted March 7, 2013), available at <http://legcounsel.house.gov/Comps/DOMVIOL.PDF> (last visited December 30, 2018).

⁸⁵ Public Law 113–4 provides for amendments made to this Act. Section 4 of such Public Law provides that “[e]xcept as otherwise specifically provided in this Act, the provisions of titles I, II, III, IV, VII, and sections 3, 602, 901, and 902 of this Act shall not take effect until the beginning of the fiscal year following the date of enactment of this Act [effective October 1, 2013]”. The amendments have been carried out in this version.

⁸⁶ This Act was enacted as title IV of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103–322). See appendix to this Act for the provisions of Acts amended by this title.

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(A) infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or

(B) deprivation by a person, including a caregiver, of goods or services with intent to cause physical harm, mental anguish, or mental illness.

[...]

(19) LEGAL ASSISTANCE.—The term “legal assistance” includes assistance to adult and youth victims of domestic violence, dating violence, sexual assault, and stalking in—

(A) family, tribal, territorial, immigration, employment, administrative agency, housing matters, campus administrative or protection or stay away order proceedings, and other similar matters; and

(B) criminal justice investigations, prosecutions and post-trial matters (including sentencing, parole, and probation) that impact the victim’s safety and privacy.

Intake or referral, by itself, does not constitute legal assistance.

(20) PERSONALLY IDENTIFYING INFORMATION OR PERSONAL INFORMATION.—The term “personally identifying information” or “personal information” means individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including—

(A) a first and last name; (B) a home or other physical address; (C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

(D) a social security number, driver license number, passport number, or student identification number; and

(E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.

[...]

(22) POPULATION SPECIFIC SERVICES.—The term “population specific services” means victim-centered services that address the safety, health, economic, legal, housing, workplace, immigration, confidentiality, or other needs of victims of domestic violence, dating violence, sexual assault, or stalking, and that are designed primarily for and are targeted to a specific underserved population.

(23) PROSECUTION.—The term “prosecution” means any public agency charged with direct responsibility for prosecuting criminal offenders, including such agency’s component bureaus (such as governmental victim assistance programs).

(24) PROTECTION ORDER OR RESTRAINING ORDER.—The term “protection order” or “restraining order” includes—

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence or contact or communication with or physical proximity to, another person, including any temporary or final orders issued by civil or criminal courts whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies, or relief issued as part of a protection order, restraining order, or stay away injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, dating violence, sexual assault, or stalking.

[...]

(29) SEXUAL ASSAULT.—The term “sexual assault” means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

(30) STALKING.—The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

[...]

(32) STATE DOMESTIC VIOLENCE COALITION.—The term “State domestic violence coalition” means a program determined by the Administration for Children and Families under sections 302 and 311 of the Family Violence Prevention and Services Act.

(34) TERRITORIAL DOMESTIC VIOLENCE OR SEXUAL ASSAULT COALITION.—The term “territorial domestic violence or sexual assault coalition” means a program addressing domestic or sexual violence that is—

(A) an established nonprofit, nongovernmental territorial coalition addressing domestic violence or sexual assault within the territory; or

(B) a nongovernmental organization with a demonstrated history of addressing domestic violence or sexual assault within the territory that proposes to incorporate as a nonprofit, nongovernmental territorial coalition.

(35) TRIBAL COALITION.—The term “tribal coalition” means an established nonprofit, nongovernmental Indian organization, Alaska Native organization, or a Native Hawaiian organization that—

(A) provides education, support, and technical assistance to member Indian service providers in a manner that enables those member providers to establish and maintain culturally appropriate services, including shelter and rape crisis services, designed to assist Indian women and the dependents of those women who are victims of domestic violence, dating violence, sexual

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assault, and stalking; and

(B) is comprised of board and general members that are representative of—

(i) the member service providers described in sub-paragraph (A); and

(ii) the tribal communities in which the services are being provided.

[...]

(37) TRIBAL NONPROFIT ORGANIZATION.—The term “tribal nonprofit organization” means— (A) a victim services provider that has as its primary purpose to assist Native victims of domestic violence, dating violence, sexual assault, or stalking; and (B) staff and leadership of the organization must include persons with a demonstrated history of assisting American Indian or Alaska Native victims of domestic violence, dating violence, sexual assault, or stalking.

[...]

(41) VICTIM ADVOCATE.—The term “victim advocate” means a person, whether paid or serving as a volunteer, who provides services to victims of domestic violence, sexual assault, stalking, or dating violence under the auspices or supervision of a victim services program.

(42) VICTIM ASSISTANT.—The term “victim assistant” means a person, whether paid or serving as a volunteer, who provides services to victims of domestic violence, sexual assault, stalking, or dating violence under the auspices or supervision of a court or a law enforcement or prosecution agency.

(43) VICTIM SERVICE PROVIDER.—The term “victim service provider” means a nonprofit, nongovernmental or tribal organization or rape crisis center, including a State or tribal coalition, that assists or advocates for domestic violence, dating violence, sexual assault, or stalking victims, including domestic violence shelters, faith-based organizations, and other organizations, with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(44) VICTIM SERVICES OR SERVICES.—The terms “victim services” and “services” mean services provided to victims of domestic violence, dating violence, sexual assault, or stalking, including telephonic or web-based hotlines, legal advocacy, economic advocacy, emergency and transitional shelter, accompaniment and advocacy through medical, civil or criminal justice, immigration, and social support systems, crisis intervention, short-term individual and group support services, information and referrals, culturally specific services, population specific services, and other related supportive services.

(45) YOUTH.—The term “youth” means a person who is 11 to 24 years old.

[...]

(8) NONEXCLUSIVITY.—Nothing in this title shall be construed to prohibit male victims of domestic violence, dating violence, sexual assault, and stalking from receiving benefits and services under this title.

[...]

(13) CIVIL RIGHTS.— (A) NONDISCRIMINATION.—No person in the United States shall, on the basis of actual or perceived race, color, religion, national origin, sex, gender identity (as defined in paragraph 249(c)(4) of title 18, United States Code), sexual orientation, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the Violence Against Women Act of 1994 (title IV of Public Law 103–322; 108 Stat. 1902), the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491), the Violence Against Women and Department of Justice Reauthorization Act of 2005 (title IX of Public Law 109–162; 119 Stat. 3080), the Violence Against Women Reauthorization Act of 2013, and any other program or activity funded in whole or in part with funds appropriated for grants, cooperative agreements, and other assistance administered by the Office on Violence Against Women.

[...]

(D) CONSTRUCTION.—Nothing contained in this paragraph shall be construed, interpreted, or applied to supplant, displace, preempt, or otherwise diminish the responsibilities and liabilities under other State or Federal civil rights law, whether statutory or common.

(14) CLARIFICATION OF VICTIM SERVICES AND LEGAL ASSISTANCE.—Victim services and legal assistance under this title also include services and assistance to victims of domestic violence, dating violence, sexual assault, or stalking who are also victims of severe forms of trafficking in persons as defined by section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).

[...]

Subtitle B—Safe Homes for Women

SEC. 40201. [42 U.S.C. 13701 nt] SHORT TITLE.

This title may be cited as the “Safe Homes for Women Act of 1994”.

CHAPTER 1—NATIONAL DOMESTIC VIOLENCE HOTLINE

SEC. 40211. GRANT FOR A NATIONAL DOMESTIC VIOLENCE HOTLINE.

See section 316 of the Family Violence and Prevention and Services Act relating to grants for prevention of sexual abuse and exploitation

CHAPTER 2—INTERSTATE ENFORCEMENT

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SEC. 40221. INTERSTATE ENFORCEMENT.

See chapter 110A of title 18 relating to domestic violence

CHAPTER 3—ARREST POLICIES IN DOMESTIC VIOLENCE CASES

SEC. 40231. ENCOURAGING ARREST POLICIES.

See part U of title I of the Omnibus Crime Control and Safe Streets Act of 1968 relating to grants to encourage arrest policies for domestic violence

CHAPTER 4—SHELTER GRANTS

SEC. 40241. GRANTS FOR BATTERED WOMEN'S SHELTERS.

See section 310(a) of the Family Violence and Prevention and Services Act

CHAPTER 5—YOUTH EDUCATION

SEC. 40251. YOUTH EDUCATION AND DOMESTIC VIOLENCE.

See section 317 of the Family Violence and Prevention and Services Act relating to youth education and domestic violence

CHAPTER 6—COMMUNITY PROGRAMS ON DOMESTIC VIOLENCE

SEC. 40261. ESTABLISHMENT OF COMMUNITY PROGRAMS ON DOMESTIC VIOLENCE.

See section 318 of the Family Violence and Prevention and Services Act relating to demonstration grants for community initiatives

CHAPTER 7—FAMILY VIOLENCE PREVENTION AND SERVICES ACT AMENDMENTS

SEC. 40271. GRANTEE REPORTING.

See section 303(a) of the Family Violence and Prevention and Services Act

CHAPTER 8—CONFIDENTIALITY FOR ABUSED PERSONS

SEC. 40281. [42 U.S.C. 13951] CONFIDENTIALITY OF ABUSED PERSON'S ADDRESS.

(a) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the United States Postal Service shall promulgate regulations to secure the confidentiality of domestic violence shelters and abused persons' addresses.

(b) REQUIREMENTS.—The regulations under subsection (a) shall require—

(1) in the case of an individual, the presentation to an appropriate postal official of a valid, outstanding protection order; and

(2) in the case of a domestic violence shelter, the presentation to an appropriate postal authority of proof from a State domestic violence coalition that meets the requirements of section 311 of the Family Violence Prevention and Services Act (42 U.S.C. 10410)) verifying that the organization is a domestic violence shelter.

(c) DISCLOSURE FOR CERTAIN PURPOSES.—The regulations under subsection (a) shall not prohibit the disclosure of addresses to State or Federal agencies for legitimate law enforcement or other governmental purposes.

(d) EXISTING COMPILATIONS.—Compilations of addresses existing at the time at which order is presented to an appropriate postal official shall be excluded from the scope of the regulations under subsection (a).

CHAPTER 9—DATA AND RESEARCH

SEC. 40291. [42 U.S.C. 13961] RESEARCH AGENDA.

(a) REQUEST FOR CONTRACT.—The Attorney General shall request the National Academy of Sciences, through its National Research Council, to enter into a contract to develop a research agenda to increase the understanding and control of violence against women, including rape and domestic violence. In furtherance of the contract, the National Academy shall convene a panel of nationally recognized experts on violence against women, in the fields of law, medicine, criminal justice, and direct services to victims and experts on domestic violence in diverse, ethnic, social, and language minority communities and the social sciences. In setting the agenda, the Academy shall focus primarily on preventive, educative, social, and legal strategies, including addressing the needs of under-served populations.

(b) DECLINATION OF REQUEST.—If the National Academy of Sciences declines to conduct the study and develop a research agenda, it shall recommend a nonprofit private entity that is qualified to conduct such a study. In that case, the Attorney General shall carry out subsection (a) through the nonprofit private entity recommended by the Academy. In either case, whether the study is conducted by the National Academy of Sciences or by the nonprofit group it recommends, the funds for the contract shall be made available from sums appropriated for the conduct of research by the National Institute of Justice.

(c) REPORT.—The Attorney General shall ensure that no later than 1 year after the date of enactment of this Act, the study required under subsection (a) is completed and a report describing the findings made is submitted to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

SEC. 40292. [42 U.S.C. 13962] STATE DATABASES.

(a) IN GENERAL.—The Attorney General shall study and report to the States and to Congress on how the States may collect centralized databases on the incidence of sexual and domestic violence offenses within a State.

(b) CONSULTATION.—In conducting its study, the Attorney General shall consult persons expert in the collection of criminal justice data, State statistical administrators, law enforcement personnel, and nonprofit nongovernmental agencies that provide direct services to victims of domestic violence. The final report shall set forth the views of the persons consulted on the recommendations.

(c) REPORT.—The Attorney General shall ensure that no later than 1 year after the date of enactment of this Act, the study required under subsection (a) is completed and a report describing the findings made is submitted to the Committees on the

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Judiciary of the Senate and the House of Representatives.

[...]

SEC. 40293. [42 U.S.C. 13963] NUMBER AND COST OF INJURIES.

(a) STUDY.—The Secretary of Health and Human Services, acting through the Centers for Disease Control Injury Control Division, shall conduct a study to obtain a national projection of the incidence of injuries resulting from domestic violence, the cost of injuries to health care facilities, and recommend health care strategies for reducing the incidence and cost of such injuries.

[...]

CHAPTER 10—RURAL DOMESTIC VIOLENCE AND CHILD ABUSE ENFORCEMENT

SEC. 40295. [42 U.S.C. 13971] RURAL DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, AND CHILD ABUSE ENFORCEMENT ASSISTANCE.

(a) PURPOSES.—The purposes of this section are—

(1) to identify, assess, and appropriately respond to child, youth, and adult victims of domestic violence, sexual assault, dating violence, and stalking in rural communities, by encouraging collaboration among—

(A) domestic violence, dating violence, sexual assault, and stalking victim service providers;

(B) law enforcement agencies;

(C) prosecutors;

(D) courts;

(E) other criminal justice service providers;

(F) human and community service providers;

(G) educational institutions; and

(H) health care providers, including sexual assault forensic examiners;

(2) to establish and expand nonprofit, nongovernmental, State, tribal, territorial, and local government victim services in rural communities to child, youth, and adult victims; and

(3) to increase the safety and well-being of women and children in rural communities, by—

(A) dealing directly and immediately with domestic violence, sexual assault, dating violence, and stalking occurring in rural communities; and

(B) creating and implementing strategies to increase awareness and prevent domestic violence, sexual assault, dating violence, and stalking.

(b) GRANTS AUTHORIZED.—The Attorney General, acting through the Director of the Office on Violence Against Women (referred to in this section as the “Director”), may award grants to States, Indian tribes, local governments, and nonprofit, public or private entities, including tribal nonprofit organizations, to carry out programs serving rural areas or rural communities that address domestic violence, dating violence, sexual assault, and stalking by—

(1) implementing, expanding, and establishing cooperative efforts and projects among law enforcement officers, prosecutors, victim service providers, and other related parties to investigate and prosecute incidents of domestic violence, dating violence, sexual assault, and stalking, including developing multidisciplinary teams focusing on high risk cases with the goal of preventing domestic and dating violence homicides;

(2) providing treatment, counseling, advocacy, legal assistance, and other long-term and short-term victim and population specific services to adult and minor victims of domestic violence, dating violence, sexual assault, and stalking in rural communities, including assistance in immigration matters;

(3) working in cooperation with the community to develop education and prevention strategies directed toward such issues; and

(4) developing, enlarging, or strengthening programs addressing sexual assault, including sexual assault forensic examiner programs, Sexual Assault Response Teams, law enforcement training, and programs addressing rape kit backlogs.

(5) developing programs and strategies that focus on the specific needs of victims of domestic violence, dating violence, sexual assault, and stalking who reside in remote rural and geographically isolated areas, including addressing the challenges posed by the lack of access to shelters and victims services, and limited law enforcement resources and training, and providing training and resources to Community Health Aides involved in the delivery of Indian Health Service programs.

[...]

CHAPTER 11—TRANSITIONAL HOUSING ASSISTANCE GRANTS FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

SEC. 40299. [42 U.S.C. 13975] TRANSITIONAL HOUSING ASSISTANCE GRANTS FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING.

(a) IN GENERAL.—The Attorney General, acting in consultation with the Director of the Violence Against Women Office of the Department of Justice, the Department of Housing and Urban Development, and the Department of Health and Human Services, shall award grants under this section to States, units of local government, Indian tribes, and other organizations, including domestic violence and sexual assault victim service providers, domestic violence and sexual assault coalitions, other nonprofit, nongovernmental organizations, or community-based and culturally specific organizations, that have a documented

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history of effective work concerning domestic violence, dating violence, sexual assault, or stalking (referred to in this section as the “recipient”) to carry out programs to provide assistance to minors, adults, and their dependents—

(1) who are homeless, or in need of transitional housing or other housing assistance, as a result of a situation of domestic violence, dating violence, sexual assault, or stalking; and

(2) for whom emergency shelter services or other crisis intervention services are unavailable or insufficient.

(b) GRANTS.—Grants awarded under this section may be used for programs that provide—

(1) transitional housing, including funding for the operating expenses of newly developed or existing transitional housing

(2) short-term housing assistance, including rental or utilities payments assistance and assistance with related expenses such as payment of security deposits and other costs incidental to relocation to transitional housing for persons described in subsection (a); and

(3) support services designed to enable a minor, an adult, or a dependent of such minor or adult, who is fleeing a situation of domestic violence, dating violence, sexual assault, or stalking to—

(A) locate and secure permanent housing;

(B) secure employment, including obtaining employment counseling, occupational training, job retention counseling, and counseling concerning re-entry in to the workforce; and

(C) integrate into a community by providing that minor, adult, or dependent with services, such as transportation, counseling, child care services, case management, and other assistance. Participation in the support services shall be voluntary. Receipt of the benefits of the housing assistance described in paragraph (2) shall not be conditioned upon the participation of the youth, adults, or their dependents in any or all of the support services offered them.

(c) DURATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), a minor, an adult, or a dependent, who receives assistance under this section shall receive that assistance for not more than 24 months.

(2) WAIVER.—The recipient of a grant under this section may waive the restriction under paragraph (1) for not more than an additional 6 month period with respect to any minor, adult, or dependent, who—

(A) has made a good-faith effort to acquire permanent housing; and

(B) has been unable to acquire permanent housing.

[...]

CHAPTER 11—RESEARCH ON EFFECTIVE INTERVENTIONS TO ADDRESS VIOLENCE AGAINST WOMEN ⁸⁷

Subtitle C—Civil Rights for Women

SEC. 40301. [42 U.S.C. 13701] SHORT TITLE.

This subtitle may be cited as the “Civil Rights Remedies for Gender-Motivated Violence Act”.

SEC. 40302. [42 U.S.C. 13981] CIVIL RIGHTS.

(a) PURPOSE.—Pursuant to the affirmative power of Congress to enact this subtitle under section 5 of the Fourteenth Amendment to the Constitution, as well as under section 8 of Article I of the Constitution, it is the purpose of this subtitle to protect the civil rights of victims of gender motivated violence and to promote public safety, health, and activities affecting interstate commerce by establishing a Federal civil rights cause of action for victims of crimes of violence motivated by gender.

(b) RIGHT TO BE FREE FROM CRIMES OF VIOLENCE.—All persons within the United States shall have the right to be free from crimes of violence motivated by gender (as defined in subsection (d)).

(c) CAUSE OF ACTION.—A person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the right declared in subsection (b) shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.

(d) DEFINITIONS.—For purposes of this section—

(1) the term “crime of violence motivated by gender” means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim’s gender; and

(2) the term “crime of violence” means ⁸⁸—

(A) an act or series of acts that would constitute a felony against the person or that would constitute a felony against property if the conduct presents a serious risk of physical injury to another, and that would come within the meaning of State or Federal offenses described in section 16 of title 18, United States Code, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States; and

(B) includes an act or series of acts that would constitute a felony described in subparagraph (A) but for the relationship between the person who takes such action and the individual against whom such action is taken.

(e) LIMITATION AND PROCEDURES.—

(1) LIMITATION.—Nothing in this section entitles a person to a cause of action under subsection (c) for random acts of violence

⁸⁷ The second chapter 11 was added to the end of subtitle B by section 505 of Public Law 109– 162. An earlier law (section 611 of P.L. 108–21) added the first chapter 11 at the end of subtitle B.

⁸⁸ So in original. The word “means” probably should appear after “(A)” below.

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unrelated to gender or for acts that cannot be demonstrated, by a preponderance of the evidence, to be motivated by gender (within the meaning of subsection (d)).

(2) NO PRIOR CRIMINAL ACTION.—Nothing in this section requires a prior criminal complaint, prosecution, or conviction to establish the elements of a cause of action under subsection (c).

(3) CONCURRENT JURISDICTION.—The Federal and State courts shall have concurrent jurisdiction over actions brought pursuant to this subtitle.

(4) SUPPLEMENTAL JURISDICTION.—Neither section 1367 of title 28, United States Code, nor subsection (c) of this section shall be construed, by reason of a claim arising under such subsection, to confer on the courts of the United States jurisdiction over any State law claim seeking the establishment of a divorce, alimony, equitable distribution of marital property, or child custody decree.

[...]

Subtitle D—Equal Justice for Women in the Courts Act

SEC. 40401. [42 U.S.C. 13701nt] SHORT TITLE.

This subtitle may be cited as the “Equal Justice for Women in the Courts Act of 1994”.

CHAPTER 1—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN STATE COURTS

SEC. 40411. [42 U.S.C. 13991] GRANTS AUTHORIZED.

The State Justice Institute may award grants for the purpose of developing, testing, presenting, and disseminating model programs to be used by States (as defined in section 202 of the State Justice Institute Act of 1984 (42 U.S.C. 10701)) in training judges and court personnel in the laws of the States and by Indian tribes in training tribal judges and court personnel in the laws of the tribes on rape, sexual assault, domestic violence, dating violence, and other crimes of violence motivated by the victim’s gender. Nothing shall preclude the attendance of tribal judges and court personnel at programs funded under this section for States to train judges and court personnel on the laws of the States.

SEC. 40412. [42 U.S.C. 13992] TRAINING PROVIDED BY GRANTS.

Training provided pursuant to grants made under this subtitle may include current information, existing studies, or current data on—

- (1) the nature and incidence of rape and sexual assault by strangers and non strangers, marital rape, and incest;
- (2) the underreporting of rape, sexual assault, and child sexual abuse;
- (3) the physical, psychological, and economic impact of rape and sexual assault on the victim, the costs to society, and the implications for sentencing;
- (4) the psychology of sex offenders, their high rate of recidivism, and the implications for sentencing;
- (5) the historical evolution of laws and attitudes on rape and sexual assault;
- (6) sex stereotyping of female and male victims of rape and sexual assault, racial stereotyping of rape victims and defendants, and the impact of such stereotypes on credibility of witnesses, sentencing, and other aspects of the administration of justice;
- (7) application of rape shield laws and other limits on introduction of evidence that may subject victims to improper sex stereotyping and harassment in both rape and non rape cases, including the need for sua sponte judicial intervention in inappropriate cross-examination;
- (8) the use of expert witness testimony on rape trauma syndrome, child sexual abuse accommodation syndrome, post-traumatic stress syndrome, and similar issues;
- (9) the legitimate reasons why victims of rape, sexual assault, and incest may refuse to testify against a defendant;
- (10) the nature and incidence of domestic violence and dating violence (as defined in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3996gg–2));
- (11) the physical, psychological, and economic impact of domestic violence and dating violence on the victim, the costs to society, and the implications for court procedures and sentencing;
- (12) the psychology and self-presentation of batterers and victims and the implications for court proceedings and credibility of witnesses;
- (13) sex stereotyping of female and male victims of domestic violence, myths about presence or absence of domestic violence and dating violence in certain racial, ethnic, religious, or socioeconomic groups, and their impact on the administration of justice;
- (14) historical evolution of laws and attitudes on domestic violence;
- (15) proper and improper interpretations of the defenses of self-defense and provocation, and the use of expert witness testimony on battered woman syndrome;
- (16) the likelihood of retaliation, recidivism, and escalation of violence by batterers, and the potential impact of incarceration and other meaningful sanctions for acts of domestic violence including violations of orders of protection;
- (17) economic, psychological, social and institutional reasons for victims’ inability to leave the batterer, to report domestic violence or dating violence or to follow through on complaints, including the influence of lack of support from police, judges, and court personnel, and the legitimate reasons why victims of domestic violence or dating violence may refuse to testify against a defendant;

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(18) the need for orders of protection, and the implications of mutual orders of protection, dual arrest policies, and mediation in domestic violence and dating violence cases;

(19) recognition of and response to gender-motivated crimes of violence other than rape, sexual assault and domestic violence, such as mass or serial murder motivated by the gender of the victims;

(20) the issues raised by domestic violence in determining custody and visitation, including how to protect the safety of the child and of a parent who is not a predominant aggressor of domestic violence, the legitimate reasons parents may report domestic violence, the ways domestic violence may relate to an abuser's desire to seek custody, and evaluating expert testimony in custody and visitation determinations involving domestic violence;

(21) the issues raised by child sexual assault in determining custody and visitation, including how to protect the safety of the child, the legitimate reasons parents may report child sexual assault, and evaluating expert testimony in custody and visitation determinations involving child sexual assault, including the current scientifically-accepted and empirically valid research on child sexual assault; and

(22) the extent to which addressing domestic violence and victim safety contributes to the efficient administration of justice.

SEC. 40413. [42 U.S.C. 13993] COOPERATION IN DEVELOPING PROGRAMS IN MAKING GRANTS UNDER THIS TITLE. The State Justice Institute shall ensure that model programs carried out pursuant to grants made under this subtitle are developed with the participation of law enforcement officials, public and private nonprofit victim advocates, including national, State, tribal, and local domestic violence and sexual assault programs and coalitions, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the courts.

[...]

CHAPTER 2—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN FEDERAL COURTS

SEC. 40421. [42 U.S.C. 14001] AUTHORIZATIONS OF CIRCUIT STUDIES; EDUCATION AND TRAINING GRANTS.

(a) STUDIES.—In order to gain a better understanding of the nature and the extent of gender bias in the Federal courts, the circuit judicial councils are encouraged to conduct studies of the instances, if any, of gender bias in their respective circuits and to implement recommended reforms.

(b) MATTERS FOR EXAMINATION.—The studies under subsection (a) may include an examination of the effects of gender on—
(1) the treatment of litigants, witnesses, attorneys, jurors, and judges in the courts, including before magistrate and bankruptcy judges;

[...]

(c) CLEARINGHOUSE.—The Administrative Office of the United States Courts shall act as a clearinghouse to disseminate any reports and materials issued by the gender bias task forces under subsection (a) and to respond to requests for such reports and materials. The gender bias task forces shall provide the Administrative Office of the Courts of the United States⁸⁹ with their reports and related material.

(d) CONTINUING EDUCATION AND TRAINING PROGRAMS.—The Federal Judicial Center, in carrying out section 620(b)(3) of title 28, United States Code, shall include in the educational programs it prepares, including the training programs for newly appointed judges, information on the aspects of the topics listed in section 40412 that pertain to issues within the jurisdiction of the Federal courts, and shall prepare materials necessary to implement this subsection.

[...]

Subtitle E—Violence Against Women Act Improvements

[...]

SEC. 40507. [42 U.S.C. 14013] REPORT ON BATTERED WOMEN'S SYNDROME.

(a) REPORT.—Not less than 1 year after the date of enactment of this Act, the Attorney General and the Secretary of Health and Human Services shall transmit to the House Committee on Energy and Commerce, the Senate Committee on Labor and Human Resources, and the Committees on the Judiciary of the Senate and the House of Representatives a report on the medical and psychological basis of "battered women's syndrome" and on the extent to which evidence of the syndrome has been considered in criminal trials.

(b) COMPONENTS.—The report under subsection (a) shall include—

(1) medical and psychological testimony on the validity of battered women's syndrome as a psychological condition;

(2) a compilation of State, tribal, and Federal court cases in which evidence of battered women's syndrome was offered in criminal trials; and

(3) an assessment by State, tribal, and Federal judges, prosecutors, and defense attorneys of the effects that evidence of battered women's syndrome may have in criminal trials.

SEC. 40508. [42 U.S.C. 14014] REPORT ON CONFIDENTIALITY OF ADDRESSES FOR VICTIMS OF DOMESTIC VIOLENCE.

(a) REPORT.—The Attorney General shall conduct a study of the means by which abusive spouses may obtain information concerning the addresses or locations of estranged or former spouses, notwithstanding the desire of the victims to have such information withheld to avoid further exposure to abuse. Based on the study, the Attorney General shall transmit a report to

⁸⁹ So in original. Probably should be "Administrative Office of the United States Courts".

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Congress including—

(1) the findings of the study concerning the means by which information concerning the addresses or locations of abused spouses may be obtained by abusers; and

(2) analysis of the feasibility of creating effective means of protecting the confidentiality of information concerning the addresses and locations of abused spouses to protect such persons from exposure to further abuse while preserving access to such information for legitimate purposes.

(b) USE OF COMPONENTS.—The Attorney General may use the National Institute of Justice and the Office for Victims of Crime in carrying out this section.

SEC. 40509. [42 U.S.C. 14015] REPORT ON RECORDKEEPING RELATING TO DOMESTIC VIOLENCE.

Not later than 1 year after the date of enactment of this Act, the Attorney General shall complete a study of, and shall submit to Congress a report and recommendations on, problems of record-keeping of criminal complaints involving domestic violence. The study and report shall examine—

(1) the efforts that have been made by the Department of Justice, including the Federal Bureau of Investigation, to collect statistics on domestic violence; and

(2) the feasibility of requiring that the relationship between an offender and victim be reported in Federal records of crimes of aggravated assault, rape, and other violent crimes.

Subtitle F—National Stalker and Domestic Violence Reduction

SEC. 40601. AUTHORIZING ACCESS TO FEDERAL CRIMINAL INFORMATION DATABASES.

(a) ACCESS AND ENTRY.—See 28 U.S.C. 534(e)

(b) RULEMAKING.—The Attorney General may make rules to carry out the subsection added to section 534 of title 28, United States Code, by subsection (a), after consultation with the officials charged with managing the National Crime Information Center and the Criminal Justice Information Services Advisory Policy Board.

SEC. 40602. [42 U.S.C. 14031] GRANT PROGRAM.

(a) IN GENERAL.—The Attorney General is authorized to provide grants to States and units of local government to improve and implement processes for entering data regarding stalking and domestic violence into local, State, and national crime information databases.

[...]

SEC. 40607. [42 U.S.C. 14036] TRAINING PROGRAMS FOR JUDGES.

The State Justice Institute, after consultation with nationally recognized nonprofit organizations with expertise in stalking and domestic violence cases, shall conduct training programs for State (as defined in section 202 of the State Justice Institute Authorization Act of 1984 (42 U.S.C. 10701)) and Indian tribal judges to ensure that a judge issuing an order in a stalking or domestic violence case has all available criminal history and other information, whether from State or Federal sources.

SEC. 40608. 42 U.S.C. 14037. RECOMMENDATIONS ON INTRASTATE COMMUNICATION.

The State Justice Institute, after consultation with nationally recognized nonprofit associations with expertise in data sharing among criminal justice agencies and familiarity with the issues raised in stalking and domestic violence cases, shall recommend proposals regarding how State courts may increase intrastate communication between civil and criminal courts.

SEC. 40609. 42 U.S.C. 14038 INCLUSION IN NATIONAL INCIDENT-BASED REPORTING SYSTEM.

Not later than 2 years after the date of enactment of this Act, the Attorney General, in accordance with the States, shall compile data regarding domestic violence and intimidation (including stalking) as part of the National Incident-Based Reporting System (NIBRS).

SEC. 40610. 42 U.S.C. 14039 REPORT TO CONGRESS.

Each even-numbered fiscal year, the Attorney General shall submit to the Congress a biennial report that provides¹ information concerning the incidence of stalking and domestic violence, and evaluates the effectiveness of State antistalking efforts and legislation.

SEC. 40611. [42 U.S.C. 14040] DEFINITIONS.

As used in this subtitle—

(1) the term “national crime information databases” refers to the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and

(2) the term “protection order” includes an injunction or any other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

Subtitle G—Protections for Battered Immigrant Women and Children

SEC. 40701. ALIEN PETITIONING RIGHTS FOR IMMEDIATE RELATIVE OR SECOND PREFERENCE STATUS.

See [section 204\(a\)\(1\) of the Immigration and Nationality Act](#)

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SEC. 40702. USE OF CREDIBLE EVIDENCE IN SPOUSAL WAIVER APPLICATIONS.

See section 216(c)(4) of the Immigration and Nationality Act

SEC. 40703. SUSPENSION OF DEPORTATION.

See section 244(a)(3) of the Immigration and Nationality Act

[...]

Subtitle H—Enhanced Training and Services to End Abuse Later in Life⁹⁰

SEC. 40801. [42 U.S.C. 14041] ENHANCED TRAINING AND SERVICES TO END ABUSE IN LATER LIFE.

(a) DEFINITIONS.—In this section—

(1) the term “exploitation” has the meaning given the term in section 2011 of the Social Security Act (42 U.S.C. 1397j);

(2) the term “later life”, relating to an individual, means the individual is 50 years of age or older; and

(3) the term “neglect” means the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an individual in later life.

(b) GRANT PROGRAM.—

(1) GRANTS AUTHORIZED.—The Attorney General may make grants to eligible entities to carry out the activities described in paragraph (2).

(2) MANDATORY AND PERMISSIBLE ACTIVITIES.—

(A) MANDATORY ACTIVITIES.—An eligible entity receiving a grant under this section shall use the funds received under the grant to—

(i) provide training programs to assist law enforcement agencies, prosecutors, agencies of States or units of local government, population specific organizations, victim service providers, victim advocates, and relevant officers in Federal, tribal, State, territorial, and local courts in recognizing and addressing instances of elder abuse;

(ii) provide or enhance services for victims of abuse in later life, including domestic violence, dating violence, sexual assault, stalking, exploitation, and neglect;

(iii) establish or support multidisciplinary collaborative community responses to victims of abuse in later life, including domestic violence, dating violence, sexual assault, stalking, exploitation, and neglect; and

(iv) conduct cross-training for law enforcement agencies, prosecutors, agencies of States or units of local government, attorneys, health care providers, population specific organizations, faith-based advocates, victim service providers, and courts to better serve victims of abuse in later life, including domestic violence, dating violence, sexual assault, stalking, exploitation, and neglect.

(B) PERMISSIBLE ACTIVITIES.—An eligible entity receiving a grant under this section may use the funds received under the grant to—

(i) provide training programs to assist attorneys, health care providers, faith-based leaders, or other community-based organizations in recognizing and addressing instances of abuse in later life, including domestic violence, dating violence, sexual assault, stalking, exploitation, and neglect; or

(ii) conduct outreach activities and awareness campaigns to ensure that victims of abuse in later life, including domestic violence, dating violence, sexual assault, stalking, exploitation, and neglect receive appropriate assistance.

[...]

Subtitle I—Domestic Violence Task Force⁹¹

SEC. 40901. [42 U.S.C. 14042] TASK FORCE.

(a) ESTABLISH.—The Attorney General, in consultation with national nonprofit, nongovernmental organizations whose primary expertise is in domestic violence, shall establish a task force to coordinate research on domestic violence and to report to Congress on any overlapping or duplication of efforts on domestic violence issues. The task force shall be comprised of representatives from all Federal agencies that fund such research.

(b) USES OF FUNDS.—Funds appropriated under this section shall be used to—

(1) develop a coordinated strategy to strengthen research focused on domestic violence education, prevention, and intervention strategies;

(2) track and report all Federal research and expenditures on domestic violence; and

(3) identify gaps and duplication of efforts in domestic violence research and governmental expenditures on domestic violence issues.

(c) REPORT.—The Task Force shall report to Congress annually on its work under subsection (b).

[...]

⁹⁰ This subtitle was added by section 1209(a) of P.L. 106–386 (114 Stat. 1508) and amended to read by section 204 of P.L. 113–4. There were no conforming amendments to conform the items relating to this subtitle in the table of sections.

⁹¹ This subtitle was added by section 1407 of P.L. 106–386 (114 Stat. 1517).

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[Subtitle J was repealed by section 104(b) of Public Law 113– 4.]

Subtitle K—Privacy Protections for Victims of Domestic Violence, Dating Violence, Sexual Violence, and Stalking

SEC. 41101. [42 U.S.C. 14043b] GRANTS TO PROTECT THE PRIVACY AND CONFIDENTIALITY OF VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING.

The Attorney General, through the Director of the Office on Violence Against Women, may award grants under this subtitle to States, Indian tribes, territories, or local agencies or nonprofit, nongovernmental organizations to ensure that personally identifying information of adult, youth, and child victims of domestic violence, sexual violence, stalking, and dating violence shall not be released or disclosed to the detriment of such victimized persons.

SEC. 41102. [42 U.S.C. 14043b–1] PURPOSE AREAS. Grants made under this subtitle may be used—

- (1) to develop or improve protocols, procedures, and policies for the purpose of preventing the release of personally identifying information of victims (such as developing alter- native identifiers);
- (2) to defray the costs of modifying or improving existing databases, registries, and victim notification systems to ensure that personally identifying information of victims is protected from release, unauthorized information sharing and disclosure;
- (3) to develop confidential opt out systems that will enable victims of violence to make a single request to keep personally identifying information out of multiple databases, victim notification systems, and registries; or
- (4) to develop safe uses of technology (such as notice requirements regarding electronic surveillance by government entities), to protect against abuses of technology (such as electronic or GPS stalking), or providing training for law enforcement on high tech electronic crimes of domestic violence, dating violence, sexual assault, and stalking.

Entities eligible for grants under this subtitle include—

- (1) jurisdictions or agencies within jurisdictions having authority or responsibility for developing or maintaining public databases, registries or victim notification systems;
- (2) nonprofit nongovernmental victim advocacy organizations having expertise regarding confidentiality, privacy, and information technology and how these issues are likely to impact the safety of victims;
- (3) States or State agencies;
- (4) local governments or agencies;
- (5) Indian tribal governments or tribal organizations;
- (6) territorial governments, agencies, or organizations; or
- (7) nonprofit nongovernmental victim advocacy organizations, including statewide domestic violence and sexual assault coalitions.

[...]

Subtitle L—Services, Education, Protection and Justice for Young Victims of Violence

SEC. 41201. [42 U.S.C. 14043] CREATING HOPE THROUGH OUTREACH, OPTIONS, SERVICES, AND EDUCATION FOR CHILDREN AND YOUTH (“CHOOSE CHILDREN & YOUTH”).

(a) GRANTS AUTHORIZED.—The Attorney General, working in collaboration with the Secretary of Health and Human Services and the Secretary of Education, shall award grants to enhance the safety of youth and children who are victims of, or exposed to, domestic violence, dating violence, sexual assault, stalking, or sex trafficking and prevent future violence.

(b) PROGRAM PURPOSES.—Funds provided under this section may be used for the following program purpose areas:

(1) SERVICES TO ADVOCATE FOR AND RESPOND TO YOUTH.— To develop, expand, and strengthen victim-centered interventions and services that target youth who are victims of domestic violence, dating violence, sexual assault, stalking, and sex trafficking. Services may include victim services, counseling, advocacy, mentoring, educational support, transportation, legal assistance in civil, criminal and administrative matters, such as family law cases, housing cases, child welfare proceedings, campus administrative proceedings, and civil protection order proceedings, population-specific services, and other activities that support youth in finding safety, stability, and justice and in addressing the emotional, cognitive, and physical effects of trauma. Funds may be used to—

(A) assess and analyze currently available services for youth victims of domestic violence, dating violence, sexual assault, stalking, and sex trafficking, determining relevant barriers to such services in a particular locality, and developing a community protocol to address such problems collaboratively;

(B) develop and implement policies, practices, and procedures to effectively respond to domestic violence, dating violence, sexual assault, stalking, or sex trafficking against youth; or

(C) provide technical assistance and training to enhance the ability of school personnel, victim service providers, child protective service workers, staff of law enforcement agencies, prosecutors, court personnel, individuals who work in after school programs, medical personnel, social workers, mental health personnel, and workers in other programs that serve children and youth to improve their ability to appropriately respond to the needs of children and youth who are victims of domestic violence, dating violence, sexual assault, stalking, and sex trafficking, and to properly refer such children, youth, and their families to appropriate services.

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(2) SUPPORTING YOUTH THROUGH EDUCATION AND PROTECTION.—To enable middle schools, high schools, and institutions of higher education to—

(A) provide training to school personnel, including healthcare providers and security personnel, on the needs of students who are victims of domestic violence, dating violence, sexual assault, stalking, or sex trafficking;

(B) develop and implement prevention and intervention policies in middle and high schools, including appropriate responses to, and identification and referral procedures for, students who are experiencing or perpetrating domestic violence, dating violence, sexual assault, stalking, or sex trafficking, and procedures for handling the requirements of court protective orders issued to or against students;

(C) provide support services for student victims of domestic violence, dating violence, sexual assault, stalking, or sex trafficking, such as a resource person who is either on-site or on-call;

(D) implement developmentally appropriate educational programming for students regarding domestic violence, dating violence, sexual assault, stalking, and sex trafficking and the impact of such violence on youth; or

(E) develop strategies to increase identification, support, referrals, and prevention programming for youth who are at high risk of domestic violence, dating violence, sexual assault, stalking, or sex trafficking.

[...]

Subtitle M—Strengthening America’s Families by Preventing Violence Against Women and Children

SEC. 41301. [42 U.S.C. 14043d] FINDINGS. Congress finds that—

(1) the former United States Advisory Board on Child Abuse suggests that domestic violence may be the single major precursor to child abuse and neglect fatalities in this country;

(2) studies suggest that as many as 10,000,000 children witness domestic violence every year;

(3) studies suggest that among children and teenagers, recent exposure to violence in the home was a significant factor in predicting a child’s violent behavior;

(4) a study by the Nurse-Family Partnership found that children whose parents did not participate in home visitation programs that provided coaching in parenting skills, advice and support, were almost 5 times more likely to be abused in their first 2 years of life;

(5) a child’s exposure to domestic violence seems to pose the greatest independent risk for being the victim of any act of partner violence as an adult;

(6) children exposed to domestic violence are more likely to believe that using violence is an effective means of getting one’s needs met and managing conflict in close relationships;

(7) children exposed to abusive parenting, harsh or erratic discipline, or domestic violence are at increased risk for juvenile crime; and

(8) in a national survey of more than 6,000 American families, 50 percent of men who frequently assaulted their wives also frequently abused their children.

SEC. 41302. [42 U.S.C. 14043d–1] PURPOSE. The purpose of this subtitle is to—

(1) prevent crimes involving violence against women, children, and youth;

(2) increase the resources and services available to prevent violence against women, children, and youth;

(3) reduce the impact of exposure to violence in the lives of children and youth so that the intergenerational cycle of violence is interrupted;

(4) develop and implement education and services programs to prevent children in vulnerable families from becoming victims or perpetrators of domestic violence, dating violence, sexual assault, or stalking;

(5) promote programs to ensure that children and youth receive the assistance they need to end the cycle of violence and develop mutually respectful, nonviolent relationships; and

(6) encourage collaboration among community-based organizations and governmental agencies serving children and youth, providers of health and mental health services and providers of domestic violence, dating violence, sexual assault, and stalking victim services to prevent violence against women and children.

SEC. 41303. [42 U.S.C. 14043d–2] SAVING MONEY AND REDUCING TRAGEDIES THROUGH PREVENTION (SMART PREVENTION).

(a) GRANTS AUTHORIZED.—The Attorney General, in consultation with the Secretary of Health and Human Services and the Secretary of Education, is authorized to award grants for the purpose of preventing domestic violence, dating violence, sexual assault, and stalking by taking a comprehensive approach that focuses on youth, children exposed to violence, and men as leaders and influencers of social norms.

(b) USE OF FUNDS.—Funds provided under this section may be used for the following purposes:

(1) TEEN DATING VIOLENCE AWARENESS AND PREVENTION.— To develop, maintain, or enhance programs that change attitudes and behaviors around the acceptability of domestic violence, dating violence, sexual assault, and stalking and provide education and skills training to young individuals and individuals who influence young individuals. The prevention program may use evidence-based, evidence-informed, or innovative strategies and practices focused on youth. Such a program should include—

(A) age and developmentally-appropriate education on domestic violence, dating violence, sexual assault, stalking, and sexual

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coercion, as well as healthy relationship skills, in school, in the community, or in health care settings;

(B) community-based collaboration and training for those with influence on youth, such as parents, teachers, coaches, healthcare providers, faith-leaders, older teens, and mentors;

(C) education and outreach to change environmental factors contributing to domestic violence, dating violence, sexual assault, and stalking; and

(D) policy development targeted to prevention, including school-based policies and protocols.

(2) CHILDREN EXPOSED TO VIOLENCE AND ABUSE.—To develop, maintain or enhance programs designed to prevent future incidents of domestic violence, dating violence, sexual assault, and stalking by preventing, reducing and responding to children's exposure to violence in the home. Such programs may include—

(A) providing services for children exposed to domestic violence, dating violence, sexual assault or stalking, including direct counseling or advocacy, and support for the non-abusing parent; and

(B) training and coordination for educational, after-school, and childcare programs on how to safely and confidentially identify children and families experiencing domestic violence, dating violence, sexual assault, or stalking and properly refer children exposed and their families to services and violence prevention programs.

(3) ENGAGING MEN AS LEADERS AND ROLE MODELS.—To develop, maintain or enhance programs that work with men to prevent domestic violence, dating violence, sexual assault, and stalking by helping men to serve as role models and social influencers of other men and youth at the individual, school, community or statewide levels.

(c) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this section, an entity shall be—

(1) a victim service provider, community-based organization, tribe or tribal organization, or other non-profit, non-governmental organization that has a history of effective work preventing domestic violence, dating violence, sexual assault, or stalking and expertise in the specific area for which they are applying for funds; or

(2) a partnership between a victim service provider, community-based organization, tribe or tribal organization, or other non-profit, nongovernmental organization that has a history of effective work preventing domestic violence, dating violence, sexual assault, or stalking and at least one of the following that has expertise in serving children exposed to domestic violence, dating violence, sexual assault, or stalking, youth domestic violence, dating violence, sexual assault, or stalking prevention, or engaging men to prevent domestic violence, dating violence, sexual assault, or stalking:

(A) A public, charter, tribal, or nationally accredited private middle or high school, a school administered by the Department of Defense under section 2164 of title 10, United States Code or section 1402 of the Defense Dependents' Education Act of 1978, a group of schools, or a school district.

(B) A local community-based organization, population-specific organization, or faith-based organization that has established expertise in providing services to youth.

(C) A community-based organization, population-specific organization, university or health care clinic, faith-based organization, or other non-profit, nongovernmental organization with a demonstrated history of effective work addressing the needs of children exposed to domestic violence, dating violence, sexual assault, or stalking.

(D) A nonprofit, nongovernmental entity providing services for runaway or homeless youth affected by domestic violence, dating violence, sexual assault, or stalking.

(E) Healthcare entities eligible for reimbursement under title XVIII of the Social Security Act, including providers that target the special needs of children and youth.

(F) Any other agencies, population-specific organizations, or nonprofit, nongovernmental organizations with the capacity to provide necessary expertise to meet the goals of the program; or (3) a public, charter, tribal, or nationally accredited private middle or high school, a school administered by the Department of Defense under section 2164 of title 10, United States Code or section 1402 of the Defense Dependents' Education Act of 1978, a group of schools, a school district, or an institution of higher education.

[...]

Subtitle N—Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking

CHAPTER 1—GRANT PROGRAMS

SEC. 41401. [42 U.S.C. 14043e] FINDINGS. Congress finds that:

(1) There is a strong link between domestic violence and homelessness. Among cities surveyed, 44 percent identified domestic violence as a primary cause of homelessness.

(2) Ninety-two percent of homeless women have experienced severe physical or sexual abuse at some point in their lives. Of all homeless women and children, 60 percent had been abused by age 12, and 63 percent have been victims of intimate partner violence as adults.

(3) Women and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.

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(4) A recent survey of legal service providers around the country found that these providers have responded to almost 150 documented eviction cases in the last year alone where the tenant was evicted because of the domestic violence crimes committed against her. In addition, nearly 100 clients were denied housing because of their status as victims of domestic violence.

(5) Women who leave their abusers frequently lack adequate emergency shelter options. The lack of adequate emergency options for victims presents a serious threat to their safety and the safety of their children. Requests for emergency shelter by homeless women with children increased by 78 per- cent of United States cities surveyed in 2004. In the same year, 32 percent of the requests for shelter by homeless families went unmet due to the lack of available emergency shelter beds.

(6) The average stay at an emergency shelter is 60 days, while the average length of time it takes a homeless family to secure housing is 6 to 10 months.

(7) Victims of domestic violence often return to abusive partners because they cannot find long-term housing.

(8) There are not enough Federal housing rent vouchers available to accommodate the number of people in need of long-term housing. Some people remain on the waiting list for Federal housing rent vouchers for years, while some lists are closed.

(9) Transitional housing resources and services provide an essential continuum between emergency shelter provision and independent living. A majority of women in transitional housing programs stated that had these programs not existed, they would have likely gone back to abusive partners.

(10) Because abusers frequently manipulate finances in an effort to control their partners, victims often lack steady in- come, credit history, landlord references, and a current ad- dress, all of which are necessary to obtain long-term permanent housing.

(11) Victims of domestic violence in rural areas face additional barriers, challenges, and unique circumstances, such as geographical isolation, poverty, lack of public transportation systems, shortages of health care providers, under-insurance or lack of health insurance, difficulty ensuring confidentiality in small communities, and decreased access to many resources (such as advanced education, job opportunities, and adequate childcare).

(12) Congress and the Secretary of Housing and Urban Development have recognized in recent years that families experiencing domestic violence have unique needs that should be ad- dressed by those administering the Federal housing programs.

SEC. 41402. [42 U.S.C. 14043e–1] PURPOSE.

The purpose of this chapter is to reduce domestic violence, dating violence, sexual assault, and stalking, and to prevent homelessness by—

(1) protecting the safety of victims of domestic violence, dating violence, sexual assault, and stalking who reside in homeless shelters, public housing, assisted housing, tribally designated housing, or other emergency, transitional, permanent, or affordable housing, and ensuring that such victims have meaningful access to the criminal justice system without jeopardizing such housing;

(2) creating long-term housing solutions that develop com- munities and provide sustainable living solutions for victims of domestic violence, dating violence, sexual assault, and stalking;

(3) building collaborations among victim service providers, homeless service providers, housing providers, and housing agencies to provide appropriate services, interventions, and training to address the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking; and

(4) enabling public and assisted housing agencies, tribally designated housing entities, private landlords, property management companies, and other housing providers and agencies to respond appropriately to domestic violence, dating violence, sexual assault, and stalking, while maintaining a safe environment for all housing residents.

[...]

SEC. 41404. [42 U.S.C. 14043e–3] COLLABORATIVE GRANTS TO INCREASE THE LONG-TERM STABILITY OF VICTIMS.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Administration for Children and Families, in partnership with the Secretary of Housing and Urban Development, shall award grants, contracts, or cooperative agreements for a period of not less than 2 years to eligible entities to develop long-term sustainability and self-sufficiency options for adult and youth victims of domestic violence, dating violence, sexual assault, and stalking who are currently homeless or at risk for becoming homeless.

[...]

(f) UNDERSERVED POPULATIONS AND PRIORITIES.—In awarding grants under this section, the Secretary of Health and Human Services shall—

(1) give priority to linguistically and culturally specific services;

(2) give priority to applications from entities that include a sexual assault service provider as described in subsection (b)(3); and

(3) award a minimum of 15 percent of the funds appropriated under this section in any fiscal year to tribal organizations.

[...]

SEC. 41405. [42 U.S.C. 14043e–4] GRANTS TO COMBAT VIOLENCE AGAINST WOMEN IN PUBLIC AND ASSISTED HOUSING.

(a) PURPOSE.—It is the purpose of this section to assist eligible grantees in responding appropriately to domestic violence, dating violence, sexual assault, and stalking so that the status of being a victim of such a crime is not a reason for the denial or loss of housing. Such assistance shall be accomplished through—

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- (1) education and training of eligible entities;
- (2) development and implementation of appropriate housing policies and practices;
- (3) enhancement of collaboration with victim service providers and tenant organizations; and
- (4) reduction of the number of victims of such crimes who are evicted or denied housing because of crimes and lease violations committed or directly caused by the perpetrators of such crimes.

[...]

(f) USE OF FUNDS.—Grants and contracts awarded pursuant to subsection (a) shall provide to eligible entities personnel, training, and technical assistance to develop and implement policies, practices, and procedures, making physical improvements or changes, and developing or enhancing collaborations for the purposes of—

- (1) enabling victims of domestic violence, dating violence, sexual assault, and stalking with otherwise disqualifying rental, credit, or criminal histories to be eligible to obtain housing or housing assistance, if such victims would otherwise qualify for housing or housing assistance and can provide documented evidence that demonstrates the causal connection between such violence or abuse and the victims' negative histories;
- (2) permitting applicants for housing or housing assistance to provide incomplete rental and employment histories, otherwise required as a condition of admission or assistance, if the victim believes that providing such rental and employment history would endanger the victim's or the victim children's safety;
- (3) protecting victims' confidentiality, including protection of victims' personally identifying information, address, or rental history;
- (4) assisting victims who need to leave a public housing, tribally designated housing, or assisted housing unit quickly to protect their safety, including those who are seeking transfer to a new public housing unit, tribally designated housing unit, or assisted housing unit, whether in the same or a different neighborhood or jurisdiction;
- (5) enabling the public housing agency, tribally designated housing entity, or assisted housing provider, or the victim, to remove, consistent with applicable State law, the perpetrator of domestic violence, dating violence, sexual assault, or stalking without evicting, removing, or otherwise penalizing the victim;
- (6) enabling the public housing agency, tribally designated housing entity, or assisted housing provider, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up;
- (7) developing and implementing more effective security policies, protocols, and services;
- (8) allotting not more than 15 percent of funds awarded under the grant to make modest physical improvements to enhance safety;
- (9) training personnel to more effectively identify and respond to victims of domestic violence, dating violence, sexual assault, and stalking; and
- (10) effectively providing notice to applicants and residents of the above housing policies, practices, and procedures.

[...]

CHAPTER 2—HOUSING RIGHTS

SEC. 41411. [42 U.S.C. 14043e–11] HOUSING PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING.

[...]

(b) PROHIBITED BASIS FOR DENIAL OR TERMINATION OF ASSISTANCE OR EVICTION.—

- (1) IN GENERAL.—An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.
- (2) CONSTRUCTION OF LEASE TERMS.—An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as—
 - (A) a serious or repeated violation of a lease for housing assisted under a covered housing program by the victim or threatened victim of such incident; or
 - (B) good cause for terminating the assistance, tenancy, or occupancy rights to housing assisted under a covered housing program of the victim or threatened victim of such incident.
- (3) TERMINATION ON THE BASIS OF CRIMINAL ACTIVITY.—
 - (A) DENIAL OF ASSISTANCE, TENANCY, AND OCCUPANCY RIGHTS PROHIBITED.—No person may deny assistance, tenancy, or occupancy rights to housing assisted under a covered housing program to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.
 - (B) BIFURCATION.—
 - (i) IN GENERAL.—Notwithstanding subparagraph (A), a public housing agency or owner or manager of housing assisted under a

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covered housing program may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing.

(ii) EFFECT OF EVICTION ON OTHER TENANTS.—If public housing agency or owner or manager of housing assisted under a covered housing program evicts, removes, or terminates assistance to an individual under clause (i), and the individual is the sole tenant eligible to receive assistance under a covered housing program, the public housing agency or owner or manager of housing assisted under the covered housing program shall provide any remaining tenant an opportunity to establish eligibility for the covered housing program. If a tenant described in the preceding sentence cannot establish eligibility, the public housing agency or owner or manager of the housing shall provide the tenant a reasonable time, as determined by the appropriate agency, to find new housing or to establish eligibility for housing under another covered housing program.

[...]

(e) EMERGENCY TRANSFERS.—Each appropriate agency shall adopt a model emergency transfer plan for use by public housing agencies and owners or managers of housing assisted under covered housing programs that—

(1) allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit assisted under a covered housing program if—

(A) the tenant expressly requests the transfer; and

(B)(i) the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same dwelling unit assisted under a covered housing program; or

(ii) in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90 day period preceding the request for transfer; and

(2) incorporates reasonable confidentiality measures to ensure that the public housing agency or owner or manager does not disclose the location of the dwelling unit of a tenant to a person that commits an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.

[...]

Subtitle O—National Resource Center

SEC. 41501. 42 U.S.C. 14043 GRANT FOR NATIONAL RESOURCE CENTER ON WORKPLACE RESPONSES TO ASSIST VICTIMS OF DOMESTIC AND SEXUAL VIOLENCE.

(a) AUTHORITY.—The Attorney General, acting through the Director of the Office on Violence Against Women, may award a grant to an eligible nonprofit nongovernmental entity or tribal organization, in order to provide for the establishment and operation of a national resource center on workplace responses to assist victims of domestic and sexual violence. The resource center shall provide information and assistance to employers and labor organizations to aid in their efforts to develop and implement responses to such violence.

[...]

FAMILY VIOLENCE PREVENTION AND SERVICES ACT ⁹²

SHORT TITLE

SEC. 301. This title may be cited as the “Family Violence Prevention and Services Act”.

(42 U.S.C. 10401 note)

DECLARATION OF PURPOSE

SEC. 302. It is the purpose of this title to—

(1) demonstrate the effectiveness of assisting ⁹³ States in efforts to increase public awareness about and prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents; and
(2) provide for technical assistance and training relating to family violence programs to States, local public agencies (including law enforcement agencies, courts, legal, social service, and health care professionals), nonprofit private organizations, and other persons seeking such assistance.

(42 U.S.C. 10401)

STATE DEMONSTRATION GRANTS AUTHORIZED

SEC. 303. (a)(1) In order to assist in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents, the Secretary is authorized, in accordance with the provisions of this title, to make grants to States.

⁹² Title III of Public Law 98–457.

⁹³ The amendment described in section 302(1)(A) of Public Law 102–295 cannot be executed. The amendatory instructions provide that paragraph (1) is amended by striking out “demonstration the effectiveness of assisting” and inserting in lieu thereof “assist”. The term “demonstration” does not appear in paragraph (1).

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(2) No grant may be made under this subsection unless the chief executive officer of the State seeking such grant submits an application to the Secretary at such time and in such manner as the Secretary may reasonably require.

[...]

SEC. 308. INFORMATION AND TECHNICAL ASSISTANCE CENTERS.

(a) PURPOSE AND GRANTS.—

(1) PURPOSE.—It is the purpose of this section to provide resource information, training, and technical assistance to Federal, State, and Indian tribal agencies, as well as to local domestic violence programs and to other professionals who provide services to victims of domestic violence.

(2) GRANTS.—From the amounts appropriated under this title, the Secretary shall award grants to private nonprofit organizations for the establishment and maintenance of one national resource center (as provided for in subsection (b)) and not to exceed seven special issue resource centers (as provided for in subsection (c)) focusing on one or more issues of concern to domestic violence victims.

(b) NATIONAL RESOURCE CENTER.—The national resource center established under subsection (a)(2) shall offer resource, policy and training assistance to Federal, State, and local government agencies, to domestic violence service providers, and to other professionals and interested parties on issues pertaining to domestic violence, and shall maintain a central resource library in order to collect, prepare, analyze, and disseminate information and statistics and analyses thereof relating to the incidence and prevention of family violence (particularly the prevention of repeated incidents of violence) and the provision of immediate shelter and related assistance.

(c) SPECIAL ISSUE RESOURCE CENTERS.—The special issue resource centers established under subsection (a)(2) shall provide information, training and technical assistance to State and local domestic violence service providers, and shall specialize in at least one of the following areas of domestic violence service, prevention, or law:

(1) Criminal justice response to domestic violence, including court-mandated abuser treatment.

(2) Improving the response of Child Protective Service agencies to battered mothers of abused children.

(3) Child custody issues in domestic violence cases.

(4) The use of the self-defense plea by domestic violence victims.

(5) Improving interdisciplinary health care responses and access to health care resources for victims of domestic violence.

(6) Improving access to and the quality of legal representation for victims of domestic violence in civil litigation, including the issuance and enforcement of protection orders.

(7) Providing technical assistance and training to State domestic violence coalitions.

[...]

SEC. 311. GRANTS FOR STATE DOMESTIC VIOLENCE COALITIONS.

(a) IN GENERAL.—The Secretary shall award grants for the funding of State domestic violence coalitions. Such coalitions shall further the purposes of domestic violence intervention and prevention through activities, including—

(1) working with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including—

(A) training and technical assistance for local programs and professionals working with victims of domestic violence;

(B) planning and conducting State needs assessments and planning for comprehensive services;

(C) serving as an information clearinghouse and resource center for the State; and

(D) collaborating with other governmental systems which affect battered women;

(2) working with judicial and law enforcement agencies to encourage appropriate responses to domestic violence cases and examine issues including—

(A) the inappropriateness of mutual protection orders;

(B) the prohibition of mediation when domestic violence is involved;

(C) the use of mandatory arrests of accused offenders; (D) the discouragement of dual arrests;

(E) the adoption of aggressive and vertical prosecution policies and procedures;

(F) the use of mandatory requirements for presentence investigations;

(G) the length of time taken to prosecute cases or reach plea agreements;

(H) the use of plea agreements;

(I) the consistency of sentencing, including comparisons of domestic violence crimes with other violent crimes;

(J) the restitution of victims;

(K) the use of training and technical assistance to law enforcement, judges, court officers and other criminal justice professionals;

(L) the reporting practices of, and significance to be accorded to, prior convictions (both felony and misdemeanor) and protection orders;

(M) the use of interstate extradition in cases of domestic violence crimes;

(N) the use of statewide and regional planning; and

(O) any other matters as the Secretary and the State domestic violence coalitions believe merit investigations;

(3) work with family law judges, criminal court judges, Child Protective Services agencies, and children's advocates to develop

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appropriate responses to child custody and visitation issues in domestic violence cases as well as cases where domestic violence and child abuse are both present, including—

- (A) the inappropriateness of mutual protection orders;
 - (B) the prohibition of mediation where domestic violence is involved;
 - (C) the inappropriate use of marital or conjoint counseling in domestic violence cases;
 - (D) the use of training and technical assistance for family law judges⁹⁴ and court personnel;
 - (E) the presumption of custody to domestic violence victims;
 - (F) the use of comprehensive protection orders to grant fullest protections possible to victims of domestic violence, including temporary custody support and maintenance;
 - (G) the development by Child Protective Service of supportive responses that enable victims to protect their children;
 - (H) the implementation of supervised visitations that do not endanger victims and their children;⁹⁵ and
 - (I) the possibility of permitting domestic violence victims to remove children from the State when the safety of the children or the victim is at risk;
- (4) conduct public education campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence, including information aimed at underserved racial, ethnic or language-minority populations; and
- (5) participate in planning and monitoring of the distribution of grants and grant funds to their State under section 303(a).
[...]

SEC. 314. GRANTS FOR PUBLIC INFORMATION CAMPAIGNS.

(a) IN GENERAL.—The Secretary may make grants to public or private nonprofit entities to provide public information campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence.
[...]

SEC. 315. MODEL STATE LEADERSHIP GRANTS FOR DOMESTIC VIOLENCE INTERVENTION.

(a) IN GENERAL.—The Secretary, in cooperation with the Attorney General, shall award grants to not more than 10 States to assist such States in becoming model demonstration States and in meeting the costs of improving State leadership concerning activities that will—

- (1) increase the number of prosecutions for domestic violence crimes;
- (2) encourage the reporting of incidences of domestic violence; and
- (3) facilitate “arrests and aggressive” prosecution policies.

[...]

SEC. 316. NATIONAL DOMESTIC VIOLENCE HOTLINE GRANT.

(a) IN GENERAL.—The Secretary may award a grant to a private, nonprofit entity to provide for the operation of a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence.
[...]

(42 U.S.C. 10416)

SEC. 317. YOUTH EDUCATION AND DOMESTIC VIOLENCE.

(a) GENERAL PURPOSE.—For purposes of this section, the Secretary may, in consultation with the Secretary of Education, select, implement and evaluate 4 model programs for education of young people about domestic violence and violence among intimate partners.

(b) NATURE OF PROGRAM.—The Secretary shall select, implement and evaluate separate model programs for 4 different audiences: primary schools, middle schools, secondary schools, and institutions of higher education. The model programs shall be selected, implemented, and evaluated in consultation with educational experts, legal and psychological experts on battering, and victim advocate organizations such as battered women’s shelters, State coalitions and resource centers.

(c) REVIEW AND DISSEMINATION.—Not later than 2 years after the date of enactment of this section, the Secretary shall transmit the design and evaluation of the model programs, along with a plan and cost estimate for nationwide distribution, to the relevant committees of Congress for review.
[...]

⁹⁴ Paragraph (4)(A) of such section 40272(c) provides that paragraph (3) is amended by inserting “, criminal court judges,” after “family law judges,” each place it appears. The amendment cannot be executed in subparagraph (D) because the term “judges,” does not appear. (Compare “judges,” and “judges”.)

⁹⁵ Paragraph (4)(C) of such section 40272(c) provides that subparagraph (H) is amended by striking “supervised visitations that do not endanger victims and their children,” and inserting “supervised visitations or denial of visitation to protect against danger to victims or their children”. The amendment cannot be executed because the term to be struck does not appear. (Compare “children,” and “children;”.)

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(42 U.S.C. 10417)

SEC. 318. DEMONSTRATION GRANTS FOR COMMUNITY INITIATIVES.

(a) IN GENERAL.—The Secretary shall provide grants to non-profit private organizations to establish projects in local communities involving many sectors of each community to coordinate intervention and prevention of domestic violence.
[...]

[18 U.S. Code § 922 - Unlawful acts](#)⁹⁶

[...]

(g) It shall be unlawful for any person—

[...]

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

[...]

[Violence Against Women Reauthorization Act, 2013](#)⁹⁷

An Act To reauthorize the [Violence Against Women Act of 1994](#)

[...]

TITLE I—ENHANCING JUDICIAL AND LAW ENFORCEMENT TOOLS TO COMBAT
VIOLENCE AGAINST WOMEN

[...]

SEC. 102. GRANTS TO ENCOURAGE ARREST POLICIES AND ENFORCEMENT OF PROTECTION ORDERS.

(a) IN GENERAL.—Part U of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh et seq.) is amended—

(1) in section 2101 (42 U.S.C. 3796hh)—

(A) in subsection (b)—

[...]

(viii) in paragraph (10), by striking “non-profit, non-governmental victim services organizations,” and inserting “victim service providers, staff from population specific organizations,”; and

(ix) by adding at the end the following:

“(14) To develop and implement training programs for prosecutors and other prosecution-related personnel regarding best practices to ensure offender accountability, victim safety, and victim consultation in cases involving domestic violence, dating violence, sexual assault, and stalking.

⁹⁶ U.S. Code Title 18, Part I, Chapter 44 (Firearms), § 922, available at <https://www.law.cornell.edu/uscode/text/18/922> (last visited December 30, 2018).

⁹⁷ Violence Against Women Reauthorization Act of 2013, Public Law 113-4 (7 March 2013), codified 42 U.S.C. 13925 through 14045d, available at <https://www.congress.gov/113/plaws/publ4/PLAW-113publ4.pdf> (last visited December 30, 2018).

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“(15) To develop or strengthen policies, protocols, and training for law enforcement, prosecutors, and the judiciary in recognizing, investigating, and prosecuting instances of domestic violence, dating violence, sexual assault, and stalking against immigrant victims, including the appropriate use of applications for nonimmigrant status under subparagraphs (T) and (U) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

“(16) To develop and promote State, local, or tribal legislation and policies that enhance best practices for responding to the crimes of domestic violence, dating violence, sexual assault, and stalking, including the appropriate treatment of victims.

“(17) To develop, implement, or enhance sexual assault nurse examiner programs or sexual assault forensic examiner programs, including the hiring and training of such examiners.

“(18) To develop, implement, or enhance Sexual Assault Response Teams or similar coordinated community responses to sexual assault.

“(19) To develop and strengthen policies, protocols, and training for law enforcement officers and prosecutors regarding the investigation and prosecution of sexual assault cases and the appropriate treatment of victims.

“(20) To provide human immunodeficiency virus testing programs, counseling, and prophylaxis for victims of sexual assault.

“(21) To identify and inventory backlogs of sexual assault evidence collection kits and to develop protocols for responding to and addressing such backlogs, including policies and protocols for notifying and involving victims.

“(22) To develop multidisciplinary high-risk teams focusing on reducing domestic violence and dating violence homicides by—
“(A) using evidence-based indicators to assess the risk of homicide and link high-risk victims to immediate crisis intervention services;

“(B) identifying and managing high-risk offenders; and

“(C) providing ongoing victim advocacy and referrals to comprehensive services including legal, housing, health care, and economic assistance.”;

[...]

SEC. 104. CONSOLIDATION OF GRANTS TO SUPPORT FAMILIES IN THE JUSTICE SYSTEM.

(a) IN GENERAL.—Title III of division B of the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386; 114 Stat. 1509) is amended by striking the section preceding section 1302 (42 U.S.C. 10420), as amended by section 306 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109–162; 119 Stat. 316), and inserting the following:

“SEC. 1301. GRANTS TO SUPPORT FAMILIES IN THE JUSTICE SYSTEM.

“(a) IN GENERAL.—The Attorney General may make grants to States, units of local government, courts (including juvenile courts), Indian tribal governments, nonprofit organizations, legal services providers, and victim services providers to improve the response of all aspects of the civil and criminal justice system to families with a history of domestic violence, dating violence, sexual assault, or stalking, or in cases involving allegations of child sexual abuse.

“(b) USE OF FUNDS.—A grant under this section may be used to—

“(1) provide supervised visitation and safe visitation exchange of children and youth by and between parents in situations involving domestic violence, dating violence, child sexual abuse, sexual assault, or stalking;

“(2) develop and promote State, local, and tribal legislation, policies, and best practices for improving civil and criminal court functions, responses, practices, and procedures in cases involving a history of domestic violence or sexual assault, or in cases involving allegations of child sexual abuse, including cases in which the victim proceeds pro se;

“(3) educate court-based and court-related personnel and court-appointed personnel (including custody evaluators and guardians ad litem) and child protective services workers on the dynamics of domestic violence, dating violence, sexual assault, and stalking, including information on perpetrator behavior, evidence-based risk factors for domestic and dating violence homicide, and on issues relating to the needs of victims, including safety, security, privacy, and confidentiality, including cases in which the victim proceeds pro se;

“(4) provide appropriate resources in juvenile court matters to respond to dating violence, domestic violence, sexual assault (including child sexual abuse), and stalking and ensure necessary services dealing with the health and mental health of victims are available;

“(5) enable courts or court-based or court-related programs to develop or enhance—

“(A) court infrastructure (such as specialized courts, consolidated courts, dockets, intake centers, or interpreter services);

“(B) community-based initiatives within the court system (such as court watch programs, victim assistants, pro se victim assistance programs, or community-based supplementary services);

“(C) offender management, monitoring, and accountability programs;

“(D) safe and confidential information-storage and information-sharing databases within and between court systems; 42 USC 10420.

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“(E) education and outreach programs to improve community access, including enhanced access for underserved populations; and
“(F) other projects likely to improve court responses to domestic violence, dating violence, sexual assault, and stalking;
“(6) provide civil legal assistance and advocacy services, including legal information and resources in cases in which the victim proceeds pro se, to—
“(A) victims of domestic violence; and
“(B) nonoffending parents in matters—
“(i) that involve allegations of child sexual abuse;
“(ii) that relate to family matters, including civil protection orders, custody, and divorce; and
“(iii) in which the other parent is represented by counsel;
“(7) collect data and provide training and technical assistance, including developing State, local, and tribal model codes and policies, to improve the capacity of grantees and communities to address the civil justice needs of victims of domestic violence, dating violence, sexual assault, and stalking who have legal representation, who are proceeding pro se, or who are proceeding with the assistance of a legal advocate; and
“(8) to improve training and education to assist judges, judicial personnel, attorneys, child welfare personnel, and legal advocates in the civil justice system.
[...]

TITLE III—SERVICES, PROTECTION, AND JUSTICE FOR YOUNG VICTIMS OF VIOLENCE

[...]

SEC. 304. CAMPUS SEXUAL VIOLENCE, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING EDUCATION AND PREVENTION.

(a) IN GENERAL.—Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)) is amended—
[...]

(5) by striking paragraph (8) and inserting the following:

“(8)(A) Each institution of higher education participating in any program under this title and title IV of the Economic Opportunity Act of 1964, other than a foreign institution of higher education, shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding—
“(i) such institution’s programs to prevent domestic violence, dating violence, sexual assault, and stalking; and
“(ii) the procedures that such institution will follow once an incident of domestic violence, dating violence, sexual assault, or stalking has been reported, including a statement of the standard of evidence that will be used during any institutional conduct proceeding arising from such a report.
“(B) The policy described in subparagraph (A) shall address the following areas:
“(i) Education programs to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking, which shall include—
“(I) primary prevention and awareness programs for all incoming students and new employees, which shall include—
“(aa) a statement that the institution of higher education prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;
“(bb) the definition of domestic violence, dating violence, sexual assault, and stalking in the applicable jurisdiction;
“(cc) the definition of consent, in reference to sexual activity, in the applicable jurisdiction;
“(dd) safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual;
“(ee) information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and
“(ff) the information described in clauses (ii) through (vii); and
“(II) ongoing prevention and awareness campaigns for students and faculty, including information described in items (aa) through (ff) of subclause (I).
“(ii) Possible sanctions or protective measures that such institution may impose following a final determination of an institutional disciplinary procedure regarding rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking.
“(iii) Procedures victims should follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about—
“(I) the importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order;
“(II) to whom the alleged offense should be reported;
“(III) options regarding law enforcement and campus authorities, including notification of the victim’s option to—
“(aa) notify proper law enforcement authorities, including on-campus and local police;
“(bb) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and

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“(cc) decline to notify such authorities; and

“(IV) where applicable, the rights of victims and the institution’s responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

“(iv) Procedures for institutional disciplinary action in cases of alleged domestic violence, dating violence, sexual assault, or stalking, which shall include a clear statement that—

“(I) such proceedings shall—

“(aa) provide a prompt, fair, and impartial investigation and resolution; and

“(bb) be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;

“(II) the accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice; and

“(III) both the accuser and the accused shall be simultaneously informed, in writing, of—

“(aa) the outcome of any institutional disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking;

“(bb) the institution’s procedures for the accused and the victim to appeal the results of the institutional disciplinary proceeding;

“(cc) of any change to the results that occurs prior to the time that such results become final; and

“(dd) when such results become final.

“(v) Information about how the institution will protect the confidentiality of victims, including how publicly-available recordkeeping will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.

“(vi) Written notification of students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community.

“(vii) Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

“(C) A student or employee who reports to an institution of higher education that the student or employee has been a victim of domestic violence, dating violence, sexual assault, or stalking, whether the offense occurred on or off campus, shall be provided with a written explanation of the student or employee’s rights and options, as described in clauses (ii) through (vii) of subparagraph (B).”;

(6) in paragraph (9), by striking “The Secretary” and inserting “The Secretary, in consultation with the Attorney General of the United States,”;

(7) by striking paragraph (16) and inserting the following:

“(16)(A) The Secretary shall seek the advice and counsel of the Attorney General of the United States concerning the development, and dissemination to institutions of higher education, of best practices information about campus safety and emergencies.

“(B) The Secretary shall seek the advice and counsel of the Attorney General of the United States and the Secretary of Health and Human Services concerning the development, and dissemination to institutions of higher education, of best practices information about preventing and responding to incidents of domestic violence, dating violence, sexual assault, and stalking, including elements of institutional policies that have proven successful based on evidence-based outcome measurements.”; and

(8) by striking paragraph (17) and inserting the following:

“(17) No officer, employee, or agent of an institution participating in any program under this title shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities under any provision of this subsection.”.

[...]

**TITLE V—STRENGTHENING THE HEALTHCARE SYSTEM’S RESPONSE
TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING**

SEC. 501. CONSOLIDATION OF GRANTS TO STRENGTHEN THE HEALTHCARE SYSTEM’S RESPONSE TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING.

(a) GRANTS.—Section 399P of the Public Health Service Act (42 U.S.C. 280g–4) is amended to read as follows:

“SEC. 399P. GRANTS TO STRENGTHEN THE HEALTHCARE SYSTEM’S RESPONSE TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING.

“(a) IN GENERAL.—The Secretary shall award grants for—

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“(1) the development or enhancement and implementation of interdisciplinary training for health professionals, public health staff, and allied health professionals;

“(2) the development or enhancement and implementation of education programs for medical, nursing, dental, and other health profession students and residents to prevent and respond to domestic violence, dating violence, sexual assault, and stalking; and

“(3) the development or enhancement and implementation of comprehensive statewide strategies to improve the response of clinics, public health facilities, hospitals, and other health settings (including behavioral and mental health programs) to domestic violence, dating violence, sexual assault, and stalking.

“(b) USE OF FUNDS.—

“(1) REQUIRED USES.—Amounts provided under a grant under this section shall be used to—

“(A) fund interdisciplinary training and education programs under paragraphs (1) and (2) of subsection (a) that—

“(i) are designed to train medical, psychology, dental, social work, nursing, and other health profession, students, interns, residents, fellows, or current health care providers to identify and provide health care services (including mental or behavioral health care services and referrals to appropriate community services) to individuals who are or who have been victims of domestic violence, dating violence, sexual assault, or stalking; and

“(ii) plan and develop culturally competent clinical training components for integration into approved internship, residency, and fellowship training or continuing medical or other health education training that address physical, mental, and behavioral health issues, including protective factors, related to domestic violence, dating violence, sexual assault, stalking, and other forms of violence and abuse, focus on reducing health disparities and preventing violence and abuse, and include the primacy of victim safety and confidentiality;

“(B) design and implement comprehensive strategies to improve the response of the health care system to domestic or sexual violence in clinical and public health settings, hospitals, clinics, and other health settings (including behavioral and mental health), under subsection (a)(3) through—

“(i) the implementation, dissemination, and evaluation of policies and procedures to guide health professionals and public health staff in identifying and responding to domestic violence, dating violence, sexual assault, and stalking, including strategies to ensure that health information is maintained in a manner that protects the patient’s privacy and safety, and safely uses health information technology to improve documentation, identification, assessment, treatment, and follow-up care;

“(ii) the development of on-site access to services to address the safety, medical, and mental health needs of patients by increasing the capacity of existing health care professionals and public health staff to address domestic violence, dating violence, sexual assault, and stalking, or by contracting with or hiring domestic or sexual assault advocates to provide such services or to model other services appropriate to the geographic and cultural needs of a site;

“(iii) the development of measures and methods for the evaluation of the practice of identification, intervention, and documentation regarding victims of domestic violence, dating violence, sexual assault, and stalking, including the development and testing of quality improvement measurements, in accordance with the multi-stakeholder and quality measurement processes established under paragraphs (7) and (8) of section 1890(b) and section 1890A of the Social Security Act (42 U.S.C. 1395aaa(b)(7) and (8); 42 U.S.C. 1890A); and

“(iv) the provision of training and follow-up technical assistance to health care professionals, and public health staff, and allied health professionals to identify, assess, treat, and refer clients who are victims of domestic violence, dating violence, sexual assault, or stalking, including using tools and training materials already developed.

“(2) PERMISSIBLE USES.—

“(A) CHILD AND ELDER ABUSE.—To the extent consistent with the purpose of this section, a grantee may use amounts received under this section to address, as part of a comprehensive programmatic approach implemented under the grant, issues relating to child or elder abuse.

“(B) RURAL AREAS.—Grants funded under paragraphs (1) and (2) of subsection (a) may be used to offer to rural areas community-based training opportunities, which may include the use of distance learning networks and other available technologies needed to reach isolated rural areas, for medical, nursing, and other health profession students and residents on domestic violence, dating violence, sexual assault, stalking, and, as appropriate, other forms of violence and abuse.

“(C) OTHER USES.—Grants funded under subsection (a)(3) may be used for—

“(i) the development of training modules and policies that address the overlap of child abuse, domestic violence, dating violence, sexual assault, and stalking and elder abuse, as well as childhood exposure to domestic and sexual violence;

“(ii) the development, expansion, and implementation of sexual assault forensic medical examination or sexual assault nurse examiner programs;

“(iii) the inclusion of the health effects of lifetime exposure to violence and abuse as well as related protective factors and behavioral risk factors in health professional training schools including medical, dental, nursing, social work, and mental and behavioral health curricula, and allied health service training courses; or

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“(iv) the integration of knowledge of domestic violence, dating violence, sexual assault, and stalking into health care accreditation and professional licensing examinations, such as medical, dental, social work, and nursing boards, and where appropriate, other allied health exams.

[...]

TITLE IX—SAFETY FOR INDIAN WOMEN

SEC. 901. GRANTS TO INDIAN TRIBAL GOVERNMENTS.

Section 2015(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–10(a)) is amended—

[...]

(6) by adding at the end the following:

“(9) provide services to address the needs of youth who are victims of domestic violence, dating violence, sexual assault, sex trafficking, or stalking and the needs of youth and children exposed to domestic violence, dating violence, sexual assault, or stalking, including support for the non abusing parent or the caretaker of the youth or child; and

“(10) develop and promote legislation and policies that enhance best practices for responding to violent crimes against Indian women, including the crimes of domestic violence, dating violence, sexual assault, sex trafficking, and stalking.”.

SEC. 902. GRANTS TO INDIAN TRIBAL COALITIONS.

Section 2001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is amended by striking subsection (d) and inserting the following:

“(d) TRIBAL COALITION GRANTS.—

“(1) PURPOSE.—The Attorney General shall award a grant to tribal coalitions for purposes of—

“(A) increasing awareness of domestic violence and sexual assault against Indian women;

“(B) enhancing the response to violence against Indian women at the Federal, State, and tribal levels;

“(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence, including sex trafficking; and

“(D) assisting Indian tribes in developing and promoting State, local, and tribal legislation and policies that enhance best practices for responding to violent crimes against Indian women, including the crimes of domestic violence, dating violence, sexual assault, sex trafficking, and stalking.

[...]

SEC. 904. TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC VIOLENCE.

Title II of Public Law 90–284 (25 U.S.C. 1301 et seq.) (commonly known as the “Indian Civil Rights Act of 1968”) is amended by adding at the end the following:

“SEC. 204. TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC VIOLENCE.

“(a) DEFINITIONS.—In this section:

“(1) DATING VIOLENCE.—The term ‘dating violence’ means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

“(2) DOMESTIC VIOLENCE.—The term ‘domestic violence’ means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family- violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.

“(3) INDIAN COUNTRY.—The term ‘Indian country’ has the meaning given the term in section 1151 of title 18, United States Code.

“(4) PARTICIPATING TRIBE.—The term ‘participating tribe’ means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.

“(5) PROTECTION ORDER.—The term ‘protection order’—

“(A) means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and

“(B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

“(6) SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION.—

The term ‘special domestic violence criminal jurisdiction’ means the criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise.

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“(7) SPOUSE OR INTIMATE PARTNER.—The term ‘spouse or intimate partner’ has the meaning given the term in section 2266 of title 18, United States Code.

“(b) NATURE OF THE CRIMINAL JURISDICTION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections 201 and 203, the powers of self-government of a participating tribe include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons.

“(2) CONCURRENT JURISDICTION.—The exercise of special domestic violence criminal jurisdiction by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both.

“(3) APPLICABILITY.—Nothing in this section—

“(A) creates or eliminates any Federal or State criminal jurisdiction over Indian country; or “(B) affects the authority of the United States or any State government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian country.

“(4) EXCEPTIONS.—

“(A) VICTIM AND DEFENDANT ARE BOTH NON-INDIANS.—

[...]

“(B) DEFENDANT LACKS TIES TO THE INDIAN TRIBE.—

[...]

“(c) CRIMINAL CONDUCT.—A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

“(1) DOMESTIC VIOLENCE AND DATING VIOLENCE.—An act of domestic violence or dating violence that occurs in the Indian country of the participating tribe.

“(2) VIOLATIONS OF PROTECTION ORDERS.—An act that—

“(A) occurs in the Indian country of the participating tribe; and

“(B) violates the portion of a protection order that—

“(i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;

“(ii) was issued against the defendant;

“(iii) is enforceable by the participating tribe; and

“(iv) is consistent with section 2265(b) of title 18, United States Code.

[...]

“(f) GRANTS TO TRIBAL GOVERNMENTS.—The Attorney General may award grants to the governments of Indian tribes (or to authorized designees of those governments)—

“(1) to strengthen tribal criminal justice systems to assist Indian tribes in exercising special domestic violence criminal jurisdiction, including—

“(A) law enforcement (including the capacity of law enforcement or court personnel to enter information into and obtain information from national crime information databases);

“(B) prosecution;

“(C) trial and appellate courts;

“(D) probation systems;

“(E) detention and correctional facilities;

“(F) alternative rehabilitation centers;

“(G) culturally appropriate services and assistance for victims and their families; and

“(H) criminal codes and rules of criminal procedure, appellate procedure, and evidence;

“(2) to provide indigent criminal defendants with the effective assistance of licensed defense counsel, at no cost to the defendant, in criminal proceedings in which a participating tribe prosecutes a crime of domestic violence or dating violence or a criminal violation of a protection order;

“(3) to ensure that, in criminal proceedings in which a participating tribe exercises special domestic violence criminal jurisdiction, jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and

“(4) to accord victims of domestic violence, dating violence, and violations of protection orders rights that are similar to the rights of a crime victim described in section 3771(a) of title 18, United States Code, consistent with tribal law and custom.

[...]

SEC. 905. TRIBAL PROTECTION ORDERS.

Section 2265 of title 18, United States Code, is amended by striking subsection (e) and inserting the following:

“(e) TRIBAL COURT JURISDICTION.—For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.”

[...]

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37.2. STATES

37.2.1. ALABAMA

[Code of Alabama, 2017](#)⁹⁸

Title 13 A – Criminal Code

Chapter 6 – Offenses Involving Danger to the Person

Article 7 – Domestic Violence in 1st, 2nd, 3rd Degrees

Section 13A-6-130

Domestic violence - First degree.

(a) A person commits the crime of domestic violence in the first degree if the person commits the crime of assault in the first degree pursuant to Section 13A-6-20 or aggravated stalking pursuant to Section 13A-6-91, and the victim is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating relationship, as defined in Section 13A-6-139.1, with the defendant. Domestic violence in the first degree is a Class A felony, except that the defendant shall serve a minimum term of imprisonment of one year without consideration of probation, parole, good time credits, or any other reduction in time for any second or subsequent conviction under this subsection.

(b) The minimum term of imprisonment imposed under subsection (a) shall be double without consideration of probation, parole, good time credits, or any reduction in time if a defendant willfully violates a protection order issued by a court of competent jurisdiction and in the process of violating the order commits domestic violence in the first degree.

(Act 2000-266, p. 411, §1; Act 2011-581, p. 1273, §1; Act 2015-493, §2.)

Section 13A-6-131

Domestic violence - Second degree.

(a) A person commits the crime of domestic violence in the second degree if the person commits the crime of assault in the second degree pursuant to Section 13A-6-21; the crime of intimidating a witness pursuant to Section 13A-10-123; the crime of stalking pursuant to Section 13A-6-90; the crime of burglary in the second or third degree pursuant to Sections 13A-7-6 and 13A-7-7; or the crime of criminal mischief in the first degree pursuant to Section 13A-7-21 and the victim is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating relationship, as defined in Section 13A-6-139.1, with the defendant. Domestic violence in the second degree is a Class B felony, except the defendant shall serve a minimum term of imprisonment of six months without consideration of probation, parole, good time credits, or any reduction in time for any second or subsequent conviction under this subsection.

(b) The minimum term of imprisonment imposed under subsection (a) shall be double without consideration of probation, parole, good time credits, or any reduction in time if a defendant willfully violates a protection order issued by a court of competent jurisdiction and in the process of violating the order commits domestic violence in the second degree.

(Act 2000-266, p. 411, §2; Act 2011-581, p. 1273, §1; Act 2015-493, §2.)

Section 13A-6-132

Domestic violence - Third degree.

(a) A person commits domestic violence in the third degree if the person commits the crime of assault in the third degree pursuant to Section 13A-6-22; the crime of menacing pursuant to Section 13A-6-23; the crime of reckless endangerment pursuant to Section 13A-6-24; the crime of criminal coercion pursuant to Section 13A-6-25; the crime of harassment pursuant to subsection (a) of Section 13A-11-8; the crime of criminal surveillance pursuant to Section 13A-11-32; the crime of harassing communications pursuant to subsection (b) of Section 13A-11-8; the crime of criminal trespass in the third degree pursuant to Section 13A-7-4; the crime of criminal mischief in the second or third degree pursuant to Sections 13A-7-22 and 13A-7-23; or the crime of arson in the third degree pursuant to Section 13A-7-43; and the victim is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating relationship, as defined in Section 13A-6-139.1, with the defendant. Domestic violence in the third degree is a Class A misdemeanor.

⁹⁸ Code of Alabama (2017), Title 13 A – Criminal Code, Chapter 6 – Offenses Involving Danger to the Person, available at <https://law.justia.com/codes/alabama/2017/title-13a/chapter-6/> (last visited December 30, 2018).

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(b) The minimum term of imprisonment imposed under subsection (a) shall be 30 days without consideration of reduction in time if a defendant willfully violates a protection order issued by a court of competent jurisdiction and in the process of violating the order commits domestic violence in the third degree.

(c) A second conviction under subsection (a) is a Class A misdemeanor, except the defendant shall serve a minimum term of imprisonment of 10 days in a city or county jail or detention facility without consideration for any reduction in time.

(d) A third or subsequent conviction under subsection (a) is a Class C felony.

(e) For purposes of determining second, third, or subsequent number of convictions, convictions in municipal court shall be included.

[...]

Article 7A – Domestic Violence Protection Order Enforcement

Section 13A-6-142

Violations; penalties.

(a) A violation of a domestic violence protection order is a Class A misdemeanor which shall be punishable as provided by law.

(b) A second conviction for violation of a domestic violence protection order, in addition to any other penalty or fine, shall be punishable by a minimum of 30 days imprisonment which may not be suspended. A third or subsequent conviction shall, in addition to any other penalty or fine, be punishable by a minimum sentence of 120 days imprisonment which may not be suspended.

[...]

37.2.2. ALASKA

[Alaska Statutes, 2017](#)⁹⁹

Title 18. Health, Safety, and Housing

Chapter 66. Domestic Violence and Sexual Assault

Article 2. Protective Orders

Sec. 18.66.100. Protective orders: eligible petitioners; relief.

(a) A person who is or has been a victim of a crime involving domestic violence may file a petition in the district or superior court for a protective order against a household member. A parent, guardian, or other representative appointed by the court under this section may file a petition for a protective order on behalf of a minor. The court may appoint a guardian ad litem or attorney to represent the minor. Notwithstanding AS 25.24.310 or this section, the office of public advocacy may not be appointed as a guardian ad litem or attorney for a minor in a petition filed under this section unless the petition has been filed on behalf of the minor.

(b) When a petition for a protective order is filed, the court shall schedule a hearing and provide at least 10 days' notice to the respondent of the hearing and of the respondent's right to appear and be heard, either in person or by an attorney. If the court finds by a preponderance of evidence that the respondent has committed a crime involving domestic violence against the petitioner, regardless of whether the respondent appears at the hearing, the court may order any relief available under (c) of this section. The provisions of a protective order issued under

(1) (c)(1) of this section are effective until further order of the court;

(2) (c)(2) — (16) of this section are effective for one year unless earlier dissolved by court order.

(c) A protective order under this section may

(1) prohibit the respondent from threatening to commit or committing domestic violence, stalking, or harassment;

(2) prohibit the respondent from telephoning, contacting, or otherwise communicating directly or indirectly with the petitioner;

(3) remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;

(4) direct the respondent to stay away from the residence, school, or place of employment of the petitioner or any specified place frequented by the petitioner or any designated household member;

(5) prohibit the respondent from entering a propelled vehicle in the possession of or occupied by the petitioner;

(6) prohibit the respondent from using or possessing a deadly weapon if the court finds the respondent was in the actual possession of or used a weapon during the commission of domestic violence;

⁹⁹ Alaska Statutes (2017), Title 18. Health, Safety, and Housing, Chapter 66. Domestic Violence and Sexual Assault, available at <https://law.justia.com/codes/alaska/2017/title-18/chapter-66/> (last visited December 30, 2018).

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- (7) direct the respondent to surrender any firearm owned or possessed by the respondent if the court finds that the respondent was in the actual possession of or used a firearm during the commission of the domestic violence;
 - (8) request a peace officer to accompany the petitioner to the petitioner's residence to ensure that the petitioner (A) safely obtains possession of the petitioner's residence, vehicle, or personal items; and (B) is able to safely remove a vehicle or personal items from the petitioner's residence;
 - (9) award temporary custody of a minor child to the petitioner and may arrange for visitation with a minor child if the safety of the child and the petitioner can be protected; if visitation is allowed, the court may order visitation under the conditions provided in AS 25.20.061;
 - (10) give the petitioner possession and use of a vehicle and other essential personal items, including a pet, regardless of ownership of the items;
 - (11) prohibit the respondent from consuming controlled substances;
 - (12) require the respondent to pay support for the petitioner, a minor child in the care of the petitioner, or a pet in the care of the petitioner if there is an independent legal obligation of the respondent to support the petitioner, child, or pet;
 - (13) require the respondent to reimburse the petitioner or other person for expenses associated with the domestic violence, including medical expenses, counseling, shelter, and repair or replacement of damaged property;
 - (14) require the respondent to pay costs and fees incurred by the petitioner in bringing the action under this chapter;
 - (15) order the respondent, at the respondent's expense, to participate in (A) a program for the rehabilitation of perpetrators of domestic violence that meets the standards set by, and that is approved by, the Department of Corrections under AS 44.28.020(b), or (B) treatment for the abuse of alcohol or controlled substances, or both; a protective order under this section may not require a respondent to participate in a program for the rehabilitation of perpetrators of domestic violence unless the program meets the standards set by, and that is approved by, the Department of Corrections under AS 44.28.020(b);
 - (16) order other relief the court determines necessary to protect the petitioner or any household member.
- (d) If the court issues a protective order under this section, it shall
- (1) make reasonable efforts to ensure that the order is understood by the petitioner and by the respondent, if present; and
 - (2) have the order delivered to the appropriate local law enforcement agency for expedited service and for entry into the central registry of protective orders under AS 18.65.540.
- (e) A court may not deny a petition for a protective order under this section solely because of a lapse of time between an act of domestic violence and the filing of the petition.

[...]

37.2.3. ARIZONA

[Arizona Revised Statutes, 2018](#) ¹⁰⁰

Title 13. Criminal Code

Chapter 36. Family Offenses

§ 13-3601. Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure

- A. "Domestic violence" means any act that is a dangerous crime against children as defined in § 13-705 or an offense prescribed in § 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204, 13-1302, 13-1303, 13-1304, 13-1406, 13-1425, 13-1502, 13-1503, 13-1504, 13-1602 or 13-2810, § 13-2904, subsection A, paragraph 1, 2, 3 or 6, § 13-2910, subsection A, paragraph 8 or 9, § 13-2915, subsection A, paragraph 3 or § 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:
1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.
 2. The victim and the defendant have a child in common.
 3. The victim or the defendant is pregnant by the other party.
 4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
 5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.

¹⁰⁰ Arizona Revised Statutes(2018), Title 13. Criminal Code § 13-3601. Domestic Violence, available at <https://www.azleg.gov/viewdocument?docName=https://www.azleg.gov/ars/13/03601.htm> (last visited December 30, 2018).

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6. The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship:

- (a) The type of relationship.
- (b) The length of the relationship.
- (c) The frequency of the interaction between the victim and the defendant.
- (d) If the relationship has terminated, the length of time since the termination.

B. A peace officer, with or without a warrant, may arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether the offense is a felony or a misdemeanor and whether the offense was committed within or without the presence of the peace officer. In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, the peace officer shall arrest a person who is at least fifteen years of age, with or without a warrant, if the officer has probable cause to believe that the offense has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether the offense was committed within or without the presence of the peace officer, unless the officer has reasonable grounds to believe that the circumstances at the time are such that the victim will be protected from further injury. Failure to make an arrest does not give rise to civil liability except pursuant to § 12-820.02. In order to arrest both parties, the peace officer shall have probable cause to believe that both parties independently have committed an act of domestic violence. An act of self-defense that is justified under chapter 4 of this title 1 is not deemed to be an act of domestic violence. The release procedures available under § 13-3883, subsection A, paragraph 4 and § 13-3903 are not applicable to arrests made pursuant to this subsection.

C. A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if the firearm is in plain view or was found pursuant to a consent to search and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm that is owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence.

D. If a firearm is seized pursuant to subsection C of this section, the peace officer shall give the owner or possessor of the firearm a receipt for each seized firearm. The receipt shall indicate the identification or serial number or other identifying characteristic of each seized firearm. Each seized firearm shall be held for at least seventy-two hours by the law enforcement agency that seized the firearm.

E. If a firearm is seized pursuant to subsection C of this section, the victim shall be notified by a peace officer before the firearm is released from temporary custody.

F. If there is reasonable cause to believe that returning a firearm to the owner or possessor may endanger the victim, the person who reported the assault or threat or another person in the household, the prosecutor shall file a notice of intent to retain the firearm in the appropriate superior, justice or municipal court. The prosecutor shall serve notice on the owner or possessor of the firearm by certified mail. The notice shall state that the firearm will be retained for not more than six months following the date of seizure. On receipt of the notice, the owner or possessor may request a hearing for the return of the firearm, to dispute the grounds for seizure or to request an earlier return date. The court shall hold the hearing within ten days after receiving the owner's or possessor's request for a hearing. At the hearing, unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat or another person in the household, the court shall order the return of the firearm to the owner or possessor.

G. A peace officer is not liable for any act or omission in the good faith exercise of the officer's duties under subsections C, D, E and F of this section.

H. Each indictment, information, complaint, summons or warrant that is issued and that involves domestic violence shall state that the offense involved domestic violence and shall be designated by the letters DV. A domestic violence charge shall not be dismissed or a domestic violence conviction shall not be set aside for failure to comply with this subsection.

I. A person who is arrested pursuant to subsection B of this section may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. Any order for release, with or without an appearance bond, shall include pretrial release conditions that are necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions that the court deems appropriate, including participation in any counseling programs available to the defendant.

J. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of the victim including:

1. An order of protection pursuant to § 13-3602, an injunction pursuant to § 25-315 and an injunction against harassment pursuant to § 12-1809.
2. The emergency telephone number for the local police agency.

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3. Telephone numbers for emergency services in the local community.
4. Websites for local resources related to domestic violence.
- K. A peace officer is not civilly liable for noncompliance with subsection J of this section.
- L. If a person is convicted of an offense involving domestic violence and the victim was pregnant at the time of the commission of the offense, at the time of sentencing the court shall take into consideration the fact that the victim was pregnant and may increase the sentence.
- M. An offense that is included in domestic violence carries the classification prescribed in the section of this title in which the offense is classified. If the defendant committed a felony offense listed in subsection A of this section against a pregnant victim and knew that the victim was pregnant or if the defendant committed a felony offense causing physical injury to a pregnant victim and knew that the victim was pregnant, the maximum sentence otherwise authorized for that violation shall be increased by up to two years.
- N. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall determine if a minor is present. If a minor is present, the peace officer shall conduct a child welfare check to determine if the child is safe and if the child might be a victim of domestic violence or child abuse.

[...]

37.2.4. ARKANSAS

[Arkansas Code, 2017](#)¹⁰¹

Title 9 – Family Law
Subtitle 2 – Domestic Relations
Chapter 15 – Domestic Abuse Act
Subchapter 2 - Judicial Proceedings

§ 9-15-201. Petition – Requirements generally

- (a) All petitions under this chapter shall be verified.
- (b) The petition shall be filed in the county where the petitioner resides, where the alleged incident of abuse occurred, or where the respondent may be served.
- (c)
- (1) A petition for relief under this chapter may be filed in the circuit court.
 - (2) A petition for relief under this chapter may be filed in a pilot district court if the jurisdiction is established by the Supreme Court under Arkansas Constitution, Amendment 80, § 7 and if the cases are assigned to the pilot district court through the administrative plan under Supreme Court Administrative Order No. 14.
- (d) A petition may be filed by:
- (1) Any adult family or household member on behalf of himself or herself;
 - (2) Any adult family or household member on behalf of another family or household member who is a minor, including a married minor;
 - (3) Any adult family or household member on behalf of another family or household member who has been adjudicated an incompetent; or
 - (4) An employee or volunteer of a domestic-violence shelter or program on behalf of a minor, including a married minor.
- (e) (1) A petition for relief shall:
- (A) Allege the existence of domestic abuse;
 - (B) Disclose the existence of any pending litigation between the parties; and
 - (C) Disclose any prior filings of a petition for an order of protection under this chapter.
- (2) The petition shall be accompanied by an affidavit made under oath that states the specific facts and circumstances of the domestic abuse and the specific relief sought.
- (f) The petition may be filed regardless of whether there is any pending litigation between the parties.
- (g) A person's right to file a petition, or obtain relief hereunder shall not be affected by his or her leaving the residence or household to avoid abuse.

[...]

¹⁰¹ Arkansas Code (2017), Title 9 – Family Law, Subtitle 2 – Domestic Relations, Chapter 15 – Domestic Abuse Act, available at <https://law.justia.com/codes/arkansas/2017/title-9/subtitle-2/chapter-15/> (last visited December 30, 2018).

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§ 9-15-206. Temporary order

- (a) When a petition under this chapter alleges an immediate and present danger of domestic abuse or that the respondent is scheduled to be released from incarceration within thirty (30) days and upon the respondent's release there will be an immediate and present danger of domestic abuse, the court shall grant a temporary order of protection pending a full hearing if the court finds sufficient evidence to support the petition.
- (b) An ex parte temporary order of protection may:
- (1) Include any of the orders provided in §§ 9-15-203 and 9-15-205; and
- (2) Provide the following relief:
- (A) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner or victim;
- (B) Exclude the abusing party from the place of business or employment, school, or other location of the petitioner or victim;
- (C) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties;
- (D) Order temporary support for minor children or a spouse, with such support to be enforced in the manner prescribed by law for other child support and alimony awards;
- (E) Prohibit the abusing party directly or through an agent from contacting the petitioner or victim except under specific conditions named in the order; and
- (F)
- (i) Order such other relief as the court considers necessary or appropriate for the protection of a family or household member.
- (ii) The relief may include without limitation enjoining and restraining the abusing party from doing, attempting to do, or threatening to do an act injuring, mistreating, molesting, or harassing the petitioner.
- (c) An ex parte temporary order of protection is effective until the date of the hearing described in § 9-15-204.
- (d) Incarceration or imprisonment of the abusing party shall not bar the court from issuing an ex parte temporary order of protection.

[...]

37.2.5. CALIFORNIA

[California Penal Code, 2017](#)¹⁰²

Part 1. Of Crimes and Punishments

Title 8. Of crimes against the person [187-248]

Chapter 9. Assault and Battery [240-248]

243.

(a) A battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, nonsworn employee of a probation department, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

¹⁰² California Penal Code (2017), Part 1. Of Crimes and Punishments – Title 8. Of crimes against the person [187-248], Chapter 9. Assault and Battery [240-248], available at https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=8.&part=1.&chapter=9.&article= (last visited December 30, 2018).

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(c) (1) When a battery is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a nonsworn employee of a probation department, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars (\$2,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

(2) When the battery specified in paragraph (1) is committed against a peace officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, the battery is punishable by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, or by both that fine and imprisonment.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(e) (1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as described in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution.

(2) Upon conviction of a violation of this subdivision, if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars (\$5,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(3) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision or Section 273.5, the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

(4) The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

(5) If a peace officer makes an arrest for a violation of paragraph (1) of subdivision (e) of this section, the peace officer is not required to inform the victim of his or her right to make a citizen's arrest pursuant to subdivision (b) of Section 836.

(f) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person who is either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a valid certificate or license in accordance with the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

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(4) “Serious bodily injury” means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(5) “Injury” means any physical injury which requires professional medical treatment.

(6) “Custodial officer” means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

(7) “Lifeguard” means a person defined in paragraph (5) of subdivision (d) of Section 241.

(8) “Traffic officer” means any person employed by a city, county, or city and county to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(9) “Animal control officer” means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

(10) “Dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

(11) (A) “Code enforcement officer” means any person who is not described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations, or file formal complaints.

(B) “Code enforcement officer” also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Manufactured Housing Act of 1980 (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(12) “Custody assistant” means any person who has the responsibilities and duties described in Section 831.7 and who is employed by a law enforcement agency of any city, county, or city and county.

(13) “Search and rescue member” means any person who is part of an organized search and rescue team managed by a government agency.

(14) “Security officer” means any person who has the responsibilities and duties described in Section 831.4 and who is employed by a law enforcement agency of any city, county, or city and county.

(g) It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as *People v. Corey*, 21 Cal. 3d 738, and *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

(Amended by Stats. 2015, Ch. 626, Sec. 1. (AB 545) Effective January 1, 2016.)

[...]

Marital rape:

[California Penal Code, 2017](#)¹⁰³

Part 1. Of Crimes and Punishments

Title 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals

Chapter 1. Rape, Abduction, Carnal Abuse of Children, and Seduction [261 – 269]

262.

(a) Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse accomplished under any of the following circumstances:

(1) Where it is accomplished against a person’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(2) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused.

¹⁰³ California Penal Code (2017), Part 1. Of Crimes and Punishments, Title 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals, available at https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=262.&lawCode=PEN (last visited December 30, 2018).

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(3) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(5) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in apprising the existence of duress.

(c) As used in this section, "menace" means any threat, declaration, or act that shows an intention to inflict an injury upon another.

(d) If probation is granted upon conviction of a violation of this section, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars (\$1,000).

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(Amended by Stats. 2006, Ch. 45, Sec. 1. Effective January 1, 2007.)

[...]

37.2.6. COLORADO

[Colorado Revised Statutes, 2017](#) ¹⁰⁴

Title 18. Criminal Code

Article 6. Offenses Involving the Family Relations

Part 8. Domestic Violence

CO Rev Stat § 18-6-800.3 (2017)

As used in this part 8, unless the context otherwise requires:

(1) "Domestic violence" means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. "Domestic violence" also includes any other crime against a person, or against property, including an animal, or any municipal ordinance violation against a person, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(2) "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

¹⁰⁴ Colorado Revised Statutes (2017), Title 18 Criminal Code, Article 6: Offenses Involving the Family Relations, available at <https://law.justia.com/codes/colorado/2017/title-18/article-6/part-8/> (last visited December 30, 2018).

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CO Rev Stat § 18-6-801 (2017)

(1) (a) In addition to any sentence that is imposed upon a person for violation of any criminal law under this title, any person who is convicted of any crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1), or any crime against property, whether or not such crime is a felony, when such crime is used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship shall be ordered to complete a treatment program and a treatment evaluation that conform with the standards adopted by the domestic violence offender management board as required by section 16-11.8-103 (4), C.R.S. If an intake evaluation conducted by an approved treatment program provider discloses that sentencing to a treatment program would be inappropriate, the person shall be referred back to the court for alternative disposition.

(b) The court may order a treatment evaluation to be conducted prior to sentencing if a treatment evaluation would assist the court in determining an appropriate sentence. The person ordered to undergo such evaluation shall be required to pay the cost of the treatment evaluation. If such treatment evaluation recommends treatment, and if the court so finds, the person shall be ordered to complete a treatment program that conforms with the standards adopted by the domestic violence offender management board as required by section 16-11.8-103 (4), C.R.S.

(c) Nothing in this subsection (1) shall preclude the court from ordering domestic violence treatment in any appropriate case.

(2) Subsection (1) of this section shall not apply to persons sentenced to the department of corrections.

(3) A person charged with the commission of a crime, the underlying factual basis of which includes an act of domestic violence as defined in section 18-6-800.3 (1), shall not be entitled to plead guilty or plead nolo contendere to an offense which does not include the domestic violence designation required in section 16-21-103, C.R.S., unless the prosecuting attorney makes a good faith representation on the record that such attorney would not be able to establish a prima facie case that the person and the alleged victim were currently or formerly involved in an intimate relationship if the defendant were brought to trial on the original domestic violence offense and upon such a finding by the court. The prosecuting attorney's record and the court's findings shall specify the relationship in the alleged domestic violence case which the prosecuting attorney is not able to prove beyond a reasonable doubt and the reasons therefor. No court shall accept a plea of guilty or nolo contendere to an offense which does not include the domestic violence designation required in section 16-21-103, C.R.S., when the facts of the case indicate that the underlying factual basis includes an act of domestic violence as defined in section 18-6-800.3 (1) unless there is a good faith representation by the prosecuting attorney that he or she would be unable to establish a prima facie case if the defendant were brought to trial on the original offense.

(4) No person accused or convicted of a crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1), shall be eligible for home detention in the home of the victim pursuant to section 18-1.3-105 or 18-1.3-106. Nothing in this subsection (4) is intended to prohibit a court from ordering a deferred sentence for a person accused or convicted of a crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1).

(5) Before granting probation, the court shall consider the safety of the victim and the victim's children if probation is granted.

(6) Nothing in this section shall preclude the ability of a municipality to enact concurrent ordinances.

(7) (a) Any misdemeanor offense that includes an act of domestic violence is a class 5 felony if the defendant at the time of sentencing has been previously convicted of three or more prior offenses that included an act of domestic violence and that were separately brought and tried and arising out of separate criminal episodes.

(b) The prior convictions must be set forth in apt words in the indictment or information. For the purposes of this section, "conviction" includes any federal, state, or municipal conviction for a felony, misdemeanor, or municipal ordinance violation.

(c) Trials in cases alleging that the defendant is an habitual domestic violence offender pursuant to this subsection (7) must be conducted in accordance with the rules of criminal procedure for felonies. The trier of fact shall determine whether an offense charged includes an act of domestic violence.

(d) Following a conviction for an offense which underlying factual basis includes an act of domestic violence:

(I) If any prior conviction included a determination by a jury or was admitted by the defendant that the offense included an act of domestic violence, the court shall proceed to sentencing without further findings as to that prior conviction by the jury or by the court, if no jury trial is had;

(II) For any prior conviction in which the factual basis was found by the court to include an act of domestic violence, but did not include a finding of domestic violence by a jury or that was not admitted by the defendant, the trial court shall proceed to a sentencing stage of the proceedings. The prosecution shall present evidence to the trier of fact that the prior conviction included an act of domestic violence. The prosecution has the burden of proof beyond a reasonable doubt.

(III) At the sentencing stage, the following applies:

(A) A finding of domestic violence made by a court at the time of the prior conviction constitutes prima facie evidence that the crime involved domestic violence;

(B) Evidence of the prior conviction is admissible through the use of certified documents under seal, or the court may take judicial notice of a prior conviction;

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(C) Evidence admitted in the guilt stage of the trial, including testimony of the defendant and other acts admitted pursuant to section 18-6-801.5, may be considered by the finder of fact.

(8) (a) In addition to any sentence that is imposed upon a defendant for violation of any criminal law under this title, if a defendant is convicted of any crime, the underlying factual basis of which is found by the court on the record to be a misdemeanor crime of domestic violence, as defined in 18 U.S.C. sec. 921 (a)(33), or that is punishable by a term of imprisonment exceeding one year and includes an act of domestic violence, as defined in section 18-6-800.3 (1), the court:

(I) Shall order the defendant to:

(A) Refrain from possessing or purchasing any firearm or ammunition for the duration of the order; and

(B) Relinquish any firearm or ammunition in the defendant's immediate possession or control or subject to the defendant's immediate possession or control; and

(II) May require that before the defendant is released from custody on bond, the defendant shall relinquish, for the duration of the order, any firearm or ammunition in the defendant's immediate possession or control or subject to the defendant's immediate possession or control.

(b) Upon issuance of an order to relinquish one or more firearms or ammunition pursuant to paragraph (a) of this subsection (8), the defendant shall relinquish any firearm or ammunition not more than twenty-four hours after being served with the order; except that a court may allow a defendant up to seventy-two hours to relinquish a firearm or up to five days to relinquish ammunition pursuant to this paragraph (b) if the defendant demonstrates to the satisfaction of the court that he or she is unable to comply within twenty-four hours. To satisfy this requirement, the defendant may:

(I) Sell or transfer possession of the firearm or ammunition to a federally licensed firearms dealer described in 18 U.S.C. sec. 923, as amended; except that this provision shall not be interpreted to require any federally licensed firearms dealer to purchase or accept possession of any firearm or ammunition;

(II) Arrange for the storage of the firearm or ammunition by a law enforcement agency; except that this provision shall not be interpreted to require any law enforcement agency to provide storage of firearms or ammunition for any person; or

(III) Sell or otherwise transfer the firearm or ammunition to a private party who may legally possess the firearm or ammunition; except that a defendant who sells or transfers a firearm pursuant to this subparagraph (III) shall satisfy all of the provisions of section 18-12-112, concerning private firearms transfers, including but not limited to the performance of a criminal background check of the transferee.

(c) If a defendant is unable to satisfy the provisions of paragraph (b) of this subsection (8) because he or she is incarcerated or otherwise held in the custody of a law enforcement agency, the court shall require the defendant to satisfy such provisions not more than twenty-four hours after his or her release from incarceration or custody or be held in contempt of court.

Notwithstanding any provision of this paragraph (c), the court may, in its discretion, require the defendant to relinquish any firearm or ammunition in the defendant's immediate possession or control or subject to the defendant's immediate possession or control before the end of the defendant's incarceration. In such a case, a defendant's failure to relinquish a firearm or ammunition as required shall constitute contempt of court.

(d) A federally licensed firearms dealer who takes possession of a firearm or ammunition pursuant to this subsection (8) shall issue a receipt to the defendant at the time of relinquishment. The federally licensed firearms dealer shall not return the firearm or ammunition to the defendant unless the dealer:

(I) Contacts the bureau to request that a background check of the defendant be performed; and

(II) Obtains approval of the transfer from the bureau after the performance of the background check.

(e) A local law enforcement agency may elect to store firearms or ammunition for persons pursuant to this subsection (8). If an agency so elects:

(I) The agency may charge a fee for such storage, the amount of which shall not exceed the direct and indirect costs incurred by the agency in providing such storage;

(II) The agency may establish policies for disposal of abandoned or stolen firearms or ammunition; and

(III) The agency shall issue a receipt to each defendant at the time the defendant relinquishes possession of a firearm or ammunition.

(f) If a local law enforcement agency elects to store firearms or ammunition for a defendant pursuant to this subsection (8), the law enforcement agency shall not return the firearm or ammunition to the defendant unless the agency:

(I) Contacts the bureau to request that a background check of the defendant be performed; and

(II) Obtains approval of the transfer from the bureau after the performance of the background check.

(g) (I) A law enforcement agency that elects to store a firearm or ammunition for a defendant pursuant to this subsection (8) may elect to cease storing the firearm or ammunition. A law enforcement agency that elects to cease storing a firearm or ammunition for a defendant shall notify the defendant of such decision and request that the defendant immediately make arrangements for the transfer of the possession of the firearm or ammunition to the defendant or, if the defendant is prohibited from possessing a firearm, to another person who is legally permitted to possess a firearm.

(II) If a law enforcement agency elects to cease storing a firearm or ammunition for a defendant and notifies the defendant as described in subparagraph (I) of this paragraph (g), the law enforcement agency may dispose of the firearm or ammunition if

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the defendant fails to make arrangements for the transfer of the firearm or ammunition and complete said transfer within ninety days of receiving such notification.

(h) If a defendant sells or otherwise transfers a firearm or ammunition to a private party who may legally possess the firearm or ammunition, as described in subparagraph (III) of paragraph (b) of this subsection (8), the defendant shall acquire:

(I) From the transferee, a written receipt acknowledging the transfer, which receipt shall be dated and signed by the defendant and the transferee; and

(II) From the licensed gun dealer who requests from the bureau a background check of the transferee, as described in section 18-12-112, a written statement of the results of the background check.

(i) (I) Not more than three business days after the relinquishment, the defendant shall file a copy of the receipt issued pursuant to paragraph (d), (e), or (h) of this subsection (8), and, if applicable, the written statement of the results of a background check performed on the transferee, as described in subparagraph (II) of paragraph (h) of this subsection (8), with the court as proof of the relinquishment. If a defendant fails to timely file a receipt or written statement as described in this paragraph (i):

(A) The failure constitutes a class 2 misdemeanor, and the defendant shall be punished as provided in section 18-1.3-501; and

(B) The court shall issue a warrant for the defendant's arrest.

(II) In any subsequent prosecution for a violation of this paragraph (i), the court shall take judicial notice of the defendant's failure to file a receipt or written statement, which will constitute prima facie evidence that the defendant has violated this paragraph (i), and testimony of the clerk of the court or his or her deputy is not required.

(j) (I) A law enforcement agency that elects in good faith to not store a firearm or ammunition for a defendant pursuant to subparagraph (B) of subparagraph (III) of paragraph (b) of this subsection (8) shall not be held criminally or civilly liable for such election not to act.

(II) A law enforcement agency that returns possession of a firearm or ammunition to a defendant in good faith as permitted by paragraph (f) of this subsection (8) shall not be held criminally or civilly liable for such action.

[...]

37.2.7. CONNECTICUT

[General Statutes of Connecticut, 2017](#) ¹⁰⁵

Title 46B. Family Law

Chapter 815e. Marriage

Sec. 46b-38a. Family violence prevention and response

Definitions. For the purposes of sections 46b-38a to 46b-38f, inclusive:

(1) "Family violence" means an incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, stalking or a pattern of threatening, between family or household members. Verbal abuse or argument shall not constitute family violence unless there is present danger and the likelihood that physical violence will occur.

(2) "Family or household member" means any of the following persons, regardless of the age of such person: (A) Spouses or former spouses; (B) parents or their children; (C) persons related by blood or marriage; (D) persons other than those persons described in subparagraph (C) of this subdivision presently residing together or who have resided together; (E) persons who have a child in common regardless of whether they are or have been married or have lived together at any time; and (F) persons in, or who have recently been in, a dating relationship.

(3) "Family violence crime" means a crime as defined in section 53a-24, other than a delinquent act as defined in section 46b-120, which, in addition to its other elements, contains as an element thereof an act of family violence to a family or household member. "Family violence crime" does not include acts by parents or guardians disciplining minor children unless such acts constitute abuse.

(4) "Institutions and services" means peace officers, service providers, mandated reporters of abuse, agencies and departments that provide services to victims and families and services designed to assist victims and families.

(P.A. 86-337, S. 1; P.A. 87-567, S. 1, 7; P.A. 88-364, S. 59, 123; P.A. 99-186, S. 2; P.A. 11-152, S. 2; 11-157, S. 21; P.A. 12-114, S. 2.)

History: P.A. 87-567 amended definitions of "family violence" by adding provision re verbal abuse or argument, "family or household member" by adding "and their children", changing "sixteen" to "eighteen" and adding persons 16 or older other than persons in Subpara. (C) and "family violence crime" by deleting former provisions and adding "in addition to its other

¹⁰⁵ General Statutes of Connecticut (2017) Title 46B Family Law – Chapter 815e Marriage, Sec. 46b-38a. Family violence prevention and response, available at https://www.cga.ct.gov/current/pub/chap_815e.htm#sec_46b-38a (last visited December 30, 2018).

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elements, contains as an element thereof an act of family violence to a family member and shall not include acts by parents or guardians disciplining minor children unless such acts constitute abuse”; P.A. 88-364 amended Subdiv. (2)(D) to remove a redundant reference to persons who have resided together in the recent past; P.A. 99-186 added Subdiv. (2)(F) re persons in, or having recently been in, a dating relationship; P.A. 11-152 amended Subdiv. (2)(F) to redefine “family or household member” by adding “regardless of the age of such persons”; P.A. 11-157 amended Subdiv. (3) to redefine “family violence crime” by excluding a delinquent act as defined in Sec. 46b-120; P.A. 12-114 redefined “family violence” in Subdiv. (1) to include stalking or pattern of threatening, redefined “family or household member” in Subdiv. (2) to apply to enumerated persons regardless of age, redefined “family violence crime” in Subdiv. (3) to include crimes that contain element of family violence to a household member, and made technical and conforming changes. [...]

Sec. 46b-38b. Investigation of family violence crime by peace officer. Arrest. Assistance to victim. Guidelines. Education and training program. Compliance with model law enforcement policy on family violence. Assistance and protocols for victims whose immigration status is questionable. (a) Whenever a peace officer determines upon speedy information that a family violence crime has been committed within such officer's jurisdiction, such officer shall arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime. The decision to arrest and charge shall not (1) be dependent on the specific consent of the victim, (2) consider the relationship of the parties, or (3) be based solely on a request by the victim. Whenever a peace officer determines that a family violence crime has been committed, such officer may seize any firearm or electronic defense weapon, as defined in section 53a-3, or ammunition at the location where the crime is alleged to have been committed that is in the possession of any person arrested for the commission of such crime or suspected of its commission or that is in plain view. Not later than seven days after any such seizure, the law enforcement agency shall return such firearm, electronic defense weapon or ammunition in its original condition to the rightful owner thereof unless such person is ineligible to possess such firearm, electronic defense weapon or ammunition or unless otherwise ordered by the court.

(b) No peace officer investigating an incident of family violence shall threaten, suggest or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party. Where complaints are made by two or more opposing parties, the officer shall evaluate each complaint separately to determine whether such officer should make an arrest or seek a warrant for an arrest. Notwithstanding the provisions of subsection (a) of this section, when a peace officer reasonably believes that a party in an incident of family violence has used force as a means of self defense, such officer is not required to arrest such party under this section.

(c) No peace officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a family violence incident for an arrest based on probable cause or for any conditions of release imposed pursuant to subsection (b) of section 54-63c.

(d) It shall be the responsibility of the peace officer at the scene of a family violence incident to provide immediate assistance to the victim. Such assistance shall include, but not be limited to: (1) Assisting the victim to obtain medical treatment if such treatment is required; (2) notifying the victim of the right to file an affidavit for a warrant for arrest; (3) informing the victim of services available, including providing the victim with contact information for a regional family violence organization that employs, or provides referrals to, counselors who are trained in providing trauma-informed care; (4) referring the victim to the Office of Victim Services; and (5) providing assistance in accordance with the uniform protocols for treating victims of family violence whose immigration status is questionable established pursuant to subsection (g) of this section. In cases where the officer has determined that no cause exists for an arrest, assistance shall include: (A) Assistance as provided in subdivisions (1) to (5), inclusive, of this subsection; and (B) remaining at the scene for a reasonable time until, in the reasonable judgment of the officer, the likelihood of further imminent violence has been eliminated. For the purposes of this subsection, “trauma-informed care” means services (i) directed by a thorough understanding of the neurological, biological, psychological and social effects of trauma and violence on a person; and (ii) delivered by a regional family violence organization that employs, or provides referrals to, counselors who: (I) Make available to the victim of family violence resources on trauma exposure, its impact and treatment; (II) engage in efforts to strengthen the resilience and protective factors of victims of family violence who are impacted by and vulnerable to trauma; (III) emphasize continuity of care and collaboration among organizations that provide services to children; and (IV) maintain professional relationships for referral and consultation purposes with programs and persons with expertise in trauma-informed care.

(e) (1) Each law enforcement agency shall develop, in conjunction with the Division of Criminal Justice, and implement specific operational guidelines for arrest policies in family violence incidents. Such guidelines shall include, but not be limited to: (A) Procedures for the conduct of a criminal investigation; (B) procedures for arrest and for victim assistance by peace officers; (C) education as to what constitutes speedy information in a family violence incident; (D) procedures with respect to the provision of services to victims; and (E) such other criteria or guidelines as may be applicable to carry out the purposes of sections 46b-1, 46b-15, 46b-38a to 46b-38f, inclusive, and 54-1g. Such procedures shall be duly promulgated by such law enforcement agency.

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On and after October 1, 2012, each law enforcement agency shall develop and implement specific operational guidelines for arrest policies in family violence incidents which, at a minimum, meet the standards set forth in the model law enforcement policy on family violence established in subdivision (2) of this subsection.

(2) There is established a model law enforcement policy on family violence for the state. Such policy shall consist of the model policy submitted by the task force established in section 19 of public act 11-152* on January 31, 2012, to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary, as amended from time to time by the Family Violence Model Policy Governing Council established pursuant to section 46b-38j.

(3) Not later than January 15, 2013, and annually thereafter, the chairperson of the Police Officer Standards and Training Council shall provide notice of updates to the model policy, if any, adopted by the council during the prior calendar year, to the chief law enforcement officer of each municipality having a police department, the law enforcement instructor of each such police department, and the Commissioner of Emergency Services and Public Protection.

(4) Not later than July 1, 2013, and annually thereafter, each law enforcement agency shall submit a report to the Commissioner of Emergency Services and Public Protection, in such form as the commissioner prescribes, regarding the law enforcement agency's compliance with the model law enforcement policy on family violence for the state.

(5) On and after July 1, 2010, each law enforcement agency shall designate at least one officer with supervisory duties to expeditiously process, upon request of a victim of family violence or other crime who is applying for U Nonimmigrant Status (A) a certification of helpfulness on Form I-918, Supplement B, or any subsequent corresponding form designated by the United States Department of Homeland Security, confirming that the victim of family violence or other crime has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity, and (B) any subsequent certification required by the victim.

(f) The Police Officer Standards and Training Council, in conjunction with the Division of Criminal Justice, shall establish an education and training program for law enforcement officers, supervisors and state's attorneys on the handling of family violence incidents. Training under such program shall: (1) Stress the enforcement of criminal law in family violence cases and the use of community resources, and include training for peace officers at both recruit and in-service levels; and (2) include, but not be limited to: (A) The nature, extent and causes of family violence; (B) legal rights of and remedies available to victims of family violence and persons accused of family violence; (C) services and facilities available to victims and persons who commit acts of family violence; (D) legal duties imposed on police officers to make arrests and to offer protection and assistance, including applicable probable cause standards; and (E) techniques for handling incidents of family violence that minimize the likelihood of injury to the officer and promote the safety of the victim. On and after July 1, 2010, training under such program shall also include, within available appropriations, information on (i) the impact of arrests of multiple parties in a family violence case on the immigration status of the parties; (ii) crime scene investigation and evaluation practices in family violence cases designed by the council to reduce the number of multiple arrests in family violence cases; and (iii) practical considerations in the application of the general statutes related to family violence. On and after July 1, 2010, such training shall also address, within available appropriations, eligibility for federal T Visas for victims of human trafficking and federal U Visas for unauthorized immigrants who are victims of family violence and other crimes.

(g) Not later than July 1, 2010, the Police Officer Standards and Training Council shall establish uniform protocols for treating victims of family violence whose immigration status is questionable, and shall make such protocols available to law enforcement agencies. Each law enforcement agency shall adopt and use such protocols on and after the date they are established by the council. [...]

Marital rape:

[General Statutes of Connecticut, 2017](#)¹⁰⁶

Title 53a. Penal Code

Chapter 952. Offenses

Section 53a-70b. Sexual assault in spousal or cohabiting relationship

¹⁰⁶ General Statutes of Connecticut (2017), Title 53a. Penal Code, Chapter 952. Offenses, Section 53a-70b Sexual assault in spousal or cohabiting relationship, available at

<https://search.cga.state.ct.us/r/statute/dtsearch.asp?cmd=getdoc&DocId=29069&Index=I%3a%5czindex%5csurs&HitCount=2&hits=f9+fa+&hc=2&req=%28number+contains+53a%2D70b%2A%29&item=0> (last visited December 30, 2018).

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Sec. 53a-70b. Sexual assault in spousal or cohabiting relationship: Class B felony. (a) For the purposes of this section:

(1) "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the victim's body; and

(2) "Use of force" means: (A) Use of a dangerous instrument; or (B) use of actual physical force or violence or superior physical strength against the victim.

(b) No spouse or cohabitor shall compel the other spouse or cohabitor to engage in sexual intercourse by the use of force against such other spouse or cohabitor, or by the threat of the use of force against such other spouse or cohabitor which reasonably causes such other spouse or cohabitor to fear physical injury.

(c) Any person who violates any provision of this section shall be guilty of a class B felony for which two years of the sentence imposed may not be suspended or reduced by the court.

[...]

37.2.8. DELAWARE

[Delaware Code, 2017](#)¹⁰⁷

Title 10. Courts and Judicial Procedure
Chapter 9. The Family Court of the State of Delaware
Subsection § 1024

§ 1024 First offenders domestic violence diversion program.

(a) For the purposes of this section, "domestic violence" shall be considered as any act or acts committed by an adult member of a family against 1 or more members of the person's family, as that term is defined in § 901(12) of this title, which constitute any of the following criminal offenses under Title 11: offensive touching (§ 601); menacing (§ 602); reckless endangering in the second degree (§ 603); assault in the third degree (§ 611); terroristic threatening (§ 621); vehicular assault in the second degree ([former] § 628); sexual harassment (§ 763); unlawful sexual contact in the third degree (§ 767); unlawful imprisonment in the second degree (§ 781); coercion (§ 791); reckless burning or exploding (§ 804); criminal mischief classified as a misdemeanor (§ 811); criminal trespass in the first, second or third degree (§§ 821, 822, 823); harassment (§ 1311); or aggravated harassment (former § 1312).

(b) Those acts of domestic violence for which an offender may elect to apply for first offender status under this rule shall be limited to the following criminal offenses under Title 11: offensive touching (§ 601); menacing (§ 602); sexual harassment (§ 763); criminal mischief classified as a misdemeanor (§ 811); criminal trespass in the first, second or third degree (§§ 821, 822, 823); harassment (§ 1311); or aggravated harassment (former § 1312).

(c) Any adult who:

(1) Has not been convicted of a violent felony or any domestic violence offense under Title 11 listed in subsection (a) of this section, or under any statute of the United States or of any state thereof including the District of Columbia relating to a violent felony or acts of domestic violence substantially similar to those criminal offenses listed in subsection (a) of this section;

(2) Has not previously been afforded first offender treatment or other diversion programs for domestic violence;

(3) Has been charged with a domestic violence offense listed in subsection (b) of this section; and

(4) Has appeared at Family Court for a bail review/domestic violence interview,

may qualify for the first offense election at the time of arraignment.

(d) At the time of arraignment any person qualifying under subsection (c) of this section as a first offender and who elects to apply under this section shall admit to the offense by entering a plea of guilty, as a first offender. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and shall place the offender on probation for a period of 1 year upon terms and conditions of which shall include but not be limited to:

(1) Enrollment with a Delaware Domestic Violence Coordinating Council certified domestic violence treatment provider for the purposes of evaluation and such treatment as the evaluation counselor deems necessary;

(2) Satisfactory completion of the Delaware Domestic Violence Coordinating Council certified treatment program;

¹⁰⁷ Delaware Code (2017), Title 10 – Courts and Judicial Procedure, Chapter 9 – The Family Court of the State of Delaware, available at <http://delcode.delaware.gov/title10/c009/sc03/index.shtml> (last visited December 30, 2018).

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- (3) Evaluation for alcohol and other drug abuse, and successful completion of a course of treatment as may be indicated by the evaluation;
 - (4) Restitution, where appropriate, to the victim;
 - (5) No unlawful contact with the victim during the period of probation; and
 - (6) Other such terms and conditions as the Court may impose.
- (e) If a term or condition of probation is violated, including failure to appear for evaluation at an assigned evaluating agency, the offender shall be brought before the Court, or if the offender fails to appear before the Court, in either case, upon a determination by the Court that the terms have been violated, the Court shall enter an adjudication of guilty and proceed as otherwise provided under Title 11.
- (f) Upon fulfillment of the terms and conditions of probation, including, but not limited to, satisfactory completion of courses of instruction and/or programs of counseling/rehabilitation, and payment of all costs and fees, the court shall discharge the person and dismiss the proceedings against the offender and shall simultaneously therewith submit to the Attorney General a report thereof which shall be retained by the Attorney General for use in future proceedings, if required.
- (g) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualification or disabilities imposed by law upon conviction of a crime, except the additional penalties imposed for second or subsequent offenses under Title 11.
- (h) Any person who elects to apply for first offender status shall by said application be deemed to have waived the right to a speedy trial and further agrees to pay the cost of prosecution as a condition. If a person elects not to apply for first offender status or if the application is not accepted, the matter shall be promptly scheduled for trial.
- (i) There may be only 1 discharge and dismissal under this section with respect to any person.

[...]

37.2.9. DISTRICT OF COLUMBIA

[Code of the District of Columbia, 2018](#) ¹⁰⁸

Title 16. Particular actions, proceedings and matters

Chapter 10. Proceedings regarding intrafamily offenses

Subchapter I. Intrafamily proceedings generally (§§ 16-1001 – 16-1006)

Subchapter III. Domestic violence (§§ 16-1031 – 16-1034)

Subchapter IV. Interstate enforcement of Domestic Violence protection; uniform law (§§ 16-1041 – 16-1048)

Subchapter V. Domestic Violence fatality board (§§ 16-1051 – 16-1059)

§ 16–1001. Definitions.

For the purposes of this subchapter, the term:

- (1) “Attorney General” means the Attorney General for the District of Columbia.
- (2) “Court” means the Superior Court of the District of Columbia.
- (3) “Custodian” shall have the meaning as provided in § 16-2301(12).
- (4) “Domestic partnership” shall have the same meaning as provided in § 32-701(4).
- (5) “Domestic Violence Unit” means any subdivision of the court designated by court rule, or by order of the Chief Judge of the court, to hear proceedings under this subchapter.
- (6) “Interpersonal violence” means an act punishable as a criminal offense that is committed or threatened to be committed by an offender upon a person:
 - (A) With whom the offender shares or has shared a mutual residence; or
 - (B) Who is or was married to, in a domestic partnership with, divorced or separated from, or in a romantic, dating, or sexual relationship with another person who is or was married to, in a domestic partnership with, divorced or separated from, or in a romantic, dating, or sexual relationship with the offender.
- (7) “Intimate partner violence” means an act punishable as a criminal offense that is committed or threatened to be committed by an offender upon a person:
 - (A) To whom the offender is or was married;
 - (B) With whom the offender is or was in a domestic partnership; or
 - (C) With whom the offender is or was in a romantic, dating, or sexual relationship.
- (8) “Intrafamily offense” means interpersonal, intimate partner, or intrafamily violence.

¹⁰⁸Code of the District of Columbia (2018), Title 16. Particular actions, proceedings and matters, Chapter 10. Proceedings regarding intrafamily offenses, Subchapter I. Intrafamily proceedings generally and Subchapter III. Domestic violence, available at <https://code.dccouncil.us/dc/council/code/titles/16/chapters/10/> (last visited December 30, 2018).

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(9) “Intrafamily violence” means an act punishable as a criminal offense that is committed or threatened to be committed by an offender upon a person to whom the offender is related by blood, adoption, legal custody, marriage, or domestic partnership, or with whom the offender has a child in common.

(10) “Judicial officer” means the Chief Judge, an Associate Judge, or a Magistrate Judge of the court.

(11) “Minor” means a person under 18 years of age.

(12) “Petitioner” means any person who alleges, or for whom is alleged, that he or she is the victim of interpersonal, intimate partner, or intrafamily violence, stalking, sexual assault, or sexual abuse.

(13) “Respondent” means any person 12 years of age or older against whom a petition for civil protection is filed under this subchapter.

§ 16–1002. Complaint of criminal conduct.

A petitioner has a right to seek relief under this subchapter. This right does not depend on the decision of the Attorney General, the United States Attorney for the District of Columbia, or a prosecuting attorney in any jurisdiction to initiate or not to initiate a criminal or delinquency case or on the pendency or termination of a criminal or delinquency case involving the same parties or issues. Testimony of the respondent in any civil proceedings under this subchapter shall be inadmissible as evidence in a criminal trial or delinquency proceeding except in a prosecution for perjury or false statement.

§ 16–1003. Petition for civil protection.

(a) A petitioner, or a person authorized by this section to act on petitioner’s behalf, may file a petition for civil protection in the Domestic Violence Unit against a respondent who has allegedly committed or threatened to commit one or more criminal offenses against the petitioner; provided, that:

(1) If the petitioner is a minor, the petitioner’s parent, guardian, custodian, or other appropriate adult may file a petition for civil protection on the petitioner’s behalf;

(2) A minor who is 16 years of age or older may file a petition for civil protection on his or her own behalf;

(3) A minor who is at least 12 but less than 16 years of age and a victim of intimate partner violence may file a petition for civil protection and participate in a hearing to seek a temporary protection order without a parent, guardian, custodian, or other appropriate adult acting on his or her behalf, but, under these circumstances, the court may appoint an attorney for the minor in accordance with section 16-1005(a-1)(3), if necessary, and if doing so will not unduly delay the issuance or denial of a temporary protection order;

(4) A minor who is at least 12 but less than 16 years of age and a victim of interpersonal or intrafamily violence may petition for civil protection only if his or her parent, guardian, or custodian files the petition on his or her behalf;

(5) A minor who is less than 12 years of age may petition for civil protection only if his or her parent, guardian, or custodian files the petition on his or her behalf; and

(6) A custodial parent, guardian, or custodian of a minor may not file a petition for civil protection against the minor.

(b) The Attorney General may provide individual legal representation to a petitioner, or person authorized by this section to act on petitioner’s behalf, who files a petition in accordance with subsection (a) of this section. Whenever the Attorney General represents a petitioner under subsection (a) of this section, the representation shall continue until the civil protection order terminates or the Attorney General withdraws his or her appearance, whichever is earlier.

(c) If a petitioner is unable to file a petition on his or her own behalf or with the assistance of a parent, guardian, custodian, or other appropriate adult in accordance with subsection (a) of this section, the Attorney General may file a petition for civil protection on the petitioner’s behalf at the request of the petitioner, the petitioner’s representative, or a government agency. When proceeding on a petition filed under this subsection, the Attorney General represents the interests of the District of Columbia.

§ 16–1004. Petition; notice; temporary order.

(a) Upon a filing of a petition for civil protection, the Domestic Violence Unit shall set the matter for hearing, consolidating it, where appropriate, with other matters before the court involving members of the same family.

(b)(1) If, upon the filing of a petition under oath, a judicial officer finds that the safety or welfare of the petitioner or a household member is immediately endangered by the respondent, the judicial officer may issue, ex parte, a temporary protection order.

(2) An initial temporary protection order shall not exceed 14 days except, if the last day falls on a Saturday, Sunday, a day observed as a holiday by the court, or a day on which weather or other conditions cause the court to be closed, the temporary protection order shall extend until the end of the next day on which the court is open. The court may extend a temporary protection order in additional 14 day increments, or longer increments with the consent of the parties, as necessary until a hearing on the petition is completed.

(3) If a respondent fails to appear for a hearing on a petition for civil protection after having been served in accordance with the Rules of the Superior Court of the District of Columbia, and a civil protection order is entered in accordance with § 16-

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1005, the temporary protection order shall remain in effect until the respondent is served with the civil protection order or the civil protection order expires, whichever occurs first.

(c) A temporary protection order issued pursuant to this section shall include a notice explaining that:

(1) If the day on which the temporary protection order is set to expire is a Saturday, Sunday, a day observed as a holiday by the court, or a day on which the weather or other conditions cause the court to be closed, the temporary protection order shall remain in effect until the end of the next day on which the court is open; and

(2) If the respondent fails to appear for a hearing on a petition for civil protection after having been served, and a civil protection order is entered, the temporary protection order will remain in effect until the respondent is served with the civil protection order or the civil protection order expires, whichever occurs first.

(d) Pursuant to the Rules of the Superior Court of the District of Columbia, the respondent, and in cases where the respondent is a minor, the respondent's custodial parent, guardian, or custodian, shall be served with notice of the hearing and an order to appear, a copy of the petition, and a temporary protection order, if entered. The court may also cause notice to be served on others whose presence at the hearing is necessary to the proper disposition of the matter.

(e) If a minor has filed a petition for civil protection without a parent, guardian, or custodian, and if the minor is residing with a parent, guardian, or custodian, the court shall send a copy of any order issued pursuant to subsection (b)(1) of this section and notice of the hearing to that parent, guardian, or custodian, unless, in the discretion of the court, notification of that parent, guardian, or custodian would be contrary to the best interests of the minor. If the court does not send notice to the parent, guardian, or custodian with whom the minor resides, the court may, in its discretion, send notice to any other parent, guardian, custodian, or other appropriate adult.

[...]

§ 16–1031. Arrests.

(a) A law enforcement officer shall arrest a person if the law enforcement officer has probable cause to believe that the person:

(1) Committed an intrafamily offense that resulted in physical injury, including physical pain or illness, regardless of whether or not the intrafamily offense was committed in the presence of the law enforcement officer; or

(2) Committed an intrafamily offense that caused or was intended to cause reasonable fear of imminent serious physical injury or death.

(b) The law enforcement officer shall present the person arrested under subsection (a) of this section to the United States Attorney for charging.

(c)(1) Notwithstanding subsections (a) and (b) of this section, a law enforcement officer shall not be required to arrest a person who is under 18 years of age when there is probable cause to believe that the person has committed an intrafamily offense that does not constitute intimate partner violence.

(2) If a person is not arrested under paragraph (1) of this section, the person shall be diverted to a program that provides behavioral health and community support services.

§ 16–1034. Training program.

(a) The Police force shall incorporate in its educational program for new law enforcement officers training in:

(1) The nature, dimension, and causes of intrafamily offenses;

(2) The legal rights and remedies available to a victim or perpetrator of an intrafamily offense;

(3) The services and facilities available to a victim or perpetrator of an intrafamily offense;

(4) The legal duties imposed on a police officer to enforce the provisions of this subchapter and to offer protection and assistance to a victim of an intrafamily offense; and

(5) Techniques for handling an intrafamily offense that minimize the likelihood of injury to the officer and promote the safety of the victim.

(b) The training shall stress the importance of enforcing the law against intrafamily offenses. The Police force may:

(1) Utilize the resources of any law enforcement agency or community organization; and

(2) Invite any community organization that provides counselling or assistance to victims of intrafamily offenses to help in planning and presenting the training program.

(c) At least 20 hours of basic training in responding to an intrafamily offense shall be required of any new law enforcement officer prior to the law enforcement officer's permanent appointment.

(d) Any currently employed law enforcement officer shall be required to participate in an 8-hour course designed to familiarize the law enforcement officer with the dynamics of intrafamily offenses.

[...]

§ 16–1042. Judicial enforcement of order.

(a) A person authorized by the law of the District to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of the District. The tribunal shall enforce the terms of the order, including terms that

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provide relief that a tribunal of the District would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of or for the benefit of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of the District for the enforcement of protection orders.

(b) Except for cases brought under § 16-1005(f) or (g), a tribunal of the District may not enforce a foreign protection order issued by a tribunal of a State that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) A tribunal of the District shall enforce the provisions of a valid foreign protection order that governs custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing State.

(d) A foreign protection order is valid if it:

- (1) Identifies the protected individual and the respondent;
- (2) Is currently in effect or was in effect at the time of the violation;
- (3) Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing State; and
- (4) Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an ex parte order, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

(e) A foreign protection order valid on its face is prima facie evidence of its validity.

(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(g) A tribunal of the District may enforce provisions of a mutual foreign protection order which favor a respondent only if:

- (1) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing State; and
- (2) The tribunal of the issuing State made specific findings in favor of the respondent.

[...]

§ 16–1052. Establishment and purpose.

(a) There is established, as part of the District of Columbia government, a Domestic Violence Fatality Review Board. Facilities and other administrative support may be provided in a specific department or through the Board, as determined by the Mayor.

(b) The purpose of the Board is to prevent domestic violence fatalities by improving the response of individuals, the community, and government agencies to domestic violence.

(c) The Board shall:

- (1) Identify and characterize the scope and nature of domestic violence fatalities in the District of Columbia;
- (2) Describe and record any trends, data, or patterns that are observed surrounding domestic violence fatalities;
- (3) Examine past events and circumstances surrounding domestic violence fatalities by reviewing records and other pertinent documents of public and private agencies responsible for investigating deaths or treating victims;
- (4) Develop and revise, as necessary, operating rules and procedures for review of domestic violence fatalities, including identification of cases to be reviewed, coordination among the agencies and professionals involved, and improvement of the identification, data collection, and record keeping of the causes of domestic violence fatalities;
- (5) Recommend systemic improvements to promote improved and integrated public and private systems serving victims of domestic violence;
- (6) Recommend components for prevention and education programs; and
- (7) Recommend training to improve the identification and investigation of domestic violence fatalities.

(d) The Board shall prepare an annual report of findings, recommendations, and steps taken to implement recommendations. The report shall not contain information identifying any victim of domestic violence, or the victim's family members, or an alleged or suspected perpetrator of abuse upon a victim. The annual report shall be submitted to the public, the Mayor, and the Council on July 1 of each year, and shall be presented to the Council at a public hearing.

[...]

[Code of the District of Columbia](#) ¹⁰⁹

Title 22. Criminal offenses and penalties

Chapter 30. Sexual abuse

Subchapter II. Sex offenses

¹⁰⁹ Code of the District of Columbia (2018), Title 22. Criminal offenses and penalties, Chapter 30. Sexual abuse, Subchapter II. Sex offenses, Section 22–3019. No immunity from prosecution for spouses or domestic partners, available at <https://code.dccouncil.us/dc/council/code/sections/22-3019.html> (last visited December 30, 2018).

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§ 22–3019. No immunity from prosecution for spouses or domestic partners
No actor is immune from prosecution under any section of this subchapter because of marriage, domestic partnership, or cohabitation with the victim; provided, that marriage or the domestic partnership of the parties may be asserted as an affirmative defense in prosecution under this subchapter where it is expressly so provided.

[...]

37.2.10. FLORIDA

[Florida Statutes, 2018](#) ¹¹⁰

Title XLII. Domestic Relations

Chapter 741. Marriage; Domestic Violence

741.29 Domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting.—

(1) Any law enforcement officer who investigates an alleged incident of domestic violence shall assist the victim to obtain medical treatment if such is required as a result of the alleged incident to which the officer responds. Any law enforcement officer who investigates an alleged incident of domestic violence shall advise the victim of such violence that there is a domestic violence center from which the victim may receive services. The law enforcement officer shall give the victim immediate notice of the legal rights and remedies available on a standard form developed and distributed by the department. As necessary, the department shall revise the Legal Rights and Remedies Notice to Victims to include a general summary of s. [741.30](#) using simple English as well as Spanish, and shall distribute the notice as a model form to be used by all law enforcement agencies throughout the state. The notice shall include:

(a) The resource listing, including telephone number, for the area domestic violence center designated by the Department of Children and Families; and

(b) A copy of the following statement: “IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you may ask the state attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an injunction for protection from domestic violence which may include, but need not be limited to, provisions which restrain the abuser from further acts of abuse; direct the abuser to leave your household; prevent the abuser from entering your residence, school, business, or place of employment; award you custody of your minor child or children; and direct the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.”

(2) When a law enforcement officer investigates an allegation that an incident of domestic violence has occurred, the officer shall handle the incident pursuant to the arrest policy provided in s. [901.15\(7\)](#), and as developed in accordance with subsections (3), (4), and (5). Whether or not an arrest is made, the officer shall make a written police report that is complete and clearly indicates the alleged offense was an incident of domestic violence. Such report shall be given to the officer’s supervisor and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled. Such report must include:

(a) A description of physical injuries observed, if any.

(b) If a law enforcement officer decides not to make an arrest or decides to arrest two or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two or more parties.

(c) A statement which indicates that a copy of the legal rights and remedies notice was given to the victim.

Whenever possible, the law enforcement officer shall obtain a written statement from the victim and witnesses concerning the alleged domestic violence. The officer shall submit the report to the supervisor or other person to whom the employer’s rules or policies require reports of similar allegations of criminal activity to be made. The law enforcement agency shall, without charge, send a copy of the initial police report, as well as any subsequent, supplemental, or related report, which excludes victim/witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure under chapter 119, to the nearest locally certified domestic violence center within 24 hours after the agency’s receipt of the report. The report furnished to the domestic violence center must include a narrative description of the domestic violence incident.

(3) Whenever a law enforcement officer determines upon probable cause that an act of domestic violence has been committed within the jurisdiction the officer may arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime. The decision to arrest and charge shall not require consent of the victim or consideration of the relationship of the parties.

(4)(a) When complaints are received from two or more parties, the officers shall evaluate each complaint separately to determine whether there is probable cause for arrest.

¹¹⁰ Florida Statutes (2018), Title XLII Domestic Relations, Chapter 741 – Marriage; Domestic Violence, Subsection 741.28 available at http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0741/0741ContentsIndex.html (last visited December 30, 2018).

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(b) If a law enforcement officer has probable cause to believe that two or more persons have committed a misdemeanor or felony, or if two or more persons make complaints to the officer, the officer shall try to determine who was the primary aggressor. Arrest is the preferred response only with respect to the primary aggressor and not the preferred response with respect to a person who acts in a reasonable manner to protect or defend oneself or another family or household member from domestic violence.

(5) No law enforcement officer shall be held liable, in any civil action, for an arrest based on probable cause, enforcement in good faith of a court order, or service of process in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.

(6) A person who willfully violates a condition of pretrial release provided in s. 903.047, when the original arrest was for an act of domestic violence as defined in s. 741.28, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall be held in custody until his or her first appearance.

[...]

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(1) There is created a cause of action for an injunction for protection against domestic violence.

(a) Any person described in paragraph (e), who is either the victim of domestic violence as defined in s. 741.28 or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence, has standing in the circuit court to file a sworn petition for an injunction for protection against domestic violence.

(b) This cause of action for an injunction may be sought whether or not any other cause of action is currently pending between the parties. However, the pendency of any such cause of action shall be alleged in the petition.

(c) In the event a subsequent cause of action is filed under chapter 61, any orders entered therein shall take precedence over any inconsistent provisions of an injunction issued under this section which addresses matters governed by chapter 61.

(d) A person's right to petition for an injunction shall not be affected by such person having left a residence or household to avoid domestic violence.

(e) This cause of action for an injunction may be sought by family or household members. No person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse.

(f) This cause of action for an injunction shall not require that either party be represented by an attorney.

(g) Notwithstanding any other law, attorney fees may not be awarded in any proceeding under this section.

(h) Any person, including an officer of the court, who offers evidence or recommendations relating to the cause of action must either present the evidence or recommendations in writing to the court with copies to each party and their attorney, or must present the evidence under oath at a hearing at which all parties are present.

(i) Nothing in this section shall affect the title to any real estate.

(j) The court is prohibited from issuing mutual orders of protection. This does not preclude the court from issuing separate injunctions for protection against domestic violence where each party has complied with the provisions of this section. Compliance with the provisions of this section cannot be waived.

(k) Notwithstanding any provision of chapter 47, a petition for an injunction for protection against domestic violence may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the domestic violence occurred. There is no minimum requirement of residency to petition for an injunction for protection.

(2)(a) Notwithstanding any other provision of law, the assessment of a filing fee for a petition for protection against domestic violence is prohibited effective October 1, 2002. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection against domestic violence issued by the court, at the rate of \$40 per petition. The request for reimbursement shall be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From this reimbursement, the clerk shall pay any law enforcement agency serving the injunction the fee requested by the law enforcement agency; however, this fee shall not exceed \$20.

(b) No bond shall be required by the court for the entry of an injunction.

(c)1. The clerk of the court shall assist petitioners in seeking both injunctions for protection against domestic violence and enforcement for a violation thereof as specified in this section.

2. All clerks' offices shall provide simplified petition forms for the injunction, any modifications, and the enforcement thereof, including instructions for completion.

3. The clerk of the court shall advise petitioners of the opportunity to apply for a certificate of indigence in lieu of prepayment for the cost of the filing fee, as provided in paragraph (a).

4. The clerk of the court shall ensure the petitioner's privacy to the extent practical while completing the forms for injunctions for protection against domestic violence.

5. The clerk of the court shall provide petitioners with a minimum of two certified copies of the order of injunction, one of which is serviceable and will inform the petitioner of the process for service and enforcement.

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6. Clerks of court and appropriate staff in each county shall receive training in the effective assistance of petitioners as provided or approved by the Florida Association of Court Clerks.

7. The clerk of the court in each county shall make available informational brochures on domestic violence when such brochures are provided by local certified domestic violence centers.

8. The clerk of the court in each county shall distribute a statewide uniform informational brochure to petitioners at the time of filing for an injunction for protection against domestic or repeat violence when such brochures become available. The brochure must include information about the effect of giving the court false information about domestic violence.

(3)(a) The sworn petition shall allege the existence of such domestic violence and shall include the specific facts and circumstances upon the basis of which relief is sought.

(b) The sworn petition shall be in substantially the following form:

[...]

(d) If the sworn petition seeks to determine a parenting plan and time-sharing schedule with regard to the minor child or children of the parties, the sworn petition shall be accompanied by or shall incorporate the allegations required by s. 61.522 of the Uniform Child Custody Jurisdiction and Enforcement Act.

(4) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. The respondent shall be personally served with a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, prior to the hearing.

(5)(a) If it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing, and may grant such relief as the court deems proper, including an injunction:

1. Restraining the respondent from committing any acts of domestic violence.
2. Awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.
3. On the same basis as provided in s. 61.13, providing the petitioner a temporary parenting plan, including a time-sharing schedule, which may award the petitioner up to 100 percent of the time-sharing. The temporary parenting plan remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the minor child.

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, no evidence other than verified pleadings or affidavits shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

(c) Any such ex parte temporary injunction shall be effective for a fixed period not to exceed 15 days. A full hearing, as provided by this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the hearing before or during a hearing for good cause shown by any party, which shall include a continuance to obtain service of process. Any injunction shall be extended if necessary to remain in full force and effect during any period of continuance.

(6)(a) Upon notice and hearing, when it appears to the court that the petitioner is either the victim of domestic violence as defined by s. 741.28 or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court may grant such relief as the court deems proper, including an injunction:

1. Restraining the respondent from committing any acts of domestic violence.
2. Awarding to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.
3. On the same basis as provided in chapter 61, providing the petitioner with 100 percent of the time-sharing in a temporary parenting plan that remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the minor child.
4. On the same basis as provided in chapter 61, establishing temporary support for a minor child or children or the petitioner. An order of temporary support remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting child support.
5. Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent. When the court orders the respondent to participate in a batterers' intervention program, the court, or any entity

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designated by the court, must provide the respondent with a list of batterers' intervention programs from which the respondent must choose a program in which to participate.

6. Referring a petitioner to a certified domestic violence center. The court must provide the petitioner with a list of certified domestic violence centers in the circuit which the petitioner may contact.

7. Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies, as provided in this section.

(b) In determining whether a petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court shall consider and evaluate all relevant factors alleged in the petition, including, but not limited to:

1. The history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse.
2. Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.
3. Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child or children.
4. Whether the respondent has intentionally injured or killed a family pet.
5. Whether the respondent has used, or has threatened to use, against the petitioner any weapons such as guns or knives.
6. Whether the respondent has physically restrained the petitioner from leaving the home or calling law enforcement.
7. Whether the respondent has a criminal history involving violence or the threat of violence.
8. The existence of a verifiable order of protection issued previously or from another jurisdiction.
9. Whether the respondent has destroyed personal property, including, but not limited to, telephones or other communications equipment, clothing, or other items belonging to the petitioner.
10. Whether the respondent engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.

In making its determination under this paragraph, the court is not limited to those factors enumerated in subparagraphs 1.-10.

(c) The terms of an injunction restraining the respondent under subparagraph (a)1. or ordering other relief for the protection of the victim under subparagraph (a)7. shall remain in effect until modified or dissolved. Either party may move at any time to modify or dissolve the injunction. No specific allegations are required. Such relief may be granted in addition to other civil or criminal remedies.

(d) A temporary or final judgment on injunction for protection against domestic violence entered pursuant to this section shall, on its face, indicate that:

1. The injunction is valid and enforceable in all counties of the State of Florida.
2. Law enforcement officers may use their arrest powers pursuant to s. 901.15(6) to enforce the terms of the injunction.
3. The court had jurisdiction over the parties and matter under the laws of Florida and that reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's right to due process.
4. The date respondent was served with the temporary or final order, if obtainable.

(e) An injunction for protection against domestic violence entered pursuant to this section, on its face, may order that the respondent attend a batterers' intervention program as a condition of the injunction. Unless the court makes written factual findings in its judgment or order which are based on substantial evidence, stating why batterers' intervention programs would be inappropriate, the court shall order the respondent to attend a batterers' intervention program if:

1. It finds that the respondent willfully violated the ex parte injunction;
2. The respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence; or
3. The respondent, in this state or any other state, has had at any time a prior injunction for protection entered against the respondent after a hearing with notice.

(f) The fact that a separate order of protection is granted to each opposing party shall not be legally sufficient to deny any remedy to either party or to prove that the parties are equally at fault or equally endangered.

(g) A final judgment on injunction for protection against domestic violence entered pursuant to this section must, on its face, indicate that it is a violation of s. 790.233, and a first degree misdemeanor, for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition.

(h) All proceedings under this subsection shall be recorded. Recording may be by electronic means as provided by the Rules of Judicial Administration.

(7) The court shall allow an advocate from a state attorney's office, an advocate from a law enforcement agency, or an advocate from a certified domestic violence center who is registered under s. 39.905 to be present with the petitioner or respondent during any court proceedings or hearings related to the injunction for protection, provided the petitioner or respondent has made such a request and the advocate is able to be present.

(8)(a)1. The clerk of the court shall furnish a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement

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agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. When requested by the sheriff, the clerk of the court may transmit a facsimile copy of an injunction that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy. Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may transmit a facsimile copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court shall be responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section shall use service and verification procedures consistent with those of the sheriff.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction. A law enforcement officer shall accept a copy of an injunction for protection against domestic violence, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

3. All orders issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1., shall be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. In the event a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

If the respondent has been served previously with the temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b) There shall be created a Domestic and Repeat Violence Injunction Statewide Verification System within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions and repeat violence injunctions issued by the courts throughout the state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5.a. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. When a petitioner makes a request for notification, the clerk must apprise the petitioner of her or his right to request in writing that the information specified in sub-subparagraph b. be held exempt from public records requirements for 5 years. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

b. Upon implementation of the automated process, information held by clerks and law enforcement agencies in conjunction with the automated process developed under sub-subparagraph a. which reveals the home or employment telephone number, cellular telephone number, home or employment address, electronic mail address, or other electronic

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means of identification of a petitioner requesting notification of service of an injunction for protection against domestic violence and other court actions related to the injunction for protection is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, upon written request by the petitioner. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this sub-subparagraph. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

6. Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

(9)(a) The court may enforce a violation of an injunction for protection against domestic violence through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation under s. 741.31. The court may enforce the respondent's compliance with the injunction through any appropriate civil and criminal remedies, including, but not limited to, a monetary assessment or a fine. The clerk of the court shall collect and receive such assessments or fines. On a monthly basis, the clerk shall transfer the moneys collected pursuant to this paragraph to the State Treasury for deposit in the Domestic Violence Trust Fund established in s. 741.01.

(b) If the respondent is arrested by a law enforcement officer under s. 901.15(6) or for a violation of s. 741.31, the respondent shall be held in custody until brought before the court as expeditiously as possible for the purpose of enforcing the injunction and for admittance to bail in accordance with chapter 903 and the applicable rules of criminal procedure, pending a hearing.

(10) The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.
[...]

37.2.11. GEORGIA

[Georgia Code, 2017](#) ¹¹¹

Title 19. Domestic Relations
Chapter 13. Family Violence (Articles 1 -4)
Article 1 - Granting of Relief by Superior Courts

GA Code § 19-13-10 (2017)

As used in this article, the term:

- (1) "Commission" means the State Commission on Family Violence.
- (2) "Commissioner" means the commissioner of community supervision.
- (3) "Department" means the Department of Community Supervision.
- (4) "Family or household members" means past or present spouses, persons who are parents of the same child, or other persons living or formerly living in the same household.
- (5) "Family violence" means the commission of the offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, or criminal trespass between family or household members.
- (6) "Family violence intervention program" or "program" means any program that is certified by the Department of Community Supervision pursuant to Code Section 19-13-14 and designed to rehabilitate family violence offenders. Such term shall include, but shall not be limited to, batterer intervention programs, anger management programs, anger counseling, family problem resolution, and violence therapy.

[...]

§ 19-13-3. Filing of petition seeking relief from family violence; granting of temporary relief ex parte; hearing; dismissal of petition upon failure to hold hearing; procedural advice for victims

- (a) A person who is not a minor may seek relief under this article by filing a petition with the superior court alleging one or more acts of family violence. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.
- (b) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that family violence has occurred in the past and may occur in the future, the court may order such temporary relief ex parte

¹¹¹ Georgia Code (2017), Title 19. Domestic Relations, Chapter 13. Family Violence, available at <https://law.justia.com/codes/georgia/2017/title-19/chapter-13/> (last visited December 30, 2018).

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as it deems necessary to protect the petitioner or a minor of the household from violence. If the court issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner.

(c) Within ten days of the filing of the petition under this article or as soon as practical thereafter, but in no case later than 30 days after the filing of the petition, a hearing shall be held at which the petitioner must prove the allegations of the petition by a preponderance of the evidence as in other civil cases. In the event a hearing cannot be scheduled within the county where the case is pending within the 30 day period the same shall be scheduled and heard within any other county of that circuit. If a hearing is not held within 30 days, the petition shall stand dismissed unless the parties otherwise agree.

(d) Family violence shelter or social service agency staff members designated by the court may explain to all victims not represented by counsel the procedures for filling out and filing all forms and pleadings necessary for the presentation of their petition to the court. The clerk of the court may provide forms for petitions and pleadings to victims of family violence and to any other person designated by the superior court pursuant to this Code section as authorized to advise victims on filling out and filing such petitions and pleadings. The clerk shall not be required to provide assistance to persons in completing such forms or in presenting their case to the court. Any assistance provided pursuant to this Code section shall be performed without cost to the petitioners. The performance of such assistance shall not constitute the practice of law as defined in Code Section 15-19-51.

§ 19-13-4. Protective orders and consent agreements; contents; issuing copy of order to sheriff; expiration; enforcement

(a) The court may, upon the filing of a verified petition, grant any protective order or approve any consent agreement to bring about a cessation of acts of family violence. The court shall not have the authority to issue or approve mutual protective orders concerning paragraph (1), (2), (5), (9), or (11) of this subsection, or any combination thereof, unless the respondent has filed a verified petition as a counter petition pursuant to Code Section 19-13-3 no later than three days, not including Saturdays, Sundays, and legal holidays, prior to the hearing and the provisions of Code Section 19-13-3 have been satisfied.

The orders or agreements may:

- (1) Direct the respondent to refrain from such acts;
- (2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;
- (3) Require a party to provide suitable alternate housing for a spouse, former spouse, or parent and the parties' child or children;
- (4) Award temporary custody of minor children and establish temporary visitation rights;
- (5) Order the eviction of a party from the residence or household and order assistance to the victim in returning to it, or order assistance in retrieving personal property of the victim if the respondent's eviction has not been ordered;
- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the support of a spouse as required by law;
- (8) Provide for possession of personal property of the parties;
- (9) Order the respondent to refrain from harassing or interfering with the victim;
- (10) Award costs and attorney's fees to either party; and
- (11) Order the respondent to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of family violence.

(b) A copy of the order shall be issued by the clerk of the superior court to the sheriff of the county wherein the order was entered and shall be retained by the sheriff as long as that order shall remain in effect.

(c) Any order granted under this Code section shall remain in effect for up to one year; provided, however, that upon the motion of a petitioner and notice to the respondent and after a hearing, the court in its discretion may convert a temporary order granted under this Code section to an order effective for not more than three years or to a permanent order.

(d) A protective order issued pursuant to this Code section shall apply and shall be effective throughout this state. It shall be the duty of every superior court and of every sheriff, every deputy sheriff, and every state, county, or municipal law enforcement officer within this state to enforce and carry out the terms of any valid protective order issued by any court under the provisions of this Code section.

37.2.12. HAWAII

[Hawaii Revised Statutes, 2017](#) ¹¹²

Division 5. Crimes and Criminal Proceedings

§ 709-906. Abuse of Family or Household Member; Penalty

¹¹² Hawaii Revised Statutes (2017), Division 5. Crimes and Criminal Proceedings, § 709-906 Abuse of Family or Household Member; Penalty, available at https://www.capitol.hawaii.gov/hrscurrent/Vol14_Ch0701-0853/HRS0709/HRS_0709-0906.htm (last visited December 30, 2018).

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(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter.

For the purposes of this section:

"Business day" means any calendar day, except Saturday, Sunday, or any state holiday.

"Family or household member":

(a) Means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons in a dating relationship as defined under section 586-1, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit; and

(b) Does not include those who are, or were, adult roommates or cohabitants only by virtue of an economic or contractual affiliation.

(2) Any police officer, with or without a warrant, may arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member and that the person arrested is guilty thereof.

(3) A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

(4) Any police officer, with or without a warrant, shall take the following course of action, regardless of whether the physical abuse or harm occurred in the officer's presence.

(a) The police officer shall make reasonable inquiry of the family or household member upon whom the officer believes physical abuse or harm has been inflicted and other witnesses as there may be;

(b) If the person who the police officer reasonably believes to have inflicted the abuse is eighteen years of age or older, the police officer lawfully shall order the person to leave the premises for a period of separation, during which time the person shall not initiate any contact, either by telephone or in person, with the family or household member; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects. The period of separation shall commence when the order is issued and shall expire at 6:00 p.m. on the second business day following the day the order was issued; provided that the day the order is issued shall not be included in the computation of the two business days;

(c) If the person who the police officer reasonably believes to have inflicted the abuse is under the age of eighteen, the police officer may order the person to leave the premises for a period of separation, during which time the person shall not initiate any contact with the family or household member by telephone or in person; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects. The period of separation shall commence when the order is issued and shall expire at 6:00 p.m. on the second business day following the day the order was issued; provided that the day the order is issued shall not be included in the computation of the two business days. The order of separation may be amended at any time by a judge of the family court. In determining whether to order a person under the age of eighteen to leave the premises, the police officer may consider the following factors:

(i) Age of the person;

(ii) Relationship between the person and the family or household member upon whom the police officer reasonably believes the abuse has been inflicted; and

(iii) Ability and willingness of the parent, guardian, or other authorized adult to maintain custody and control over the person;

(d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person;

(e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member; and

(f) The police officer shall seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.

(5) Abuse of a family or household member and refusal to comply with the lawful order of a police officer under subsection (4) are misdemeanors and the person shall be sentenced as follows:

(a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and

(b) For a second offense that occurs within one year of the first conviction, the person shall be termed a "repeat offender" and serve a minimum jail sentence of thirty days.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

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- (6) Whenever a court sentences a person pursuant to subsection (5), it also shall require that the offender undergo any available domestic violence intervention programs ordered by the court. However, the court may suspend any portion of a jail sentence, except for the mandatory sentences under subsection (5)(a) and (b), upon the condition that the defendant remain arrest-free and conviction-free or complete court-ordered intervention.
- (7) For a third or any subsequent offense that occurs within two years of a second or subsequent conviction, the offense shall be a class C felony.
- (8) Where the physical abuse consists of intentionally or knowingly impeding the normal breathing or circulation of the blood of the family or household member by applying pressure on the throat or the neck, abuse of a family or household member is a class C felony.
- (9) Where physical abuse occurs in the presence of a minor, as defined in section 706-606.4, and the minor is a family or household member less than fourteen years of age, abuse of a family or household member is a class C felony.
- (10) Any police officer who arrests a person pursuant to this section shall not be subject to any civil or criminal liability; provided that the police officer acts in good faith, upon reasonable belief, and does not exercise unreasonable force in effecting the arrest.
- (11) The family or household member who has been physically abused or harmed by another person may petition the family court, with the assistance of the prosecuting attorney of the applicable county, for a penal summons or arrest warrant to issue forthwith or may file a criminal complaint through the prosecuting attorney of the applicable county.
- (12) The respondent shall be taken into custody and brought before the family court at the first possible opportunity. The court may dismiss the petition or hold the respondent in custody, subject to bail. Where the petition is not dismissed, a hearing shall be set.
- (13) This section shall not operate as a bar against prosecution under any other section of this Code in lieu of prosecution for abuse of a family or household member.
- (14) It shall be the duty of the prosecuting attorney of the applicable county to assist any victim under this section in the preparation of the penal summons or arrest warrant.
- (15) This section shall not preclude the physically abused or harmed family or household member from pursuing any other remedy under law or in equity.
- (16) When a person is ordered by the court to undergo any domestic violence intervention, that person shall provide adequate proof of compliance with the court's order. The court shall order a subsequent hearing at which the person is required to make an appearance, on a date certain, to determine whether the person has completed the ordered domestic violence intervention. The court may waive the subsequent hearing and appearance where a court officer has established that the person has completed the intervention ordered by the court.

[...]

37.2.13. IDAHO

[Idaho Statutes, 2018](#) ¹¹³

Title 18 – Crimes and Punishments
Chapter 9 – Assault and Battery
Section 918 - Domestic Violence

- (1) For the purpose of this section:
- (a) "Household member" means a person who is a spouse, former spouse, or a person who has a child in common regardless of whether they have been married or a person with whom a person is cohabiting, whether or not they have married or have held themselves out to be husband or wife.
- (b) "Traumatic injury" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.
- (2) (a) Any household member who in committing a battery, as defined in section [18-903](#), Idaho Code, inflicts a traumatic injury upon any other household member is guilty of a felony.
- (b) A conviction of felony domestic battery is punishable by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars (\$10,000) or by both fine and imprisonment.
- (3) (a) A household member who commits an assault, as defined in section [18-901](#), Idaho Code, against another household member which does not result in traumatic injury is guilty of a misdemeanor domestic assault.

¹¹³ Idaho Statutes (2018), Title 18 – Crimes and Punishments, Chapter 9 – Assault and Battery, Section 918 Domestic Violence, available at <https://legislature.idaho.gov/statutesrules/idstat/title18/t18ch9/sect18-918/> (last visited December 30, 2018).

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(b) A household member who commits a battery, as defined in section [18-903](#), Idaho Code, against another household member which does not result in traumatic injury is guilty of a misdemeanor domestic battery.

(c) A first conviction under this subsection is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in a county jail not to exceed six (6) months, or both. Any person who pleads guilty to or is found guilty of a violation of this subsection who previously has pled guilty to or been found guilty of a violation of this subsection, or of any substantially conforming foreign criminal violation, notwithstanding the form of the judgment or withheld judgment, within ten (10) years of the first conviction, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a term not to exceed one (1) year or by a fine not exceeding two thousand dollars (\$2,000) or by both fine and imprisonment. Any person who pleads guilty to or is found guilty of a violation of this subsection who previously has pled guilty to or been found guilty of two (2) violations of this subsection, or of any substantially conforming foreign criminal violation or any combination thereof, notwithstanding the form of the judgment or withheld judgment, within fifteen (15) years of the first conviction, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars (\$5,000) or by both fine and imprisonment.

(4) The maximum penalties provided in this section shall be doubled where the act of domestic assault or battery for which the person is convicted or pleads guilty took place in the presence of a child. For purposes of this section, "in the presence of a child" means in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic assault or battery. For purposes of this section, "child" means a person under sixteen (16) years of age.

(5) Notwithstanding any other provisions of this section, any person who previously has pled guilty to or been found guilty of a felony violation of the provisions of this section or of any substantially conforming foreign criminal felony violation, notwithstanding the form of the judgment or withheld judgment, and who, within fifteen (15) years, pleads guilty to or is found guilty of any further violation of this section shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars (\$10,000), or by both such fine and imprisonment.

(6) For the purposes of this section, a substantially conforming foreign criminal violation exists when a person has pled guilty to or been found guilty of a violation of any federal law or law of another state, or any valid county, city or town ordinance of another state, substantially conforming with the provisions of this section. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(7) (a) Any person who pleads guilty to or is found guilty of a violation of this section or section [18-923](#), Idaho Code, shall undergo, at the person's own expense, an evaluation by a person, agency or organization approved by the court in accordance with paragraph (c) of this subsection to determine whether the defendant should be required to obtain counseling or other appropriate treatment. Such evaluation shall be completed prior to the sentencing date if the court's list of approved evaluators, in accordance with paragraph (c) of this subsection, contains evaluators who are able to perform the evaluation prior to the sentencing dates. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling or treatment considered appropriate for the defendant, together with the estimated costs thereof, and shall recommend any other suitable alternative counseling or treatment programs, together with the estimated costs thereof. The defendant shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that counseling is required unless the defendant makes a showing by a preponderance of evidence that counseling is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If counseling or other treatment is ordered, in no event shall the person, agency or organization doing the evaluation be the person, agency or organization that provides the counseling or other treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized for court-ordered counseling or treatment pursuant to this section for indigent defendants as provided by law. In the event that funding is provided for or on behalf of the defendant by a governmental entity, the defendant shall be ordered to make restitution to such governmental entity in accordance with the restitution procedure for crime victims, as specified under [chapter 53, title 19](#), Idaho Code.

(b) If the evaluation recommends counseling or other treatment, the court shall order the person to complete the counseling or other treatment in addition to any other sentence which may be imposed. If the court determines that counseling or treatment would be inappropriate or undesirable, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such counseling or treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation or a comparable program. Nothing contained in this subsection shall be construed as requiring a court to order that counseling or treatment be provided at government expense unless otherwise required by law.

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(c) The supreme court shall by rule establish a uniform system for the qualification and approval of persons, agencies or organizations to perform the evaluations required in this subsection. Only qualified evaluators approved by the court shall be authorized to perform such evaluations. Funds to establish a system for approval of evaluators shall be derived from moneys designated therefor and deposited in the district court fund as provided in section [31-3201A](#)(16), Idaho Code.

(d) Counseling or treatment ordered pursuant to this section shall be conducted according to standards established or approved by the Idaho council on domestic violence and victim assistance.

[...]

Marital rape:

[Idaho Statutes, 2018](#) ¹¹⁴

Title 18. Crimes and Punishments

Chapter 61. Rape

18-6107. Rape of Spouse

18-6107. RAPE OF SPOUSE. No person shall be convicted of rape for any act or acts with that person's spouse, except under the circumstances cited in subsections (4), (5), (6) and (10) of section 18-6101, Idaho Code.

History:

[18-6107, added 1977, ch. 208, sec. 4, p. 574; am. 1989, ch. 351, sec. 1, p. 879; am. 2010, ch. 352, sec. 2, p. 921; am. 2016, ch. 296, sec. 2, p. 829.]

[...]

37.2.14. ILLINOIS

[Illinois Statutes, 2017](#) ¹¹⁵

Chapter 720 - Criminal Offenses

Act 5 – Criminal Code 2012

Title III – Specific Offenses

Article 12 – Bodily Harm

Subdivision 5 – Assault and battery

§ 5/12-3.2. Domestic battery

(a) A person commits domestic battery if he or she knowingly without legal justification by any means:

(1) Causes bodily harm to any family or household member;

(2) Makes physical contact of an insulting or provoking nature with any family or household member.

(b) Sentence. Domestic battery is a Class A misdemeanor. Domestic battery is a Class 4 felony if the defendant has any prior conviction under this Code for violation of an order of protection (Section 12-3.4 or 12-30), or any prior conviction under the law of another jurisdiction for an offense which is substantially similar. Domestic battery is a Class 4 felony if the defendant has any prior conviction under this Code for first degree murder (Section 9-1), attempt to commit first degree murder (Section 8-4), aggravated domestic battery (Section 12-3.3), aggravated battery (Section 12-3.05 or 12-4), heinous battery (Section 12-4.1), aggravated battery with a firearm (Section 12-4.2), aggravated battery with a machine gun or a firearm equipped with a silencer (Section 12-4.2-5), aggravated battery of a child (Section 12-4.3), aggravated battery of an unborn child (subsection (a-5) of Section 12-3.1, or Section 12-4.4), aggravated battery of a senior citizen (Section 12-4.6), stalking (Section 12-7.3), aggravated stalking (Section 12-7.4), criminal sexual assault (Section 11-1.20 or 12-13), aggravated criminal sexual assault (Section 11-1.30 or 12-14), kidnapping (Section 10-1), aggravated kidnapping (Section 10-2), predatory criminal sexual assault of a child (Section 11-1.40 or 12-14.1), aggravated criminal sexual abuse (Section 11-1.60 or 12-16), unlawful restraint (Section 10-3), aggravated unlawful restraint (Section 10-3.1), aggravated arson (Section 20-1.1), or aggravated discharge of a firearm (Section 24-1.2), or any prior conviction under the law of another jurisdiction for any offense that is substantially similar to the

¹¹⁴ Idaho Statutes (2018), Title 18. Crimes and Punishments, Chapter 61. Rape, 18-6107. Rape of Spouse, available at <https://legislature.idaho.gov/statutesrules/idstat/title18/t18ch61/sect18-6107/> (last visited December 30, 2018).

¹¹⁵ Illinois Statutes (2017), Chapter 720 - Criminal Offenses, Act 5 – Criminal Code 2012, Title III – Specific Offenses, Article 12 – Bodily Harm, Subdivision 5 – Assault and battery, §.2 5/12-3.2. Domestic battery, available at <https://codes.findlaw.com/il/chapter-720-criminal-offenses/il-st-sect-720-5-12-3-2.html> (last visited December 30, 2018).

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offenses listed in this Section, when any of these offenses have been committed against a family or household member. Domestic battery is a Class 4 felony if the defendant has one or 2 prior convictions under this Code for domestic battery (Section 12-3.2), or one or 2 prior convictions under the law of another jurisdiction for any offense which is substantially similar. Domestic battery is a Class 3 felony if the defendant had 3 prior convictions under this Code for domestic battery (Section 12-3.2), or 3 prior convictions under the law of another jurisdiction for any offense which is substantially similar. Domestic battery is a Class 2 felony if the defendant had 4 or more prior convictions under this Code for domestic battery (Section 12-3.2), or 4 or more prior convictions under the law of another jurisdiction for any offense which is substantially similar. In addition to any other sentencing alternatives, for any second or subsequent conviction of violating this Section, the offender shall be mandatorily sentenced to a minimum of 72 consecutive hours of imprisonment. The imprisonment shall not be subject to suspension, nor shall the person be eligible for probation in order to reduce the sentence.

(c) Domestic battery committed in the presence of a child. In addition to any other sentencing alternatives, a defendant who commits, in the presence of a child, a felony domestic battery (enhanced under subsection (b)), aggravated domestic battery (Section 12-3.3), aggravated battery (Section 12-3.05 or 12-4), unlawful restraint (Section 10-3), or aggravated unlawful restraint (Section 10-3.1) against a family or household member shall be required to serve a mandatory minimum imprisonment of 10 days or perform 300 hours of community service, or both. The defendant shall further be liable for the cost of any counseling required for the child at the discretion of the court in accordance with subsection (b) of Section 5-5-6 of the Unified Code of Corrections. 1 For purposes of this Section, “child” means a person under 18 years of age who is the defendant's or victim's child or step-child or who is a minor child residing within or visiting the household of the defendant or victim.

(d) Upon conviction of domestic battery, the court shall advise the defendant orally or in writing, substantially as follows: “An individual convicted of domestic battery may be subject to federal criminal penalties for possessing, transporting, shipping, or receiving any firearm or ammunition in violation of the federal Gun Control Act of 1968 (18 U.S.C. 922(g)(8) and (9)).” A notation shall be made in the court file that the admonition was given.

[...]

[Illinois Statutes, 2017](#) ¹¹⁶

Chapter 720 - Criminal Offenses
Act 5 – Criminal Code 2012
Title III – Specific Offenses,
Article 12 – Bodily Harm,
Subdivision 5 – Assault and battery
§ 5/12-3.3 Aggravated domestic Battery

(a) A person who, in committing a domestic battery, knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated domestic battery.

(a-5) A person who, in committing a domestic battery, strangles another individual commits aggravated domestic battery. For the purposes of this subsection (a-5), “strangle” means intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual or by blocking the nose or mouth of that individual.

(b) Sentence. Aggravated domestic battery is a Class 2 felony. Any order of probation or conditional discharge entered following a conviction for an offense under this Section must include, in addition to any other condition of probation or conditional discharge, a condition that the offender serve a mandatory term of imprisonment of not less than 60 consecutive days. A person convicted of a second or subsequent violation of this Section must be sentenced to a mandatory term of imprisonment of not less than 3 years and not more than 7 years or an extended term of imprisonment of not less than 7 years and not more than 14 years.

(c) Upon conviction of aggravated domestic battery, the court shall advise the defendant orally or in writing, substantially as follows: “An individual convicted of aggravated domestic battery may be subject to federal criminal penalties for possessing, transporting, shipping, or receiving any firearm or ammunition in violation of the federal Gun Control Act of 1968 (18 U.S.C. 922(g)(8) and (9)).” A notation shall be made in the court file that the admonition was given.

[...]

¹¹⁶ Illinois Statutes (2017), Chapter 720 - Criminal Offenses, Act 5 – Criminal Code 2012, Title III – Specific Offenses, Article 12 – Bodily Harm, Subdivision 5 – Assault and battery, §.2 5/12-3.3. Aggravated domestic battery, available at <http://iga.in.gov/legislative/laws/2018/ic/titles/035#35-42-2-1.3> (last visited December 30, 2018).

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37.2.15. INDIANA

[Indiana Code, 2018](#) ¹¹⁷

Title 35 – Criminal Law and Procedure
Article 42 – Offenses Against the Person
Chapter 2 – Battery and Related Offenses
1.3 Domestic battery

IC 35-42-2-1.3 Domestic battery

Sec. 1.3. (a) Except as provided in subsections (b) through (f), a person who knowingly or intentionally:

- (1) touches a family or household member in a rude, insolent, or angry manner; or
 - (2) in a rude, insolent, or angry manner places any bodily fluid or waste on a family or household member;
- commits domestic battery, a Class A misdemeanor.

(b) The offense under subsection (a)(1) or (a)(2) is a Level 6 felony if one (1) or more of the following apply:

(1) The person who committed the offense has a previous, unrelated conviction:

(A) for a battery offense included in this chapter; or

(B) in any other jurisdiction, including a military court, in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a battery offense included in this chapter.

(2) The person who committed the offense is at least eighteen (18) years of age and committed the offense against a family or household member in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense.

(3) The offense results in moderate bodily injury to a family or household member.

(4) The offense is committed against a family or household member who is less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age.

(5) The offense is committed against a family or household member of any age who has a mental or physical disability and is committed by a person having the care of the family or household member with the mental or physical disability, whether the care is assumed voluntarily or because of a legal obligation.

(6) The offense is committed against a family or household member who is an endangered adult (as defined in IC 12-10-3-2).

(c) The offense described in subsection (a)(1) or (a)(2) is a Level 5 felony if one (1) or more of the following apply:

(1) The offense results in serious bodily injury to a family or household member.

(2) The offense is committed with a deadly weapon against a family or household member.

(3) The offense results in bodily injury to a pregnant family or household member if the person knew of the pregnancy.

(4) The person has a previous conviction for a battery offense:

(A) included in this chapter against the same family or household member; or

(B) against the same family or household member in any other jurisdiction, including a military court, in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a battery offense included in this chapter.

(5) The offense results in bodily injury to one (1) or more of the following:

(A) A family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.

(B) A family or household member who has a mental or physical disability if the offense is committed by an individual having care of the family or household member with the disability, regardless of whether the care is assumed voluntarily or because of a legal obligation.

(C) A family or household member who is an endangered adult (as defined in IC 12-10-3-2).

(d) The offense described in subsection (a)(1) or (a)(2) is a Level 4 felony if it results in serious bodily injury to a family or household member who is an endangered adult (as defined in IC 12-10-3-2).

(e) The offense described in subsection (a)(1) or (a)(2) is a Level 3 felony if it results in serious bodily injury to a family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.

(f) The offense described in subsection (a)(1) or (a)(2) is a Level 2 felony if it results in the death of one (1) or more of the following:

(1) A family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.

(2) A family or household member who is an endangered adult (as defined in IC 12-10-3-2).

¹¹⁷ Indiana Code (2018), Title 35 – Criminal Law and Procedure, Article 42 – Offenses Against the Person, Chapter 2 – Battery and Related Offenses, 1.3 Domestic battery, available at <http://iga.in.gov/legislative/laws/2018/ic/titles/001> (last visited December 30, 2018).

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As added by P.L.188-1999, SEC.6. Amended by P.L.47-2000, SEC.3; P.L.221-2003, SEC.18; P.L.129-2006, SEC.1; P.L.6-2012, SEC.225; P.L.158-2013, SEC.421; P.L.65-2016, SEC.34.

[...]

37.2.16. IOWA

[Iowa Code, 2016](#) ¹¹⁸

Title VI. Human Services

Chapter 236. Domestic abuse

236.1 Short title. This chapter may be cited as the “Domestic Abuse Act”. [C81, §236.1]

36.2 Definitions. For purposes of this chapter, unless a different meaning is clearly indicated by the context:

1. “Department” means the department of justice.
2. “Domestic abuse” means committing assault as defined in section 708.1 under any of the following circumstances:
 - a. The assault is between family or household members who resided together at the time of the assault.
 - b. The assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault.
 - c. The assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time.
 - d. The assault is between persons who have been family or household members residing together within the past year and are not residing together at the time of the assault.
 - e. (1) The assault is between persons who are in an intimate relationship or have been in an intimate relationship and have had contact within the past year of the assault. In determining whether persons are or have been in an intimate relationship, the court may consider the following nonexclusive list of factors:
 - (a) The duration of the relationship.
 - (b) The frequency of interaction.
 - (c) Whether the relationship has been terminated.
 - (d) The nature of the relationship, characterized by either party’s expectation of sexual or romantic involvement.(2) A person may be involved in an intimate relationship with more than one person at a time.
3. “Emergency shelter services” include but are not limited to secure crisis shelters or housing for victims of domestic abuse.
4. a. “Family or household members” means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity.
b. “Family or household members” does not include children under age eighteen of persons listed in paragraph “a”.
5. “Intimate relationship” means a significant romantic involvement that need not include sexual involvement. An intimate relationship does not include casual social relationships or associations in a business or professional capacity.
6. “Plaintiff” includes a person filing an action on behalf of an unemancipated minor.
7. “Pro se” means a person proceeding on the person’s own behalf without legal representation.
8. “Support services” include but are not limited to legal services, counseling services, transportation services, child care services, and advocacy services. [C81, §236.2] 85 Acts, ch 175, §2; 87 Acts, ch 154, §1; 89 Acts, ch 279, §2, 3; 91 Acts, ch 218, §4; 93 Acts, ch 157, §1; 95 Acts, ch 180, §7; 2002 Acts, ch 1004, §1, 2; 2003 Acts, ch 44, §52; 2009 Acts, ch 41, §263 Referred to in §9E.2, 135B.7, 236.5, 236.13, 507B.4, 598.16, 598.41, 598C.305, 611.23, 708.2A, 708.2B, 804.7

[...]

236.4 Hearings — temporary orders.

1. Not less than five and not more than fifteen days after commencing a proceeding and upon notice to the other party, a hearing shall be held at which the plaintiff must prove the allegation of domestic abuse by a preponderance of the evidence.
2. The court may enter any temporary order it deems necessary to protect the plaintiff from domestic abuse prior to the hearing, including temporary custody or visitation orders pursuant to subsection 3, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection. A temporary order issued pursuant to this subsection shall specifically include notice that the person may be required to relinquish all firearms, offensive weapons, and ammunition upon the issuance of a permanent order pursuant to section 236.5.

¹¹⁸ Iowa Code (2016), Title VI. Human Services, Chapter 236. Domestic abuse, available at <https://www.legis.iowa.gov/docs/code/236.pdf> (last visited December 30, 2018).

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3. The court may award temporary custody of or establish temporary visitation rights with regard to children under eighteen years of age. In awarding temporary custody or temporary visitation rights, the court shall give primary consideration to the safety of the alleged victim and the children. If the court finds that the safety of the alleged victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall set conditions or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children. The court shall also determine whether any other existing orders awarding custody or visitation should be modified.
 4. The court may include in the temporary order issued pursuant to this section a grant to the petitioner of the exclusive care, possession, or control of any pets or companion animals owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child of the petitioner or respondent whose welfare may be affected by the controversy. The court may forbid the respondent from approaching, taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the pet or companion animal. This subsection shall not apply to livestock as defined in section 717.1, held solely or primarily for commercial purposes.
 5. If a hearing is continued, the court may make or extend any temporary order under subsection 2, 3, or 4 that it deems necessary.
 6. Upon application of a party, the court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers.
 7. The court shall advise the defendant of a right to be represented by counsel of the defendant's choosing and to have a continuance to secure counsel.
 8. Prior to the entry of a temporary order under this section that involves a child-custody determination as defined in section 598B.102, the plaintiff shall furnish information to the court in compliance with section 598B.209.
 9. Hearings shall be recorded.
- [C81, §236.4]

236.5 Disposition.

1. Upon a finding that the defendant has engaged in domestic abuse:
 - a. The court may order that the plaintiff, the defendant, and the children who are members of the household receive professional counseling, either from a private source approved by the court or from a source appointed by the court. Costs of counseling shall be paid in full or in part by the parties and taxed as court costs. If the court determines that the parties are unable to pay the costs, they may be paid in full or in part from the county treasury.
 - b. The court may grant a protective order or approve a consent agreement which may contain but is not limited to any of the following provisions:
 - (1) That the defendant cease domestic abuse of the plaintiff.
 - (2) That the defendant not knowingly possess, ship, transport, or receive firearms, offensive weapons, and ammunition in violation of section 724.26, subsection 2.
 - (3) That the defendant grant possession of the residence to the plaintiff to the exclusion of the defendant or that the defendant provide suitable alternate housing for the plaintiff.
 - (4) That the defendant stay away from the plaintiff's residence, school, or place of employment.
 - (5) The awarding of temporary custody of or establishing temporary visitation rights with regard to children under eighteen.
 - (a) In awarding temporary custody or temporary visitation rights, the court shall give primary consideration to the safety of the victim and the children.
 - (b) If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children.
 - (c) The court shall also determine whether any other existing orders awarding custody or visitation rights should be modified.
 - (d) Prior to entry of an order or agreement under this section that involves a child-custody determination as defined in section 598B.102, the parties shall furnish information to the court in compliance with section 598B.209.
 - (6) Unless prohibited pursuant to 28 U.S.C. §1738B, that the defendant pay the clerk a sum of money for the separate support and maintenance of the plaintiff and children under eighteen.
 - (7) A grant to the petitioner of the exclusive care, possession, or control of any pets or companion animals owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child of the petitioner or respondent whose welfare may be affected by the controversy. The court may forbid the respondent from approaching, taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the pet or companion animal. This subparagraph shall not apply to livestock as defined in section 717.1, held solely or primarily for commercial purposes.
2. An order for counseling, a protective order, or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend or extend its order or a consent agreement at any time upon a petition filed by either party and after notice and hearing. The court may extend the order if the court, after hearing at which the defendant has the opportunity to be heard, finds that the defendant continues to pose a threat to the safety of the victim, persons residing with

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the victim, or members of the victim's immediate family. At the time of the extension, the parties need not meet the requirement in section 236.2, subsection 2, paragraph "d", that the parties lived together during the last year if the parties met the requirements of section 236.2, subsection 2, paragraph "d", at the time of the original order. The number of extensions that can be granted by the court is not limited.

3. The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

4. The court may order that the defendant pay the plaintiff's attorney fees and court costs.

5. An order or consent agreement under this section shall not affect title to real property.

6. A copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant, the county sheriff of the county in which the order or consent decree is initially entered, and the twenty-four-hour dispatcher for the county sheriff. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and the county sheriff previously notified.

7. The clerk shall notify the county sheriff and the twenty-four-hour dispatcher for the county sheriff in writing so that the county sheriff and the county sheriff's dispatcher receive written notice within six hours of filing the order, approved consent agreement, amendment, or revocation. The clerk may fulfill this requirement by sending the notice by facsimile or other electronic transmission which reproduces the notice in writing within six hours of filing the order.

8. The county sheriff's dispatcher shall notify all law enforcement agencies having jurisdiction over the matter and the twenty-four-hour dispatcher for the law enforcement agencies upon notification by the clerk.

[C81, §236.5]

[...]

236.6 Emergency orders.

1. When the court is unavailable from the close of business at the end of the day or week to the resumption of business at the beginning of the day or week, a petition may be filed before a district judge, or district associate judge designated by the chief judge of the judicial district, who may grant emergency relief in accordance with section 236.5, subsection 1, paragraph "b", if the district judge or district associate judge deems it necessary to protect the plaintiff from domestic abuse, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection.

2. An emergency order issued under subsection 1 shall expire seventy-two hours after issuance. When the order expires, the plaintiff may seek a temporary order from the court pursuant to section 236.4.

3. A petition filed and emergency order issued under this section and any documentation in support of the petition and order shall be immediately certified to the court. The certification shall commence a proceeding for purposes of section 236.3.

[C81, §236.6]

[...]

37.2.17. KANSAS

[Kansas Statutes, 2017](#) ¹¹⁹

Chapter 21. Crimes and Punishments

Article 54. Crimes against persons

21-5414. Domestic Battery

21-5414. Domestic battery; aggravated domestic battery.

(a) Domestic battery is:

(1) Knowingly or recklessly causing bodily harm to a person with whom the offender is involved or has been involved in a dating relationship or a family or household member; or

(2) knowingly causing physical contact with a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner.

(b) Aggravated domestic battery is:

(1) Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck or chest of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner; or

¹¹⁹ Kansas Statutes (2017), Chapter 21 Crimes and Punishments, Article 54. Crimes against persons, 21-5414-Domestic Battery, available at http://www.kslegislature.org/li/b2017_18/statute/021_000_0000_chapter/021_054_0000_article/021_054_0014_section/021_054_0014_k/ (last visited December 30, 2018).

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(2) knowingly impeding the normal breathing or circulation of the blood by blocking the nose or mouth of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner.

(c) (1) Domestic battery is:

(A) Except as provided in subsection (c)(1)(B) or (c)(1)(C), a class B person misdemeanor and the offender shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the offender to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program;

(B) except as provided in subsection (c)(1)(C), a class A person misdemeanor, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a second time and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours' imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days' imprisonment before the offender is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court; and

(C) a person felony, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a third or subsequent time, and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$7,500. The offender convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the offender has served at least 90 days' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court. If the offender does not undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, the offender shall serve not less than 180 days nor more than one year's imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program.

(2) Aggravated domestic battery is a severity level 7, person felony.

(d) In determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offense under this section, a court shall consider information presented to the court relating to any current or prior protective order issued against such person.

(e) As used in this section:

(1) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since the termination of the relationship, if applicable;

(2) "family or household member" means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. "Family or household member" also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(3) "protective order" means:

(A) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 or 60-3107, and amendments thereto;

(B) a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. § 2265;

(C) a restraining order issued pursuant to K.S.A. 2017 Supp. 23-2707, 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-1607, prior to its transfer;

(D) an order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence, post release supervision or at any other time during the criminal case or upon appeal that orders the person to refrain from having any direct or indirect contact with a family or household member;

(E) an order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; or

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(F) a protection from stalking order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.

(f) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under subsection (c)(1):

(1) "Conviction" includes being convicted of a violation of K.S.A. 21-3412a, prior to its repeal, this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) only convictions occurring in the immediately preceding five years including prior to July 1, 2001, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(g) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of subsection (a) or (b) or an ordinance of any city or resolution of any county which prohibits the acts that subsection (a) or (b) prohibits only twice during any five-year period.

[...]

37.2.18. KENTUCKY

[Kentucky Statutes, 2018](#)¹²⁰

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage – Child Custody

Sections 715 through 785. Domestic Violence and Abuse

403.720 Definitions for KRS 403.715 to 403.785

As used in KRS 403.715 to 403.785:

(1) "Domestic violence and abuse" means physical injury, serious physical injury, stalking, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;

(2) "Family member" means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;

(3) "Foreign protective order" means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 that was issued on the basis of domestic violence and abuse;

(4) "Global positioning monitoring system" means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity;

(5) "Member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;

(6) "Order of protection" means an emergency protective order or a domestic violence order and includes a foreign protective order; and

(7) "Substantial violation" means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

[...]

[Kentucky Statutes, 2018](#)¹²¹

¹²⁰ Kentucky Statutes (2018), Title XXXV. Domestic Relations, Chapter 403. Dissolution of Marriage – Child Custody – Sections 715 through 785. Domestic Violence and Abuse, available at <http://www.lrc.ky.gov/Statutes/chapter.aspx?id=39213> (last visited December 30, 2018).

¹²¹ Kentucky Statutes, 2018, Title L. Penal Code, Chapter 508. Assault and related offenses, 508.032 Assault of family member or member of an unmarried couple, available at <http://www.lrc.ky.gov/statutes/statute.aspx?id=19731> (last visited December 30, 2018).

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Title L. Penal Code

Chapter 508. Assault and Related Offenses

Section – 032. Assault of family member or member of an unmarried couple

508.032 Assault of family member or member of an unmarried couple -- Enhancement of penalty.

(1) If a person commits a third or subsequent offense of assault in the fourth degree under KRS 508.030 within five (5) years, and the relationship between the perpetrator and the victim in each of the offenses meets the definition of family member or member of an unmarried couple, as defined in KRS 403.720, then the person may be convicted of a Class D felony. If the Commonwealth desires to utilize the provisions of this section, the Commonwealth shall indict the defendant and the case shall be tried in the Circuit Court as a felony case. The jury, or judge if the trial is without a jury, may decline to assess a felony penalty in a case under this section and may convict the defendant of a misdemeanor. The victim in the second or subsequent offense is not required to be the same person who was assaulted in the prior offenses in order for the provisions of this section to apply.

(2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered by a court of competent jurisdiction.

[...]

37.2.19. LOUISIANA

[Louisiana Revised Statutes, 2017](#)¹²²

Title 14. Criminal Law

RS 14:35.3 – Domestic abuse battery

§35.3. Domestic abuse battery

A. Domestic abuse battery is the intentional use of force or violence committed by one household member or family member upon the person of another household member or family member.

B. For purposes of this Section:

(1) "Burning" means an injury to flesh or skin caused by heat, electricity, friction, radiation, or any other chemical or thermal reaction.

(2) "Community service activities" as used in this Section may include duty in any morgue, coroner's office, or emergency treatment room of a state-operated hospital or other state-operated emergency treatment facility, with the consent of the administrator of the morgue, coroner's office, hospital, or facility.

(3) "Court-monitored domestic abuse intervention program" means a program, comprised of a minimum of twenty-six in-person sessions occurring over a minimum of twenty-six weeks, that follows a model designed specifically for perpetrators of domestic abuse. The offender's progress in the program shall be monitored by the court. The provider of the program shall have all of the following:

(a) Experience in working directly with perpetrators and victims of domestic abuse.

(b) Experience in facilitating batterer intervention groups.

(c) Training in the causes and dynamics of domestic violence, characteristics of batterers, victim safety, and sensitivity to victims.

(4) "Family member" means spouses, former spouses, parents, children, stepparents, stepchildren, foster parents, and foster children.

(5) "Household member" means any person presently or formerly living in the same residence with the offender and who is involved or has been involved in a sexual or intimate relationship with the offender, or any child presently or formerly living in the same residence with the offender, or any child of the offender regardless of where the child resides.

(6) "Serious bodily injury" means bodily injury that involves unconsciousness, extreme physical pain, or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death.

(7) "Strangulation" means intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of the victim.

C. On a first conviction, notwithstanding any other provision of law to the contrary, the offender shall be fined not less than three hundred dollars nor more than one thousand dollars and shall be imprisoned for not less than thirty days nor more than

¹²² [Louisiana Revised Statutes \(2017\), Title 14. Criminal Law, RS 14:35.3 – Domestic abuse battery](https://law.justia.com/codes/louisiana/2017/code-revisedstatutes/title-14/rs-14-35.3/), available at <https://law.justia.com/codes/louisiana/2017/code-revisedstatutes/title-14/rs-14-35.3/> (last visited December 30, 2018).

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six months. At least forty-eight hours of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless either of the following occurs:

(1) The offender is placed on probation with a minimum condition that he serve four days in jail and complete a court-monitored domestic abuse intervention program, and the offender shall not own or possess a firearm throughout the entirety of the sentence.

(2) The offender is placed on probation with a minimum condition that he perform eight, eight-hour days of court-approved community service activities and complete a court-monitored domestic abuse intervention program, and the offender shall not own or possess a firearm throughout the entirety of the sentence.

D. On a conviction of a second offense, notwithstanding any other provision of law to the contrary, regardless of whether the second offense occurred before or after the first conviction, the offender shall be fined not less than seven hundred fifty dollars nor more than one thousand dollars and shall be imprisoned with or without hard labor for not less than sixty days nor more than one year. At least fourteen days of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence, and the offender shall be required to complete a court-monitored domestic abuse intervention program. Imposition or execution of the remainder of the sentence shall not be suspended unless either of the following occurs:

(1) The offender is placed on probation with a minimum condition that he serve thirty days in jail and complete a court-monitored domestic abuse intervention program, and the offender shall not own or possess a firearm throughout the entirety of the sentence.

(2) The offender is placed on probation with a minimum condition that he perform thirty eight-hour days of court-approved community service activities and complete a court-monitored domestic abuse intervention program, and the offender shall not own or possess a firearm throughout the entirety of the sentence.

E. On a conviction of a third offense, notwithstanding any other provision of law to the contrary and regardless of whether the offense occurred before or after an earlier conviction, the offender shall be imprisoned with or without hard labor for not less than one year nor more than five years and shall be fined two thousand dollars. The first year of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence.

F.(1) Except as otherwise provided in Paragraph (2) of this Subsection, on a conviction of a fourth or subsequent offense, notwithstanding any other provision of law to the contrary and regardless of whether the fourth offense occurred before or after an earlier conviction, the offender shall be imprisoned with hard labor for not less than ten years nor more than thirty years and shall be fined five thousand dollars. The first three years of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence.

(2) If the offender has previously received the benefit of suspension of sentence, probation, or parole as a fourth or subsequent offender, no part of the sentence may be imposed with benefit of suspension of sentence, probation, or parole, and no portion of the sentence shall be imposed concurrently with the remaining balance of any sentence to be served for a prior conviction for any offense.

G.(1) For purposes of determining whether an offender has a prior conviction for violation of this Section, a conviction under this Section, or a conviction under the laws of any state or an ordinance of a municipality, town, or similar political subdivision of another state which prohibits the intentional use of force or violence committed by one household member or family member upon another household member or family member shall constitute a prior conviction.

(2) For purposes of this Section, a prior conviction shall not include a conviction for an offense under this Section if the date of completion of sentence, probation, parole, or suspension of sentence is more than ten years prior to the commission of the crime with which the offender is charged, and such conviction shall not be considered in the assessment of penalties hereunder. However, periods of time during which the offender was incarcerated in a penal institution in this or any other state shall be excluded in computing the ten-year period.

H. An offender ordered to complete a court-monitored domestic abuse intervention program required by the provisions of this Section shall pay the cost incurred in participation in the program. Failure to make such payment shall subject the offender to revocation of probation, unless the court determines that the offender is unable to pay.

I. This Subsection shall be cited as the "Domestic Abuse Child Endangerment Law". When the state proves, in addition to the elements of the crime as set forth in Subsection A of this Section, that a minor child thirteen years of age or younger was present at the residence or any other scene at the time of the commission of the offense, of the sentence imposed by the court, the execution of the minimum mandatory sentence provided by Subsection C or D of this Section, as appropriate, shall not be suspended, the minimum mandatory sentence imposed under Subsection E of this Section shall be two years without suspension of sentence, and the minimum mandatory sentence imposed under Subsection F of this Section shall be four years without suspension of sentence.

J. Any crime of violence, as defined in R.S. 14:2(B), against a person committed by one household member against another household member, shall be designated as an act of domestic abuse for consideration in any civil or criminal proceeding.

K. If the victim of domestic abuse battery is pregnant and the offender knows that the victim is pregnant at the time of the commission of the offense, the offender, who is sentenced under the provisions of this Section, shall be required to serve a

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minimum of forty-five days without benefit of suspension of sentence for a first conviction, upon a second conviction shall serve a minimum of one year imprisonment without benefit of suspension of sentence, upon a third conviction shall serve a minimum of two years with or without hard labor without benefit of probation, parole, or suspension of sentence, and upon a fourth and subsequent offense shall serve a minimum of four years at hard labor without benefit of probation, parole, or suspension of sentence.

L. Notwithstanding any other provision of law to the contrary, if the domestic abuse battery involves strangulation, the offender shall be imprisoned at hard labor for not more than three years.

M. Notwithstanding any other provision of law to the contrary, if the domestic abuse battery is committed by burning that results in serious bodily injury, the offense shall be classified as a crime of violence, and the offender shall be imprisoned at hard labor for not less than five nor more than fifty years without benefit of probation, parole, or suspension of sentence.

[...]

37.2.20. MAINE

[Maine Revised Statutes, 2018](#) ¹²³

Title 19-A. Domestic Relations

Part 4. Protection from Abuse

Chapter 101. Protection from Abuse

Sections 4001 through 4014

§4001. PURPOSES

The court shall liberally construe and apply this chapter to promote the following underlying purposes:

1. Recognition. To recognize domestic abuse as a serious crime against the individual and society, producing an unhealthy and dangerous family environment, resulting in a pattern of escalating abuse, including violence, that frequently culminates in intrafamily homicide and creating an atmosphere that is not conducive to healthy childhood development;

2. Protection. To allow family and household members who are victims of domestic abuse to obtain expeditious and effective protection against further abuse so that the lives of the nonabusing family or household members are as secure and uninterrupted as possible;

3. Enforcement. To provide protection by promptly entering and diligently enforcing court orders that prohibit abuse and, when necessary, by reducing the abuser's access to the victim and addressing related issues of parental rights and responsibilities and economic support so that victims are not trapped in abusive situations by fear of retaliation, loss of a child or financial dependence;

4. Prevention. To expand the power of the justice system to respond effectively to situations of domestic abuse, to clarify the responsibilities and support the efforts of law enforcement officers, prosecutors and judicial officers to provide immediate, effective assistance and protection for victims of abuse and to recognize the crucial role of law enforcement officers in preventing further incidents of abuse and in assisting the victims of abuse;

[...]

§4002. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Abuse. "Abuse" means the occurrence of the following acts between family or household members or dating partners or by a family or household member or dating partner upon a minor child of a family or household member or dating partner:

A. Attempting to cause or causing bodily injury or offensive physical contact, including sexual assaults under Title 17-A, chapter 11, except that contact as described in Title 17-A, section 106, subsection 1 is excluded from this definition;

B. Attempting to place or placing another in fear of bodily injury through any course of conduct, including, but not limited to, threatening, harassing or tormenting behavior;

C. Compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain or to abstain from conduct in which the person has a right to engage;

¹²³ Maine Revised Statutes (2018); Title 19-A. Domestic Relations, Part 4. Protection from Abuse, Chapter 101, available at <http://www.mainelegislature.org/legis/statutes/19-A/title19-Ach101sec0.html> (last visited December 30, 2018).

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D. Knowingly restricting substantially the movements of another person without that person's consent or other lawful authority by:

- (1) Removing that person from that person's residence, place of business or school;
- (2) Moving that person a substantial distance from the vicinity where that person was found; or
- (3) Confining that person for a substantial period either in the place where the restriction commences or in a place to which that person has been moved; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. Communicating to a person a threat to commit, or to cause to be committed, a crime of violence dangerous to human life against the person to whom the communication is made or another, and the natural and probable consequence of the threat, whether or not that consequence in fact occurs, is to place the person to whom the threat is communicated, or the person against whom the threat is made, in reasonable fear that the crime will be committed;

F. Repeatedly and without reasonable cause:

- (1) Following the plaintiff; or
- (2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment;

G. Engaging in the unauthorized dissemination of certain private images as prohibited pursuant to Title 17-A, section 511-A; or

H. Engaging in aggravated sex trafficking or sex trafficking as described in Title 17-A, section 852 or 853, respectively.

2. Adult. "Adult" means a person 18 years of age or older or a person under 18 years of age who is emancipated pursuant to Title 15, section 3506-A.

3. Court. "Court" means a District Court and, with regard to section 4011, the tribal court of the Passamaquoddy Tribe or the Penobscot Nation.

3-A. Dating partners. "Dating partners" means individuals currently or formerly involved in dating each other, whether or not the individuals are or were sexual partners.

4. Family or household members. "Family or household members" means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living together as spouses, parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member when the defendant is an adult household member and, for the purposes of Title 15, section 1023, subsection 4, paragraph B-1 and Title 15, section 1094-B, this chapter and Title 17-A, sections 15, 207-A, 209-A, 210-B, 210-C, 211-A, 1201, 1202 and 1253 only, includes individuals presently or formerly living together and individuals who are or were sexual partners. Holding oneself out to be a spouse is not necessary to constitute "living as spouses." For purposes of this subsection, "domestic partners" means 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

5. Law enforcement agency. "Law enforcement agency" means the State Police, a sheriff's department or a municipal police department.

6. Mutual order of protection or restraint. "Mutual order of protection or restraint" means an order that is granted to the defendant in an action under this chapter or the inclusion of language in an order granted to the plaintiff in an action under this chapter that restricts or limits the plaintiff's conduct with regard to the defendant absent the filing of a separate complaint by the defendant, service of the complaint and summons upon the plaintiff and a finding by the court that the plaintiff committed the abuse alleged in the complaint.

[...]

§4005. COMMENCEMENT OF PROCEEDING

1. Filing. An adult who has been abused by a family or household member or a dating partner may seek relief by filing a complaint alleging that abuse.

When a minor child in the care or custody of a family or household member or a dating partner has been abused by a family or household member or a dating partner, a person responsible for the child, as defined in Title 22, section 4002, subsection 9, or a representative of the department may seek relief by filing a petition alleging that abuse.

An adult who has been a victim of conduct defined as stalking in Title 17-A, section 210-A or described as sexual assault in Title 17-A, chapter 11 or described as unauthorized dissemination of certain private images in Title 17-A, section 511-A or described as aggravated sex trafficking or sex trafficking in Title 17-A, section 852 or 853, respectively, whether or not the conduct was perpetrated by a family or household member or dating partner, may seek relief by filing a complaint alleging that conduct without regard to whether criminal prosecution has occurred. When a minor has been a victim of such conduct, the minor's parent, other person responsible for the child or a representative of the department may seek relief by filing a petition alleging that conduct.

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When an adult who is 60 years of age or older or a dependent adult, as defined in Title 22, section 3472, subsection 6, or an incapacitated adult, as defined in Title 22, section 3472, subsection 10, has been the victim of abuse as defined in section 4002, subsection 1 or Title 22, section 3472, subsection 1 by an extended family member or an unpaid care provider, the adult victim, the adult victim's legal guardian or a representative of the department may seek relief by filing a complaint alleging the abusive conduct. For the purposes of this subsection, "extended family member" includes, but is not limited to: a person who is related to the victim by blood, marriage or adoption, whether or not the person resides or has ever resided with the victim. "Unpaid care provider" includes, but is not limited to, a caretaker who voluntarily provides full, intermittent or occasional personal care to the adult victim in the victim's home similar to the way a family member would provide personal care.

2. Assistance. The following assistance is available.

A. The court shall provide separate forms and clerical assistance to either party in completing and filing a complaint or other necessary documents. The assistance may not include legal advice or assistance in drafting legal documents.

B. If a judge is unavailable to review a request for temporary relief under this chapter, the clerk shall immediately notify the plaintiff of other courts at which a judge or justice is available. [1995, c. 694, Pt. B, §2

C. The clerk shall provide the plaintiff written notice of resources from which the plaintiff may receive legal or social service assistance.

[...]

4. Fees. A fee may not be charged for forms or for filing a complaint. A plaintiff may apply for leave to proceed in forma pauperis.

5. Notice. Prior to the plaintiff signing a complaint, the court shall notify the plaintiff, orally or in writing, that it is a crime to make a false statement under oath in a court document.

[2003, c. 372, §1 (NEW) .]

§4006. HEARINGS

1. Full hearing. Within 21 days of the filing of a complaint, a hearing must be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. If a request for temporary, emergency or interim relief is denied, the hearing must be held as soon as practicable within the 21-day period.

2. Temporary orders. The court may enter temporary orders authorized under subsection 5 that it considers necessary to protect the plaintiff or minor child from abuse, on good cause shown in an ex parte proceeding, which the court shall hear and determine as expeditiously as practicable after the filing of a complaint. Immediate and present danger of abuse to the plaintiff or minor child constitutes good cause. An order remains in effect pending a hearing pursuant to subsection 1.

2-A. Temporary orders; possession of dangerous weapons. The court may direct the defendant not to possess a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon for the duration of the temporary order if the complaint demonstrates:

A. Abuse that involves a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon; or [2015, c. 217, §1 (AMD).]

B. A heightened risk of immediate abuse to the plaintiff or a minor child. In determining whether a heightened risk of immediate abuse is present, the court shall consider, but is not limited to consideration of, whether:

(1) The temporary order of protection is not likely to achieve its purpose in the absence of such a condition;

(2) The defendant has violated orders of protection;

(3) Past or present abuse to a victim resulted in injury;

(4) The abuse occurred in public; and

(5) The abuse includes:

(a) Threats of suicide or homicide;

(b) Killing or threatening to kill pets;

(c) An escalation of violence;

(d) Stalking behavior or extreme obsession;

(e) Sexual violence;

(f) Excessive alcohol or drug use; and

(g) Abuse against a pregnant victim. [2003, c. 372, §2 (NEW).]

If the court prohibits the defendant from possessing a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon in a temporary order and if the defendant moves for dissolution or modification of an order pursuant to subsection 7, the court must hear and decide the motion as expeditiously as possible and must issue a written decision on the motion within 24 hours after a hearing on that motion.

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If the court prohibits the defendant from possessing a dangerous weapon other than a firearm, muzzle-loading firearm, bow or crossbow in a temporary order, the court shall specify the type of weapon the defendant is prohibited from possessing. If the court prohibits the defendant from possessing a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon in a temporary order, the court shall direct the defendant to relinquish, within 24 hours after service of the order on the defendant or such earlier time as the court specifies in the order, all firearms, muzzle-loading firearms, bows, crossbows and specified dangerous weapons in the possession of the defendant to a law enforcement officer or other individual for the duration of the order. If the weapons are relinquished to an individual other than a law enforcement officer, the defendant must file, within 24 hours after such relinquishment, with the court or local law enforcement agency designated in the order a written statement that contains the name and address of the individual holding the weapons and a description of all weapons held by that individual. The court may subsequently issue a search warrant authorizing a law enforcement officer to seize any firearms, muzzle-loading firearms, bows, crossbows and other dangerous weapons at any location if there is probable cause to believe such firearms, muzzle-loading firearms, bows, crossbows or dangerous weapons have not been relinquished by the defendant.

3. Emergency relief. Emergency relief is available as follows.

A. When there is no judge available in the District Court having venue or the District Court courthouse is closed and no other provision can be made for the shelter of an abused family or household member or minor child, a complaint may be presented to another District Court Judge or Superior Court Justice. Upon a showing of good cause, as defined in subsection 2, the court may enter temporary orders authorized under subsection 5 that it considers necessary to protect the plaintiff or minor child from abuse.

B. If a complaint is presented under this subsection, that complaint and any order issued pursuant to it must be forwarded immediately to the clerk of the District Court having venue for filing.

C. An order remains in effect pending a hearing pursuant to subsection 1.

[...]

§4007. RELIEF

1. Protection order; consent agreement. The court, after a hearing and upon finding that the defendant has committed the alleged abuse or engaged in the alleged conduct described in section 4005, subsection 1, may grant a protective order or, upon making that finding, approve a consent agreement to bring about a cessation of abuse or the alleged conduct. This subsection does not preclude the parties from voluntarily requesting a consent agreement without a finding of abuse. The court may enter a finding that the defendant represents a credible threat to the physical safety of the plaintiff or a minor child residing in the plaintiff's household. Relief granted under this section may include:

A. Directing the defendant to refrain from threatening, assaulting, molesting, harassing, attacking or otherwise abusing the plaintiff and any minor children residing in the household;

A-1. Directing the defendant not to possess a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon for the duration of the order;

A-2. Prohibiting the defendant from the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury against the plaintiff or a minor child residing in the household;

B. Directing the defendant to refrain from going upon the premises of the plaintiff's residence;

[...]

[Maine Revised Statutes, 2018](#) ¹²⁴

Title 17-A. Maine Criminal Code

Part 2. Substantive Offenses

Chapter 9. Offenses against the person

§207-A. Domestic violence assault

1. A person is guilty of domestic violence assault if:

A. The person violates section 207 and the victim is a family or household member as defined in Title 19-A, section 4002, subsection 4. Violation of this paragraph is a Class D crime; or

B. The person violates paragraph A and at the time of the offense:

¹²⁴ Maine Revised Statutes (2018), Title 17-A. Maine Criminal Code, Part 2. Substantive Offenses, Chapter 9. Offenses against the person, §207-A. Domestic violence assault, available at <http://www.mainelegislature.org/legis/statutes/17-a/title17-Asec207-A.html> (last visited December 30, 2018).

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(1) Has one or more prior convictions for violating paragraph A or for violating section 209-A, 210-B, 210-C or 211-A or one or more prior convictions for engaging in conduct substantially similar to that contained in paragraph A or in section 209-A, 210-B, 210-C or 211-A in another jurisdiction;

(2) Has one or more prior convictions for violating Title 19-A, section 4011, subsection 1 or one or more prior convictions for engaging in conduct substantially similar to that contained in Title 19-A, section 4011, subsection 1 in another jurisdiction; or

(3) Has one or more prior convictions for violating Title 15, section 1092, subsection 1, paragraph B when the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) when the alleged victim in the case for which the defendant was on bail was a family or household member as defined in Title 19-A, section 4002, subsection 4.

Violation of this paragraph is a Class C crime.

[...]

37.2.21. MARYLAND

[Maryland Code, 2018](#) ¹²⁵

Family Law -
Title 4. Spouses
Subtitle 5. Domestic Violence

Part I: Definitions

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Abuse" means any of the following acts:

(i) an act that causes serious bodily harm;

(ii) an act that places a person eligible for relief in fear of imminent serious bodily harm;

(iii) assault in any degree;

(iv) rape or sexual offense under §§ 3–303 through 3–308 of the Criminal Law Article or attempted rape or sexual offense in any degree;

(v) false imprisonment; or

(vi) stalking under § 3–802 of the Criminal Law Article.

(2) If the person for whom relief is sought is a child, "abuse" may also include abuse of a child, as defined in Title 5, Subtitle 7 of this article. Nothing in this subtitle shall be construed to prohibit reasonable punishment, including reasonable corporal punishment, in light of the age and condition of the child, from being performed by a parent or stepparent of the child.

(3) If the person for whom relief is sought is a vulnerable adult, "abuse" may also include abuse of a vulnerable adult, as defined in Title 14, Subtitle 1 of this article.

(c) "Child care provider" means a person that provides supervision and care for a minor child.

(d) "Cohabitant" means a person who has had a sexual relationship with the respondent and resided with the respondent in the home for a period of at least 90 days within 1 year before the filing of the petition.

(e) "Commissioner" means a District Court Commissioner appointed in accordance with Article IV, § 41G of the Maryland Constitution.

(f) "Court" means the District Court or a circuit court in this State.

(g) "Emergency family maintenance" means a monetary award given to or for a person eligible for relief to whom the respondent has a duty of support under this article based on:

(1) the financial needs of the person eligible for relief; and

(2) the resources available to the person eligible for relief and the respondent.

(h) "Executive Director" means the Executive Director of the Governor's Office of Crime Control and Prevention.

(i) "Final protective order" means a protective order issued under § 4–506 of this subtitle.

(j) "Home" means the property in this State that:

(1) is the principal residence of a person eligible for relief; and

(2) is owned, rented, or leased by the person eligible for relief or respondent or, in a petition alleging child abuse or abuse of a vulnerable adult, an adult living in the home at the time of a proceeding under this subtitle.

(k) "Interim protective order" means an order that a Commissioner issues under this subtitle pending a hearing by a judge on a petition.

(l) "Local department" means the local department that has jurisdiction in the county:

¹²⁵ Maryland Code (2018), Family Law, Title 4. Spouses, Subtitle 5. Domestic Violence, Part I and II, available at <https://law.justia.com/codes/maryland/2017/family-law/title-4/subtitle-5/> (last visited December 30, 2018).

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- (1) where the home is located; or
- (2) if different, where the abuse is alleged to have taken place.
- (m) "Person eligible for relief" includes:
 - (1) the current or former spouse of the respondent;
 - (2) a cohabitant of the respondent;
 - (3) a person related to the respondent by blood, marriage, or adoption;
 - (4) a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within 1 year before the filing of the petition;
 - (5) a vulnerable adult;
 - (6) an individual who has a child in common with the respondent; or
 - (7) an individual who has had a sexual relationship with the respondent within 1 year before the filing of the petition.
- (n) (1) "Pet" means a domesticated animal.
- (2) "Pet" does not include livestock.
- (o) (1) "Petitioner" means an individual who files a petition.
- (2) "Petitioner" includes:
 - (i) a person eligible for relief; or
 - (ii) the following persons who may seek relief from abuse on behalf of a minor or vulnerable adult:
 - 1. the State's Attorney for the county where the child or vulnerable adult lives, or, if different, where the abuse is alleged to have taken place;
 - 2. the department of social services that has jurisdiction in the county where the child or vulnerable adult lives, or, if different, where the abuse is alleged to have taken place;
 - 3. a person related to the child or vulnerable adult by blood, marriage, or adoption; or
 - 4. an adult who resides in the home.
- (p) "Residence" includes the yard, grounds, outbuildings, and common areas surrounding the residence.
- (q) "Respondent" means the person alleged in the petition to have committed the abuse.
- (r) "Temporary protective order" means a protective order issued under § 4-505 of this subtitle.
- (s) "Victim" includes a person eligible for relief.
- (t) "Vulnerable adult" has the meaning provided in § 14-101(q) of this article

[...]

Part II - Household Violence

§ 4-504. Petition for relief from abuse

- (a) In general. -- (1) A petitioner may seek relief from abuse by filing with a court, or with a commissioner under the circumstances specified in § 4-504.1(a) of this subtitle, a petition that alleges abuse of any person eligible for relief by the respondent.
- (2) A petition may be filed under this subtitle if:
 - (i) the abuse is alleged to have occurred in the State; or
 - (ii) the person eligible for relief is a resident of the State, regardless of whether the abuse is alleged to have occurred in the State.
- (b) Contents; exceptions. -- (1) The petition shall:
 - (i) be under oath; and
 - (ii) include any information known to the petitioner of:
 - 1. the nature and extent of the abuse for which the relief is being sought, including information known to the petitioner concerning previous injury resulting from abuse by the respondent;
 - 2. each previous action between the parties in any court;
 - 3. each pending action between the parties in any court;
 - 4. the whereabouts of the respondent, if known;
 - 5. if financial relief is requested, information known to the petitioner regarding the financial resources of the respondent; and
 - 6. in a case of alleged child abuse or alleged abuse of a vulnerable adult, the whereabouts of the child or vulnerable adult and any other information relating to the abuse of the child or vulnerable adult.
- (2) If the petition states that disclosure of the address of a person eligible for relief would risk further abuse of a person eligible for relief, or reveal the confidential address of a shelter for domestic violence victims, that address may be omitted from all documents filed with a commissioner or filed with, or transferred to, a court. If disclosure is necessary to determine jurisdiction or consider any venue issue, it shall be made orally and in camera and may not be disclosed to the respondent.
- (c) Fees. -- The petitioner may not be required to pay a filing fee or costs for the issuance or service of:
 - (1) an interim protective order;
 - (2) a temporary protective order;
 - (3) a final protective order; or

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(4) a witness subpoena.

(d) Request of notification of service of protective order. –

(1) If a petitioner has requested notification of the service of a protective order, the Department of Public Safety and Correctional Services shall: (i) notify the petitioner of the service on the respondent of an interim or a temporary protective order within one hour after a law enforcement officer electronically notifies the Department of Public Safety and Correctional Services of the service; and

(ii) notify the petitioner of the service on the respondent of a final protective order within one hour after knowledge of service of the order on the respondent.

(2) The Department of Public Safety and Correctional Services shall develop a notification request form and procedures for notification under this subsection.

(3) The court clerk or Commissioner shall provide the notification request form to a petitioner.

[...]

37.2.22. MASSACHUSETTS

[Commonwealth of Massachusetts General Laws, 2017](#) ¹²⁶

Part II. Real and personal property and domestic relations (Ch. 183-210)

Chapter 209A. Abuse Prevention

Section 1: Definitions

Section 1. As used in this chapter the following words shall have the following meanings:

"Abuse", the occurrence of one or more of the following acts between family or household members:

- (a) attempting to cause or causing physical harm;
- (b) placing another in fear of imminent serious physical harm;
- (c) causing another to engage involuntarily in sexual relations by force, threat or duress.

"Court", the superior, probate and family, district or Boston municipal court departments of the trial court, except when the petitioner is in a dating relationship when "Court" shall mean district, probate, or Boston municipal courts.

"Family or household members", persons who:

- (a) are or were married to one another;
- (b) are or were residing together in the same household;
- (c) are or were related by blood or marriage;
- (d) having a child in common regardless of whether they have ever married or lived together; or
- (e) are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston municipal courts consideration of the following factors:
 - (1) the length of time of the relationship;
 - (2) the type of relationship;
 - (3) the frequency of interaction between the parties; and
 - (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

"Law officer", any officer authorized to serve criminal process.

"Protection order issued by another jurisdiction", any injunction or other order issued by a court of another state, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or tribal court that is issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to another person, including temporary and final orders issued by civil and criminal courts filed by or on behalf of a person seeking protection.

"Vacate order", court order to leave and remain away from a premises and surrendering forthwith any keys to said premises to the plaintiff. The defendant shall not damage any of the plaintiff's belongings or those of any other occupant and shall not shut off or cause to be shut off any utilities or mail delivery to the plaintiff. In the case where the premises designated in the vacate order is a residence, so long as the plaintiff is living at said residence, the defendant shall not interfere in any way with the plaintiff's right to possess such residence, except by order or judgment of a court of competent jurisdiction pursuant to appropriate civil eviction proceedings, a petition to partition real estate, or a proceeding to divide marital property. A vacate order may include in its scope a household, a multiple family dwelling and the plaintiff's workplace. When issuing an order to vacate the plaintiff's workplace, the presiding justice must consider whether the plaintiff and defendant work in the same location or for the same employer.

¹²⁶ Commonwealth of Massachusetts [General Laws \(2017\), Part II. Real and personal property and domestic relations \(Ch. 183-210\), Chapter 209A Abuse Prevention](#), available at <https://malegislature.gov/Laws/GeneralLaws/PartII/TitleIII/Chapter209A/Section1> (last visited December 30, 2018).

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[...]

Section 3: Remedies; period of relief

Section 3. A person suffering from abuse from an adult or minor family or household member may file a complaint in the court requesting protection from such abuse, including, but not limited to, the following orders:

- (a) ordering the defendant to refrain from abusing the plaintiff, whether the defendant is an adult or minor;
- (b) ordering the defendant to refrain from contacting the plaintiff, unless authorized by the court, whether the defendant is an adult or minor;
- (c) ordering the defendant to vacate forthwith and remain away from the household, multiple family dwelling, and workplace. Notwithstanding the provisions of section thirty-four B of chapter two hundred and eight, an order to vacate shall be for a fixed period of time, not to exceed one year, at the expiration of which time the court may extend any such order upon motion of the plaintiff, with notice to the defendant, for such additional time as it deems necessary to protect the plaintiff from abuse;
- (d) awarding the plaintiff temporary custody of a minor child; provided, however, that in any case brought in the probate and family court a finding by such court by a preponderance of the evidence that a pattern or serious incident of abuse, as defined in section 31A of chapter 208, toward a parent or child has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody or shared physical custody with the abusive parent. Such presumption may be rebutted by a preponderance of the evidence that such custody award is in the best interests of the child.

For the purposes of this section, an "abusive parent" shall mean a parent who has committed a pattern of abuse or a serious incident of abuse;

For the purposes of this section, the issuance of an order or orders under chapter 209A shall not in and of itself constitute a pattern or serious incident of abuse; nor shall an order or orders entered ex parte under said chapter 209A be admissible to show whether a pattern or serious incident of abuse has in fact occurred; provided, however, that an order or orders entered ex parte under said chapter 209A may be admissible for other purposes as the court may determine, other than showing whether a pattern or serious incident of abuse has in fact occurred; provided further, that the underlying facts upon which an order or orders under said chapter 209A was based may also form the basis for a finding by the probate and family court that a pattern or serious incident of abuse has occurred.

If the court finds that a pattern or serious incident of abuse has occurred and issues a temporary or permanent custody order, the court shall within 90 days enter written findings of fact as to the effects of the abuse on the child, which findings demonstrate that such order is in the furtherance of the child's best interests and provides for the safety and well-being of the child.

If ordering visitation to the abusive parent, the court shall provide for the safety and well-being of the child and the safety of the abused parent. The court may consider:

- (a) ordering an exchange of the child to occur in a protected setting or in the presence of an appropriate third party;
- (b) ordering visitation supervised by an appropriate third party, visitation center or agency;
- (c) ordering the abusive parent to attend and complete, to the satisfaction of the court, a certified batterer's treatment program as a condition of visitation;
- (d) ordering the abusive parent to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding visitation;
- (e) ordering the abusive parent to pay the costs of supervised visitation;
- (f) prohibiting overnight visitation;
- (g) requiring a bond from the abusive parent for the return and safety of the child;
- (h) ordering an investigation or appointment of a guardian ad litem or attorney for the child; and
- (i) imposing any other condition that is deemed necessary to provide for the safety and well-being of the child and the safety of the abused parent.

Nothing in this section shall be construed to affect the right of the parties to a hearing under the rules of domestic relations procedure or to affect the discretion of the probate and family court in the conduct of such hearing.

(e) ordering the defendant to pay temporary support for the plaintiff or any child in the plaintiff's custody or both, when the defendant has a legal obligation to support such a person. In determining the amount to be paid, the court shall apply the standards established in the child support guidelines. Each judgment or order of support which is issued, reviewed or modified pursuant to this chapter shall conform to and shall be enforced in accordance with the provisions of section 12 of chapter 119A;

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(f) ordering the defendant to pay the person abused monetary compensation for the losses suffered as a direct result of such abuse. Compensatory losses shall include, but not be limited to, loss of earnings or support, costs for restoring utilities, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical and moving expenses and reasonable attorney's fees;

(g) ordering information in the case record to be impounded in accordance with court rule;

(h) ordering the defendant to refrain from abusing or contacting the plaintiff's child, or child in plaintiff's care or custody, unless authorized by the court;

(i) the judge may recommend to the defendant that the defendant attend a batterer's intervention program that is certified by the department of public health.

No filing fee shall be charged for the filing of the complaint. Neither the plaintiff nor the plaintiff's attorney shall be charged for certified copies of any orders entered by the court, or any copies of the file reasonably required for future court action or as a result of the loss or destruction of plaintiff's copies.

Any relief granted by the court shall be for a fixed period of time not to exceed one year. Every order shall on its face state the time and date the order is to expire and shall include the date and time that the matter will again be heard. If the plaintiff appears at the court at the date and time the order is to expire, the court shall determine whether or not to extend the order for any additional time reasonably necessary to protect the plaintiff or to enter a permanent order. When the expiration date stated on the order is on a weekend day or holiday, or a date when the court is closed to business, the order shall not expire until the next date that the court is open to business. The plaintiff may appear on such next court business day at the time designated by the order to request that the order be extended. The court may also extend the order upon motion of the plaintiff, for such additional time as it deems necessary to protect from abuse the plaintiff or any child in the plaintiff's care or custody. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order, of allowing an order to expire or be vacated, or for refusing to issue a new order.

The court may modify its order at any subsequent time upon motion by either party. When the plaintiff's address is inaccessible to the defendant as provided in section 8 of this chapter and the defendant has filed a motion to modify the court's order, the court shall be responsible for notifying the plaintiff. In no event shall the court disclose any such inaccessible address.

No order under this chapter shall in any manner affect title to real property.

No court shall compel parties to mediate any aspect of their case. Although the court may refer the case to the family service office of the probation department or victim/witness advocates for information gathering purposes, the court shall not compel the parties to meet together in such information gathering sessions.

A court shall not deny any complaint filed under this chapter solely because it was not filed within a particular time period after the last alleged incident of abuse.

A court may issue a mutual restraining order or mutual no-contact order pursuant to any abuse prevention action only if the court has made specific written findings of fact. The court shall then provide a detailed order, sufficiently specific to apprise any law officer as to which party has violated the order, if the parties are in or appear to be in violation of the order.

Any action commenced under the provisions of this chapter shall not preclude any other civil or criminal remedies. A party filing a complaint under this chapter shall be required to disclose any prior or pending actions involving the parties for divorce, annulment, paternity, custody or support, guardianship, separate support or legal separation, or abuse prevention. If there is a prior or pending custody support order from the probate and family court department of the trial court, an order issued in the superior, district or Boston municipal court departments of the trial court pursuant to this chapter may include any relief available pursuant to this chapter including orders for custody or support; provided, however, that upon issuing an order for custody or support, the superior, district or Boston municipal court shall provide a copy of the order to the probate and family court department of the trial court that issued the prior or pending custody or support order immediately; provided further, that such order for custody or support shall be for a fixed period of time, not to exceed 30 days; and provided further, that such order may be superseded by a subsequent custody or support order issued by the probate and family court department, which shall retain final jurisdiction over any custody or support order. This section shall not be interpreted to mean that superior, district or Boston municipal court judges are prohibited or discouraged from ordering all other necessary relief or issuing the custody and support provisions of orders pursuant to this chapter for the full duration permitted under subsection (c).

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If the parties to a proceeding under this chapter are parties in a subsequent proceeding in the probate and family court department for divorce, annulment, paternity, custody or support, guardianship or separate support, any custody or support order or judgment issued in the subsequent proceeding shall supersede any prior custody or support order under this chapter.

[...]

[Commonwealth of Massachusetts General Laws, 2017](#)¹²⁷

Part IV. Crimes, punishments and proceedings in criminal case (Ch. 263-280)

Chapter 265. Crimes Against the Person

§ 13M. Assault or assault and battery on a family or household member; second or subsequent offense; penalty

Section 13M. (a) Whoever commits an assault or assault and battery on a family or household member shall be punished by imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more than \$5,000, or both such fine and imprisonment.

(b) Whoever is convicted of a second or subsequent offense of assault or assault and battery on a family or household member shall be punished by imprisonment in the house of correction for not more than 2 1/2 years or by imprisonment in the state prison for not more than 5 years.

(c) For the purposes of this section, "family or household member" shall mean persons who (i) are or were married to one another, (ii) have a child in common regardless of whether they have ever married or lived together or (iii) are or have been in a substantive dating or engagement relationship; provided, that the trier of fact shall determine whether a relationship is substantive by considering the following factors: the length of time of the relationship; the type of relationship; the frequency of interaction between the parties; whether the relationship was terminated by either person; and the length of time elapsed since the termination of the relationship.

(d) For any violation of this section, or as a condition of a continuance without a finding, the court shall order the defendant to complete a certified batterer's intervention program unless, upon good cause shown, the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention.

[...]

37.2.23. MICHIGAN

[Michigan Compiled Laws](#)¹²⁸

Chapter 400. Social Services

Domestic Violence

Section 400.1501 through 1511

Sec. 1. As used in this act:

(a) "Board" means the domestic violence prevention and treatment board created in section 2. 1

(b) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(c) "Department" means the family independence agency.

(d) "Domestic violence" means the occurrence of any of the following acts by a person that is not an act of self-defense:

(i) Causing or attempting to cause physical or mental harm to a family or household member.

(ii) Placing a family or household member in fear of physical or mental harm.

(iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

(iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(e) "Family or household member" includes any of the following:

(i) A spouse or former spouse.

¹²⁷ Commonwealth of Massachusetts General Laws (2017), Part IV. Crimes, punishments and proceedings in criminal case (Ch. 263-280). Chapter 265, § 13M, [available at https://malegislature.gov/Laws/GeneralLaws/PartIV/Title/Chapter265/Section13M](https://malegislature.gov/Laws/GeneralLaws/PartIV/Title/Chapter265/Section13M), (last visited December 30, 2018).

¹²⁸ Michigan Compiled Laws, Chapter 400. Social Services, Domestic Violence, §1501 through 1511, available at <https://codes.findlaw.com/mi/chapter-400-social-services/mi-comp-laws-400-1501.html> (last visited December 30, 2018).

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- (ii) An individual with whom the person resides or has resided.
 - (iii) An individual with whom the person has or has had a dating relationship.
 - (iv) An individual with whom the person is or has engaged in a sexual relationship.
 - (v) An individual to whom the person is related or was formerly related by marriage.
 - (vi) An individual with whom the person has a child in common.
 - (vii) The minor child of an individual described in subparagraphs (i) to (vi).
- (f) "Fund" means the domestic violence prevention and treatment fund created in section 5. 2
- (g) "Prime sponsor" means a county, city, village, or township of this state, or a combination thereof, or a private, nonprofit association or organization.

§ 400.1504

Sec. 4. The department shall provide staff to enable the board to carry out the following powers and duties:

- (a) Coordinate and monitor programs and services funded under this act for the prevention of domestic violence and the treatment of victims of domestic violence.
- (b) Develop standards for the implementation and administration of services and procedures to prevent domestic violence and to provide services and programs for victims of domestic violence.
- (c) Provide planning and technical assistance to prime sponsors for the development, implementation, and administration of programs and services for the prevention of domestic violence and the treatment of victims of domestic violence.
- (d) Conduct research to develop and implement effective means for preventing domestic violence and treating victims of domestic violence.
- (e) Provide assistance to the department of state police in developing a system for monitoring and maintaining a uniform reporting system to provide accurate statistical data on domestic violence.
- (f) Coordinate educational and public informational programs for the purpose of developing appropriate public awareness regarding the problems of domestic violence; encourage professional persons and groups to recognize and deal with problems of domestic violence; to make information about the problems of domestic violence available to the public and organizations and agencies which deal with problems of domestic violence; and encourage the development of community programs to prevent domestic violence and provide services to victims of domestic violence.
- (g) Study and recommend changes in civil and criminal procedures which will enable victims of domestic violence to receive equitable and fair treatment under the law.
- (h) Advise the legislature and governor on the nature, magnitude, and priorities of the problem of domestic violence and the needs of victims of domestic violence; and recommend changes in state programs, statutes, policies, budgets, and standards which will reduce the problem and improve the condition of victims.

[...]

[Michigan Penal Code, 2018](#) ¹²⁹

Chapter XI - Assaults (750.81 – 750.90h)

Section 750.81 - Assault or assault and battery; penalties; previous convictions; exception; "dating relationship" defined

Sec. 81.

- (1) Except as otherwise provided in this section, a person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.
- (2) Except as provided in subsection (3), (4), or (5), an individual who assaults or assaults and batters his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.
- (3) An individual who assaults or assaults and batters an individual who is pregnant and who knows the individual is pregnant is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.
- (4) An individual who commits an assault or an assault and battery in violation of subsection (2) or (3), and who has previously been convicted of assaulting or assaulting and battering an individual described in either subsection (2) or subsection (3) under any of the following, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both:
 - (a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

¹²⁹ Michigan Penal Code (2018), (Chapter 750, Act 328 of 1931), Section 750.81 - Assault or assault and battery; penalties; previous convictions; exception; "dating relationship" defined, available at <http://legislature.mi.gov/doc.aspx?mcl-750-81> (last visited December 30, 2018).

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(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(5) An individual who commits an assault or an assault and battery in violation of subsection (2) or (3), and who has 2 or more previous convictions for assaulting or assaulting and battering an individual described in either subsection (2) or subsection (3) under any of the following, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both:

(a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(6) This section does not apply to an individual using necessary reasonable physical force in compliance with section 1312 of the revised school code, 1976 PA 451, MCL 380.1312.

(7) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

[...]

Marital rape:

[Michigan Penal Code, 2018](#) ¹³⁰

Chapter LXXVI. Rape

Section 520L. Legal Spouse as Victim

A person may be charged and convicted under sections 520b to 520g even though the victim is his or her legal spouse. However, a person may not be charged or convicted solely because his or her legal spouse is under the age of 16, mentally incapable, or mentally incapacitated.

[...]

37.2.24. MINNESOTA

[Minnesota Statutes, 2017](#) ¹³¹

Chapters 517-519A. Domestic Relations

518B. Domestic Abuse (Domestic Abuse Act)

Subdivision 1. Short title. This section may be cited as the "Domestic Abuse Act."

Subd. 2. Definitions.

As used in this section, the following terms shall have the meanings given them:

(a) "Domestic abuse" means the following, if committed against a family or household member by a family or household member:

(1) physical harm, bodily injury, or assault;

(2) the infliction of fear of imminent physical harm, bodily injury, or assault; or

(3) terroristic threats, within the meaning of section 609.713, subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subdivision 2.

(b) "Family or household members" means:

(1) spouses and former spouses;

(2) parents and children;

(3) persons related by blood;

(4) persons who are presently residing together or who have resided together in the past;

(5) persons who have a child in common regardless of whether they have been married or have lived together at any time;

¹³⁰ Michigan Penal Code (2018), (Act 328 of 1931), Chapter LXXVI. Rape, Section 520L. Legal Spouse as Victim, available at [http://www.legislature.mi.gov/\(S\(snr3ygaamjptailzf0p00\)\)/mileg.aspx?page=getObject&objectName=mcl-750-520l&highlight=spouse](http://www.legislature.mi.gov/(S(snr3ygaamjptailzf0p00))/mileg.aspx?page=getObject&objectName=mcl-750-520l&highlight=spouse) (last visited December 30, 2018).

¹³¹ [Minnesota Statutes \(2017\), Chapters 517-519A Domestic Relations, 518B. Domestic Abuse \(Domestic Abuse Act\)](https://www.revisor.mn.gov/statutes/cite/518B.01), available at <https://www.revisor.mn.gov/statutes/cite/518B.01> (last visited December 30, 2018).

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(6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(7) persons involved in a significant romantic or sexual relationship.

Issuance of an order for protection on the ground in clause (6) does not affect a determination of paternity under sections 257.51 to 257.74. In determining whether persons are or have been involved in a significant romantic or sexual relationship under clause (7), the court shall consider the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, length of time since the termination.

(c) "Qualified domestic violence-related offense" has the meaning given in section 609.02, subdivision 16.

[...]

Subd. 4. Order for protection.

There shall exist an action known as a petition for an order for protection in cases of domestic abuse.

(a) A petition for relief under this section may be made by any family or household member personally or by a family or household member, a guardian as defined in section 524.1-201, clause (27), or, if the court finds that it is in the best interests of the minor, by a reputable adult age 25 or older on behalf of minor family or household members. A minor age 16 or older may make a petition on the minor's own behalf against a spouse or former spouse, or a person with whom the minor has a child in common, if the court determines that the minor has sufficient maturity and judgment and that it is in the best interests of the minor.

(b) A petition for relief shall allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(c) A petition for relief must state whether the petitioner has ever had an order for protection in effect against the respondent.

(d) A petition for relief must state whether there is an existing order for protection in effect under this chapter governing both the parties and whether there is a pending lawsuit, complaint, petition or other action between the parties under chapter 257, 518, 518A, 518B, or 518C. The court administrator shall verify the terms of any existing order governing the parties. The court may not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of an existing order. A subsequent order in a separate action under this chapter may modify only the provision of an existing order that grants relief authorized under subdivision 6, paragraph (a), clause (1). A petition for relief may be granted, regardless of whether there is a pending action between the parties.

(e) The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.

(f) The court shall advise a petitioner under paragraph (e) of the right to file a motion and affidavit and to sue in forma pauperis pursuant to section 563.01 and shall assist with the writing and filing of the motion and affidavit.

(g) The court shall advise a petitioner under paragraph (e) of the right to serve the respondent by published notice under subdivision 5, paragraph (b), if the respondent is avoiding personal service by concealment or otherwise, and shall assist with the writing and filing of the affidavit.

(h) The court shall advise the petitioner of the right to seek restitution under the petition for relief.

(i) The court shall advise the petitioner of the right to request a hearing under subdivision 7, paragraph (c). If the petitioner does not request a hearing, the court shall advise the petitioner that the respondent may request a hearing and that notice of the hearing date and time will be provided to the petitioner by mail at least five days before the hearing.

(j) The court shall advise the petitioner of the right to request supervised parenting time, as provided in section 518.175, subdivision 1a.

[...]

37.2.25. MISSISSIPPI

[Mississippi Code, 2017](#)¹³²

Title 97. Crimes

§ 97-3-7. Simple and aggravated assault; simple and aggravated domestic violence

(1) (a) A person is guilty of simple assault if he (i) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; (ii) negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or (iii) attempts by physical menace to put another in fear of imminent serious bodily harm; and, upon

¹³² Mississippi Code (2017), Title 97. Crimes, § 97-3-7. Simple and aggravated assault; simple and aggravated domestic violence, available at <https://law.justia.com/codes/mississippi/2017/title-97/chapter-3/section-97-3-7/> (last visited December 30, 2018).

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conviction, he shall be punished by a fine of not more than Five Hundred Dollars (\$ 500.00) or by imprisonment in the county jail for not more than six (6) months, or both.

(b) However, a person convicted of simple assault upon any of the persons listed in subsection (14) of this section under the circumstances enumerated in subsection (14) shall be punished by a fine of not more than One Thousand Dollars (\$ 1,000.00) or by imprisonment for not more than five (5) years, or both.

(2) (a) A person is guilty of aggravated assault if he (i) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; (ii) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or (iii) causes any injury to a child who is in the process of boarding or exiting a school bus in the course of a violation of Section 63-3-615; and, upon conviction, he shall be punished by imprisonment in the county jail for not more than one (1) year or in the Penitentiary for not more than twenty (20) years.

(b) However, a person convicted of aggravated assault upon any of the persons listed in subsection (14) of this section under the circumstances enumerated in subsection (14) shall be punished by a fine of not more than Five Thousand Dollars (\$ 5,000.00) or by imprisonment for not more than thirty (30) years, or both.

(3) (a) When the offense is committed against a current or former spouse of the defendant or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child, a person is guilty of simple domestic violence who:

(i) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another;

(ii) Negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or

(iii) Attempts by physical menace to put another in fear of imminent serious bodily harm.

Upon conviction, the defendant shall be punished by a fine of not more than Five Hundred Dollars (\$ 500.00) or by imprisonment in the county jail for not more than six (6) months, or both.

(b) Simple domestic violence: third. A person is guilty of the felony of simple domestic violence third who commits simple domestic violence as defined in this subsection (3) and who, at the time of the commission of the offense in question, has two (2) prior convictions, whether against the same or another victim, within seven (7) years, for any combination of simple domestic violence under this subsection (3) or aggravated domestic violence as defined in subsection (4) of this section or substantially similar offenses under the law of another state, of the United States, or of a federally recognized Native American tribe. Upon conviction, the defendant shall be sentenced to a term of imprisonment not less than five (5) nor more than ten (10) years.

(4) (a) When the offense is committed against a current or former spouse of the defendant or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child, a person is guilty of aggravated domestic violence who:

(i) Attempts to cause serious bodily injury to another, or causes such an injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life;

(ii) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or

(iii) Strangles, or attempts to strangle another.

Upon conviction, the defendant shall be punished by imprisonment in the custody of the Department of Corrections for not less than two (2) nor more than twenty (20) years.

(b) Aggravated domestic violence; third. A person is guilty of aggravated domestic violence third who, at the time of the commission of that offense, commits aggravated domestic violence as defined in this subsection (4) and who has two (2) prior convictions within the past seven (7) years, whether against the same or another victim, for any combination of aggravated domestic violence under this subsection (4) or simple domestic violence third as defined in subsection (3) of this section, or substantially similar offenses under the laws of another state, of the United States, or of a federally recognized Native American tribe. Upon conviction for aggravated domestic violence third, the defendant shall be sentenced to a term of imprisonment of not less than ten (10) nor more than twenty (20) years.

(5) Sentencing for fourth or subsequent domestic violence offense. Any person who commits an offense defined in subsection (3) or (4) of this section, and who, at the time of the commission of that offense, has at least three (3) previous convictions, whether against the same or different victims, for any combination of offenses defined in subsections (3) and (4) of this section

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or substantially similar offenses under the law of another state, of the United States, or of a federally recognized Native American tribe, shall, upon conviction, be sentenced to imprisonment for not less than fifteen (15) years nor more than twenty (20) years.

(6) In sentencing under subsections (3), (4) and (5) of this section, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child under sixteen (16) years of age who was, at the time of the offense, living within either the residence of the victim, the residence of the perpetrator, or the residence where the offense occurred.

(7) Reasonable discipline of a child, such as spanking, is not an offense under subsections (3) and (4) of this section.

(8) A person convicted under subsection (4) or (5) of this section shall not be eligible for parole under the provisions of Section 47-7-3(1)(c) until he shall have served one (1) year of his sentence.

(9) For the purposes of this section:

(a) "Strangle" means to restrict the flow of oxygen or blood by intentionally applying pressure on the neck, throat or chest of another person by any means or to intentionally block the nose or mouth of another person by any means.

(b) "Dating relationship" means a social relationship as defined in Section 93-21-3.

(10) Every conviction under subsection (3), (4) or (5) of this section may require as a condition of any suspended sentence that the defendant participate in counseling or treatment to bring about the cessation of domestic abuse. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

(11) (a) Upon conviction under subsection (3), (4) or (5) of this section, the court shall be empowered to issue a criminal protection order prohibiting the defendant from any contact with the victim. The court may include in a criminal protection order any other condition available under Section 93-21-15. The duration of a criminal protection order shall be based upon the seriousness of the facts before the court, the probability of future violations, and the continued safety of the victim or another person. However, municipal and justice courts may issue criminal protection orders for a maximum period of time not to exceed one (1) year. Circuit and county courts may issue a criminal protection order for any period of time deemed necessary. Upon issuance of a criminal protection order, the clerk of the issuing court shall enter the order in the Mississippi Protection Order Registry within twenty-four (24) hours of issuance with no exceptions for weekends or holidays, pursuant to Section 93-21-25.

(b) A criminal protection order shall not be issued against the defendant if the victim of the offense, or the victim's lawful representative where the victim is a minor or incompetent person, objects to its issuance, except in circumstances where the court, in its discretion, finds that a criminal protection order is necessary for the safety and well-being of a victim who is a minor child or incompetent adult.

(c) Criminal protection orders shall be issued on the standardized form developed by the Office of the Attorney General and a copy provided to both the victim and the defendant.

(d) It shall be a misdemeanor to knowingly violate any condition of a criminal protection order. Upon conviction for a violation, the defendant shall be punished by a fine of not more than Five Hundred Dollars (\$ 500.00) or by imprisonment in the county jail for not more than six (6) months, or both.

(12) When investigating allegations of a violation of subsection (3), (4), (5) or (11) of this section, whether or not an arrest results, law enforcement officers shall utilize the form prescribed for such purposes by the Office of the Attorney General in consultation with the sheriff's and police chief's associations. However, failure of law enforcement to utilize the uniform offense report shall not be a defense to a crime charged under this section. The uniform offense report shall not be required if, upon investigation, the offense does not involve persons in the relationships specified in subsections (3) and (4) of this section.

(13) In any conviction under subsection (3), (4), (5) or (11) of this section, the sentencing order shall include the designation "domestic violence." The court clerk shall enter the disposition of the matter into the corresponding uniform offense report.

(14) Assault upon any of the following listed persons is an aggravating circumstance for charging under subsections (1)(b) and (2)(b) of this section:

(a) When acting within the scope of his duty, office or employment at the time of the assault: a statewide elected official; law enforcement officer; fireman; emergency medical personnel; public health personnel; social worker, family protection specialist or family protection worker employed by the Department of Human Services or another agency; Division of Youth Services personnel; any county or municipal jail officer; superintendent, principal, teacher or other instructional personnel, school attendance officer or school bus driver; any member of the Mississippi National Guard or United States Armed Forces; a judge of a circuit, chancery, county, justice, municipal or youth court or a judge of the Court of Appeals or a justice of the

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Supreme Court; district attorney or legal assistant to a district attorney; county prosecutor or municipal prosecutor; court reporter employed by a court, court administrator, clerk or deputy clerk of the court; public defender; or utility worker;
(b) A legislator while the Legislature is in regular or extraordinary session or while otherwise acting within the scope of his duty, office or employment; or
(c) A person who is sixty-five (65) years of age or older or a person who is a vulnerable person, as defined in Section 43-47-5.

[...]

Marital rape:

[Mississippi Code, 2017](#) ¹³³

Title 97 – Crimes

Chapter 3 – Crimes Against the Person

§ 97-3-65. Statutory rape; enhanced penalty for forcible sexual intercourse or statutory rape by administering certain substances; criminal sexual assault protection order

(4) (a) Every person who shall have forcible sexual intercourse with any person, or who shall have sexual intercourse not constituting forcible sexual intercourse or statutory rape with any person without that person's consent by administering to such person any substance or liquid which shall produce such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance, upon conviction, shall be imprisoned for life in the State Penitentiary if the jury by its verdict so prescribes; and in cases where the jury fails to fix the penalty at life imprisonment, the court shall fix the penalty at imprisonment in the State Penitentiary for any term as the court, in its discretion, may determine.

(b) This subsection (4) shall apply whether the perpetrator is married to the victim or not.

[...]

37.2.26. MISSOURI

[Missouri Revised Statutes, 2018](#) ¹³⁴

Title XXX – Domestic Relations

Chapter 455 - Abuse — Adults and Children — Shelters and Protective Orders

455.010. Definitions. —

As used in this chapter, unless the context clearly indicates otherwise, the following terms shall mean:

(1) "Abuse" includes but is not limited to the occurrence of any of the following acts, attempts or threats against a person who may be protected pursuant to this chapter, except abuse shall not include abuse inflicted on a child by accidental means by an adult household member or discipline of a child, including spanking, in a reasonable manner:

(a) "Assault", purposely or knowingly placing or attempting to place another in fear of physical harm;

(b) "Battery", purposely or knowingly causing physical harm to another with or without a deadly weapon;

(c) "Coercion", compelling another by force or threat of force to engage in conduct from which the latter has a right to abstain or to abstain from conduct in which the person has a right to engage;

(d) "Harassment", engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to an adult or child and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable adult or child to suffer substantial emotional distress and must actually cause substantial emotional distress to the petitioner or child. Such conduct might include, but is not limited to:

a. Following another about in a public place or places;

b. Peering in the window or lingering outside the residence of another; but does not include

constitutionally protected activity;

(e) "Sexual assault", causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, duress, or without that person's consent;

(f) "Unlawful imprisonment", holding, confining, detaining or abducting another person against that person's will;

¹³³ Mississippi Code (2017), Title 97 – Crimes, Chapter 3 – Crimes Against the Person, § 97-3-65. Statutory rape; enhanced penalty for forcible sexual intercourse or statutory rape by administering certain substances; criminal sexual assault protection order, available at <https://law.justia.com/codes/mississippi/2017/title-97/chapter-3/section-97-3-65/> (last visited December 30, 2018).

¹³⁴ Missouri Revised Statutes (2018), Title XXX – Domestic Relations, Chapter 455 - Abuse — Adults and Children — Shelters and Protective Orders, available at <http://revisor.mo.gov/main/OneChapter.aspx?chapter=455> (last visited December 30, 2018).

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- (2) "Adult", any person seventeen years of age or older or otherwise emancipated;
- (3) "Child", any person under seventeen years of age unless otherwise emancipated;
- (4) "Court", the circuit or associate circuit judge or a family court commissioner;
- (5) "Domestic violence", abuse or stalking committed by a family or household member, as such terms are defined in this section;
- (6) "Ex parte order of protection", an order of protection issued by the court before the respondent has received notice of the petition or an opportunity to be heard on it;
- (7) "Family" or "household member", spouses, former spouses, any person related by blood or marriage, persons who are presently residing together or have resided together in the past, any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and anyone who has a child in common regardless of whether they have been married or have resided together at any time;
- (8) "Full order of protection", an order of protection issued after a hearing on the record where the respondent has received notice of the proceedings and has had an opportunity to be heard;
- (9) "Order of protection", either an ex parte order of protection or a full order of protection;
- (10) "Pending", exists or for which a hearing date has been set;
- (11) "Petitioner", a family or household member who has been a victim of domestic violence, or any person who has been the victim of stalking or sexual assault, or a person filing on behalf of a child pursuant to section 455.503 who has filed a verified petition pursuant to the provisions of section 455.020 or section 455.505;
- (12) "Respondent", the family or household member alleged to have committed an act of domestic violence, or person alleged to have committed an act of stalking or sexual assault, against whom a verified petition has been filed or a person served on behalf of a child pursuant to section 455.503;
- (13) "Sexual assault", as defined under subdivision (1) of this section;
- (14) "Stalking" is when any person purposely engages in an unwanted course of conduct that causes alarm to another person, or a person who resides together in the same household with the person seeking the order of protection when it is reasonable in that person's situation to have been alarmed by the conduct. As used in this subdivision:
 - (a) "Alarm" means to cause fear of danger of physical harm; and
 - (b) "Course of conduct" means a pattern of conduct composed of two or more acts over a period of time, however short, that serves no legitimate purpose. Such conduct may include, but is not limited to, following the other person or unwanted communication or unwanted contact.

[...]

455.020. Relief may be sought — order of protection effective, where. —

1. Any person who has been subject to domestic violence by a present or former family or household member, or who has been the victim of stalking or sexual assault, may seek relief under sections 455.010 to 455.085 by filing a verified petition alleging such domestic violence, stalking, or sexual assault by the respondent.
2. A person's right to relief under sections 455.010 to 455.085 shall not be affected by the person leaving the residence or household to avoid domestic violence.
3. Any protection order issued pursuant to sections 455.010 to 455.085 shall be effective throughout the state in all cities and counties.

[...]

37.2.27. MONTANA

[Montana Code Annotated, 2017](#) ¹³⁵

Title 45. Crimes
Chapter 5. Offenses against the person
Part 2. Assault and related offenses
Section 45-5-206. Partner or family member assault

- (1) A person commits the offense of partner or family member assault if the person:
 - (a) purposely or knowingly causes bodily injury to a partner or family member;

¹³⁵ Montana Code Annotated (2017), Title 45. Crimes, Chapter 5. Offenses against the person, Part 2. Assault and related offenses (45-5-206. Partner or family member assault), available at https://leg.mt.gov/bills/mca/title_0450/chapter_0050/part_0020/section_0060/0450-0050-0020-0060.html (last visited December 30, 2018).

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- (b) negligently causes bodily injury to a partner or family member with a weapon; or
- (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

- (a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.
- (b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship.

(3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not less than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.
(ii) An offender convicted of a second offense under this section shall be fined not less than \$300 or more than \$1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

(iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than \$500 and not more than \$50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

(b) For the purpose of determining the number of convictions under this section, a conviction means:

(i) a conviction, as defined in 45-2-101, under this section;

(ii) a conviction for domestic abuse under this section;

(iii) a conviction for a violation of a statute similar to this section in another state;

(iv) if the offender was a partner or family member of the victim, a conviction for aggravated assault under 45-5-202 or assault with a weapon under 45-5-213;

(v) a conviction for strangulation of a partner or family member under 45-5-215;

(vi) a conviction in another state for an offense related to domestic violence between partners or family members, as those terms are defined in this section, regardless of what the offense is named or whether it is misdemeanor or felony, if the offense involves conduct similar to conduct that is prohibited under 45-5-202, 45-5-213, or this section; or

(vii) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.

(b) The offender shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender accountable for the offender's violent or controlling behavior must meet the standards established pursuant to 44-7-210 and be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent or controlling conduct of the offender.

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(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

[...]

45-5-209. Partner or family member assault -- no contact order -- notice -- violation of order -- penalty.

(1) A court may issue a standing no contact order and direct law enforcement to serve the order on a defendant charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, 45-5-213, or 45-5-215. The court order may specify conditions necessary to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on the defendant to stay away from the protected person's location.

(2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, 45-5-213, or 45-5-215. One copy of the order must be given to the defendant, and one copy must be filed with the court.

(3) The charge of a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, 45-5-213, or 45-5-215 must be supported by a peace officer's affidavit of probable cause.

(4) The no contact order issued at the time that the defendant is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, 45-5-213, or 45-5-215 is effective for 72 hours or until the defendant makes the first appearance in court.

[...]

37.2.28. NEBRASKA

[Nebraska Revised Statutes, 2018](#) ¹³⁶

Chapter 28. Crimes and punishments

Subsection 323. Domestic assault; penalties

Domestic assault; penalties.

(1) A person commits the offense of domestic assault in the third degree if he or she:

- (a) Intentionally and knowingly causes bodily injury to his or her intimate partner;
- (b) Threatens an intimate partner with imminent bodily injury; or
- (c) Threatens an intimate partner in a menacing manner.

(2) A person commits the offense of domestic assault in the second degree if he or she intentionally and knowingly causes bodily injury to his or her intimate partner with a dangerous instrument.

(3) A person commits the offense of domestic assault in the first degree if he or she intentionally and knowingly causes serious bodily injury to his or her intimate partner.

(4) Violation of subdivision (1)(a) or (b) of this section is a Class I misdemeanor, except that for any subsequent violation of subdivision (1)(a) or (b) of this section, any person so offending is guilty of a Class IIIA felony.

(5) Violation of subdivision (1)(c) of this section is a Class I misdemeanor.

(6) Violation of subsection (2) of this section is a Class IIIA felony, except that for any second or subsequent violation of such subsection, any person so offending is guilty of a Class IIA felony.

(7) Violation of subsection (3) of this section is a Class IIA felony, except that for any second or subsequent violation under such subsection, any person so offending is guilty of a Class II felony.

(8) For purposes of this section, intimate partner means a spouse; a former spouse; persons who have a child in common whether or not they have been married or lived together at any time; and persons who are or were involved in a dating relationship. For purposes of this subsection, dating relationship means frequent, intimate associations primarily characterized

¹³⁶ Nebraska Revised Statutes (2018), Chapter 28. Crimes and punishments, Subsection 323. Domestic assault; penalties, available at <https://nebraskalegislature.gov/laws/statutes.php?statute=28-323> (last visited December 30, 2018).

by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.

[...]

37.2.29. NEVADA

[Nevada Revised Statutes, 2017](#) ¹³⁷

Chapter 33. Injunctions, protection orders

NRS 33.018 – Acts which constitute domestic violence

1. Domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child:

- (a) A battery.
- (b) An assault.
- (c) Compelling the other person by force or threat of force to perform an act from which the other person has the right to refrain or to refrain from an act which the other person has the right to perform.
- (d) A sexual assault.
- (e) A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to:
 - (1) Stalking.
 - (2) Arson.
 - (3) Trespassing.
 - (4) Larceny.
 - (5) Destruction of private property.
 - (6) Carrying a concealed weapon without a permit.
 - (7) Injuring or killing an animal.
- (f) A false imprisonment.
- (g) Unlawful entry of the other person's residence, or forcible entry against the other person's will if there is a reasonably foreseeable risk of harm to the other person from the entry.

2. As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.

[...]

NRS 33.020 Requirements for issuance of temporary and extended orders; availability of court; court clerk to inform protected party upon transfer of information to Central Repository.

1. If it appears to the satisfaction of the court from specific facts shown by a verified application that an act of domestic violence has occurred or there exists a threat of domestic violence, the court may grant a temporary or extended order. A temporary or extended order must not be granted to the applicant or the adverse party unless the applicant or the adverse party has requested the order and has filed a verified application that an act of domestic violence has occurred or there exists a threat of domestic violence.
2. The court may require the applicant or the adverse party, or both, to appear before the court before determining whether to grant the temporary or extended order.
3. A temporary order may be granted with or without notice to the adverse party. An extended order may only be granted after notice to the adverse party and a hearing on the application.

[...]

¹³⁷ Nevada Revised Statutes (2017), Chapter 33. Injunctions, protection orders - NRS 33.018 – Acts which constitute domestic violence, available at <https://www.leg.state.nv.us/nrs/nrs-033.html#NRS033Sec018> (last visited December 30, 2018).

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Marital rape:

[Nevada Revised Statutes, 2017](#) ¹³⁸

Chapter 200 – Crimes Against the Person
Section 373. Sexual assault of spouse by spouse

NRS 200.373 Sexual assault of spouse by spouse. It is no defense to a charge of sexual assault that the perpetrator was, at the time of the assault, married to the victim, if the assault was committed by force or by the threat of force.
(Added to NRS by 1967, 470; A 1975, 1141; 1977, 1628; 1987, 1165)

[...]

37.2.30. NEW HAMPSHIRE

[New Hampshire Revised Statutes, 2017](#) ¹³⁹

Title XII. Public safety and welfare
Chapter 173-B. Protection of persons from domestic violence
Section 173-B:1

173-B:1 Definitions. – In this chapter:

I. "Abuse" means the commission or attempted commission of one or more of the acts described in subparagraphs (a) through (h) by a family or household member or by a current or former sexual or intimate partner, where such conduct is determined to constitute a credible present threat to the petitioner's safety. The court may consider evidence of such acts, regardless of their proximity in time to the filing of the petition, which, in combination with recent conduct, reflects an ongoing pattern of behavior which reasonably causes or has caused the petitioner to fear for his or her safety or well-being:

(a) Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3.

(b) Criminal threatening as defined in RSA 631:4.

(c) Sexual assault as defined in RSA 632-A:2 through RSA 632-A:5.

(d) Interference with freedom as defined in RSA 633:1 through RSA 633:3-a.

(e) Destruction of property as defined in RSA 634:1 and RSA 634:2.

(f) Unauthorized entry as defined in RSA 635:1 and RSA 635:2.

(g) Harassment as defined in RSA 644:4.

(h) Cruelty to animals as defined in RSA 644:8.

II. "Applicant" means any private, town, city, or regional agency or organization applying for funds under RSA 173-B:16.

III. "Commissioner" means the commissioner of the department of health and human services.

IV. "Contact" means any action to communicate with another either directly or indirectly, including, but not limited to, using any form of electronic communication, leaving items, or causing another to communicate in such fashion.

V. "Coordinator" means the agency or organization appointed by the commissioner to administer the domestic violence grant program.

VI. "Cross orders for relief" means separate orders granted to parties in a domestic violence situation where each of the parties has filed a petition pursuant to this chapter on allegations arising from the same incident or incidents of domestic violence.

VII. "Deadly weapon" means "deadly weapon" as defined in RSA 625:11, V.

VIII. "Department" means the department of health and human services.

IX. "Domestic violence" means abuse as defined in RSA 173-B:1, I.

X. "Family or household member" means:

(a) Spouses, ex-spouses, persons cohabiting with each other, and persons who cohabited with each other but who no longer share the same residence.

(b) Parents and other persons related by consanguinity or affinity, other than minor children who reside with the defendant.

XI. "Firearm" means any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a

¹³⁸ Nevada Revised Statutes (2017), Chapter 200 – Crimes Against the Person, available at <https://www.leg.state.nv.us/NRS/NRS-200.html#NRS200Sec373> (last visited December 30, 2018).

¹³⁹ New Hampshire Revised Statutes (2017), Title XII. Public safety and welfare, Chapter 173-B. Protection of persons from domestic violence, Section 173-B:1, available at <http://www.gencourt.state.nh.us/rsa/html/XII/173-B/173-B-1.htm> (last visited December 30, 2018).

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projectile by force of gunpowder.

XII. "Foreign protective order" means an order enforceable under RSA 173-B:13.

XIII. "Fund" means the special fund for domestic violence programs established by RSA 173-B:15.

XIV. "Grantee" means any private, town, city, or regional agency or organization receiving funds under RSA 173-B:16.

XV. "Intimate partners" means persons currently or formerly involved in a romantic relationship, whether or not such relationship was ever sexually consummated.

XVI. "Mutual order for relief" means an order restraining both parties from abusing the other originating from a petition filed by one of the parties and arising from the same incident or incidents of domestic violence.

XVII. "Program" means services or facilities provided to domestic violence victims.

[...]

37.2.31. NEW JERSEY

[New Jersey Statutes, 2017](#)¹⁴⁰

Title 2C. The New Jersey Code of Criminal Justice

Subtitle 2. Definition of Specific Offenses

Part 3. Offenses Against Others

Chapter 25 – Domestic Violence

2C:25-18. Legislative findings and declaration

The Legislature finds and declares that domestic violence is a serious crime against society; that there are thousands of persons in this State who are regularly beaten, tortured and in some cases even killed by their spouses or cohabitants; that a significant number of women who are assaulted are pregnant; that victims of domestic violence come from all social and economic backgrounds and ethnic groups; that there is a positive correlation between spousal abuse and child abuse; and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. It is therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide.

[...]

The Legislature further finds and declares that violence against the elderly and disabled, including criminal neglect of the elderly and disabled under section 1 of P.L.1989, c.23 (C.2C:24-8), must be recognized and addressed on an equal basis as violence against spouses and children in order to fulfill our responsibility as a society to protect those who are less able to protect themselves.

The Legislature further finds and declares that even though many of the existing criminal statutes are applicable to acts of domestic violence, previous societal attitudes concerning domestic violence have affected the response of our law enforcement and judicial systems, resulting in these acts receiving different treatment from similar crimes when they occur in a domestic context. The Legislature finds that battered adults presently experience substantial difficulty in gaining access to protection from the judicial system, particularly due to that system's inability to generate a prompt response in an emergency situation.

It is the intent of the Legislature to stress that the primary duty of a law enforcement officer when responding to a domestic violence call is to enforce the laws allegedly violated and to protect the victim. Further, it is the responsibility of the courts to protect victims of violence that occurs in a family or family-like setting by providing access to both emergent and long-term civil and criminal remedies and sanctions, and by ordering those remedies and sanctions that are available to assure the safety of the victims and the public. To that end, the Legislature encourages the training of all police and judicial personnel in the procedures and enforcement of this act, and about the social and psychological context in which domestic violence occurs; and it further encourages the broad application of the remedies available under this act in the civil and criminal courts of this State. It is further intended that the official response to domestic violence shall communicate the attitude that violent behavior will not be excused or tolerated, and shall make clear the fact that the existing criminal laws and civil remedies created under this act will be enforced without regard to the fact that the violence grows out of a domestic situation.

¹⁴⁰ New Jersey Statutes (2017), Title 2C. The New Jersey Code of Criminal Justice, Subtitle 2. Definition of Specific Offenses, Part 3. Offenses Against Others, Chapter 25 – Domestic Violence (2C § 25-17), available at <https://www.womenslaw.org/laws/nj/statutes/2c25-17-prevention-domestic-violence-act-1991-short-title> (last visited December 30, 2018).

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[...]

2C:25-28. Complaint by victim; emergency relief; temporary restraining orders; service of process

a. A victim may file a complaint alleging the commission of an act of domestic violence with the Family Part of the Chancery Division of the Superior Court in conformity with the Rules of Court. The court shall not dismiss any complaint or delay disposition of a case because the victim has left the residence to avoid further incidents of domestic violence. Filing a complaint pursuant to this section shall not prevent the filing of a criminal complaint for the same act.

On weekends, holidays and other times when the court is closed, a victim may file a complaint before a judge of the Family Part of the Chancery Division of the Superior Court or a municipal court judge who shall be assigned to accept complaints and issue emergency, ex parte relief in the form of temporary restraining orders pursuant to this act.

A plaintiff may apply for relief under this section in a court having jurisdiction over the place where the alleged act of domestic violence occurred, where the defendant resides, or where the plaintiff resides or is sheltered, and the court shall follow the same procedures applicable to other emergency applications. Criminal complaints filed pursuant to this act shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred. Contempt complaints filed pursuant to N.J.S.2C:29-9 shall be prosecuted in the county where the contempt is alleged to have been committed and a copy of the contempt complaint shall be forwarded to the court that issued the order alleged to have been violated.

b. The court shall waive any requirement that the petitioner's place of residence appear on the complaint.

c. (1) The clerk of the court, or other person designated by the court, shall assist the parties in completing any forms necessary for the filing of a summons, complaint, answer or other pleading.

(2) The plaintiff may provide information concerning firearms to which the defendant has access, including the location of these firearms, if known, on a form to be prescribed by the Administrative Director of the Courts.

(3) Information provided by the plaintiff concerning firearms to which the defendant has access shall be kept confidential and shall not be disseminated or disclosed, provided that nothing in this subsection shall prohibit dissemination or disclosure of this information in a manner consistent with and in furtherance of the purpose for which the information was provided.

d. Summons and complaint forms shall be readily available at the clerk's office, at the municipal courts and at municipal and State police stations.

e. As soon as the domestic violence complaint is filed, both the victim and the abuser shall be advised of any programs or services available for advice and counseling.

f. A plaintiff may seek emergency, ex parte relief in the nature of a temporary restraining order. A municipal court judge or a judge of the Family Part of the Chancery Division of the Superior Court may enter an ex parte order when necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought.

g. If it appears that the plaintiff is in danger of domestic violence, the judge shall, upon consideration of the plaintiff's domestic violence complaint, order emergency ex parte relief, in the nature of a temporary restraining order. A decision shall be made by the judge regarding the emergency relief forthwith.

h. A judge may issue a temporary restraining order upon sworn testimony or complaint of an applicant who is not physically present, pursuant to court rules, or by a person who represents a person who is physically or mentally incapable of filing personally. A temporary restraining order may be issued if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown.

i. An order for emergency, ex parte relief shall be granted upon good cause shown and shall remain in effect until a judge of the Family Part issues a further order. Any temporary order hereunder is immediately appealable for a plenary hearing de novo not on the record before any judge of the Family Part of the county in which the plaintiff resides or is sheltered if that judge issued the temporary order or has access to the reasons for the issuance of the temporary order and sets forth in the record the reasons for the modification or dissolution. The denial of a temporary restraining order by a municipal court judge and subsequent administrative dismissal of the complaint shall not bar the victim from refileing a complaint in the Family Part based on the same incident and receiving an emergency, ex parte hearing de novo not on the record before a Family Part judge, and every denial of relief by a municipal court judge shall so state.

j. Emergency relief may include forbidding the defendant from returning to the scene of the domestic violence, forbidding the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1, ordering the search for and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located and the seizure of any firearms purchaser identification card or permit to purchase a handgun issued to the defendant and any other appropriate relief.

If the order requires the surrender of any firearm or other weapon, a law enforcement officer shall accompany the defendant, or may proceed without the defendant if necessary, to the scene of the domestic violence or any other location where the judge has reasonable cause to believe any firearm or other weapon belonging to the defendant is located, to ensure that the defendant does not gain access to any firearm or other weapon, and that the firearm or other weapon is appropriately surrendered in accordance with the order. If the order prohibits the defendant from returning to the scene of domestic violence or any other location where the judge has reasonable cause to believe any firearm or other weapon belonging to the

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defendant is located, any firearm or other weapon located there shall be seized by a law enforcement officer. The order shall include notice to the defendant of the penalties for a violation of any provision of the order, including but not limited to the penalties for contempt of court and unlawful possession of a firearm or other weapon pursuant to N.J.S.2C:39-5. Other appropriate relief may include but is not limited to an order directing the possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household and providing that the animal shall not be disposed of prior to entry of a final order pursuant to section 13 of P.L.1991, c. 261 (C.2C:25-29).

The judge shall state with specificity the reasons for and scope of any search and seizure authorized by the order. The provisions of this subsection prohibiting a defendant from possessing a firearm or other weapon shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty.

k. The judge may permit the defendant to return to the scene of the domestic violence to pick up personal belongings and effects but shall, in the order granting relief, restrict the time and duration of such permission and provide for police supervision of such visit.

l. An order granting emergency relief, together with the complaint or complaints, shall immediately be forwarded to the appropriate law enforcement agency for service on the defendant, and to the police of the municipality in which the plaintiff resides or is sheltered, and shall immediately be served upon the defendant by the police, except that an order issued during regular court hours may be forwarded to the sheriff for immediate service upon the defendant in accordance with the Rules of Court. If personal service cannot be effected upon the defendant, the court may order other appropriate substituted service. At no time shall the plaintiff be asked or required to serve any order on the defendant.

m. (Deleted by amendment, P.L.1994, c. 94.)

n. Notice of temporary restraining orders issued pursuant to this section shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.

o. (Deleted by amendment, P.L.1994, c. 94.)

p. Any temporary or final restraining order issued pursuant to this act shall be in effect throughout the State, and shall be enforced by all law enforcement officers.

q. Prior to the issuance of any temporary or final restraining order issued pursuant to this section, the court shall order that a search be made of the domestic violence central registry with regard to the defendant's record.

[...]

37.2.32. NEW MEXICO

[New Mexico Statutes, 2017](#) ¹⁴¹

Chapter 30. Criminal offenses

Article 3. Assault and battery

Section 30-3-15. Battery against a household member

A. Battery against a household member consists of the unlawful, intentional touching or application of force to the person of a household member, when done in a rude, insolent or angry manner.

B. Whoever commits battery against a household member is guilty of a misdemeanor.

C. Upon conviction pursuant to this section, an offender shall be required to participate in and complete a domestic violence offender treatment or intervention program approved by the children, youth and families department pursuant to rules promulgated by the department that define the criteria for such programs.

D. Notwithstanding any provision of law to the contrary, if a sentence imposed pursuant to this section is suspended or deferred in whole or in part, the period of probation may extend beyond three hundred sixty-four days but may not exceed two years. If an offender violates a condition of probation, the court may impose any sentence that the court could originally have imposed and credit shall not be given for time served by the offender on probation; provided that the total period of incarceration shall not exceed three hundred sixty-four days and the combined period of incarceration and probation shall not exceed two years.

[...]

¹⁴¹ New Mexico Statutes (2017), Chapter 30. Criminal offenses, Article 3. Assault and battery, Section 30-3-15. Battery against a household member, available at <https://law.justia.com/codes/new-mexico/2017/chapter-30/article-3/section-30-3-15/> (last visited December 30, 2018).

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[New Mexico Statutes, 2017](#) ¹⁴²

Chapter 30. Criminal offenses

Article 3. Assault and battery

30-3-16. Aggravated battery against a household member

- A. Aggravated battery against a household member consists of the unlawful touching or application of force to the person of a household member with intent to injure that person or another.
- B. Whoever commits aggravated battery against a household member by inflicting an injury to that person that is not likely to cause death or great bodily harm, but that does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a misdemeanor.
- C. Whoever commits aggravated battery against a household member by inflicting great bodily harm or doing so with a deadly weapon or doing so in any manner whereby great bodily harm or death can be inflicted is guilty of a third degree felony.
- D. Upon conviction pursuant to Subsection B of this section, an offender shall be required to participate in and complete a domestic violence offender treatment or intervention program approved by the children, youth and families department pursuant to rules promulgated by the department that define the criteria for such programs.
- E. Notwithstanding any provision of law to the contrary, if a sentence imposed pursuant to the provisions of Subsection B of this section is suspended or deferred in whole or in part, the period of probation may extend beyond three hundred sixty-four days but may not exceed two years. If an offender violates a condition of probation, the court may impose any sentence that the court could originally have imposed and credit shall not be given for time served by the offender on probation; provided that the total period of incarceration shall not exceed three hundred sixty-four days and the combined period of incarceration and probation shall not exceed two years.

[...]

37.2.33. NEW YORK

[New York Consolidated Laws, 2018](#) ¹⁴³

Social Services Law

Article 6-A – Domestic Violence Prevention Act,
Section 459

Section 459-A Definitions - Social Services (SOS)

As used in this article:

1. "Victim of domestic violence" means any person over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted assault, attempted murder, criminal obstruction of breathing or blood circulation, or strangulation; and
 - (i) such act or acts have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person or such person's child; and
 - (ii) such act or acts are or are alleged to have been committed by a family or household member.
2. "Family or household members" mean the following individuals:
 - (a) persons related by consanguinity or affinity;
 - (b) persons legally married to one another;
 - (c) persons formerly married to one another regardless of whether they still reside in the same household;
 - (d) persons who have a child in common regardless of whether such persons are married or have lived together at any time;
 - (e) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household;
 - (f) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an "intimate relationship" include, but are not limited to: the nature or type of relationship, regardless of whether the

¹⁴² New Mexico Statutes (2017), Chapter 30. Criminal offenses, Article 3. Assault and battery, Section 30-3-16. Aggravated battery against a household member, available at <https://law.justia.com/codes/new-mexico/2017/chapter-30/article-3/section-30-3-16/> (last visited December 30, 2018).

¹⁴³ New York Consolidated Laws (2018), Social Services, Article 6-A – Domestic Violence Prevention Act, Section 459, available at <https://www.nysenate.gov/legislation/laws/SOS/A6-A> (last visited December 30, 2018).

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relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; or

(g) any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation.

3. "Parent" means a natural or adoptive parent or any individual lawfully charged with a minor child's care or custody.

4. "Residential program for victims of domestic violence" means any residential care program certified by the department and operated by a not-for-profit organization in accordance with the regulations of the department for the purpose of providing emergency shelter, services and care to victims of domestic violence. Residential programs for victims of domestic violence shall include, but shall not be limited to:

(a) "Domestic violence shelters", which shall include any residential care facility organized for the exclusive purpose of providing emergency shelter, services and care to victims of domestic violence and their minor children, if any;

(b) "Domestic violence programs" which shall include any facility which otherwise meets or would meet the requirements of paragraph (a) of this subdivision, except that victims of domestic violence and their minor children, if any, constitute at least seventy percent of the clientele of such program; and

(c) "Safe home networks" which shall include any organized network of private homes offering emergency shelter and services to victims of domestic violence and their minor children, if any. Such network shall be coordinated by a not-for-profit organization.

5. "Non-residential program for victims of domestic violence" means any program operated by a not-for-profit organization, for the purpose of providing non-residential services to victims of domestic violence, including, but not limited to, information and referral services, advocacy, counseling, and community education and outreach activities and providing or arranging for hotline services. Victims of domestic violence and their children, if any, shall constitute at least seventy percent of the clientele of such programs.

[...]

37.2.34. NORTH CAROLINA

[North Carolina General Statutes, 2017](#) ¹⁴⁴

Chapter 50B. Domestic Violence

§ 50B-1. Domestic violence; definition.

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or

(3) Committing any act defined in G.S. 14-27.21 through G.S. 14-27.33.

(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:

(1) Are current or former spouses;

(2) Are persons of opposite sex who live together or have lived together;

(3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;

(4) Have a child in common;

(5) Are current or former household members;

(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

(c) As used in this Chapter, the term "protective order" includes any order entered pursuant to this Chapter upon hearing by the court or consent of the parties.

¹⁴⁴ North Carolina General Statutes (2017), Chapter 50B. Domestic Violence, available at <https://www2.ncleg.net/Laws/GeneralStatuteSections/Chapter50B> (last visited December 30, 2018).

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[...]

§ 50B-3. Relief.

(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such acts.

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household.

(3) Require a party to provide a spouse and his or her children suitable alternate housing.

(4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process.

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it.

(6) Order either party to make payments for the support of a minor child as required by law.

(7) Order either party to make payments for the support of a spouse as required by law.

(8) Provide for possession of personal property of the parties, including the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

(9) Order a party to refrain from doing any or all of the following:

a. Threatening, abusing, or following the other party.

b. Harassing the other party, including by telephone, visiting the home or workplace, or other means.

b1. Cruelly treating or abusing an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

c. Otherwise interfering with the other party.

(10) Award attorney's fees to either party.

(11) Prohibit a party from purchasing a firearm for a time fixed in the order.

(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission.

(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(a1) Upon the request of either party at a hearing after notice or service of process, the court shall consider and may award temporary custody of minor children and establish temporary visitation rights as follows:

(1) In awarding custody or visitation rights, the court shall base its decision on the best interest of the minor child with particular consideration given to the safety of the minor child.

(2) For purposes of determining custody and visitation issues, the court shall consider:

a. Whether the minor child was exposed to a substantial risk of physical or emotional injury or sexual abuse.

b. Whether the minor child was present during acts of domestic violence.

[...]

[North Carolina Statutes, 2017](#) ¹⁴⁵

Chapter 14 Criminal Law

Article 7B – Rape and Other Sex Offenses

§ 14-27.34. No defense that victim is spouse of person committing act.

A person may be prosecuted under this Article whether or not the victim is the person's legal spouse at the time of the commission of the alleged rape or sexual offense. (1979, c. 682, s. 1; 1987, c. 742; 1993, c. 274, s. 1; 2015-181, s. 15.

[...]

37.2.35. NORTH DAKOTA

[North Dakota Century Code, 2018](#) ¹⁴⁶

¹⁴⁵ North Carolina Statutes (2017), Chapter 14 Criminal Law, Article 7B – Rape and Other Sex Offenses, available at https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_14/GS_14-27.34.pdf (last visited December 30, 2018).

¹⁴⁶ North Dakota Century Code (2018), Title 14, Chapter 14-07.1 Domestic Violence, available at <https://www.legis.nd.gov/cencode/t14c07-1.pdf?20140710132136> (last visited December 30, 2018).

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Title 14. Domestic Relations and Persons
Chapter 14-07.1 Domestic Violence

14-07.1-01. Definitions.

1. "Department" means the state department of health.
2. "Domestic violence" includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.
3. "Domestic violence sexual assault organization" means a private, nonprofit organization whose primary purpose is to provide emergency housing, twenty-four-hour crisis lines, advocacy, supportive peer counseling, community education, and referral services for victims of domestic violence and sexual assault.
4. "Family or household member" means a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02.
5. "Health officer" means the state health officer of the department.
6. "Law enforcement officer" means a public servant authorized by law or by a government agency to enforce the law and to conduct or engage in investigations of violations of law.
7. "Predominant aggressor" means an individual who is the most significant, not necessarily the first, aggressor. 8. "Willfully" means willfully as defined in section 12.1-02-02

[...]

14-07.1-02. Domestic violence protection order.

1. An action for a protection order commenced by a verified application alleging the existence of domestic violence may be brought in district court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.
2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order, or at a later date if good cause is shown.
3. Service must be made upon the respondent at least five days prior to the hearing. If service cannot be made, the court may set a new date.
4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, injuring, harassing, or having contact with any other person.
 - b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.
 - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorney's fees and costs.
 - f. Awarding temporary use of personal property, including motor vehicles, to either party.
 - g. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent

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is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or to the chief of police, or the chief's designee, of the city in which the respondent resides in the manner and at the time and place determined by that law enforcement officer. If the firearm or other dangerous weapon is not surrendered, the law enforcement officer may arrest the respondent pursuant to section 14-07.1-11 and take possession of the firearm or other dangerous weapon.

5. A court of competent jurisdiction may issue a dual protection order restricting both parties involved in a domestic violence dispute if each party has commenced an action pursuant to subsection 1 and the court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.

6. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

7. No order or agreement under this section affects title to any real property in any matter.

8. The petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.

9. Upon the application of an individual residing within the state, a court may issue a domestic violence protection order or an ex parte temporary protection order under this chapter even though the actions constituting domestic violence occurred exclusively outside the state. In these cases, a respondent is subject to the personal jurisdiction of this state upon entry into this state. If the domestic violence justifying the issuance of a protection order under this chapter occurred exclusively outside the state, the relief that may be granted is limited to an order restraining the party from having contact with or committing acts of domestic violence on another person in this state.

10. Whenever a protection order is issued, extended, modified, or terminated under this section, the court shall transmit the order electronically to the bureau. The bureau shall enter the order electronically in the national crime information center database provided by the federal bureau of investigation, or its successor agency. The sheriff of the county in which the order was issued shall maintain and respond to inquiries regarding the record in the national crime information center database provided by the federal bureau of investigation, or its successor agency, pursuant to bureau and federal requirements. Whenever a protection order is issued, the clerk of court shall forward a copy of the order to the local law enforcement agency with jurisdiction over the residence of the protected party by the close of business on the day the protection order is issued. Once the bureau, after consultation with the state court administrator, determines and implements an electronic method to notify the sheriff of the county that issued the order, the clerk of court's requirement to forward the order to a law enforcement agency will be satisfied.

[...]

37.2.36. OHIO

[Ohio Revised Code, 2018](#) ¹⁴⁷

Title 29 (XXIX). Crimes-Procedure
Chapter 2919. Offenses against the family
Section 25. Domestic Violence

(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

(B) No person shall recklessly cause serious physical harm to a family or household member.

(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

(D)

¹⁴⁷ Ohio Revised Code (2018), Title 29 (XXIX). Crimes-Procedure, Chapter 2919. Offenses against the family - 2919.25 Domestic Violence, available at <http://codes.ohio.gov/orc/2919.25> (last visited December 30, 2018).

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(1) Whoever violates this section is guilty of domestic violence, and the court shall sentence the offender as provided in divisions (D)(2) to (6) of this section.

(2) Except as otherwise provided in divisions (D)(3) to (5) of this section, a violation of division (C) of this section is a misdemeanor of the fourth degree, and a violation of division (A) or (B) of this section is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (D)(4) of this section, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to domestic violence, a violation of section 2903.14, 2909.06, 2909.07, 2911.12, 2911.211, or 2919.22 of the Revised Code if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of division (A) or (B) of this section is a felony of the fourth degree, and, if the offender knew that the victim of the violation was pregnant at the time of the violation, the court shall impose a mandatory prison term on the offender pursuant to division (D)(6) of this section, and a violation of division (C) of this section is a misdemeanor of the second degree.

(4) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violations or offenses, a violation of division (A) or (B) of this section is a felony of the third degree, and, if the offender knew that the victim of the violation was pregnant at the time of the violation, the court shall impose a mandatory prison term on the offender pursuant to division (D)(6) of this section, and a violation of division (C) of this section is a misdemeanor of the first degree.

(5) Except as otherwise provided in division (D)(3) or (4) of this section, if the offender knew that the victim of the violation was pregnant at the time of the violation, a violation of division (A) or (B) of this section is a felony of the fifth degree, and the court shall impose a mandatory prison term on the offender pursuant to division (D)(6) of this section, and a violation of division (C) of this section is a misdemeanor of the third degree.

(6) If division (D)(3), (4), or (5) of this section requires the court that sentences an offender for a violation of division (A) or (B) of this section to impose a mandatory prison term on the offender pursuant to this division, the court shall impose the mandatory prison term as follows:

(a) If the violation of division (A) or (B) of this section is a felony of the fourth or fifth degree, except as otherwise provided in division (D)(6)(b) or (c) of this section, the court shall impose a mandatory prison term on the offender of at least six months.

(b) If the violation of division (A) or (B) of this section is a felony of the fifth degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, the court shall impose a mandatory prison term on the offender of twelve months.

(c) If the violation of division (A) or (B) of this section is a felony of the fourth degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, the court shall impose a mandatory prison term on the offender of at least twelve months.

(d) If the violation of division (A) or (B) of this section is a felony of the third degree, except as otherwise provided in division (D)(6)(e) of this section and notwithstanding the range of prison terms prescribed in section 2929.14 of the Revised Code for a felony of the third degree, the court shall impose a mandatory prison term on the offender of either a definite term of six months or one of the prison terms prescribed in section 2929.14 of the Revised Code for felonies of the third degree.

(e) If the violation of division (A) or (B) of this section is a felony of the third degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, notwithstanding the range of prison terms prescribed in section 2929.14 of the Revised Code for a felony of the third degree, the court shall impose a mandatory prison term on the offender of either a definite term of one year or one of the prison terms prescribed in section 2929.14 of the Revised Code for felonies of the third degree.

(E) Notwithstanding any provision of law to the contrary, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of charges against a person alleging that the person violated this section or a municipal ordinance substantially similar to this section or in connection with the prosecution of any charges so filed.

(F) As used in this section and sections 2919.251 and 2919.26 of the Revised Code:

(1) "Family or household member" means any of the following:

(a) Any of the following who is residing or has resided with the offender:

(i) A spouse, a person living as a spouse, or a former spouse of the offender;

(ii) A parent, a foster parent, or a child of the offender, or another person related by consanguinity or affinity to the offender;

(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.

(b) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

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(2) "Person living as a spouse" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.

(3) "Pregnant woman's unborn" has the same meaning as "such other person's unborn," as set forth in section 2903.09 of the Revised Code, as it relates to the pregnant woman. Division (C) of that section applies regarding the use of the term in this section, except that the second and third sentences of division (C)(1) of that section shall be construed for purposes of this section as if they included a reference to this section in the listing of Revised Code sections they contain.

(4) "Termination of the pregnant woman's pregnancy" has the same meaning as "unlawful termination of another's pregnancy," as set forth in section 2903.09 of the Revised Code, as it relates to the pregnant woman. Division (C) of that section applies regarding the use of the term in this section, except that the second and third sentences of division (C)(1) of that section shall be construed for purposes of this section as if they included a reference to this section in the listing of Revised Code sections they contain.

[...]

[Ohio Revised Code, 2018](#) ¹⁴⁸

Title 29. Crimes – Procedure
Chapter 2907. Sex Offenses
Section .01 Sex offenses general definition

[...]

(L) "Spouse" means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:

- (1) When the parties have entered into a written separation agreement authorized by section 3103.06 of the Revised Code;
- (2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation;
- (3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

[...]

37.2.37. OKLAHOMA

[Oklahoma Statutes, 2017](#) ¹⁴⁹

Title 21. Crimes and punishments
§21-644. Assault - Assault and battery - Domestic abuse

A. Assault shall be punishable by imprisonment in a county jail not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

B. Assault and battery shall be punishable by imprisonment in a county jail not exceeding ninety (90) days, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

C. Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of domestic abuse. Upon conviction, the defendant shall be punished by imprisonment in the county jail for not more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Upon conviction for a second or subsequent offense, the person shall be punished by imprisonment in the custody of the Department of Corrections for not more than four (4) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall apply to any second or subsequent offense.

¹⁴⁸ Ohio Revised Code (2018), Title 29. Crimes – Procedure, Chapter 2907. Sex Offenses, Section .01 Sex offenses general definitions, available at <http://codes.ohio.gov/orc/2907> (last visited December 30, 2018).

¹⁴⁹ Oklahoma Statutes (2017), Title 21. Crimes and punishments, §21-644. Assault - Assault and battery - Domestic abuse available at <https://law.justia.com/codes/oklahoma/2017/title-21/section-21-644/> (last visited December 30, 2018).

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D. 1. Any person who, with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon a current or former spouse, a present spouse of a former spouse, a parent, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant with any sharp or dangerous weapon, upon conviction, is guilty of domestic assault or domestic assault and battery with a dangerous weapon which shall be a felony and punishable by imprisonment in the custody of the Department of Corrections not exceeding ten (10) years, or by imprisonment in a county jail not exceeding one (1) year. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

2. Any person who, without such cause, shoots a current or former spouse, a present spouse of a former spouse, a parent, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant, by means of any deadly weapon that is likely to produce death shall, upon conviction, be guilty of domestic assault and battery with a deadly weapon which shall be a felony punishable by imprisonment in the custody of the Department of Corrections not exceeding life. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

E. Any person convicted of domestic abuse committed against a pregnant woman with knowledge of the pregnancy shall be guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than one (1) year.

Any person convicted of a second or subsequent offense of domestic abuse against a pregnant woman with knowledge of the pregnancy shall be guilty of a felony, punishable by imprisonment in the custody of the Department of Corrections for not less than ten (10) years.

Any person convicted of domestic abuse committed against a pregnant woman with knowledge of the pregnancy and a miscarriage occurs or injury to the unborn child occurs shall be guilty of a felony, punishable by imprisonment in the custody of the Department of Corrections for not less than twenty (20) years.

F. Any person convicted of domestic abuse as defined in subsection C of this section that results in great bodily injury to the victim shall be guilty of a felony and punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years, or by imprisonment in the county jail for not more than one (1) year. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction of a violation of this subsection.

G. Any person convicted of domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Any person convicted of a second or subsequent domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or by a fine not exceeding Seven Thousand Dollars (\$7,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall apply to any second or subsequent offense. For every conviction of domestic abuse, domestic assault or domestic assault and battery with a dangerous weapon, or domestic assault and battery with a deadly weapon, the court shall:

1. Specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;

2.a. The court shall require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program certified by the Attorney General. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered domestic abuse counseling or treatment program shall be prima facie evidence of the violation of the conditions of probation for the district attorney to seek acceleration or revocation of any probation entered by the court.

b. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment,

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including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;

3.a. The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court may suspend sentencing of the defendant until the defendant has presented proof to the court of enrollment in a program of treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program certified by the Attorney General and attendance at weekly sessions of such program. Such proof shall be presented to the court by the defendant no later than one hundred twenty (120) days after the defendant is ordered to such counseling or treatment. At such time, the court may complete sentencing, beginning the period of the sentence from the date that proof of enrollment is presented to the court, and schedule reviews as required by subparagraphs a and b of this paragraph and paragraphs 4 and 5 of this subsection. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered domestic abuse counseling or treatment program shall be prima facie evidence of the violation of the conditions of probation for the district attorney to seek acceleration or revocation of any probation entered by the court.

b. The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;

4. The court may set subsequent or other review hearings as the court determines necessary to assure the defendant attends and fully complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;

5. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, the court may order the defendant to further or continue counseling, treatment, or other necessary services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation pursuant to Section 991b of Title 22 of the Oklahoma Statutes and subject the defendant to any or all remaining portions of the original sentence;

6. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings; and

7. If funding is available, a referee may be appointed and assigned by the presiding judge of the district court to hear designated cases set for review under this subsection. Reasonable compensation for the referees shall be fixed by the presiding judge. The referee shall meet the requirements and perform all duties in the same manner and procedure as set forth in Sections 7003-8.6 and 7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees appointed in juvenile proceedings.

The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

H. As used in subsection G of this section, "in the presence of a child" means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence. For the purposes of subsections C and G of this section, "child" may be any child whether or not related to the victim or the defendant.

I. For the purposes of subsections C and G of this section, any conviction for assault and battery against a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for a felony charge:

1. If that conviction is rendered in any state, county or parish court of record of this or any other state; or
2. If that conviction is rendered in any municipal court of record of this or any other state for which any jail time was served; provided, no conviction in a municipal court of record entered prior to November 1, 1997, shall constitute a prior conviction for purposes of a felony charge.

J. Any person who commits any assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall, upon conviction, be guilty of domestic abuse by strangulation and shall be punished by imprisonment in

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the custody of the Department of Corrections for a period of not less than one (1) year nor more than three (3) years, or by a fine of not more than Three Thousand Dollars (\$3,000.00), or by both such fine and imprisonment. Upon a second or subsequent conviction, the defendant shall be punished by imprisonment in the custody of the Department of Corrections for a period of not less than three (3) years nor more than ten (10) years, or by a fine of not more than Twenty Thousand Dollars (\$20,000.00), or by both such fine and imprisonment. As used in this subsection, "strangulation" means any form of asphyxia; including, but not limited to, asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck or the closure of the nostrils or mouth as a result of external pressure on the head.

K. Any district court of this state and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a treatment program for domestic abusers certified by the Attorney General;
2. Attend counseling or treatment services ordered as part of any suspended or deferred sentence or probation; and
3. Attend, complete, and be evaluated before and after attendance by a treatment program for domestic abusers, certified by the Attorney General.

L. There shall be no charge of fees or costs to any victim of domestic violence, stalking, or sexual assault in connection with the prosecution of a domestic violence, stalking, or sexual assault offense in this state.

M. In the course of prosecuting any charge of domestic abuse, stalking, harassment, rape, or violation of a protective order, the prosecutor shall provide the court, prior to sentencing or any plea agreement, a local history and any other available history of past convictions of the defendant within the last ten (10) years relating to domestic abuse, stalking, harassment, rape, violation of a protective order, or any other violent misdemeanor or felony convictions.

N. Any plea of guilty or finding of guilt for a violation of subsection C, F, G, I or J of this section shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is relevant for a period of ten (10) years following the completion of any court imposed probationary term; provided, the person has not, in the meantime, been convicted of a misdemeanor involving moral turpitude or a felony.

O. For purposes of subsection F of this section, "great bodily injury" means bone fracture, protracted and obvious disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or substantial risk of death.

[...]

Marital rape:

[Oklahoma Statutes, 2017](#)¹⁵⁰

Title 21. Crimes and Punishments
§21-1111. Rape defined

[...]

B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

[...]

37.2.38. OREGON

[Oregon Revised Statutes, 2017](#)¹⁵¹

Vol. 3. Landlord-Tenant, Domestic Relations, Probate

¹⁵⁰ Oklahoma Statutes (2017), Title 21. Crimes and Punishments, §21-1111. Rape defined, available at <https://law.justia.com/codes/oklahoma/2017/title-21/section-21-1111/> (last visited December 30, 2018)

¹⁵¹ Oregon Revised Statutes (2017), Vol. 3 Landlord-Tenant, Domestic Relations, Probate, Chapter 107. Marital Dissolution, Annulment and Separation; Mediation and Conciliation Services; Family Abuse Prevention, Sections 700 through 735, available at https://www.oregonlegislature.gov/bills_laws/ors/ors107.html (last visited December 30, 2018).

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Chapter 107. Marital Dissolution, Annulment and Separation; Mediation and Conciliation Services; Family Abuse Prevention Sections 700 through 735

FAMILY ABUSE PREVENTION ACT

107.700 Short title. ORS 107.700 to 107.735 shall be known and may be cited as the "Family Abuse Prevention Act." [1977 c.845 §4; 1995 c.637 §1]

107.705 Definitions for ORS 107.700 to 107.735. As used in ORS 107.700 to 107.735:

- (1) "Abuse" means the occurrence of one or more of the following acts between family or household members:
 - (a) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.
 - (b) Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury.
 - (c) Causing another to engage in involuntary sexual relations by force or threat of force.
- (2) "Child" means an unmarried person who is under 18 years of age.
- (3) "Declaration under penalty of perjury" means a declaration under penalty of perjury in the form required by ORCP 1 E.
- (4) "Family or household members" means any of the following:
 - (a) Spouses.
 - (b) Former spouses.
 - (c) Adult persons related by blood, marriage or adoption.
 - (d) Persons who are cohabiting or who have cohabited with each other.
 - (e) Persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing by one of them of a petition under ORS 107.710.
 - (f) Unmarried parents of a child.
- (5) "Interfere" means to interpose in a manner that would reasonably be expected to hinder or impede a person in the petitioner's situation.
- (6) "Intimidate" means to act in a manner that would reasonably be expected to threaten a person in the petitioner's situation, thereby compelling or deterring conduct on the part of the person.
- (7) "Menace" means to act in a manner that would reasonably be expected to threaten a person in the petitioner's situation.
- (8) "Molest" means to act, with hostile intent or injurious effect, in a manner that would reasonably be expected to annoy, disturb or persecute a person in the petitioner's position.

[...]

107.710 Petition to circuit court for relief; burden of proof.

- (1) Any person who has been the victim of abuse within the preceding 180 days may petition the circuit court for relief under ORS 107.700 to 107.735, if the person is in imminent danger of further abuse from the abuser. The person may seek relief by filing a petition with the circuit court alleging that the person is in imminent danger of abuse from the respondent, that the person has been the victim of abuse committed by the respondent within the 180 days preceding the filing of the petition and particularly describing the nature of the abuse and the dates thereof. The abuse must have occurred not more than 180 days before the filing of the petition. The petition must include allegations made under oath or affirmation or a declaration under penalty of perjury. The circuit court shall have jurisdiction over all proceedings under ORS 107.700 to 107.735.
- (2) The petitioner has the burden of proving a claim under ORS 107.700 to 107.735 by a preponderance of the evidence.
- (3) A person's right to relief under ORS 107.700 to 107.735 shall not be affected by the fact that the person left the residence or household to avoid abuse.
- (4) A petition filed under ORS 107.700 to 107.735 shall disclose the existence of any custody, Family Abuse Prevention Act or Elderly Persons and Persons With Disabilities Abuse Prevention Act proceedings, or any marital annulment, dissolution or separation proceedings, or any filiation proceeding, pending between the parties, and the existence of any other custody order affecting the children of the parties.
- (5) When the petitioner requests custody of any child, the petition shall comply with ORS 109.767 and disclose:
 - (a) The child's present residence and the length of time the child has resided at the residence;
 - (b) The county and state where the child resided for the five years immediately prior to the filing of the petition;
 - (c) The name and address of the party or other responsible person with whom the child is presently residing;
 - (d) The name and current address of any party or other responsible person with whom the child resided for the five years immediately prior to the filing of the petition;
 - (e) Whether the party participated as a party, witness or in any other capacity, in any other litigation concerning the custody of the child in this or any other state;
 - (f) Whether the party has information of any custody proceeding concerning the child pending in a court of this or any other state; and

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(g) Whether the party knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody, parenting time or visitation rights with respect to the child.

(6) For purposes of computing the 180-day period in this section and ORS 107.718, any time during which the respondent is incarcerated or has a principal residence more than 100 miles from the principal residence of the petitioner shall not be counted as part of the 180-day period.

[...]

37.2.39. PENNSYLVANIA

[Pennsylvania Statutes, 2017](#)¹⁵²

Title 23. Domestic Relations

Part VII. Abuse of Family (Protection from Abuse Act), Sections 6101 and 6113

This chapter shall be known and may be cited as the Protection From Abuse Act

§ 6102. Definitions

(a) General rule.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Abuse.” The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:

(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.

(2) Placing another in reasonable fear of imminent serious bodily injury.

(3) The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment).

(4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).

(5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury.

The definition of this paragraph applies only to proceedings commenced under this title and is inapplicable to any criminal prosecutions commenced under Title 18 (relating to crimes and offenses).

“Adult.” An individual who is 18 years of age or older.

“Certified copy.” A paper copy of the original order of the issuing court endorsed by the appropriate clerk of that court or an electronic copy of the original order of the issuing court endorsed with a digital signature of the judge or appropriate clerk of that court. A raised seal on the copy of the order of the issuing court shall not be required.

“Comparable court.” A foreign court that:

(1) has subject matter jurisdiction and is authorized to issue ex parte, emergency, temporary or final protection orders in that jurisdiction; and

(2) possessed jurisdiction over the parties when the protection order was issued in that jurisdiction.

“Confidential communications.” All information, whether written or spoken, transmitted between a victim and a domestic violence counselor or advocate in the course of the relationship. The term includes information received or given by the domestic violence counselor or advocate in the course of the relationship, as well as advice, reports, statistical data, memoranda or working papers, records or the like, given or made in the course of the relationship. The term also includes communications made by or to a linguistic interpreter assisting the victim, counselor or advocate in the course of the relationship.

“Domestic violence counselor/advocate.” An individual who is engaged in a domestic violence program, the primary purpose of which is the rendering of counseling or assistance to victims of domestic violence, who has undergone 40 hours of training.

“Domestic violence program.” A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims which include, but are not limited to, crisis hotline; safe homes or shelters; community education; counseling systems intervention and interface; transportation, information and referral; and victim assistance.

“Family or household members.” Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

¹⁵² Pennsylvania Statutes (2017), Title 23. Domestic Relations, Part VII. Abuse of Family (Protection From Abuse Act), Sections 6101 and 6113, available at <https://codes.findlaw.com/pa/title-23-pacsa-domestic-relations/#!tid=NBE239C133DD84E24B2525189844B06E3> (last visited December 30, 2018).

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“Firearm.” Any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon as defined by 18 Pa.C.S. § 6105(i) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

“Foreign protection order.” A protection order as defined by 18 U.S.C. § 2266 (relating to definitions) issued by a comparable court of another state, the District of Columbia, Indian tribe or territory, possession or commonwealth of the United States.

“Hearing officer.” A magisterial district judge, judge of the Philadelphia Municipal Court, arraignment court magistrate appointed under 42 Pa.C.S. § 1123 (relating to jurisdiction and venue), master appointed under 42 Pa.C.S. § 1126 (relating to masters) and master for emergency relief.

“Master for emergency relief.” A member of the bar of the Commonwealth appointed under section 6110(e) (relating to emergency relief by minor judiciary).

“Minor.” An individual who is not an adult.

“Other weapon.” Anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have. The term does not include a firearm.

“Safekeeping permit.” A permit issued by a sheriff allowing a person to take possession of any firearm, other weapon or ammunition that a judge ordered a defendant to relinquish in a protection from abuse proceeding.

“Secure visitation facility.” A court-approved visitation program offered in a facility with trained professional staff operated in a manner that safeguards children and parents from abuse and abduction.

“Sheriff.”

(1) Except as provided in paragraph (2), the sheriff of the county.

(2) In a city of the first class, the chief or head of the police department.

“Victim.” A person who is physically or sexually abused by a family or household member. For purposes of section 6116 (relating to confidentiality), a victim is a person against whom abuse is committed who consults a domestic violence counselor or advocate for the purpose of securing advice, counseling or assistance. The term shall also include persons who have a significant relationship with the victim and who seek advice, counseling or assistance from a domestic violence counselor or advocate regarding abuse of the victim.

“Weapon.” Anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have. The term includes a firearm which is not loaded or lacks a magazine, clip or other components to render it immediately operable and components which can readily be assembled into a weapon as defined by 18 Pa.C.S. § 907 (relating to possessing instruments of crime).

(b) Other terms.--Terms not otherwise defined in this chapter shall have the meaning given to them in 18 Pa.C.S. (relating to crimes and offenses).

[...]

§ 6108. Relief

(a) General rule.--The court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order or agreement may include:

(1) Directing the defendant to refrain from abusing the plaintiff or minor children.

(2) Granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff if the residence or household is jointly owned or leased by the parties, is owned or leased by the entireties or is owned or leased solely by the plaintiff.

(3) If the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff or, with the consent of the plaintiff, ordering the defendant to provide suitable alternate housing.

(4) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children. In determining whether to award temporary custody or establish temporary visitation rights pursuant to this paragraph, the court shall consider any risk posed by the defendant to the children as well as risk to the plaintiff. The following shall apply:

(i) A defendant shall not be granted custody, partial custody or unsupervised visitation where it is alleged in the petition, and the court finds after a hearing under this chapter, that the defendant:

(A) abused the minor children of the parties or poses a risk of abuse toward the minor children of the parties; or

(B) has been convicted of violating 18 Pa.C.S. § 2904 (relating to interference with custody of children) within two calendar years prior to the filing of the petition for protection order or that the defendant poses a risk of violating 18 Pa.C.S. § 2904.

(ii) Where the court finds after a hearing under this chapter that the defendant has inflicted abuse upon the plaintiff or a child, the court may require supervised custodial access by a third party. The third party must agree to be accountable to the court for supervision and execute an affidavit of accountability.

(iii) Where the court finds after a hearing under this chapter that the defendant has inflicted serious abuse upon the plaintiff or a child or poses a risk of abuse toward the plaintiff or a child, the court may:

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- (A) award supervised visitation in a secure visitation facility; or
- (B) deny the defendant custodial access to a child.

(iv) If a plaintiff petitions for a temporary order under section 6107(b) (relating to hearings) and the defendant has partial, shared or full custody of the minor children of the parties by order of court or written agreement of the parties, the custody shall not be disturbed or changed unless the court finds that the defendant is likely to inflict abuse upon the children or to remove the children from the jurisdiction of the court prior to the hearing under section 6107(a). Where the defendant has forcibly or fraudulently removed any minor child from the care and custody of a plaintiff, the court shall order the return of the child to the plaintiff unless the child would be endangered by restoration to the plaintiff.

(v) Nothing in this paragraph shall bar either party from filing a petition for custody under Chapter 53 (relating to custody) or under the Pennsylvania Rules of Civil Procedure.

(vi) In order to prevent further abuse during periods of access to the plaintiff and child during the exercise of custodial rights, the court shall consider, and may impose on a custody award, conditions necessary to assure the safety of the plaintiff and minor children from abuse.

(5) After a hearing in accordance with section 6107(a), directing the defendant to pay financial support to those persons the defendant has a duty to support, requiring the defendant, under sections 4324 (relating to inclusion of medical support) and 4326 (relating to mandatory inclusion of child medical support), to provide health coverage for the minor child and spouse, directing the defendant to pay all of the unreimbursed medical expenses of a spouse or minor child of the defendant to the provider or to the plaintiff when he or she has paid for the medical treatment, and directing the defendant to make or continue to make rent or mortgage payments on the residence of the plaintiff to the extent that the defendant has a duty to support the plaintiff or other dependent household members. The support order shall be temporary, and any beneficiary of the order must file a complaint for support under the provisions of Chapters 43 (relating to support matters generally) and 45 (relating to reciprocal enforcement of support orders) within two weeks of the date of the issuance of the protection order. If a complaint for support is not filed, that portion of the protection order requiring the defendant to pay support is void. When there is a subsequent ruling on a complaint for support, the portion of the protection order requiring the defendant to pay support expires.

(6) Prohibiting the defendant from having any contact with the plaintiff or minor children, including, but not limited to, restraining the defendant from entering the place of employment or business or school of the plaintiff or minor children and from harassing the plaintiff or plaintiff's relatives or minor children.

(7) Ordering the defendant to temporarily relinquish to the sheriff the defendant's other weapons and ammunition which have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children and the defendant's firearms and prohibiting the defendant from acquiring or possessing any firearm for the duration of the order and requiring the defendant to relinquish to the sheriff any firearm license issued under section 6108.3 (relating to relinquishment to third party for safekeeping) or 18 Pa.C.S. § 6106 (relating to firearms not to be carried without a license) or 6109 (relating to licenses) the defendant may possess. A copy of the court's order shall be transmitted to the chief or head of the police force or police department of the municipality and to the sheriff of the county of which the defendant is a resident. When relinquishment is ordered, the following shall apply:

(i)(A) The court's order shall require the defendant to relinquish such firearms, other weapons, ammunition and any firearm license pursuant to the provisions of this chapter within 24 hours of service of a temporary order or the entry of a final order or the close of the next business day as necessary by closure of the sheriffs' offices, except for cause shown at the hearing, in which case the court shall specify the time for relinquishment of any or all of the defendant's firearms.

(B) A defendant subject to a temporary order requiring the relinquishment of firearms, other weapons or ammunition shall, in lieu of relinquishing specific firearms, other weapons or ammunition which cannot reasonably be retrieved within the time for relinquishment in clause (A) due to their current location, provide the sheriff with an affidavit listing the firearms, other weapons or ammunition and their current location. If the defendant, within the time for relinquishment in clause (A), fails to provide the affidavit or fails to relinquish, pursuant to this chapter, any firearms, other weapons or ammunition ordered to be relinquished which are not specified in the affidavit, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement authorities. The defendant shall not possess any firearms, other weapons or ammunition specifically listed in the affidavit provided to the sheriff pursuant to this clause for the duration of the temporary order.

(C) As used in this subparagraph, the term "cause" shall be limited to facts relating to the inability of the defendant to retrieve a specific firearm within 24 hours due to the current location of the firearm.

(ii) The court's order shall contain a list of any firearm, other weapon or ammunition ordered relinquished. Upon the entry of a final order, the defendant shall inform the court in what manner the defendant is going to relinquish any firearm, other weapon or ammunition ordered relinquished. Relinquishment may occur pursuant to section 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or 6108.3 or to the sheriff pursuant to this paragraph. Where the sheriff is designated, the sheriff shall secure custody of the defendant's firearms, other weapons or ammunition and any firearm license listed in the court's order for the duration of the order or until otherwise directed by court order. In securing custody of the defendant's relinquished firearms, the sheriff shall comply with 18 Pa.C.S. § 6105(f)(4) (relating to

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persons not to possess, use, manufacture, control, sell or transfer firearms). In securing custody of the defendant's other weapons and ammunition, the sheriff shall provide the defendant with a signed and dated written receipt which shall include a detailed description of the other weapon or ammunition and its condition.

(iii) The sheriff shall provide the plaintiff with the name of the person to which any firearm, other weapon or ammunition was relinquished.

(iv) Unless the defendant has complied with subparagraph (i)(B) or section 6108.2 or 6108.3, if the defendant fails to relinquish any firearm, other weapon, ammunition or firearm license within 24 hours or upon the close of the next business day due to closure of sheriffs' offices or within the time ordered by the court upon cause being shown at the hearing, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement agencies.

(v) Any portion of any order or any petition or other paper which includes a list of any firearm, other weapon or ammunition ordered relinquished shall be kept in the files of the court as a permanent record thereof and withheld from public inspection except:

(A) upon an order of the court granted upon cause shown;

(B) as necessary, by law enforcement and court personnel; or

(C) after redaction of information listing any firearm, other weapon or ammunition.

(vi) As used in this paragraph, the term "defendant's firearms" shall, if the defendant is a licensed firearms dealer, only include firearms in the defendant's personal firearms collection pursuant to 27 CFR § 478.125a (relating to personal firearms collection).

(7.1) If the defendant is a licensed firearms dealer, ordering the defendant to follow such restrictions as the court may require concerning the conduct of his business, which may include ordering the defendant to relinquish any Federal or State license for the sale, manufacture or importation of firearms as well as firearms in the defendant's business inventory. In restricting the defendant pursuant to this paragraph, the court shall make a reasonable effort to preserve the financial assets of the defendant's business while fulfilling the goals of this chapter.

(8) Directing the defendant to pay the plaintiff for reasonable losses suffered as a result of the abuse, including medical, dental, relocation and moving expenses; counseling; loss of earnings or support; costs of repair or replacement of real or personal property damaged, destroyed or taken by the defendant or at the direction of the defendant; and other out-of-pocket losses for injuries sustained. In addition to out-of-pocket losses, the court may direct the defendant to pay reasonable attorney fees. An award under this chapter shall not constitute a bar to litigation for civil damages for injuries sustained from the acts of abuse giving rise to the award or a finding of contempt under this chapter.

(9) Directing the defendant to refrain from stalking or harassing the plaintiff and other designated persons as defined in 18 Pa.C.S. §§ 2709 (relating to harassment) and 2709.1 (relating to stalking).

(10) Granting any other appropriate relief sought by the plaintiff.

(b) Identifying information.--Any order issued under this section shall, where furnished by either party, specify the Social Security number and date of birth of the defendant.

(c) Mutual orders of protection.--Mutual orders of protection shall not be awarded unless both parties have filed timely written petitions, complied with service requirements under section 6106 (relating to commencement of proceedings) and are eligible for protection under this chapter. The court shall make separate findings and, where issuing orders on behalf of both petitioners, enter separate orders.

(d) Duration and amendment of order or agreement.--A protection order or approved consent agreement shall be for a fixed period of time not to exceed three years. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

(e) Extension of protection orders.--

(1) An extension of a protection order may be granted:

(i) Where the court finds, after a duly filed petition, notice to the defendant and a hearing, in accordance with the procedures set forth in sections 6106 and 6107, that the defendant committed one or more acts of abuse subsequent to the entry of the final order or that the defendant engaged in a pattern or practice that indicates continued risk of harm to the plaintiff or minor child.

(ii) When a contempt petition or charge has been filed with the court or with a hearing officer in Philadelphia County, but the hearing has not occurred before the expiration of the protection order, the order shall be extended, at a minimum, until the disposition of the contempt petition and may be extended for another term beyond the disposition of the contempt petition.

(2) Service of an extended order shall be made in accordance with section 6109 (relating to service of orders).

(3) There shall be no limitation on the number of extensions that may be granted.

(f) Support procedure.--The domestic relations section shall enforce any support award in a protection order where the plaintiff files a complaint for support under subsection (a)(5).

(g) Notice.--Notice shall be given to the defendant, in orders issued under this section, stating that violations of an order will subject the defendant to arrest under section 6113 (relating to arrest for violation of order) or contempt of court under section 6114 (relating to contempt for violation of order or agreement). Resumption of coresidency on the part of the plaintiff and defendant shall not nullify the provisions of the court order.

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(h) Title to real property unaffected.--No order or agreement under this chapter shall in any manner affect title to any real property.

[...]

37.2.40. RHODE ISLAND

[Rhode Island General Laws, 2017](#) ¹⁵³

Title 12. Criminal Procedure

Chapter 29. Domestic Violence Prevention Act

§ 12-29-1. Legislative purpose.

(a) The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure victims of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.

(b) While the legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence, previous societal attitudes have been reflected in policies and practices of law enforcement agencies, prosecutors, and courts which have resulted in differing treatment of crimes occurring between family or household members and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies.

(c) It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabitating, or involved in a relationship.

§ 12-29-1.1. Full faith and credit.

(a) Any protective order issued by another jurisdiction, as defined in § 12-29-2, shall be given full faith and credit throughout the state and enforced as if it were issued in the state for as long as the order is in effect in the issuing jurisdiction.

(b) A person entitled to protection under a protective order issued by another jurisdiction may file the order in the superior court, family court, or district court by filing with the court a certified copy of the order which shall be entered into the restraining order, no contact order system (R.O.N.C.O.). The person shall swear under oath in an affidavit, to the best of the person's knowledge, that the order is presently in effect as written. A law enforcement officer shall presume the validity of the order and enforce the order issued by another jurisdiction which has been provided to the law enforcement officer; provided, that the officer is also provided with a statement by the person protected by the order that the order remains in effect. Law enforcement officers shall rely on the statement by the person protected by the order.

[...]

§ 12-29-2. Definitions.

(a) "Domestic violence" includes, but is not limited to, any of the following crimes when committed by one family or household member against another:

- (1) Simple assault (§ 11-5-3);
- (2) Felony assaults (chapter 5 of title 11);
- (3) Vandalism (§ 11-44-1);
- (4) Disorderly conduct (§ 11-45-1);
- (5) Trespass (§ 11-44-26);
- (6) Kidnapping (§ 11-26-1);
- (7) Child-snatching (§ 11-26-1.1);
- (8) Sexual assault (§§ 11-37-2, 11-37-4);
- (9) Homicide (§§ 11-23-1 and 11-23-3);
- (10) Violation of the provisions of a protective order entered pursuant to § 15-5-19, chapter 15 of title 15, or chapter 8.1 of title 8 where the respondent has knowledge of the order and the penalty for its violation, or a violation of a no contact order issued pursuant to § 12-29-4;

¹⁵³ Rhode Island General Laws (2017), Title 12. Criminal Procedure, Chapter 29. Domestic Violence Prevention Act, available at <http://webserver.rilin.state.ri.us/Statutes/TITLE12/12-29/12-29-2.HTM> (last visited December 30, 2018).

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- (11) Stalking (chapter 59 of title 11);
 - (12) Refusal to relinquish or to damage or to obstruct a telephone (§ 11-35-14);
 - (13) Burglary and Unlawful Entry (chapter 8 of title 11);
 - (14) Arson (chapter 4 of title 11);
 - (15) Cyberstalking and cyberharassment (§ 11-52-4.2);
 - (16) Domestic assault by strangulation § 11-5-2.3; and
 - (17) Electronic tracking of motor vehicles (§ 11-69-1).
- (b) "Family or household member" means spouses, former spouses, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past three (3) years, and persons who have a child in common regardless of whether they have been married or have lived together, or persons who are, or have been, in a substantive dating or engagement relationship within the past one year which shall be determined by the court's consideration of the following factors:
- (1) The length of time of the relationship;
 - (2) The type of the relationship;
 - (3) The frequency of the interaction between the parties.
- (c) "Protective order" means an order issued pursuant to § 15-5-19, chapter 15 of title 15, or chapter 8.1 of title 8.
- (d) "Victim" means a family or household member who has been subjected to domestic violence.

[...]

37.2.41. SOUTH CAROLINA

[South Carolina Code of Laws Unannotated, 2018](#) ¹⁵⁴

Title 16. Crimes and offenses

Chapter 25. Domestic Violence, Section 16-25-10 starting

SECTION 16-25-10. Definitions.

As used in this article, the term:

(1) "Deadly weapon" means any pistol, dirk, slingshot, metal knuckles, razor, or other instrument which can be used to inflict deadly force.

(2) "Great bodily injury" means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

For validity of (3), see Editors' Notes below.

(3) "Household member" means:

(a) a spouse;

(b) a former spouse;

(c) persons who have a child in common; or

(d) a male and female who are cohabiting or formerly have cohabited.

(4) "Moderate bodily injury" means physical injury that involves prolonged loss of consciousness or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

(5) "Prior conviction of domestic violence" includes conviction of any crime, in any state, containing among its elements those enumerated in, or substantially similar to those enumerated in, Section 16-25-20(A) that is committed against a household member as defined in item (3) within the ten years prior to the incident date of the current offense.

(6) "Protection order" means any order of protection, restraining order, condition of bond, or any other similar order issued in this State or another state or foreign jurisdiction for the purpose of protecting a household member.

(7) "Firearm" means a pistol, revolver, rifle, shotgun, machine gun, submachine gun, or an assault rifle which is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive but does not include an antique firearm as defined in 18 U.S.C. 921(a)(16).

¹⁵⁴ South Carolina Code of Laws Unannotated (2018), Title 16. Crimes and offenses, Chapter 25. Domestic Violence, Section 16-25-10, available at <https://www.scstatehouse.gov/code/t16c025.php> (last visited December 30, 2018).

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SECTION 16-25-20. Acts prohibited; penalties.

(A) It is unlawful to:

- (1) cause physical harm or injury to a person's own household member; or
- (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

(B) Except as otherwise provided in this section, a person commits the offense of domestic violence in the first degree if the person violates the provisions of subsection (A) and:

- (1) great bodily injury to the person's own household member results or the act is accomplished by means likely to result in great bodily injury to the person's own household member;
- (2) the person violates a protection order and in the process of violating the order commits domestic violence in the second degree;
- (3) has two or more prior convictions of domestic violence within ten years of the current offense;
- (4) the person uses a firearm in any manner while violating the provisions of subsection (A); or
- (5) in the process of committing domestic violence in the second degree one of the following also results:
 - (a) the offense is committed in the presence of, or while being perceived by a minor;
 - (b) the offense is committed against a person known, or who reasonably should have been known, by the offender to be pregnant;
 - (c) the offense is committed during the commission of a robbery, burglary, kidnapping, or theft;
 - (d) the offense is committed by impeding the victim's breathing or air flow; or
 - (e) the offense is committed using physical force or the threatened use of force against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:
 - (i) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or
 - (ii) a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

Domestic violence in the first degree is a lesser included offense of domestic violence of a high and aggravated nature, as defined in Section 16-25-65.

(C) A person commits the offense of domestic violence in the second degree if the person violates subsection (A) and:

- (1) moderate bodily injury to the person's own household member results or the act is accomplished by means likely to result in moderate bodily injury to the person's own household member;
- (2) the person violates a protection order and in the process of violating the order commits domestic violence in the third degree;
- (3) the person has one prior conviction for domestic violence in the past ten years from the current offense; or
- (4) in the process of committing domestic violence in the third degree one of the following also results:
 - (a) the offense is committed in the presence of, or while being perceived by, a minor;
 - (b) the offense is committed against a person known, or who reasonably should have been known, by the offender to be pregnant;
 - (c) the offense is committed during the commission of a robbery, burglary, kidnapping, or theft;
 - (d) the offense is committed by impeding the victim's breathing or air flow; or
 - (e) the offense is committed using physical force or the threatened use of force against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:
 - (i) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or
 - (ii) a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand five hundred dollars nor more than five thousand dollars or imprisoned for not more than three years, or both.

Domestic violence in the second degree is a lesser-included offense of domestic violence in the first degree, as defined in subsection (B), and domestic violence of a high and aggravated nature, as defined in Section 16-25-65.

Assault and battery in the second degree pursuant to Section 16-3-600(D) is a lesser-included offense of domestic violence in the second degree as defined in this subsection.

(D) A person commits the offense of domestic violence in the third degree if the person violates subsection (A).

- (1) A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than one

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thousand dollars nor more than two thousand five hundred dollars or imprisoned not more than ninety days, or both. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, and 22-3-550, an offense pursuant to the provisions of this subsection may be tried in summary court.

(2) Domestic violence in the third degree is a lesser-included offense of domestic violence in the second degree, as defined in subsection (C), domestic violence in the first degree, as defined in subsection (B), and domestic violence of a high and aggravated nature, as defined in Section 16-25-65.

(3) Assault and battery in the third degree pursuant to Section 16-3-600(E) is a lesser-included offense of domestic violence in the third degree as defined in this subsection.

(4) A person who violates this subsection is eligible for pretrial intervention pursuant to Chapter 22, Title 17.

(E) When a person is convicted of a violation of Section 16-25-20(B) or (C) or Section 16-25-65, the circuit court may suspend execution of all or part of the sentence and place the offender on probation, or if a person is convicted of a violation of Section 16-25-20(D), the court may suspend execution of all or part of the sentence, conditioned upon:

(1) the offender's mandatory completion, to the satisfaction of the court, of a domestic violence intervention program designed to treat batterers in accordance with the provisions of subsection (G);

(2) fulfillment of all the obligations arising under court order pursuant to this section and Section 16-25-65;

(3) other reasonable terms and conditions of probation as the court may determine necessary to ensure the protection of the victim; and

(4) making restitution as the court deems appropriate.

(F) In determining whether or not to suspend the imposition or execution of all or part of a sentence as provided in this section, the court must consider the nature and severity of the offense, the number of times the offender has repeated the offense, and the best interests and safety of the victim.

(G) An offender who participates in a domestic violence intervention program pursuant to this section, shall participate in a program offered through a government agency, nonprofit organization, or private provider selected and approved by the Circuit Solicitor with jurisdiction over the offense or the Attorney General if the offense is prosecuted by the Attorney General's Office. If the offender moves to a different circuit after entering a treatment program selected by the Circuit Solicitor, the Circuit Solicitor for the county in which the offender resides shall have the authority to select and approve the batterer's treatment program. The offender shall pay a reasonable fee, if required, for participation in the program but no person may be denied participation due to inability to pay. If the offender suffers from a substance abuse problem or mental health concern, the judge may order, or the program may refer, the offender to supplemental treatment coordinated through the Department of Alcohol and Other Drug Abuse Services with the local alcohol and drug treatment authorities pursuant to Section 61-12-20 or the Department of Mental Health or Veterans' Hospital, respectively. The offender must pay a reasonable fee for participation in the substance abuse treatment or mental health program, if required, but no person may be denied participation due to inability to pay.

(H) A person who violates the terms and conditions of an order of protection issued in this State pursuant to Chapter 4, Title 20, the "Protection from Domestic Abuse Act", or a valid protection order related to domestic or family violence issued by a court of another state, tribe, or territory is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days and fined not more than five hundred dollars.

(I) Unless the complaint is voluntarily dismissed or the charge is dropped prior to the scheduled trial date, a person charged with a violation provided in this chapter must appear before a judge for disposition of the case or be tried in the person's absence.

[...]

37.2.42. SOUTH DAKOTA

[South Dakota Codified Laws, 2018](#) ¹⁵⁵

Title 25. Domestic Relations

Chapter 25-10. Protection for Domestic Abuse

25-10-1. Definitions. Terms used in this chapter mean:

¹⁵⁵ South Dakota Codified Laws (2018), Title 25. Domestic Relations, Chapter 25-10. Protection for Domestic Abuse, available at https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=25-10 (last visited December 30, 2018).

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- (1) "Domestic abuse," physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury when occurring between persons in a relationship described in § 25-10-3.1. Any violation of § 25-10-13 or chapter 22-19A or any crime of violence as defined in subdivision 22-1-2(9) constitutes domestic abuse if the underlying criminal act is committed between persons in such a relationship;
- (2) "Protection order," an order restraining any person in a relationship described in § 25-10-3.1 from committing any act of domestic abuse or an order excluding any person in a relationship described in § 25-10-3.1 from the dwelling or residence of another person in such a relationship, whether or not the dwelling or residence is shared. A protection order has a duration of five years or less; and
- (3) "Temporary protection order," an order restraining any person in a relationship described in § 25-10-3.1 from committing any act of domestic abuse or an order excluding any person in a relationship described in § 25-10-3.1 from the dwelling or residence of another person in such a relationship, whether or not the dwelling or residence is shared. A temporary protection order has a duration of thirty days except as provided in § 25-10-7.1.

25-10-2. Application for relief--Filing--Venue. An application for relief under this chapter may be filed in circuit court or in a magistrate court with a magistrate judge presiding. Venue lies where any party to the proceedings resides.

25-10-3. Petition for protection order--Procedure--Standard petition form. There exists an action known as a petition for a protection order in cases of domestic abuse. Procedures for the action are as follows:

- (1) A petition under this section may be made by any person in a relationship described in § 25-10-3.1 against any other person in such a relationship;
- (2) A petition shall allege the existence of domestic abuse and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the domestic abuse; and
- (3) A petition for relief may be made whether or not there is a pending lawsuit, complaint, petition, or other action between the parties. However, if there is any other lawsuit, complaint, petition, or other action pending between the parties, any new petition made pursuant to this section shall be made to the judge previously assigned to the pending lawsuit, petition, or other action, unless good cause is shown for the assignment of a different judge.

The clerk of the circuit court shall make available standard petition forms with instructions for completion to be used by a petitioner.

25-10-3.1. Persons entitled to apply for protection order. Any person who is involved in one of the following relationships with another party:

- (1) Spouse or former spouse;
 - (2) Is in a significant romantic relationship or has been in one during the past twelve months with the abusing party;
 - (3) Has a child or is expecting a child with the abusing party;
 - (4) Parent and child, including a relationship by adoption, guardianship, or marriage; or
 - (5) Siblings, whether of the whole or half blood, including a relationship through adoption or marriage;
- is entitled to apply for a protection order or a temporary protection order pursuant to the provisions of this chapter.

[...]

37.2.43. TENNESSEE

[Tennessee Code, 2018](#) ¹⁵⁶

Title 39. Criminal Offenses
Chapter 13. Offenses Against Person
Part 1. Assaultive Offenses
Section 39-13-111 – Domestic Assault

39-13-111. Domestic assault.

- (a) As used in this section, "domestic abuse victim" means any person who falls within the following categories:
 - (1) Adults or minors who are current or former spouses;

¹⁵⁶ Tennessee Code (2018), Title 39 Criminal Offenses, Chapter 13, Part 1, Section 39-13-111 – Domestic Assault, available at <https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=8db62c15-587f-498c-8afc-2b8d62b23eb1&title=39-13-111.+Domestic+assault.&populated=false&haschildren=&level=4&nodepath=%2FROOT%2FABN%2FABNAAK%2FABNAAKAB%2FABNAAKAAAB%2FABNAAKAAABAL&nodeid=ABNAAKAAABAL&config=025054JABIOTJjNmlyNiOwYjIOLTRjZGEtYWESZCOzNGFhOWNhMjFINDgKAFBvZENhdGFsb2cDFQ14bX2GfyBTaI9WcPX5&pdfocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5NK5-2DVO-R03J-M2B7-00008-00&ecomp=-jxvkk&prid=8851624b-4e70-4abf-ae4a-311cc5c66512> (last visited December 30, 2018).

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- (2) Adults or minors who live together or who have lived together;
 - (3) Adults or minors who are dating or who have dated or who have or had a sexual relationship, but does not include fraternization between two (2) individuals in a business or social context;
 - (4) Adults or minors related by blood or adoption;
 - (5) Adults or minors who are related or were formerly related by marriage; or
 - (6) Adult or minor children of a person in a relationship that is described in subdivisions (a)(1)-(5).
- (b) A person commits domestic assault who commits an assault as defined in § 39-13-101 against a domestic abuse victim.
- (c)
- (1) A first conviction for domestic assault and a second or subsequent conviction for domestic assault committed in a manner prohibited by § 39-13-101(a)(2) and (a)(3) is punishable the same as assault under § 39-13-101, and additionally, as provided in subdivisions (c)(2) and (c)(3) and subsections (d) and (e) of this section.
 - (2) A second conviction for domestic assault committed in a manner prohibited by § 39-13-101(a)(1) is punishable by a fine of not less than three hundred fifty dollars (\$350) nor more than three thousand five hundred dollars (\$3,500), and by confinement in the county jail or workhouse for not less than thirty (30) consecutive days, nor more than eleven (11) months and twenty-nine (29) days.
 - (3) A third or subsequent conviction for domestic assault committed in a manner prohibited by § 39-13-101(a)(1) is punishable by a fine of not less than one thousand one hundred dollars (\$1,100) nor more than five thousand dollars (\$5,000), and by confinement in the county jail or workhouse for not less than ninety (90) consecutive days, nor more than eleven (11) months and twenty-nine (29) days; provided, however, that if the domestic assault victim's relationship with the defendant falls within the categories defined in subdivision (a)(1) or (a)(3), or the victim is the minor child of any person in such categories, and the defendant has at least two (2) prior convictions for domestic assault committed in a manner prohibited by § 39-13-101(a)(1) prior to or at the time of committing the offense, the offense is a Class E felony, with a mandatory confinement of not less than ninety (90) consecutive days in the county jail or workhouse.
 - (4) For purposes of this section, a person who is convicted of a violation of § 39-13-111 committed in a manner prohibited by § 39-13-101(a)(1), shall not be subject to the enhanced penalties prescribed in this subsection (c), if ten (10) or more years have elapsed between the date of the present violation and the date of any immediately preceding violation of § 39-13-111, committed in a manner prohibited by § 39-13-101(a)(1), that resulted in a conviction for such offense.
 - (5) In addition to any other punishment that may be imposed for a violation of this section, if, as determined by the court, the defendant possesses the ability to pay a fine in an amount not in excess of two hundred twenty-five dollars (\$225), then the court shall impose a fine at the level of the defendant's ability to pay, but not in excess of two hundred twenty-five dollars (\$225). The additional fine shall be paid to the clerk of the court imposing sentence, who shall transfer it to the state treasurer, who shall credit the fine to the general fund. All fines so credited to the general fund shall be subject to appropriation by the general assembly for the exclusive purpose of funding family violence shelters and shelter services. This appropriation shall be in addition to any amount appropriated pursuant to § 67-4-411.
 - (6) If a defendant pleads guilty or is found guilty of a domestic violence offense, as defined by this section or in § 40-14-109, the judge shall immediately order that the defendant:
 - (A) Terminate physical possession of all firearms in the defendant's possession within forty-eight (48) hours of the conviction by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms; and
 - (B)
 - (i) Complete an affidavit of firearms dispossession form and return it to the court in which the defendant was convicted when all firearms have been lawfully dispossessed as required by subdivision (c)(6)(A);
 - (ii) The defendant may obtain the affidavit of dispossession from the court or court clerk or the defendant may be directed to obtain a copy from the website of the administrative office of the courts.
 - (7) In addition to all other fines, fees, costs, and punishments now prescribed by law, the court shall assess each person convicted of domestic assault an electronic monitoring indigency fee of ten dollars (\$10.00). All proceeds collected pursuant to this subdivision (c)(7) shall be transmitted to the treasurer for deposit in the electronic monitoring indigency fund, established in § 55-10-419.
 - (d) As part of a defendant's alternative sentencing for a violation of this section, the sentencing judge may direct the defendant to complete a drug or alcohol treatment program or available counseling programs that address violence and control issues including, but not limited to, a batterer's intervention program that has been certified by the domestic violence state coordinating council. Completion of a noncertified batterer's intervention program shall only be ordered if no certified program is available in the sentencing county. No batterer's intervention program, certified or noncertified, shall be deemed complete until the full term of the program is complete, and a judge may not require a defendant to attend less than the full term of a program as part of a plea agreement or otherwise. The defendant's knowing failure to complete such an intervention program shall be considered a violation of the defendant's alternative sentence program and the sentencing judge may revoke the defendant's participation in such program and order execution of sentence.

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(e) A person convicted of a violation under this section shall be required to serve at least the minimum sentence day for day. All persons sentenced under this section shall, in addition to service of at least the minimum sentence, be required to serve the difference between the time actually served and the maximum sentence on supervised probation.

[...]

Marital rape:

[Tennessee Code, 2017](#) ¹⁵⁷

Title 39. Criminal Offenses
Chapter 13. Offenses Against Person
Part 5. Sexual Offenses
§ 39-13-501

(8) "Victim" means the person alleged to have been subjected to criminal sexual conduct and includes the spouse of the defendant.

[...]

37.2.44. TEXAS

[Texas Penal Code, 2017](#) ¹⁵⁸

Title 5. Offenses Against the Person
Chapter 22. Assaultive Offenses
Section 22.01 - Assault

Sec. 22.01. ASSAULT. (a) A person commits an offense if the person:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
- (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or
- (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

- (1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;
- (2) a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if:

(A) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; or

(B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth;

(3) a person who contracts with government to perform a service in a facility as defined by Section 1.07(a)(14), Penal Code, or Section 51.02(13) or (14), Family Code, or an employee of that person:

(A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide the service; or

(B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract;

(4) a person the actor knows is a security officer while the officer is performing a duty as a security officer;

(5) a person the actor knows is emergency services personnel while the person is providing emergency services; or

(6) a pregnant individual to force the individual to have an abortion.

(b-1) Notwithstanding Subsection (b), an offense under Subsection (a)(1) is a felony of the third degree if the offense is committed:

¹⁵⁷ Tennessee Code (2017), Title 39. Criminal Offenses, Chapter 13. Offenses Against Person, Part 5. Sexual Offenses, § 39-13-501, available at <https://codes.findlaw.com/tn/title-39-criminal-offenses/tn-code-sect-39-13-501.html>

¹⁵⁸ Texas Penal Code (2017), Title 5. Offenses Against the Person, Chapter 22. Assaultive Offenses, Section 22.01 Assault, available at <https://statutes.capitol.texas.gov/Docs/PE/htm/PE.22.htm> (last visited December 30, 2018).

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(1) while the actor is committed to a civil commitment facility; and

(2) against:

(A) an officer or employee of the Texas Civil Commitment Office:

(i) while the officer or employee is lawfully discharging an official duty at a civil commitment facility; or

(ii) in retaliation for or on account of an exercise of official power or performance of an official duty by the officer or employee; or

(B) a person who contracts with the state to perform a service in a civil commitment facility or an employee of that person:

(i) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by the state to provide the service; or

(ii) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 27

(b-2) Notwithstanding Subsection (b)(2), an offense under Subsection (a)(1) is a felony of the second degree if:

(1) the offense is committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code;

(2) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; and

(3) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 440 (H.B. 2908), Sec. 3

(b-2) Notwithstanding Subsection (b)(1), an offense under Subsection (a)(1) is a felony of the second degree if the offense is committed against a person the actor knows is a peace officer or judge while the officer or judge is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a peace officer or judge.

(c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the offense is committed under Subsection (a)(3) against an elderly individual or disabled individual, as those terms are defined by Section 22.04;

(2) a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant either:

(A) while the participant is performing duties or responsibilities in the participant's capacity as a sports participant; or

(B) in retaliation for or on account of the participant's performance of a duty or responsibility within the participant's capacity as a sports participant; or

(3) a Class A misdemeanor if the offense is committed against a pregnant individual to force the individual to have an abortion.

(d) For purposes of Subsection (b), the actor is presumed to have known the person assaulted was a public servant, a security officer, or emergency services personnel if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant or status as a security officer or emergency services personnel.

(e) In this section:

(1) "Emergency services personnel" includes firefighters, emergency medical services personnel as defined by Section 773.003, Health and Safety Code, emergency room personnel, and other individuals who, in the course and scope of employment or as a volunteer, provide services for the benefit of the general public during emergency situations.

(2) Repealed by Acts 2005, 79th Leg., R.S., Ch. 788 (S.B. 91), Sec. 6, eff. September 1, 2005.

(3) "Security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

(4) "Sports participant" means a person who participates in any official capacity with respect to an interscholastic, intercollegiate, or other organized amateur or professional athletic competition and includes an athlete, referee, umpire, linesman, coach, instructor, administrator, or staff member.

(f) For the purposes of Subsections (b)(2)(A) and (b-2)(2):

(1) a defendant has been previously convicted of an offense listed in those subsections committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in those subsections is a conviction of the offense listed.

(g) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or both sections.

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(a) A person commits an offense if:

(1) the person intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) regardless of whether the person knows the age of the child at the time of the offense, the person intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor;

(C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force, violence, or coercion;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;

(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;

(8) the actor is a public servant who coerces the other person to submit or participate;

(9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;

(10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or

(11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code.

(c) In this section:

(1) "Child" means a person younger than 17 years of age.

(2) "Spouse" means a person who is legally married to another.

(3) "Health care services provider" means:

(A) a physician licensed under Subtitle B, Title 3, Occupations Code;

(B) a chiropractor licensed under Chapter 201, Occupations Code;

(C) a physical therapist licensed under Chapter 453, Occupations Code;

(D) a physician assistant licensed under Chapter 204, Occupations Code; or

(E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.

(4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section 505.002, Occupations Code;

(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;

(C) licensed professional counselor as defined by Section 503.002, Occupations Code;

(D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;

(E) member of the clergy;

(F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or

(G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.

(5) "Employee of a facility" means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.

(d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

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- (e) It is an affirmative defense to prosecution under Subsection (a)(2):
- (1) that the actor was the spouse of the child at the time of the offense; or
 - (2) that:
 - (A) the actor was not more than three years older than the victim and at the time of the offense:
 - (i) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or
 - (ii) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and
 - (B) the victim:
 - (i) was a child of 14 years of age or older; and
 - (ii) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.
- (f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

[...]

37.2.45. UTAH

[Utah Code, 2018](#) ¹⁵⁹

Title 77. Utah Code of Criminal Procedure
Chapter 36. Cohabitant Abuse Procedures Act

77-36-1 Definitions. As used in this chapter:

- (1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.
- (2) "Department" means the Department of Public Safety.
- (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter 3, Divorce.
- (4) "Domestic violence" or "domestic violence offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. "Domestic violence" or "domestic violence offense" also means commission or attempt to commit, any of the following offenses by one cohabitant against another:
 - (a) aggravated assault, as described in Section 76-5-103;
 - (b) assault, as described in Section 76-5-102;
 - (c) criminal homicide, as described in Section 76-5-201;
 - (d) harassment, as described in Section 76-5-106;
 - (e) electronic communication harassment, as described in Section 76-9-201;
 - (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;
 - (g) mayhem, as described in Section 76-5-105;
 - (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Section 76-5b-201, Sexual exploitation of a minor -- Offenses; (i) s talking, as described in Section 76-5-106.5;
 - (j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304; (k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;
 - (l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6, Part 3, Robbery;
 - (m) possession of a deadly weapon with criminal intent, as described in Section 76-10-507;
 - (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508;
 - (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with a domestic violence offense otherwise described in this Subsection (4), except that a conviction of disorderly conduct as a domestic violence offense, in the manner described in this

¹⁵⁹ Utah Code (2018), Title 77. Utah Code of Criminal Procedure, Chapter 36. Cohabitant Abuse Procedures Act (effective 5/8/2018), available at <https://le.utah.gov/xcode/Title77/Chapter36/77-36-S1.html> (last visited December 30, 2018).

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Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;

- (p) child abuse, as described in Section 76-5-109.1;
- (q) threatening use of a dangerous weapon, as described in Section 76-10-506; (r) threatening violence, as described in Section 76-5-107;
- (s) tampering with a witness, as described in Section 76-8-508;
- (t) retaliation against a witness or victim, as described in Section 76-8-508.3;
- (u) unlawful distribution of an intimate image, as described in Section 76-5b-203;
- (v) sexual battery, as described in Section 76-9-702.1;
- (w) voyeurism, as described in Section 76-9-702.7; (x) damage to or interruption of a communication device, as described in Section 76-6-108; or
- (y) an offense described in Section 77-20-3.5.
- (5) "Jail release agreement" means the same as that term is defined in Section 77-20-3.5. Utah Code Page 2
- (6) "Jail release court order" means the same as that term is defined in Section 77-20-3.5.
- (7) "Marital status" means married and living together, divorced, separated, or not married.
- (8) "Married and living together" means a couple whose marriage was solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.
- (9) "Not married" means any living arrangement other than married and living together, divorced, or separated.
- (10) "Protective order" includes an order issued under Subsection 77-36-5.1(6).
- (11) "Pretrial protective order" means a written order:
 - (a) specifying and limiting the contact a person who has been charged with a domestic violence offense may have with an alleged victim or other specified individuals; and
 - (b) specifying other conditions of release pursuant to Subsection 77-20-3.5(3), Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.
- (12) "Sentencing protective order" means a written order of the court as part of sentencing in a domestic violence case that limits the contact a person who has been convicted of a domestic violence offense may have with a victim or other specified individuals pursuant to Sections 77-36-5 and 77-36-5.1.
- (13) "Separated" means a couple who have had their marriage solemnized under Section 30-1-4 or 30-1-6 and who are not living in the same residence.
- (14) "Victim" means a cohabitant who has been subjected to domestic violence.

Amended by Chapter 255, 2018 General Session

77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence offenses.

- (1) For purposes of this section, "qualifying domestic violence offense" means:
 - (a) a domestic violence offense in Utah; or
 - (b) an offense in any other state, or in any district, possession, or territory of the United States, that would be a domestic violence offense under Utah law.
- (2) A person who is convicted of a domestic violence offense is:
 - (a) guilty of a class B misdemeanor if:
 - (i) the domestic violence offense described in this Subsection (2) is designated by law as a class C misdemeanor; and
 - (ii) (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or
 - (B) the person is convicted of the domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense;
 - (b) guilty of a class A misdemeanor if:
 - (i) the domestic violence offense described in this Subsection (2) is designated by law as a class B misdemeanor; and
 - (ii) (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or
 - (B) the person is convicted of the domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense;
 - (c) guilty of a felony of the third degree if:
 - (i) the domestic violence offense described in this Subsection (2) is designated by law as a class A misdemeanor; and
 - (ii) (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or
 - (B) the person is convicted of the domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense.

77-36-2.1. Duties of law enforcement officers -- Notice to victims.

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- (1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including:
- (a) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;
 - (b) confiscating the weapon or weapons involved in the alleged domestic violence;
 - (c) making arrangements for the victim and any child to obtain emergency housing or shelter;
 - (d) providing protection while the victim removes essential personal effects;
 - (e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; and
 - (f) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (2).
- (2) (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, and Title 78B, Chapter 7, Part 2, Child Protective Orders.
- (b) The written notice shall also include:
- (i) a statement that the forms needed in order to obtain an order for protection are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled;
 - (ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and
 - (iii) the information required to be provided to both parties in accordance with Subsections 77-20-3.5(10) and (11) .
- (3) If a weapon is confiscated under this section, the law enforcement agency shall return the weapon to the individual from whom the weapon is confiscated if a domestic violence protective order is not issued or once the domestic violence protective order is terminated.

[...]

37.2.46. VERMONT

[Vermont Statutes, 2017](#) ¹⁶⁰

Title 15: Domestic Relations
Chapter 21: Abuse Prevention
Subchapter 1: General Provisions

§ 1101. Definitions

The following words as used in this chapter shall have the following meanings:

- (1) "Abuse" means the occurrence of one or more of the following acts between family or household members:
- (A) Attempting to cause or causing physical harm.
 - (B) Placing another in fear of imminent serious physical harm.
 - (C) Abuse to children as defined in 33 V.S.A. chapter 49, subchapter 2.
 - (D) Stalking as defined in 12 V.S.A. § 5131(6).
 - (E) Sexual assault as defined in 12 V.S.A. § 5131(5).
- (2) "Household members" means persons who, for any period of time, are living or have lived together, are sharing or have shared occupancy of a dwelling, are engaged in or have engaged in a sexual relationship, or minors or adults who are dating or who have dated. "Dating" means a social relationship of a romantic nature. Factors that the court may consider when determining whether a dating relationship exists or existed include:
- (A) the nature of the relationship;
 - (B) the length of time the relationship has existed;
 - (C) the frequency of interaction between the parties; and
 - (D) the length of time since the relationship was terminated, if applicable.
- (3) A "foreign abuse prevention order" means any protection order issued by the court of any other state that contains provisions similar to relief provisions authorized under this chapter, the Vermont Rules for Family Proceedings, 33 V.S.A. chapter 69, or 12 V.S.A. chapter 178.
- (4) "Other state" and "issuing state" shall mean any state other than Vermont and any federally recognized Indian tribe, territory or possession of the United States, the Commonwealth of Puerto Rico or the District of Columbia.

¹⁶⁰ Vermont Statutes (2017), Title 15. Domestic Relations, Chapter 21. Abuse Prevention, Subchapter 1. General Provisions, available at <https://legislature.vermont.gov/statutes/chapter/15/021> (last visited December 30, 2018).

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(5) A "protection order" means any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil and criminal courts, other than support or child custody orders, whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

§ 1102. Jurisdiction and venue

- (a) The family division of the superior court shall have jurisdiction over proceedings under this chapter.
- (b) Emergency orders under section 1104 of this title may be issued by a judge of the criminal, civil, or family division of the superior court.
- (c) Proceedings under this chapter may be commenced in the county in which the plaintiff resides. If the plaintiff has left the residence or household to avoid abuse, the plaintiff shall have the option to bring an action in the county of the previous residence or household or the county of the new residence or household.

§ 1103. Requests for relief

- (a) Any family or household member may seek relief from abuse by another family or household member on behalf of himself or herself or his or her children by filing a complaint under this chapter. A minor 16 years of age or older, or a minor of any age who is in a dating relationship as defined in subdivision 1101(2) of this chapter, may file a complaint under this chapter seeking relief on his or her own behalf. The plaintiff shall submit an affidavit in support of the order.
- (b) Except as provided in section 1104 of this title, the court shall grant relief only after notice to the defendant and a hearing. The plaintiff shall have the burden of proving abuse by a preponderance of the evidence.
- (c)(1) The court shall make such orders as it deems necessary to protect the plaintiff or the children, or both, if the court finds that the defendant has abused the plaintiff, and:
 - (A) there is a danger of further abuse; or
 - (B) the defendant is currently incarcerated and has been convicted of one of the following: murder, attempted murder, kidnapping, domestic assault, aggravated domestic assault, sexual assault, aggravated sexual assault, stalking, aggravated stalking, lewd or lascivious conduct with a child, use of a child in a sexual performance, or consenting to a sexual performance.
- (2) The court order may include the following:
 - (A) an order that the defendant refrain from abusing the plaintiff or his or her children, or both, and from interfering with their personal liberty, including restrictions on the defendant's ability to contact the plaintiff or the plaintiff's children, or both, in any way, whether directly, indirectly, or through a third party, with the purpose of making contact with the plaintiff, including in writing or by telephone, e-mail, or other electronic communication, and restrictions prohibiting the defendant from coming within a fixed distance of the plaintiff, the children, the plaintiff's residence, or other designated locations where the plaintiff or the plaintiff's children are likely to spend time;
 - (B) an order that the defendant immediately vacate the household and that the plaintiff be awarded sole possession of a residence;
 - (C) a temporary award of parental rights and responsibilities in accordance with the criteria in section 665 of this title;
 - (D) an order for parent-child contact under such conditions as are necessary to protect the child or the plaintiff, or both, from abuse. An order for parent-child contact may if necessary include conditions under which the plaintiff may deny parent-child contact pending further order of the court;
 - (E) if the court finds that the defendant has a duty to support the plaintiff, an order that the defendant pay the plaintiff's living expenses for a fixed period of time not to exceed three months;
 - (F) if the court finds that the defendant has a duty to support the child or children, a temporary order of child support pursuant to chapter 5 of this title, for a period not to exceed three months. A support order granted under this section may be extended if the relief from abuse proceeding is consolidated with an action for legal separation, divorce, or parentage;
 - (G) an order concerning the possession, care, and control of any animal owned, possessed, leased, kept, or held as a pet by either party or a minor child residing in the household; and
 - (H) an order that the defendant return any personal documentation in his or her possession, including immigration documentation, birth certificates, and identification cards:
 - (i) pertaining to the plaintiff; or
 - (ii) pertaining to the plaintiff's children if relief is sought for the children or for good cause shown.
- (d) In a hearing under this chapter, neither opinion evidence of nor evidence of the reputation of the plaintiff's sexual conduct shall be admitted. Evidence of prior sexual conduct of the plaintiff shall not be admitted; provided, however, where it bears on the credibility of the plaintiff or it is material to a fact at issue and its probative value outweighs its private character, the court may admit:
 - (1) Evidence of the plaintiff's past sexual conduct with the defendant.
 - (2) Evidence of specific instances of the plaintiff's sexual conduct showing the source of origin of semen, pregnancy, or disease.
 - (3) Evidence of specific instances of the plaintiff's past false allegations of violations of 13 V.S.A. chapter 59 or 72.

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(e) Relief shall be granted for a fixed period, at the expiration of which time the court may extend any order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff, the children, or both, from abuse. It is not necessary for the court to find that abuse has occurred during the pendency of the order to extend the terms of the order. The court may modify its order at any subsequent time upon motion by either party and a showing of a substantial change in circumstance.

(f) No filing fee shall be required.

(g) Every order under this chapter shall contain the name of the court, the names of the parties, the date of the petition, the date and time of the order, and shall be signed by the judge.

(h) Form complaints and form orders shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

(i) When findings are required under this section, the court shall make either written findings of fact or oral findings of fact on the record.

(j) Every final order issued under this section shall bear the following language: "VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH."

(k) Affidavit forms required pursuant to this section shall bear the following language: "MAKING FALSE STATEMENTS IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 2904."

[...]

[Vermont Statutes, 2017](#) ¹⁶¹

Title 13. Crimes and Criminal Procedure
Chapter 019. Breach of the Peace; Disturbances
Subchapter 6. Domestic Assaults
§ 1043. First degree aggravated domestic assault

§ 1043. First degree aggravated domestic assault

(a) a person commits the crime of first degree aggravated domestic assault if the person:

(1) attempts to cause or willfully or recklessly causes serious bodily injury to a family or household member; or

(2) uses, attempts to use or is armed with a deadly weapon and threatens to use the deadly weapon on a family or household member; or

(3) commits the crime of domestic assault and has been previously convicted of aggravated domestic assault.

(b) A person who commits the crime of first degree aggravated domestic assault shall be imprisoned not more than 15 years or fined not more than \$25,000.00, or both.

(c) Conduct constituting the offense of first degree aggravated domestic assault under this section shall be considered a violent act for the purpose of determining bail. (Added 1993, No. 95, § 2.)

[...]

37.2.47. VIRGINIA

[Code of Virginia, 2018](#) ¹⁶²

Title 18.2 Crimes and Offenses Generally
Chapter 4. Crimes against the person
§ 18.2-57.2. Assault and battery against a family or household member; penalty

A. Any person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor.

B. Upon a conviction for assault and battery against a family or household member, where it is alleged in the warrant, petition, information, or indictment on which a person is convicted, that such person has been previously convicted of two offenses

¹⁶¹ Vermont Statutes (2017), Title 13. Crimes and Criminal Procedure, Chapter 019. Breach of the Peace; Disturbances, Subchapter 6. Domestic Assaults, § 1043. First degree aggravated domestic assault (Cite as: 13 V.S.A. § 1043), available at <https://legislature.vermont.gov/statutes/section/13/019/01043> (last visited December 30, 2018).

¹⁶² Code of Virginia (2018), Title 18.2 Crimes and Offenses Generally, Chapter 4. Crimes against the person, § 18.2-57.2. Assault and battery against a family or household member; penalty, available at <https://law.lis.virginia.gov/vacode/title18.2/chapter4/section18.2-57.2/> (last visited December 30, 2018).

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against a family or household member of (i) assault and battery against a family or household member in violation of this section, (ii) malicious wounding or unlawful wounding in violation of § 18.2-51, (iii) aggravated malicious wounding in violation of § 18.2-51.2, (iv) malicious bodily injury by means of a substance in violation of § 18.2-52, (v) strangulation in violation of § 18.2-51.6, or (vi) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses, in any combination, all of which occurred within a period of 20 years, and each of which occurred on a different date, such person is guilty of a Class 6 felony.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-253.4, except if the defendant is a minor, an emergency protective order shall not be required.

D. The definition of "family or household member" in § 16.1-228 applies to this section.

[...]

Marital rape:

[Code of Virginia, 2018](#) ¹⁶³

Title 18.2. crimes and Offenses Generally
Chapter 4. Crimes Against the Person
§ 18.2-61. Rape

A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

[...]

37.2.48. WASHINGTON

[Revised Code of Washington, 2018](#) ¹⁶⁴

Title 10. Criminal Procedure
Chapter 10.99 - Domestic Violence

RCW 10.99.010
Purpose—Intent.

The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

RCW 10.99.020
Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(2) "Association" means the Washington association of sheriffs and police chiefs.

¹⁶³ Code of Virginia (2018), Title 18.2. Crimes and Offenses Generally, Chapter 4. Crimes Against the Person, § 18.2-61. Rape, available at <https://law.lis.virginia.gov/vacode/18.2-61/> (last visited December 30, 2018).

¹⁶⁴ Revised Code of Washington (2018), Title 10. Criminal Procedure, Chapter 10.99 Domestic Violence, available at <http://app.leg.wa.gov/RCW/default.aspx?cite=10.99> (last visited December 30, 2018).

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(3) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(4) "Dating relationship" has the same meaning as in RCW 26.50.010.

(5) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

(a) Assault in the first degree (RCW 9A.36.011);

(b) Assault in the second degree (RCW 9A.36.021);

(c) Assault in the third degree (RCW 9A.36.031);

(d) Assault in the fourth degree (RCW 9A.36.041);

(e) Drive-by shooting (RCW 9A.36.045);

(f) Reckless endangerment (RCW 9A.36.050);

(g) Coercion (RCW 9A.36.070);

(h) Burglary in the first degree (RCW 9A.52.020);

(i) Burglary in the second degree (RCW 9A.52.030);

(j) Criminal trespass in the first degree (RCW 9A.52.070);

(k) Criminal trespass in the second degree (RCW 9A.52.080);

(l) Malicious mischief in the first degree (RCW 9A.48.070);

(m) Malicious mischief in the second degree (RCW 9A.48.080);

(n) Malicious mischief in the third degree (RCW 9A.48.090);

(o) Kidnapping in the first degree (RCW 9A.40.020);

(p) Kidnapping in the second degree (RCW 9A.40.030);

(q) Unlawful imprisonment (RCW 9A.40.040);

(r) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, * 26.26.138, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);

(s) Rape in the first degree (RCW 9A.44.040);

(t) Rape in the second degree (RCW 9A.44.050);

(u) Residential burglary (RCW 9A.52.025);

(v) Stalking (RCW 9A.46.110); and

(w) Interference with the reporting of domestic violence (RCW 9A.36.150).

(6) "Employee" means any person currently employed with an agency.

(7) "Sworn employee" means a general authority Washington peace officer as defined in RCW 10.93.020, any person appointed under RCW 35.21.333, and any person appointed or elected to carry out the duties of the sheriff under chapter 36.28 RCW.

(8) "Victim" means a family or household member who has been subjected to domestic violence.

RCW 10.99.030

Law enforcement officers—Training, powers, duties—Domestic violence reports.

(1) All training relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.

(2) The criminal justice training commission shall implement by January 1, 1997, a course of instruction for the training of law enforcement officers in Washington in the handling of domestic violence complaints. The basic law enforcement curriculum of the criminal justice training commission shall include at least twenty hours of basic training instruction on the law enforcement response to domestic violence. The course of instruction, the learning and performance objectives, and the standards for the training shall be developed by the commission and focus on enforcing the criminal laws, safety of the victim, and holding the perpetrator accountable for the violence. The curriculum shall include training on the extent and prevalence of domestic violence, the importance of criminal justice intervention, techniques for responding to incidents that minimize the likelihood of officer injury and that promote victim safety, investigation and interviewing skills, evidence gathering and report writing,

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assistance to and services for victims and children, verification and enforcement of court orders, liability, and any additional provisions that are necessary to carry out the intention of this subsection.

(3) The criminal justice training commission shall develop and update annually an in-service training program to familiarize law enforcement officers with the domestic violence laws. The program shall include techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of all parties. The commission shall make the training program available to all law enforcement agencies in the state.

(4) Development of the training in subsections (2) and (3) of this section shall be conducted in conjunction with agencies having a primary responsibility for serving victims of domestic violence with emergency shelter and other services, and representatives to the statewide organization providing training and education to these organizations and to the general public.

(5) The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.

(6)(a) When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall exercise arrest powers with reference to the criteria in RCW 10.31.100. The officer shall notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. The parties in such cases shall also be advised of the importance of preserving evidence.

(b) A peace officer responding to a domestic violence call shall take a complete offense report including the officer's disposition of the case.

(7) When a peace officer responds to a domestic violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in superior, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in any municipal, district, or superior court. Information about shelters and alternatives to domestic violence is available from a statewide twenty-four-hour toll-free hotline at (include appropriate phone number). The battered women's shelter and other resources in your area are (include local information)"

(8) The peace officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(9) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation. Upon receiving the offense report, the prosecuting agency may, in its discretion, choose not to file the information as a domestic violence offense, if the offense was committed against a sibling, parent, stepparent, or grandparent.

(10) Each law enforcement agency shall make as soon as practicable a written record and shall maintain records of all incidents of domestic violence reported to it.

(11) Records kept pursuant to subsections (6) and (10) of this section shall be made identifiable by means of a departmental code for domestic violence.

(12) Commencing January 1, 1994, records of incidents of domestic violence shall be submitted, in accordance with procedures described in this subsection, to the Washington association of sheriffs and police chiefs by all law enforcement agencies. The Washington criminal justice training commission shall amend its contract for collection of statewide crime data with the Washington association of sheriffs and police chiefs:

(a) To include a table, in the annual report of crime in Washington produced by the Washington association of sheriffs and police chiefs pursuant to the contract, showing the total number of actual offenses and the number and percent of the offenses that are domestic violence incidents for the following crimes: (i) Criminal homicide, with subtotals for murder and nonnegligent homicide and manslaughter by negligence; (ii) forcible rape, with subtotals for rape by force and attempted forcible rape; (iii) robbery, with subtotals for firearm, knife or cutting instrument, or other dangerous weapon, and strongarm robbery; (iv) assault, with subtotals for firearm, knife or cutting instrument, other dangerous weapon, hands, feet, aggravated, and other nonaggravated assaults; (v) burglary, with subtotals for forcible entry, nonforcible unlawful entry, and attempted forcible entry; (vi) larceny theft, except motor vehicle theft; (vii) motor vehicle theft, with subtotals for autos, trucks and buses, and other vehicles; (viii) arson; and (ix) violations of the provisions of a protection order or no-contact order restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, provided that specific

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appropriations are subsequently made for the collection and compilation of data regarding violations of protection orders or no-contact orders;

(b) To require that the table shall continue to be prepared and contained in the annual report of crime in Washington until that time as comparable or more detailed information about domestic violence incidents is available through the Washington state incident based reporting system and the information is prepared and contained in the annual report of crime in Washington; and

(c) To require that, in consultation with interested persons, the Washington association of sheriffs and police chiefs prepare and disseminate procedures to all law enforcement agencies in the state as to how the agencies shall code and report domestic violence incidents to the Washington association of sheriffs and police chiefs.

[...]

Marital rape:

[Washington State Criminal Code, 2018](#) ¹⁶⁵

Sex Offenses, 9A.44.904 – Construction
Chapter applicable to state registered domestic partnerships

RCW 9A.44.904

Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

[...]

37.2.49. WEST VIRGINIA

[West Virginia Code, 2017](#) ¹⁶⁶

Chapter 48. Domestic Relations
Article 27. Prevention and treatment of domestic violence

PART 1. GENERAL PROVISIONS.

§48-27-101. Findings and purposes.

(a) The Legislature of this state finds that:

(1) Every person has a right to be safe and secure in his or her home and family and to be free from domestic violence.

(2) Children are often physically assaulted or witness violence against one of their parents or other family or household members, violence which too often ultimately results in death. These children may suffer deep and lasting emotional harm from victimization and from exposure to domestic violence;

(3) Domestic violence is a major health and law-enforcement problem in this state with enormous costs to the state in both dollars and human lives. It affects people of all racial and ethnic backgrounds and all socioeconomic classes; and

(4) Domestic violence can be deterred, prevented or reduced by legal intervention that treats this problem with the seriousness that it deserves.

(b) This article shall be liberally construed and applied to promote the following purposes:

(1) To assure victims of domestic violence the maximum protection from abuse that the law can provide;

¹⁶⁵ Washington State Criminal Code (2018), Sex Offenses, 9A.44.904 – Construction – Chapter applicable to state registered domestic partnerships, 2009, available at <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44> (last visited December 30, 2018).

¹⁶⁶ West Virginia Code (2017), Chapter 48. Domestic Relations, Article 27. Prevention and treatment of domestic violence, available at <http://www.wvlegislature.gov/wvcode/ChapterEntire.cfm?chap=48&art=27> (last visited December 30, 2018).

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- (2) To create a speedy remedy to discourage violence against family or household members with whom the perpetrator of domestic violence has continuing contact;
- (3) To expand the ability of law-enforcement officers to assist victims, to enforce the domestic violence law more effectively, and to prevent further abuse;
- (4) To facilitate equal enforcement of criminal law by deterring and punishing violence against family and household members as diligently as violence committed against strangers;
- (5) To recognize that domestic violence constitutes serious criminal behavior with potentially tragic results and that it will no longer be excused or tolerated; and
- (6) To recognize that the existence of a former or on-going familial or other relationship should not serve to excuse, explain or mitigate acts of domestic violence which are otherwise punishable as crimes under the laws of this state.

§48-27-202. Domestic violence defined.

"Domestic violence" or "abuse" means the occurrence of one or more of the following acts between family or household members, as that term is defined in section two hundred four of this article:

- (1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;
- (2) Placing another in reasonable apprehension of physical harm;
- (3) Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts;
- (4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and
- (5) Holding, confining, detaining or abducting another person against that person's will.

§48-27-203. Emergency hearing defined.

"Emergency hearing" means the hearing before a magistrate upon the filing of a petition for a protective order. An emergency hearing may be held ex parte.

[...]

§48-27-204. Family or household members defined.

"Family or household members" means persons who:

- (1) Are or were married to each other;
- (2) Are or were living together as spouses;
- (3) Are or were sexual or intimate partners;
- (4) Are or were dating: *Provided*, That a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship;
- (5) Are or were residing together in the same household;
- (6) Have a child in common regardless of whether they have ever married or lived together;
- (7) Have the following relationships to another person:
 - (A) Parent;
 - (B) Stepparent;
 - (C) Brother or sister;
 - (D) Half-brother or half-sister;
 - (E) Stepbrother or stepsister;
 - (F) Father-in-law or mother-in-law;
 - (G) Stepfather-in-law or stepmother-in-law;
 - (H) Child or stepchild;
 - (I) Daughter-in-law or son-in-law;
 - (J) Stepdaughter-in-law or stepson-in-law;
 - (K) Grandparent;
 - (L) Step grandparent;
 - (M) Aunt, aunt-in-law or step aunt;
 - (N) Uncle, uncle-in-law or step uncle;
 - (O) Niece or nephew;
 - (P) First or second cousin; or
- (8) Have the relationships set forth in paragraphs (A) through (P), subdivision (7) of this section to a family or household member, as defined in subdivisions (1) through (6) of this section.

[...]

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§48-27-207. Program for victims of domestic violence defined.

"Program for victims of domestic violence" means a licensed program for victims of domestic violence and their children, which program provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education or training.

§48-27-208. Program of intervention for perpetrators defined.

"Program of intervention for perpetrators" means a licensed program, where available, or if no licensed program is available, a program that:

- (1) Accepts perpetrators of domestic violence into educational intervention groups or counseling pursuant to a court order; or
- (2) Offers educational intervention groups to perpetrators of domestic violence.

§48-27-209. Protective order defined.

"Protective order" means an emergency protective order entered by a magistrate as a result of the emergency hearing or a protective order entered by a family court judge upon final hearing.

[...]

PART 3. PROCEDURE.

§48-27-403. Emergency protective orders of court; hearings; persons present.

(a) Upon the filing of a verified petition under this article, the magistrate court may enter an emergency protective order as it may deem necessary to protect the petitioner or minor children from domestic violence and, upon good cause shown, may do so ex parte without the necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and present danger of abuse to the petitioner or minor children shall constitute good cause for the issuance of an emergency protective order pursuant to this section. If the respondent is not present at the proceeding, the petitioner or the petitioner's legal representative shall certify to the court, in writing, the efforts which have been made to give notice to the respondent or just cause why notice should not be required. Copies of medical reports or records may be admitted into evidence to the same extent as though the original thereof. The custodian of such records shall not be required to be present to authenticate such records for any proceeding held pursuant to this subsection. If the magistrate court determines to enter an emergency protective order, the order shall prohibit the respondent from possessing firearms.

(b) Following the proceeding, the magistrate court shall order a copy of the petition to be served immediately upon the respondent, together with a copy of any emergency protective order entered pursuant to the proceedings, a notice of the final hearing before the family court and a statement of the right of the respondent to appear and participate in the final hearing, as provided in subsection (d) of this section. Copies of any order entered under the provisions of this section, a notice of the final hearing before the family court and a statement of the right of the petitioner to appear and participate in the final hearing, as provided in subsection (d) of this section, shall also be delivered to the petitioner. Copies of any order entered shall also be delivered to any law-enforcement agency having jurisdiction to enforce the order, including municipal police, the county sheriff's office and local office of the State Police, within twenty-four hours of the entry of the order. An emergency protective order is effective until modified by order of the family court upon hearing as provided in subsection (d) of this section. The order is in full force and effect in every county in this state.

(c) Subsequent to the entry of the emergency protective order, service on the respondent and the delivery to the petitioner and law-enforcement officers, the court file shall be transferred to the office of the clerk of the circuit court for use by the family court.

(d) The family court shall schedule a final hearing on each petition in which an emergency protective order has been entered by a magistrate. The hearing shall be scheduled not later than ten days following the entry of the order by the magistrate. The notice of the final hearing shall be served on the respondent and delivered to the petitioner, as provided in subsection (b) of this section, and must set forth the hearing date, time and place and include a statement of the right of the parties to appear and participate in the final hearing. The notice must also provide that the petitioner's failure to appear will result in a dismissal of the petition and that the respondent's failure to appear may result in the entry of a protective order against him or her for a period of ninety or one hundred eighty days, as determined by the court. The notice must also include the name, mailing address, physical location and telephone number of the family court having jurisdiction over the proceedings. To facilitate the preparation of the notice of final hearing required by the provisions of this subsection, the family court must provide the magistrate court with a day and time in which final hearings may be scheduled before the family court within the time required by law.

(e) Upon final hearing the petitioner must prove, by a preponderance of the evidence, the allegation of domestic violence or that he or she reported or witnessed domestic violence against another and has, as a result, been abused, threatened, harassed or has been the subject of other actions to attempt to intimidate him or her, or such petition shall be dismissed by the family court. If the respondent has not been served with notice of the emergency protective order, the hearing may be continued to permit service to be effected. The failure to obtain service upon the respondent does not constitute a basis to dismiss the petition. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of such records.

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(f) No person requested by a party to be present during a hearing held under the provisions of this article shall be precluded from being present unless such person is to be a witness in the proceeding and a motion for sequestration has been made and such motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(g) Upon hearing, the family court may dismiss the petition or enter a protective order for a period of ninety days or, in the discretion of the court, for a period of one hundred eighty days. The hearing may be continued on motion of the respondent, at the convenience of the court. Otherwise, the hearing may be continued by the court no more than seven days. If a hearing is continued, the family court may modify the emergency protective order as it deems necessary.

(h) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant to this section that results in the issuance of an emergency protective order naming a juvenile as the respondent in which the petition for the emergency protective order is filed by or on behalf of the juvenile's parent, guardian or custodian or other person with whom the juvenile resides shall be treated as a petition authorized by section seven, article five, chapter forty-nine of this code, alleging the juvenile is a juvenile delinquent: *Provided*, That the magistrate court shall notify the prosecuting attorney in the county where the emergency protective order is issued within twenty-four hours of the issuance of the emergency protective order and the prosecuting attorney may file an amended verified petition to comply with the provisions of subsection (a) of section seven, article five, chapter forty-nine of this code within two judicial days.

37.2.50. WISCONSIN

[Wisconsin Statutes, 2017](#) ¹⁶⁷

Chapter 968. Commencement of Criminal Proceedings

Section 968.075. Domestic abuse incidents; arrest and prosecution

(1) Definitions. In this section:

(a) "Domestic abuse" means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225 (1), (2) or (3).
4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

(b) "Law enforcement agency" has the meaning specified in s. 165.83 (1) (b).

(d) "Party" means a person involved in a domestic abuse incident.

(e) "Predominant aggressor" means the most significant, but not necessarily the first, aggressor in a domestic abuse incident.

(2) Circumstances requiring arrest; presumption against certain arrests.

(a) Notwithstanding s. 968.07 (1) and except as provided in pars. (am) and (b), a law enforcement officer shall arrest and take a person into custody if:

1. The officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime; and

2. Any of the following apply:

- a. The officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely.
- b. There is evidence of physical injury to the alleged victim.
- c. The person is the predominant aggressor.

(am) Notwithstanding s. 968.07 (1), unless the person's arrest is required under s. 813.12 (7), 813.122 (10), 813.125 (6), or 813.128 (3g) (b) or sub. (5) (e), if a law enforcement officer identifies the predominant aggressor, it is generally not appropriate for a law enforcement officer to arrest anyone under par. (a) other than the predominant aggressor.

(ar) In order to protect victims from continuing domestic abuse, a law enforcement officer shall consider all of the following in identifying the predominant aggressor:

1. The history of domestic abuse between the parties, if it can be reasonably ascertained by the officer, and any information provided by witnesses regarding that history.
2. Statements made by witnesses.
3. The relative degree of injury inflicted on the parties.
4. The extent to which each person present appears to fear any party.

¹⁶⁷ Wisconsin Statutes (2017), Chapter 968. Commencement of Criminal Proceedings, Section 968.075 - Domestic abuse incidents; arrest and prosecution, available at <https://docs.legis.wisconsin.gov/statutes/statutes/968/075> (last visited December 30, 2018).

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5. Whether any party is threatening or has threatened future harm against another party or another family or household member.

6. Whether either party acted in self-defense or in defense of any other person under the circumstances described in s. 939.48.

(b) If the officer's reasonable grounds for belief under par. (a) 1. are based on a report of an alleged domestic abuse incident, the officer is required to make an arrest under par. (a) only if the report is received, within 28 days after the day the incident is alleged to have occurred, by the officer or the law enforcement agency that employs the officer.

(2m) Immediate release prohibited. Unless s. 968.08 applies, a law enforcement officer may not release a person whose arrest was required under sub. (2) until the person posts bail under s. 969.07 or appears before a judge under s. 970.01 (1).

(3) Law enforcement policies.

(a) Each law enforcement agency shall develop, adopt, and implement written policies regarding procedures for domestic abuse incidents. The policies shall include, but not be limited to, the following:

1. a. A statement emphasizing that in most circumstances, other than those under sub. (2), a law enforcement officer should arrest and take a person into custody if the officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime.

b. A policy reflecting the requirements of subs. (2) and (2m).

c. A statement emphasizing that a law enforcement officer's decision as to whether or not to arrest under this section may not be based on the consent of the victim to any subsequent prosecution or on the relationship of the parties.

d. A statement emphasizing that a law enforcement officer's decision not to arrest under this section may not be based solely upon the absence of visible indications of injury or impairment.

e. A statement discouraging, but not prohibiting, the arrest of more than one party.

f. A statement emphasizing that a law enforcement officer, in determining whether to arrest a party, should consider whether he or she acted in self-defense or in defense of another person.

2. A procedure for the written report and referral required under sub. (4).

3. A procedure for notifying the alleged victim of the incident of the provisions in sub. (5), the procedure for releasing the arrested person and the likelihood and probable time of the arrested person's release.

4. A procedure that requires a law enforcement officer, if the law enforcement officer has reasonable grounds to believe that a person is committing or has committed domestic abuse, to inform the victim of the availability of shelters and services in his or her community, including using lists available under ss. 49.165 (4) (b) and 165.93 (4) (b); to give notice of legal rights and remedies available to him or her; and to provide him or her with a statement that reads substantially as follows: "If you are the victim of domestic abuse, you may contact a domestic violence victim service provider to plan for your safety and take steps to protect yourself, including filing a petition under s. 813.12 of the Wisconsin statutes for a domestic abuse injunction or under s. 813.125 of the Wisconsin statutes for a harassment injunction."

(am) The policies under par. (a) may provide that the law enforcement agency will share information with organizations that are eligible to receive grants under s. 49.165 (2) or 165.93 (2).

(b) In the development of these policies, each law enforcement agency is encouraged to consult with community organizations and other law enforcement agencies with expertise in the recognition and handling of domestic abuse incidents.

(c) This subsection does not limit the authority of a law enforcement agency to establish policies that require arrests under more circumstances than those set forth in sub. (2), but the policies may not conflict with the presumption under sub. (2) (am).

(4) Report required where no arrest. If a law enforcement officer does not make an arrest under this section when the officer has reasonable grounds to believe that a person is committing or has committed domestic abuse and that person's acts constitute the commission of a crime, the officer shall prepare a written report stating why the person was not arrested. The report shall be sent to the district attorney's office, in the county where the acts took place, immediately after investigation of the incident has been completed. The district attorney shall review the report to determine whether the person involved in the incident should be charged with the commission of a crime.

(5) Contact prohibition.

(a) 1. Unless there is a waiver under par. (c), during the 72 hours immediately following an arrest for a domestic abuse incident, the arrested person shall avoid the residence of the alleged victim of the domestic abuse incident and, if applicable, any premises temporarily occupied by the alleged victim, and avoid contacting or causing any person, other than law enforcement officers and attorneys for the arrested person and alleged victim, to contact the alleged victim.

2. An arrested person who intentionally violates this paragraph may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(b) 1. Unless there is a waiver under par. (c), a law enforcement officer or other person who releases a person arrested for a domestic abuse incident from custody less than 72 hours after the arrest shall inform the arrested person orally and in writing

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of the requirements under par. (a), the consequences of violating the requirements and the provisions of s. 939.621. The arrested person shall sign an acknowledgment on the written notice that he or she has received notice of, and understands the requirements, the consequences of violating the requirements and the provisions of s. 939.621. If the arrested person refuses to sign the notice, he or she may not be released from custody.

2. If there is a waiver under par. (c) and the person is released under subd. 1., the law enforcement officer or other person who releases the arrested person shall inform the arrested person orally and in writing of the waiver and the provisions of s. 939.621.

3. Failure to comply with the notice requirement under subd. 1. regarding a person who is lawfully released from custody bars a prosecution under par. (a), but does not affect the application of s. 939.621 in any criminal prosecution.

(c) At any time during the 72-hour period specified in par. (a), the alleged victim may sign a written waiver of the requirements in par. (a). The law enforcement agency shall have a waiver form available.

(d) The law enforcement agency responsible for the arrest of a person for a domestic abuse incident shall notify the alleged victim of the requirements under par. (a) and the possibility of, procedure for and effect of a waiver under par. (c).

(e) Notwithstanding s. 968.07 (1), a law enforcement officer shall arrest and take a person into custody if the officer has reasonable grounds to believe that the person has violated par. (a).

(6) Conditional release. A person arrested and taken into custody for a domestic abuse incident is eligible for conditional release. Unless there is a waiver under sub. (5) (c), as part of the conditions of any such release that occurs during the 72 hours immediately following such an arrest, the person shall be required to comply with the requirements under sub. (5) (a) and to sign the acknowledgment under sub. (5) (b). The arrested person's release shall be conditioned upon his or her signed agreement to refrain from any threats or acts of domestic abuse against the alleged victim or other person.

(6m) Officer immunity. A law enforcement officer is immune from civil and criminal liability arising out of a decision by the officer to arrest or not arrest an alleged offender, if the decision is made in a good faith effort to comply with this section.

(7) Prosecution policies. Each district attorney's office shall develop, adopt and implement written policies encouraging the prosecution of domestic abuse offenses. The policies shall include, but not be limited to, the following:

(a) A policy indicating that a prosecutor's decision not to prosecute a domestic abuse incident should not be based:

1. Solely upon the absence of visible indications of injury or impairment;
2. Upon the victim's consent to any subsequent prosecution of the other person involved in the incident; or
3. Upon the relationship of the persons involved in the incident.

(b) A policy indicating that when any domestic abuse incident is reported to the district attorney's office, including a report made under sub. (4), a charging decision by the district attorney should, absent extraordinary circumstances, be made not later than 2 weeks after the district attorney has received notice of the incident.

(8) Education and training. Any education and training by the law enforcement agency relating to the handling of domestic abuse complaints shall stress enforcement of criminal laws in domestic abuse incidents and protection of the alleged victim. Law enforcement agencies and community organizations with expertise in the recognition and handling of domestic abuse incidents shall cooperate in all aspects of the training.

[...]

Marital rape:

[Wisconsin Statutes Crimes, 2017](#)¹⁶⁸

Chapter 940. Crimes Against Life and Bodily Security

Subchapter II. Bodily Security

§ 225. Sexual assault

[...]

(6) Marriage not a bar to prosecution. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

[...]

¹⁶⁸ Wisconsin Statutes Crimes (2017) Chapter 940. Crimes Against Life and Bodily Security, Subchapter II. Bodily Security, § 940.225. Sexual assault, available at <https://codes.findlaw.com/wi/crimes-ch-938-to-951/wi-st-940-225.html> (last visited December 30, 2018).

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37.2.51. WYOMING

[Wyoming Statutes, 2017](#) ¹⁶⁹

Title 6. Crimes and offenses
Chapter 2. Offenses against the person
Article 5. Assault and Battery
6-2-510. Domestic Assault
6-2-511. Domestic Battery

§ 6-2-510. Domestic assault

- (a) A household member is guilty of domestic assault if, having the present ability to do so, he unlawfully attempts to cause bodily injury to another household member.
- (b) Domestic assault is punishable as follows:
- (i) By a fine of not more than seven hundred fifty dollars (\$750.00);
- (ii) By imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both, if the person has previously been convicted of domestic assault or if the person has previously been convicted of the following or similar offense against another household member:
- (A) Domestic battery under W.S. 6-2-511 ;
- (B) Simple assault under W.S. 6-2-501(a) ;
- (C) Battery under W.S. 6-2-501(b) ;
- (D) Aggravated assault and battery under W.S. 6-2-502 ;
- (E) Child abuse under W.S. 6-2-503 ; or
- (F) Reckless endangering under W.S. 6-2-504 .
- (c) If a person sentenced under paragraph (b)(ii) of this section is placed on probation, the court may, notwithstanding any other provision of law, impose a term of probation exceeding the maximum six (6) months imprisonment, provided the term of probation, including extensions, shall not exceed one (1) year.
- (d) As used in this section:
- (i) "Convicted" means a person has been convicted upon a plea of guilty or no contest or has been found guilty;
- (ii) "Household member" means as defined in W.S. 35-21-102 ;
- (iii) "Similar offense" means a substantially similar law of this or any other state, tribe or territory.

§ 6-2-511. Domestic battery

- (a) A household member is guilty of domestic battery if he knowingly or recklessly causes bodily injury to another household member by use of physical force.
- (b) Domestic battery is punishable as follows:
- (i) By imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both;
- (ii) By imprisonment for not more than one (1) year, a fine of not more than one thousand dollars (\$1,000.00), or both, if within the previous five (5) years, the person has been convicted of domestic battery or the following or similar offense against another household member:
- (A) Domestic assault under W.S. 6-2-510 ;
- (B) Simple assault under W.S. 6-2-501(a) ;
- (C) Battery under W.S. 6-2-501(b) ;
- (D) Aggravated assault and battery under W.S. 6-2-502 ;
- (E) Child abuse under W.S. 6-2-503 ; or
- (F) Reckless endangering under W.S. 6-2-504 .
- (iii) By imprisonment for not more than five (5) years, a fine of not more than two thousand dollars (\$2,000.00), or both, if within the previous ten (10) years, the person has been convicted of domestic battery two (2) or more times or has been convicted of domestic battery and the following or similar offense against another household member:
- (A) Domestic assault under W.S. 6-2-510 ;
- (B) Simple assault under W.S. 6-2-501(a) ;
- (C) Battery under W.S. 6-2-501(b) ;
- (D) Aggravated assault and battery under W.S. 6-2-502 ;
- (E) Child abuse under W.S. 6-2-503 ; or
- (F) Reckless endangering under W.S. 6-2-504 .

¹⁶⁹ Wyoming Statutes (2017), Title 6. Crimes and offenses, Chapter 2. Offenses against the person, Article 5. Assault and Battery, 6-2-511. Domestic Battery, available at <https://codes.findlaw.com/wy/title-6-crimes-and-offenses/wy-st-sect-6-2-511.html> (last visited December 30, 2018).

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(c) If a person sentenced under paragraph (b)(ii) of this section is placed on probation, the court may, notwithstanding any other provision of law, impose a term of probation exceeding the maximum imprisonment of one (1) year, provided the term of probation, including extensions, shall not exceed two (2) years.

(d) As used in this section:

- (i) "Convicted" means a person has been convicted upon a plea of guilty or no contest or has been found guilty;
- (ii) "Household member" means as defined in W.S. 35-21-102 ;
- (iii) "Similar offense" means a substantially similar law of this or any other state, tribe or territory.

[...]

Marital rape:

[Wyoming Statutes, 2017](#) ¹⁷⁰

Title 6. Crimes and Offenses
Chapter 2. Offenses Against the Person
Article 3. Sexual Assault
Section 6-2-307. Evidence of marriage as a defense

(a) The fact that the actor and the victim are married to each other is not by itself a defense to a violation of W.S. 6-2-302(a)(i), (ii) or (iii) or 6-2-303(a)(i), (ii), (iii), (vi) or (vii) .

(b) Consent of the victim is not a defense to a violation of W.S. 6-2-303(a)(vii) or 6-2-304(a)(iii) .

38. URUGUAY

[Domestic Violence Law, 2002](#) ¹⁷¹

DOMESTIC VIOLENCE

Activities aimed at its prevention, early detection, attention and eradication are declared of general interest

[...]

CHAPTER I GENERAL PROVISIONS

Article 1.- Activities aimed at the prevention, early detection, attention and eradication of domestic violence are declared of general interest. The provisions of this law are of public order.

Article 2.- It constitutes domestic violence any action or omission, direct or indirect, that by any means undermines, illegitimately limiting, the free exercise or enjoyment of a person's human rights, caused by another with whom that person is, or used to be, in a dating relationship, or with whom that person has, or used to have, an affective relationship based on cohabitation and originating in kinship, marriage or de facto union.

Article 3.- The following are manifestations of domestic violence, whether they constitute an offence or not:

- A) Physical violence. Any act, omission, or pattern of conduct that damages a person's bodily integrity.
- B) Psychological or emotional violence. Any action or omission aimed at disturbing, degrading or controlling the conduct, behavior, beliefs or decisions of a person, through humiliation, intimidation, isolation or any other means that affect the person's psychological or emotional stability.
- C) Sexual violence. Any action that imposes or induces sexual behaviors on a person through the use of force, intimidation, coercion, manipulation, threat or any other means which annuls, or limits, that person's sexual freedom.

¹⁷⁰ Wyoming Statutes (2017), Title 6. Crimes and Offenses, Chapter 2. Offenses Against the Person, Article 3. Sexual Assault, Section 6-2-307. Evidence of marriage as a defense, available at <https://codes.findlaw.com/wy/title-6-crimes-and-offenses/#ltid=N10AFBF300CB511DDA19990FB6932205C> (last visited December 30, 2018).

¹⁷¹ Domestic Violence Law (Violencia doméstica), Law No. 17.514 (2 July 2002), available at http://www.inmujeres.gub.uy/innovaportal/file/21710/1/2_ley_17514.pdf (last visited December 30, 2018). Unofficial translation by Compendium team.

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- D) Patrimonial violence. Any action or omission that with manifest illegitimacy implies damage, loss, transformation, subtraction, destruction, distraction, concealment or retention of goods, instruments of work, documents or economic resources, intended to coerce the self-determination of another person.

CHAPTER II
JURISDICTION AND COMPETENCE

Article 4.- The courts with competence in the area of family law shall also have it in non-criminal matters of domestic violence, as well as personal or patrimonial issues arising from it.

Article 5.- The courts and prosecutors with competence in family matters shall also be competent to address domestic violence emergencies.

To this end, the Supreme Court of Justice and the Ministry of Education and Culture, on the proposal of the Prosecutor's Office of the Court, shall determine, where appropriate, the regime of shifts to be able to address, in working and non-working days, all matters which require their intervention in accordance with this law.

Article 6.- The peace courts in the interior of the Republic, of any category, shall have competence to address domestic violence emergencies and to issue the provisional measures established in this law for the protection of alleged victims, and must refer such matters to the corresponding court of first instance within forty eight hours of having had knowledge of the facts, deferring to its decision.

Article 7.- Every judicial action in matters of domestic violence will be notified, from the beginning, to the corresponding prosecutor. The prosecutor will intervene in all matters related to the persons and interests of the victims of domestic violence.

CHAPTER III
LEGITIMIZATION OF THE COMPLAINANT AND SUMMON OF THIRD PARTIES TO TRIAL

Article 8.- Any person who has knowledge of a domestic violence act may report it to the judge competent in the matter, who shall adopt the measures which he considers pertinent in accordance with the provisions of this law. Provided that the facts are well founded, no responsibility will be attributed to the person reporting them.

The judge, ex officio or at the request of the Public Prosecutor, may call third parties to the trial.

CHAPTER IV
PROTECTION MEASURES

Article 9.- In all matters of domestic violence, in addition to the measures provided for in article 316 of the General Procedure Code, the judge, ex officio, at the request of the party or of the Prosecutor, shall issue all measures for the protection of the life, physical, or emotional integrity of the victim, freedom and personal safety, as well as [for the protection] of the economic assistance and patrimonial integrity of the family.

Article 10.- To this end, the following, or other analogous, measures may be taken for precautionary purposes:

- 1) Removal of the aggressor from the common residence and the immediate delivery to him of his personal effects in the sheriff's presence. In addition, a judicial inventory of the movable property removed from, and that remaining in the dwelling will be made, and a testimony can be given at the request of the parties.
- 2) Provide to reinstate the victim in the domicile or residence that she had left for safety reasons, in the presence of a bailiff.
- 3) Prohibit, restrict, or limit the presence of the aggressor in the home or residence, places of work, study or other places frequented by the victim.
- 4) Prohibit the aggressor from communicating, connecting with, interviewing or undertaking any similar conduct with regards to the victim, other persons affected, witnesses or persons reporting the fact.
- 5) Seize the weapons that the aggressor has in his possession, which shall remain in the custody of the court in the manner which is deemed pertinent. Prohibit the aggressor from using, or possessing, firearms, deferring to the authority competent to its effect.
- 6) Establish a provisional alimony in favor of the victim.

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- 7) Refer the aggressor to mandatory attendance of rehabilitation programmers.
- 8) Also, if applicable, to resolve temporarily all matters relating to alimony and, where appropriate, to guardianship and visitation.

In the event that the judge decides not to take any action, his or her decision shall indicate the grounds of such determination.

Article 11.- In all cases, the judge shall order the bailiff, or whomever he deems fit, to oversee implementation, and shall convene a hearing within a period of no more than ten days from the adoption of the measure for its evaluation. In case of non-appearance, the judge will order the conduction of the aggressor.

If the measures disposed are not implemented, the judge will order the perpetrator's arrest for a maximum period of forty-eight hours, without prejudice to the provisions of articles 21.3, 374.1, 374.2 and 374.4 of the General Procedure Code. Once the precautionary measure has been adopted and the hearing has taken place, the acts must be sent to the court with competence over the procedures related to the family involved.

Article 12.- The measures taken shall have the scope and duration determined by the judge, without prejudice to their substance, modification or cessation.

Article 13.- The procedure for the adoption of the precautionary measures shall be that provided for in articles 313, 314 and 315 of the General Procedure Code. Until it is proven that an intrinsic human right is being violated or threatened, the judge shall immediately issue the appropriate precautionary measures. In the same way, it will proceed when the prior hearing of the aggressor can compromise the scope of the measure.

Article 14.- In matters of probation, the provisions of the General Procedure Code shall apply, taking into account the purpose of this law and the provisions contained in the following articles.

Article 15.- Once the precautionary measures laid down in article 10 of this law are adopted, the Tribunal will order a diagnostic of the situation between the parties involved. This will be developed in an interdisciplinary manner and will aim to determine the physical or psychological damage suffered by the victim, assess the situation of danger or risk and the social environment.

This diagnosis shall be made available to the Tribunal at the time of the hearing set out in article 11 of this law. If, because of the characteristics of the situation, the adoption of measures, or the adoption of treatment of psychological or other nature are deemed necessary for any of the subjects involved, the court may request that this be undertaken by any of the public or private institutions suitable in the matter.

Article 16.-For the purposes of complying with the provisions of the preceding article, the Ministry of Education and Culture, through the National Institute of Family and Women, will promote the training of experts in domestic violence, with interdisciplinary work capacity, that will be incorporated into the work of the Forensic Technical Institute.

The relevant laws will entrust the National Institute of Family and Women with establishment of the requirements to be met by the stakeholders in order to be accredited as experts in the area of domestic violence regulated by this law.

Article 17.- The Supreme Court of Justice shall incorporate this category of professionals into the single registry of experts. It shall also include into this registry those who have been accredited before the Ministry of Education and Culture that - with the collaboration of the University of the Republic or other authorized universities- will have a known suitability on the matter at the time of entry into force of this law.

Article 18.- In all cases, the guiding principle shall be that of preventing additional victimization, by prohibiting the confrontation or the joint appearance of the victim and the perpetrator in the cases of children and adolescents less than 18 years old.

In cases where the adult victim requires such confrontation and it is certified that she is in a position to do so, this will be carried out. The tribunal shall provide the form and technical means to receive the declaration, by applying the principles of immediacy, concentration and contradictory.

It may, if necessary, request the interdisciplinary team to indicate whether the victim is in a condition to be interrogated at that time.

Article 19.- Situations of domestic violence must be assessed from the perspective of comprehensive protection of human dignity.

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It shall also be considered, specifically, that the facts constituting domestic violence to be proven are, in general, situations linked to the intimacy of the home, whose knowledge lies with the group of people affected by the acts of violence.

CHAPTER V
MANDATORY LEGAL ASSISTANCE

Article 20.- The Supreme Court of Justice shall guarantee mandatory legal assistance to the victim, to which aim is entitled to conclude agreements with public or private entities specializing in the matter.

CHAPTER VI
COORDINATION OF ACTIONS

Article 21.- When a court with jurisdiction in criminal matters, or a court with jurisdiction in the matter of minors intervenes in a situation of domestic violence, whatever the decision adopted, it shall submit within forty-eight hours of having taken knowledge of the facts full testimony of the proceedings and resolution adopted to the judge with jurisdiction in matters of domestic violence.

In addition, where the prosecution has been ordered with imprisonment, it shall communicate the release or grant of temporary release, or any form of completion of the process to the court with competence in matters of domestic violence before this becomes effective. It should also inform the victim at her actual domicile, or at that of her lawyer, where this is known, of the most effective ways to obtain the protection afforded by this law.

In the same way, the courts with jurisdiction over domestic violence emergencies will communicate to the criminal court on duty, within twenty-four hours, the criminal facts that have come to their knowledge. Representatives of the Public Prosecutor have the same obligation towards each other.

CHAPTER VII
PREVENTION OF DOMESTIC VIOLENCE AND THE PROMOTION OF COMPREHENSIVE CARE FOR THE VICTIM

Article 22.- The State shall take all necessary measures to prevent, punish and eradicate domestic violence, and provide comprehensive support for the victim.

Article 23.- The rehabilitation and social reintegration of the aggressor must be part of a policy to ensure protection to all related people. Assistance and treatment should be the instruments of this policy.

Article 24.- Within the Ministry of Education and Culture, it is created the National Consultative Council for the Fight against domestic violence, which will be integrated by:

- A representative of the Ministry of Education and Culture, who will chair it.
- A representative of the Ministry of the Interior.
- A representative of the Ministry of Public Health.
- A representative of the National Institute of the Minor (INAME).
- A representative of the judiciary.
- A representative of the National Administration of Public Education (ANEP).
- A representative of the Congress of Intendants.
- Three representatives of non-governmental organizations to fight domestic violence.

Representatives of the public bodies must be of the highest rank.

Representatives of non-governmental organizations will be designated by the National association of non-governmental organizations (ANONG).

Article 25.- The Council may convene in meetings representatives of the ministries and public agencies, non-state public figures, non-governmental organizations and private institutions fighting against domestic violence.

Article 26.- The Council, whose competence is national, shall have the following aims:

1. To advise the executive power in the matter of its competence.

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2. To ensure compliance with this law and its regulations.
3. To design and organize plans to combat domestic violence.
4. To promote the coordination and integration of sectoral policies to combat domestic violence designed by the different public entities working in this field.
5. To prepare an annual report on the fulfilment of its tasks and on the national situation of domestic violence.
6. To be heard mandatorily in the elaboration of reports that the State should submit within the framework of the international conventions in force related to the issue of domestic violence referred to in this law.
7. To provide opinions, upon express request, on the drafting of bills and programs related to domestic violence.
8. To collaborate with the Supreme Court of Justice in the implementation of legal aid as established in article 20 of this law.

Article 27.- The Ministry of Education and Culture will provide the infrastructure for the Council's meetings.

Article 28.- The Council may create departmental or regional commissions, by regulating their integration and operation.

Article 29.- The Council shall dictate its internal operating regulations within thirty days of its installation.

Within a period of not more than one hundred and twenty days after its installation, the Council shall draw up and transmit for consideration to the Executive Branch, Ministry of Education and Culture, the first National Action Plan to Fight Domestic Violence, with an integrated approach aimed at the prevention, care and rehabilitation of the people involved, in order to make the most appropriate use of existing resources for the benefit of the whole society. This national plan will suggest actions that will ensure compliance with the following objectives:

- A) To repress this type of violence in all its manifestations, encouraging the comprehensive respect of human dignity in compliance with all existing national standards, as well as the commitments assumed by the State in ratifying human rights conventions and treaties.
- B) To project effective legal mechanisms for the protection of victims of domestic violence, as well as the rehabilitation of the perpetrators.
- C) To promote the specialization of all those institutions and operators whose intervention is necessary for the prevention and eradication of domestic violence.

[...]

39. VANUATU

[The Family Protection Act, 2008](#) ¹⁷²

An Act to provide for an offence of domestic violence and family protection orders in cases of domestic violence, and for related purposes

PART 1 – PRELIMINARY MATTERS

1 Purpose

(1) The purpose of this Act is:

- (a) to preserve and promote harmonious family relationships; and
- (b) to prevent domestic violence in all levels of society in Vanuatu.

(2) This Act is based on traditional values of Vanuatu and on Christian principles and:

- (a) recognizes that domestic violence of any kind is not acceptable behavior; and
- (b) ensures there is effective legal protection for the victims of domestic violence; and
- (c) provides for punishment of all persons who commit acts of domestic violence.

¹⁷² The Family Protection Act, Law No. 28/2008 (2 March 2009), available at http://www.paclii.org/vu/legis/num_act/fpa2008206/ (last visited December 30, 2018).

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2 Interpretation

In this Act, unless the contrary intention appears:

authorised person means:

- (a) a magistrate; or
- (b) a justice of an Island Court; or
- (c) a person appointed to be an authorised person under section 7;

child of a person means an individual under the age of 18 who is:

- (a) a biological, adopted, step or foster child of the person; or
- (b) in the care or custody of the person;

whether or not the child is a child of another person;

complainant means the person for whose benefit a family protection order is in force, or may be made, under this Act;

court means:

- (a) a Magistrates Court; or
- (b) an Island Court;

defendant means a person against whom a family protection order is in force, is sought or may be sought, under this Act;

domestic violence has the meaning given by section 4;

domestic violence offence means an offence under section 10;

family protection order means:

- (a) a protection order; or
- (b) a temporary protection order;

family member has the meaning given by section 3;

local government region has the same meaning as in the Decentralization Act No. 1 of 1994;

Minister means the Minister responsible for women's affairs;

property has the meaning given by section 6;

protection order means an order made under section 11;

registered counsellor means a person declared to be a registered counsellor under section 8;

spouse has the meaning given by section 5;

temporary protection order means an order made under section 17 or 18;

weapon means:

- (a) a firearm of any kind; or
 - (b) any thing used for causing injury to, or incapacitating, an individual; or
 - (c) a thing stated in the regulations to be a weapon;
- and includes a part of such a firearm or thing.

3 Meaning of family member

Each of the following is a member of a person's family:

- (a) the spouse of the person;
- (b) a child of the person and/or the person's spouse;
- (c) a parent of the person or the person's spouse;
- (d) a brother or sister of the person or the person's spouse;
- (e) any other person who is treated by the person as a family member.

4 Meaning of domestic violence

(1) A person commits an act of domestic violence if he or she intentionally does any of the following acts against a member of his or her family:

- (a) assaults the family member (whether or not there is evidence of a physical injury);
- (b) psychologically abuses, harasses or intimidates the family member;
- (c) sexually abuses the family member;
- (d) stalks the family member so as to cause him or her apprehension or fear;
- (e) behaves in an indecent or offensive manner to the family member;
- (f) damages or causes damage to the family member's property;
- (g) threatens to do any of the acts in paragraphs (a) to (f).

(2) Without limiting paragraph (1)(d), a person may stalk another person by:

- (a) following the person; or
- (b) watching the person; or
- (c) loitering outside premises where the person lives, works or frequents for the purposes of any social or leisure

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activity; or

(d) making persistent telephone calls to the person or to premises where the person lives or works.

(3) For the purposes of this Act, if a person (in this subsection called "the instigator") counsels or procures another person to commit an act that, if done by the instigator, would be an act of domestic violence, then the instigator is taken to have committed the act.

(4) To avoid doubt:

(a) a single act may amount to an act of domestic violence; and

(b) a number of acts that form part of a pattern of behaviour may amount to domestic violence even though some or all of those acts when viewed in isolation may appear to be minor or trivial.

5 Meaning of spouse

Spouse of a person means an individual of the opposite sex to the person who:

(a) is or has been married to the person; or

(b) although not married to the person, is living with the person in a marriage-like relationship or has lived with the person in such a relationship; or

(c) is a biological parent of a child with the person (whether or not they are or have been married or are living or have lived together)

6 Meaning of property

Property of a person means property that:

(a) the person owns; or

(b) the person does not own, but:

(i) is used and enjoyed by the person; or

(ii) is available for the person's use or enjoyment; or

(iii) is in the person's care or custody.

7 Declaration of authorised persons

(1) The President acting on the advice of the Judicial Service Commission is, by declaration in writing, to appoint authorised persons.

(2) The Minister is to recommend to the Judicial Services Commission persons for appointment under subsection (1). A person is to be recommended only if:

(a) the person has undertaken training approved by the Minister for the purposes of this section; and

(b) the person has a good knowledge of this Act and understands how it works; and

(c) the person understands the social and cultural environment within which domestic violence takes place; and

(d) the person:

(i) is the principal chief of a village; or

(ii) is an assistant chief of a village, a church leader, a community leader, a teacher, or a village health worker nominated by the principal chief of the relevant village; or

(iii) is a member of the Vanuatu Police Force of or above the rank of inspector; or

(iv) has applied in writing to the Minister to be recommended for appointment.

(3) The Minister must:

(a) consult with the President of the National Council of Chiefs and the Director of the Department of Women's Affairs and the Director General of the Prime Minister's Department before making a recommendation; and

(b) ensure so far as practicable that recommendations are made in respect of an equal number of men and women in each local government region of Vanuatu.

(4) A person who is appointed as an authorised person is not to be paid any remuneration or allowances for performing any functions or exercising any powers under this Act.

(5) A copy of each declaration must be published in the Gazette as soon as practicable after it is made.

(6) An authorized person may claim from the Director General of the Prime Minister's Department reimbursement of any expenses that the authorized person incurs in performing any functions or exercising any powers under this Act.

(reimbursement of telephone calls to the court or transport costs to take a victim to a hospital, for example).

8 Registered counselors

(1) The Minister may declare persons to be registered counsellors for the purposes of this Act.

(2) The Minister may declare a person to be a registered counsellor only if he or she has appropriate qualifications or experience in counselling or mediation in relation to domestic violence.

(3) A person who in accordance with the rules of custom conducts counselling or mediation in relation to domestic violence

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may be considered to have appropriate experience.

(4) In making declarations, the Minister must:

(a) consult with the President of the National Council of Chiefs and the Director of the Department of Women's Affairs and the Director General of the Prime Minister's Department; and

(b) ensure so far as practicable that there are registered counsellors in each local government region.

(5) A declaration must be in writing and a copy of it must be published in the Gazette as soon as practicable after it is made.

9 Registers

(1) The Director of the Department of Women's Affairs must:

(a) establish a register of persons in respect of whom declarations have been made under section 7; and

(b) establish a register of persons in respect of whom declarations have been made under section 8; and

(c) keep both registers up to date.

(2) Each register is to be located at the offices of the Department in Port Vila. However, a copy of each register is also to be kept at the office of each local government council and municipal council.

(3) Any person may inspect the register or a copy of it free of charge during normal office hours.

(4) A register may be kept wholly or partly by computer.

(5) In this section:

local government council has the same meaning as in the [Decentralization Act](#) No. 1 of 1994; and

municipal council means a municipal council referred to in section 3 of the Municipal Councils Act [CAP 126].

PART 2 - DOMESTIC VIOLENCE OFFENCE

10 Domestic Violence Offence

(1) A person who commits an act of domestic violence is guilty of an offence punishable on conviction by a term of imprisonment not exceeding 5 years or a fine not exceeding 100,000Vatu, or both.

(2) It is not a defence to an offence under subsection (1) that the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant.

(3) An offence under subsection (1) is in addition to and not in substitution for any other offence constituted by an act of domestic violence.

(4) If a person (in this subsection called "the instigator") counsels or procures another person to commit an act that, if done by the instigator, would be an act of domestic violence, then the instigator is taken to have committed the act and subsection (1) applies in relation to the instigator.

(5) If a person is convicted of an offence against this section, a court may, in determining the penalty to be imposed on the person, take into account any compensation or reparation made or due by the person under custom.

(6) If under custom such compensation or reparation has not been determined and a court is satisfied that a determination is likely to be made without undue delay, the court may postpone sentencing pending the determination.

PART 3 – FAMILY PROTECTION ORDERS

Division 1 – Power of court to make protection orders

11 Court may make protection order

(1) A court may, on an application made under section 28, make a protection order against a defendant if the court is satisfied that:

(a) the defendant has committed an act of domestic violence against the complainant; or

(b) the defendant is likely to commit an act of domestic violence against the complainant.

(2) In deciding whether to make a protection order, the court must take into account the following:

(a) the need to ensure that the complainant is protected from domestic violence;

(b) the well being and accommodation needs of the complainant and the complainant's children;

(c) the well being and accommodation needs of other family members;

(d) any other matter that the court considers relevant.

(3) The court must give most importance to the matters in paragraphs (2)(a) and (b).

(4) In deciding whether to make a protection order, the court must not have any regard to whether the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant.

(5) The court may include the name of another family member in a protection order made for the benefit of the complainant if the court is satisfied that the defendant has committed, or is likely to commit, an act of domestic violence against that family member.

(6) The court must not refuse to make a protection order merely because of the existence of other legal proceedings involving

the defendant and the complainant.

12 Conditions of a protection order

(1) If a court makes a protection order, the court must make each of the following a condition of the order:

- (a) the defendant must be of good behaviour towards the complainant and any other family member named in the order; and
- (b) the defendant must not commit acts of domestic violence.

(2) A court may also impose other conditions on the defendant in accordance with sections 13, 14, 15 and 16 if it considers the conditions are:

- (a) necessary in the circumstances; and
- (b) desirable in the interests of the complainant or any other family member.

13 Conditions relating to individual protection and harmonious family relationships

A court may include all or any of the following conditions in a protection order:

- (a) prohibiting the defendant or complainant from approaching each other; or
- (b) prohibiting the defendant or complainant from approaching each other while under the influence of kava, alcohol or non-prescription drugs;
- (c) prohibiting the defendant or complainant from contacting each other;
- (d) prohibiting the defendant or complainant from being in or near specified premises, including premises where the other lives, works or frequents, even though he or she has a legal or equitable interest in the premises;
- (e) prohibiting the defendant or complainant from communicating with each other;
- (f) prohibiting the defendant or complainant from doing any act that does not promote, encourage or facilitate harmonious family relationships;
- (g) prohibiting the defendant or complainant from causing another person to engage in conduct referred to in paragraphs (a) to (f).

14 Conditions relating to weapons

A court may include all or any of the following conditions in a protection order:

- (a) prohibiting the defendant from possessing any weapon;
- (b) directing that the defendant dispose of any weapon or that it be forfeited to the court for disposal by a police officer in accordance with the order.

15 Conditions relating to property

(1) A court may include all or any of the following conditions in a protection order:

- (a) prohibiting the defendant from damaging property of the complainant;
- (b) directing the defendant:
 - (i) to return any specified personal property of the complainant; or
 - (ii) to allow the complainant to recover, have access to or make use of any specified personal property;
- (c) granting the complainant exclusive occupancy to a residence or specified part of a residence whether or not the residence is solely owned or leased by the defendant.

(2) A person other than the defendant is not to be ejected from any premises by reason of any condition included in an order made under this section.

16 Conditions relating to counselling and/or mediation

(1) A court may direct either or both the defendant and the complainant to participate in:

- (a) counselling; or
- (b) mediation; or
- (c) both counselling and mediation;

to be conducted by a registered counsellor.

(2) A court may make an order for a person who is not a registered counsellor to conduct counselling and/or mediation if the defendant and the complainant agree that he or she conducts the counselling and/or mediation.

Division 2 – Temporary protection orders

17 Authorised person may make temporary protection order

(1) An authorised person to whom an application is made under section 29 may make a temporary protection order if the authorised person is satisfied that:

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- (a) the complainant is in danger of personal injury; and
 - (b) because of distance, time or other circumstance of the case, it is not practicable to apply to a court for a protection order or a temporary protection order, and for it to be heard and determined quickly by the court.
- (2) A temporary protection order made under subsection (1) may be in the same terms as a protection order under Division 1 of this Part and sections 12 to 16 apply accordingly.
- (3) An authorised person may make a temporary protection order:
- (a) whether or not the defendant or complainant is present when the order is made; and
 - (b) at any time of the day or night.
- (4) A temporary protection order made under this section can remain in force for not more than a period of 14 days, and may be renewed only once for a further period of 14 days.

18 Court may make temporary protection order

- (1) On an application being made under section 28, a court may make a temporary protection order if the court is satisfied that the complainant is in danger of personal injury.
- (2) The court may make a temporary protection order in the same terms as a protection order under Division 1 of this Part and sections 12 to 16 apply accordingly.
- (3) A court may make a temporary protection order whether or not the defendant or complainant is in court.
- (4) A temporary protection order made under this section can remain in force for not more than a period of 30 days, and may be renewed only once for a further period of 30 days.
- (5) To avoid doubt, a court may make a temporary protection order even though an application was made under section 28 for a protection order.

19 Further hearing by court

- (1) If a temporary protection order is made by a court in the absence of the defendant, the court may issue:
- (a) a summons for the defendant to appear at a specified date and time for a further hearing; or
 - (b) a warrant for the arrest of the defendant.
- (2) The court must not issue a warrant unless the court is satisfied that the personal safety of the complainant would be seriously threatened unless the defendant is apprehended and brought into custody.
- (3) At a further hearing, the court may confirm, vary or revoke the temporary protection order.

20 Temporary protection orders – evidence and matters to consider

- (1) A court or an authorised person may make a temporary protection order on such evidence as the court or authorised person considers sufficient and appropriate having regard to the temporary nature of the order.
- (2) Without limiting subsection (1), if the complainant is unable to attend the court or appear before the authorised person because of his or her injuries, the court or authorised person may accept affidavit or hearsay evidence on behalf of the complainant.
- (3) In deciding whether to make a temporary protection order, a court or an authorised person must give most importance to ensuring that the complainant and the complainant's children are protected from domestic violence.
- (4) In deciding whether to make a temporary protection order, a court or an authorised person must not have any regard to whether the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant.
- (5) An authorised person or a court may include the name of another family member in a temporary protection order made for the benefit of the complainant if the authorised person or court is satisfied that family member is in danger of personal injury.
- (6) An authorised person or a court must not refuse to make a temporary protection order merely because of the existence of other legal proceedings involving the defendant and the complainant.

Division 3 – Offence and compensation

21 Offence to breach family protection order

- (1) A person who breaches a family protection order is guilty of an offence punishable on conviction by a term of imprisonment not exceeding 2 years or a fine not exceeding 50,000 Vatu, or both.
- (2) It is not a defence to an offence under subsection (1) that the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant.
- (3) An offence under subsection (1) is in addition to and not in substitution for any other offence constituted by an act of domestic violence.
- (4) If a person (in this subsection called "the instigator") counsels or procures another person to commit an act that, if done by the instigator, would be a breach of a family protection order, then the instigator is taken to have committed the act and

subsection (1) applies in relation to the instigator.

22 Compensation

(1) A court may make an order that the defendant pay compensation according to custom or otherwise to the complainant if he or she as a result of an act of domestic violence suffered:

- (a) personal injury; or
- (b) damage to property; or
- (c) financial loss.

(2) The court may take into account the following in making an order for compensation for a person:

- (a) any pain and suffering of the person;
- (b) any physical or mental injury of the person;
- (c) the cost of any medical treatment incurred by the person;
- (d) any loss of earnings suffered by the person;
- (e) the value of any property of the person that has been taken, destroyed or damaged;
- (f) any necessary and reasonable expenses incurred as a result of separation which results from the act of the domestic violence, including:
 - (i) accommodation expenses; and
 - (ii) moving and transport expenses; and
 - (iii) expenses of setting up a separate household, including housing loan repayments or rent for as long as the court considers reasonably necessary.

(3) The court in considering any necessary and reasonable expenses under paragraph (2)(f) must have regard to:

- (a) the financial position of the parties; and
- (b) the relationship between the parties; and
- (c) any other legal proceedings involving the parties.

Division 4 – Other matters

23 Order to be explained

(1) If a court or an authorised person proposes to make a family protection order against a person and the person is present, the court or authorised person must, before making the order, explain the order to the person in a language that he or she understands.

(2) Without limiting subsection (1), the court or authorised person must explain:

- (a) the purpose, terms and effect of the order; and
- (b) what may happen if the person fails to comply with the order; and
- (c) how the order can be varied or revoked.

24 Consent orders

(1) A court or an authorised person may make a family protection order if the parties consent to the order even if the court or authorised person is not satisfied that an order could be made under this Act.

(2) A consent order may be made even if the defendant does not admit to any of the allegations on which the application for the order is based.

(3) A consent order cannot be used in any other legal proceedings.

25 Power of court to make order if person pleads guilty

(1) A court may, on its own initiative, make a family protection order against a person if:

- (a) the person pleads guilty to, or is found guilty of, an offence under section 10 or an offence under any other Act that involves domestic violence; and
- (b) the court is satisfied that the order could be made against the person under this Act.

(2) If a family protection order is already in force, the court may vary the order.

26 Form of family protection order

(1) A court must make a family protection order in the form in Schedule 2.

(2) An authorised person may make a temporary protection order orally or in writing. If the order is made in writing, it may be made in the form in Schedule 2.

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27 Who can apply for a family protection order?

- (1) An application for a family protection order may be made by:
 - (a) the complainant; or
 - (b) a friend or other family member on behalf of the complainant if the complainant has given his or her oral or written consent for that friend or family member to make the application; or
 - (c) a qualified legal practitioner on behalf of the complainant if the complainant has given his or her oral or written consent for that practitioner to make the application; or
 - (d) a police officer on behalf of the complainant if the complainant has given his or her oral or written consent for that officer to make the application.
- (2) An authorised person may apply on behalf of the complainant to a court for a family protection order.
- (3) If:
 - (a) an authorised person has made a temporary protection order under section 17; and
 - (b) the complainant requests that authorised person to make an application to a court under section 28; that authorised person must make the application as soon as practicable.
- (4) An application may be made by or on behalf of more than one person.

28 Application to a court for a family protection order

- (1) An application to a court for a family protection order may be made:
 - (a) orally; or
 - (b) by telephone, radio or other similar facility; or
 - (c) in writing; or
 - (d) by facsimile, telex or email.
- (2) If the application is made orally, the court must reduce the application to writing.
- (3) If the application is made in writing, it may be made in the form in Schedule 1.
- (4) A court must keep a written register of:
 - (a) all applications for family protection orders made to it; and
 - (b) all family protection orders made by it.

29 Application to an authorised person for a temporary protection order

- (1) An application may be made to an authorised person for a temporary protection order if the applicant believes that because of distance, time or other circumstance of the case (for example, it is late at night) it is not practicable:
 - (a) for an application under section 28 to be made to a court; and
 - (b) for the court to hear and determine the matter quickly.
- (2) The application may be made:
 - (a) orally; or
 - (b) by telephone, radio or other similar facility; or
 - (c) in writing; or
 - (d) by facsimile, telex or email.
- (3) If the application is made in writing, it may be made in the form in Schedule 1.
- (4) To avoid doubt, an application under this section does not in any way limit a person's right to apply for a family protection order under section 28.
- (5) An authorised person must cause to be kept a written register of:
 - (a) all applications for temporary protection orders made to him or her; and
 - (b) all temporary protection orders made or refused by him or her; and
 - (c) the reasons for making or refusing to make a temporary protection order.

PART 5 - PROCEDURAL MATTERS IN RELATION TO DOMESTIC VIOLENCE APPLICATIONS AND ORDERS

Division 1 – Priority for applications and evidence

30 Absent defendant

- (1) Subject to subsection (2), a court may proceed to hear and determine an application for a protection order if the defendant is not present.
- (2) The court must be satisfied that:
 - (a) the defendant has been served with a summons to appear at the hearing (see section 35(1)(a)); or
 - (b) the defendant was required by conditions of bail to appear at the hearing (see section 35(1)(b)); or
 - (c) having regard to the circumstances of the case all reasonable efforts have been made to give the defendant

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notice of the hearing.

31 Priority

- (1) A court must give priority to applications for family protection orders so far as is practicable.
- (2) A court or an authorised person must determine an application for a temporary protection order on the same day on which the application is made unless there are exceptional circumstances.

32 Evidence

In proceedings under this Act (other than proceedings for an offence), a court or authorised person may receive any evidence that the court or authorised person thinks fit, whether the evidence is otherwise admissible in a court or not.

33 Burden of proof

In proceedings under this Act (other than proceedings for an offence), a court or an authorised person is to decide questions of fact on the balance of probabilities.

34 Spouse may give evidence

If a person is charged with an offence under this Act:

- (a) the person's spouse is a competent and compellable witness in any legal proceedings in connection with the offence; and
- (b) the person's spouse may be called to give evidence without the consent of the person.

Division 2 – Service, duration, variation and revocation

35 Service of application and issue of summons or warrant

- (1) On application being made to a court under section 28 for a protection order, the court may issue:
 - (a) a summons directing the defendant to appear at the time and place set out in the summons; or
 - (b) a warrant in accordance with subsection (2) for the arrest of the defendant.
- (2) The court must not issue a warrant unless the court is satisfied that the personal safety of the complainant would be seriously threatened unless the defendant is apprehended and brought into custody.
- (3) The court must give 2 copies of the application and any summons or warrant to the police officer in charge of the police station closest to where the defendant lives or was last known to live.
- (4) The police officer must cause the application and summons or warrant to be served personally on the defendant.
- (5) In the case of a warrant, the police officer must cause the defendant to be arrested and taken into custody using only such force as is reasonably necessary.
- (6) An application for a temporary protection order made to a court under section 28 or to an authorised person under section 29 is not required to be served on, or otherwise communicated to, the defendant.

36 Service of family protection orders

- (1) If a family protection order is made by a court, the court must:
 - (a) cause a copy of the order to be served personally on the complainant and on the defendant; and
 - (b) cause a copy of the order to be given or forwarded to the officer in charge of the police station closest to where the complainant lives.
- (2) If a temporary protection order is made by an authorised person, the authorised person must cause the order to be communicated by the most practical means available:
 - (a) to the complainant and the defendant; and
 - (b) to the police officer in charge of the police station closest to where the complainant lives.
- (3) Without limiting subsection (2), a temporary protection order may be communicated:
 - (a) orally; or
 - (b) by telephone, radio or other similar facility; or
 - (c) by personal service.

37 Duration of orders

- (1) A family protection order takes effect:
 - (a) on the day it is made; or
 - (b) if it is made while an existing family protection order is in force - at the end of the existing order.
- (2) A protection order continues in force for the period specified in the order, unless it is revoked or the period of the order is varied.
- (3) Subject to subsection (4), the period specified in a protection order must not exceed 2 years and is to be for such period as

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the court considers necessary to protect a person. If a period is not specified in an order, the order remains in force for 6 months.

(4) If the court is satisfied that there are special reasons for doing so, the court may specify a period that is longer than 2 years.

(5) A temporary protection order remains in force for the period specified in the order, unless:

- (a) it is revoked; or
- (b) the period of the order is varied; or
- (c) is replaced by a protection order.

38 Variation and revocation of orders

(1) An application to vary or revoke a family protection order may be made by any person to whom the order applies.

(2) If:

- (a) a court made the order, the application must be made to the court; or
- (b) an authorised person made the order, the application must be made to:
 - (i) that authorised person; or
 - (ii) another authorised person if the authorised person who made the order is not available.

(3) A court may also vary a family protection order:

- (a) on its own initiative under section 25; or
- (b) when dealing with a contravention of the order.

(4) A family protection order may be varied by:

- (a) varying the conditions imposed by the order; or
- (b) extending the period for which the order continues in force.

(5) Before a court or authorised person varies or revokes a family protection order:

- (a) in the case of a protection order - the court must have regard to subsections 11(2), (3) and (4); and
- (b) in the case of a temporary protection order – the authorised person or the court must consider whether the complainant is still in danger of personal injury.

(6) A court or authorised person must not vary or revoke a family protection order on the application of a person unless:

- (a) in the case of the court – it is satisfied that the other parties to the application have been personally served with the application; and
- (b) in the case of an authorised person – he or she is satisfied that the application has been communicated to the other parties by the most practical means available.

(7) A court that varies or revokes a family protection order must:

- (a) cause a copy of the variation or revocation to be served personally on the complainant and the defendant; and
- (b) cause a copy of the variation or revocation to be given or forwarded to the officer in charge of the police station closest to where the complainant lives.

(8) An authorised person who varies or revokes a temporary protection order must cause the variation or revocation to be communicated by the most practical means available:

- (a) to the complainant and the defendant; and
- (b) to the police officer in charge of the police station closest to where the complainant lives; and
- (c) if he or she is not the authorised person who originally made the order - to that authorised person.

(9) Without limiting paragraph (6)(b) and subsection (8), communication may be made:

- (a) orally; or
- (b) by telephone, radio or other similar facility; or
- (c) by personal service.

Division 3 – Other matters

39 Proceedings for family protection orders not open to public

(1) A court or an authorised person hearing an application for a family protection order is not to be open to the public.

(2) Subject to subsection (3), a person may not be present during the hearing of an application unless he or she is:

- . (a) an officer of the court; or
- . (b) a party to the application or the legal or other representative of the party; or
- . (c) a witness; or
- . (d) any other particular person whom the court or authorised person permits to be present.

(3) A complainant is entitled to have a person with him or her throughout the proceedings to provide support and other assistance.

40 Restriction on publication of proceedings

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(1) This section applies to any proceedings before a court or an authorised person under this Act, other than proceedings for an offence under section 10 or 21.

(2) A person must not publish:

- (a) (otherwise than by the display of a notice in the premises of a court) a notification of the proceedings, identified by reference to the names of the parties to the proceedings; or
- (b) any account of the proceedings or of any part of those proceedings identified by reference to the name of the parties to the proceedings; or
- (c) personal details of the parties to the proceedings or any description of them by which they can be identified; unless the court or authorised person expressly permits the publication and the complainant and defendant have given their oral or written consent to the publication.

(3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction:

- (a) if the person is an individual - by a fine not exceeding 50,000 Vatu or imprisonment for a term not exceeding 3 months, or both; or
- (b) in any other case - by a fine not exceeding 250,000 Vatu.

(4) Subsection (2) does not apply if the publication:

- (a) is of a technical nature that is intended primarily for circulation amongst members of the legal, medical, psychiatric, psychological or social welfare profession; or
- (b) is a transcript of the evidence used in relation to disciplinary proceedings against members of any such profession.

(5) In this section, **publishes** means:

- (a) publishes in a newspaper or periodical publication; or
- (b) publishes by radio broadcast or television or otherwise by any means to the public or a section of the public.

41 No application fees

Despite the provisions of any other Act or law, no fees or charges are payable to a court or an authorised person in relation to the making of an application for a family protection order (for example, there can not be any court filing fees for the application).

42 Costs

In proceedings under this Act a court, the Supreme Court and the Court of Appeal are not to award costs unless satisfied that the proceedings are based on a frivolous or vexatious claim.

43 Bail

In determining bail for an offence under section 10 or 21, a court must:

- (a) take account of the defendant's past history, including:
 - (i) previous offences under that section against the complainant or any other person; and
 - (ii) violence against the complainant or any other person; and
- (b) give primary consideration to protecting the complainant.

PART 6 – POWERS OF THE POLICE

44 Duty of police to act in relation to domestic violence

(1) If a police officer suspects on reasonable grounds that a person:

- (a) has committed a domestic violence offence (see section 10); or
- (b) has breached a family protection order (see section 21);

the officer must investigate the alleged offence.

(2) If, after the investigation, the police officer believes on reasonable grounds that the person:

- (a) has committed a domestic violence offence; or
- (b) has breached a family protection order;

the officer must:

- (c) charge the person with a domestic violence offence; or
- (d) if the complainant is in danger of personal injury - arrest the person and take him or her into police custody.

(3) An arrest under this section can be made without a warrant.

45 Duty of police to bring matter to court

(1) A police officer must bring a person arrested under section 44 before a magistrate or a justice of an Island Court as soon as practicable and no later than 48 hours after being arrested.

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(2) In working out the 48 hours, a period falling on a Sunday, Saturday or public holiday is not to be counted.

46 Entry and search of premises

- (1) This section applies if a police officer believes on reasonable grounds that:
- (a) a person is committing, or has committed an act of domestic violence, on any premises; or
 - (b) the person is breaching, or has breached, a family protection order on the premises.
- (2) The police officer must:
- (a) enter the premises; and
 - (b) take such action as the officer considers necessary, including removing one or more persons from the premises or remaining on the premises and seizing any weapons, to:
 - (i) stop the domestic violence or the breach of the family protection order; or
 - (ii) ensure that there is no immediate danger that an act of domestic violence or a breach of a family protection order will occur on the premises; and
 - (c) give or arrange for such assistance as is reasonable in the circumstances to any person on the premises.
- (3) A police officer entering premises and taking action under subsection (2) is to use only such force as is reasonably necessary in the circumstances.
- (4) A police officer can enter premises and take action under subsection (2) without further or other authority than this section. To avoid doubt, an officer does not need a warrant nor the consent of the owner or occupier of the premises.
- (5) If a police officer seizes a weapon, the police officer must deliver the weapon to the officer in charge of his or her police station who must retain the weapon in safe custody pending the outcome of any proceedings under this Act in relation to the domestic violence in question.
- (6) Nothing in this section is to be taken to limit in any way the powers of a police officer under Part II of the Criminal Procedure Code [CAP 136].

PART 7 - APPEALS

47 Appeals

- (1) An appeal may be made to the Supreme Court against a decision of a court:
- (a) to make a family protection order; or
 - (b) to revoke or vary a family protection order (including a variation of the conditions imposed by the order); or
 - (c) to refuse to make, vary or revoke a protection order.
- (2) An appeal:
- (a) may be made by the complainant or the defendant; and
 - (b) must be instituted within 28 days after the day on which the court's decision is made.

48 Institution and nature of appeal

- (1) An appeal must be instituted by:
- (a) lodging a notice of appeal in writing with the Registrar of the Supreme Court; and
 - (b) serving a copy of the notice of appeal on each person who is a party to the proceedings (other than the appellant); and
 - (c) giving a copy of the notice of appeal to the Commissioner of Police.
- (2) A notice of appeal must specify with particularity the grounds of appeal and the facts that are relied upon.
- (3) Unless a Judge of the Supreme Court orders otherwise, an appeal is to be by way of re-hearing, and must be in accordance with the rules of the Court.
- (4) An appeal against an order does not stay the operation of that order.

49 Decision on appeal

- (1) If the Supreme Court allows an appeal:
- (a) it may confirm, dismiss or vary any order to which the appeal relates, as it considers appropriate; and
 - (b) it may make such order or decision as it considers should have been made, and every such order or decision takes effect on and from the day on which it is made.
- (2) A person aggrieved by an order or decision of the Supreme Court may appeal to the Court of Appeal against that order or decision.
- (3) Neither the Supreme Court nor the Court of Appeal is bound by the rules of evidence in determining an appeal.

PART 8 - MISCELLANEOUS

50 Offence to interfere with authorised persons

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A person who improperly influences, hinders or obstructs an authorised person in the exercise of his or her duties under this Act is guilty of an offence punishable on conviction by a term of imprisonment not exceeding 6 months or a fine not exceeding 20,000 Vatu, or both.

51 Regulations

- (1) The Minister may, by Order in writing, make regulations prescribing all matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), regulations may provide for all or any of the following:
 - (a) prescribing forms of any applications, orders or other document required under this Act;
 - (b) prescribing things that are weapons for the purposes of this Act;
 - (c) prescribing conditions to be accepted by a person before the person is released from custody under this Act;
 - (d) prescribing training programs for magistrates, justices of Island Courts, authorised persons, registered counsellors and persons wanting to become authorised persons or registered counsellors;
 - (e) prescribing education programs for the public.

52 Review of Act

- (1) The Minister must cause an independent review of the operation of this Act to be undertaken within 3 years after the commencement of this Act.
- (2) The people who undertake the review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report to be tabled in the Parliament within 5 sitting days of the ordinary session after its receipt by the Minister.
- (4) In this section:
independent review means a review undertaken by a team consisting of an equal number of women and men who possess appropriate qualifications and/or experience in domestic violence matters.

53 Commencement

This Act commences on the day on which it is published in the Gazette.

40. VIETNAM

[Law on Domestic Violence Prevention and Control, 2007](#)¹⁷³

Chapter 1 GENERAL PROVISIONS

Article 1. Governing scope

1. This Law provides for domestic violence prevention, protection of and support for domestic violence victims: responsibilities of individuals, families, agencies and organizations in domestic violence prevention and control; and handling of violations concerning domestic violence prevention and control.;
2. Domestic violence means an intention at act by a family member which causes or potentially causes physical, spiritual and financial damage to other members of a family.

Article 2. Acts of domestic violence

1. Acts of domestic violence include:
 - a/ Persecuting, maltreating, beating or other intentional acts that harm another family members health or life;
 - b/ Reviling or other intentional acts that offend another family member's honor or dignity;
 - c/ Isolating, driving away or frequently imposing psychological pressures that cause serious consequences;
 - d/ Obstructing the exercise of rights and fulfillment of responsibilities concerning family relationships between grandparents and grandchildren; parents and children; wives and husbands; and among siblings;

¹⁷³ Law on Domestic Violence Prevention and Control, No. 02/2007/QH12 (21 November 2007), available at http://moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3030 (last visited December 30, 2018).

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e/ Forcing sex;

f/ Forcing early marriage; forcing marriage or divorcé, or obstructing voluntary and progressive marriage,

g/ Appropriating, destroying, breaking or other intentional acts that damage private property of other family members or common property of family members;

h/ Forcing family members to overwork or make financial contributions beyond their capacity; controlling family members' incomes in order to create financial dependence;

if Committing illegal acts to force family members to leave their abode.

2. Acts of domestic violence specified in Clause 1 of this Article also apply to family members of divorced or cohabiting couples.

Article 3. Domestic violence prevention and control principles

1. To combine and implement comprehensive measures for domestic violence prevention and control, considering prevention essential, and attaching importance to family communication and education, counseling and conciliation in conformity with Vietnamese cultural traditions and fine customs and habits.

2. Acts of domestic violence must be promptly detected, stopped and handed in accordance with law.

3. Domestic violence victims must be promptly protected and assisted in a manner suitable to their conditions and the country's socio-economic conditions: to prioritize protection of lawful rights and interests of children, the aged people with disabilities, and women.

4. To bring into play the role and responsibilities of individuals, families, communities, agencies and organizations in domestic violence prevention and control.

Article 4, Obligations of people committing acts of domestic violence

1. To respect the lawful interference of the community; to immediately stop acts of domestic violence.

2. To observe decisions of competent agencies and organizations.

3. To promptly take their victims to hospital for first aid and medical treatment; to take care of domestic violence victims, unless refused by victims.

4. To pay compensation to domestic violence victims at request and according to law.

Article 5. Rights and responsibilities of domestic violence victims

1. Domestic violence victims have the following rights:

a/ To request competent agencies, organizations or individuals to protect their health, life, dignity and other lawful rights and interests;

b/ To request competent agencies or individuals to apply measures on stoppage, protection and ban from contact under this Law; c/ To receive healthcare, and psychological and legal counseling services;

d/ To be given temporary shelter, to have their temporary shelter and other information kept secret according to this Law;

e/ Other rights according to law.

2. Domestic violence victims are obliged to supply information on domestic violence to competent agencies, organizations and individuals at their request. :

Article 6. State policies on domestic violence prevention and control

1. The State annually allocates funds for domestic violence prevention and control.

2. To encourage agencies, organizations and individuals to participate in and finance domestic violence prevention and control activities; to develop models of domestic violence prevention and support domestic violence victims.

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3. To encourage research into and literature and art creation about domestic violence prevention and control;
 4. To organize and support training of domestic violence prevention and control workers.
5. People who directly engage in domestic violence prevention and control and gain achievements are entitled to commendation. If suffering health damage, life or property loss, they are entitled to prescribed policies.

Article 7. International cooperation in domestic violence prevention and control

1. The State encourages international cooperation in domestic violence prevention and control on the principles of equality, respect for sovereignty and compliance with Vietnamese and international laws.

2. International cooperation contents include:

a/ Formulating and implementing domestic violence prevention and control programs, projects and activities.

b/ Joining international organizations: concluding, acceding to and implementing treaties and agreements on domestic violence prevention and control:

c/ Exchanging domestic violence prevention and control information and experience.

Article 8. Prohibited acts

1. Acts of domestic violence specified in Article 2 of this Law.

2. Forcing, inciting, instigating and assisting other people to commit acts of domestic violence.

3. Using and disseminating information, images and sound in order to incite domestic violence.

4. Revenging or threatening to revenge people assisting domestic violence victims or people detecting, reporting and stopping acts of domestic violence.

5. Hindering the detection, reporting and handling of acts of domestic violence.

6. Taking advantage of domestic violence prevention and control activities for self-seeking purposes or commitment of illegal acts.

7. Tolerating, covering up, failing to handle acts of domestic violence or handling them in contravention with law.

Chapter II DOMESTIC VIOLENCE PREVENTION

Section 1. INFORMATION AND COMMUNICATION ON DOMESTIC VIOLENCE PREVENTION AND CONTROL

Article 9. Purposes and requirements for information and communication on domestic violence prevention and control

1. Information and communication on domestic violence prevention and control aim to change awareness about, and acts of, domestic violence, contributing to gradually eliminating domestic violence and raising awareness about fine traditions of Vietnamese people and families.

2. Information and communication on domestic violence prevention and control must satisfy the following requirements:

a/ Being accurate, clear, simple and practical;

b/ Being suitable to each group of people, education level, age, gender, traditions, culture, national identity and religion; c/ Not affecting gender equity, honor, dignity and prestige of domestic violence victims and other family members.

Article 10. Contents of information and communication on domestic violence prevention and control

1. Laws and policies on domestic violence prevention and control, gender equity, rights and obligations of family members.

2. Fine traditions of Vietnamese people and families.

3. Harmful effects of domestic violence.

4. Measures on, models of, and experience in, domestic violence prevention and control.

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5. Knowledge on marriage and family; code of conduct in and build cultured families.
6. Other contents concerning domestic violence prevention and control.

Article 11. Forms of information and communication on domestic violence prevention and control

1. Face-to-face.
2. Through the mass media.
3. Integrating into training and learning programs of training institutions within the national education system.
4. Through literature and art activities, community activities and other forms of mass cultural activities.

Section 2. CONCILIATION OF CONFLICTS AND DISPUTES BETWEEN FAMILY MEMBERS

Article 12. Principles on conciliation of conflicts and disputes between family members

1. Being prompt, proactive and patient.
 2. Conforming with the Party's guidelines and policies and the State's laws and policies, social ethics and Vietnamese fine customs and habits.
 3. Respecting involved parties' voluntary conciliation.
 4. Being objective, just, rational and reasonable.
 5. Keeping involved parties' private information secret.
 6. Respecting lawful rights and interests of others; not harming the State's interests and public interests. .
 7. Not conciliating conflicts and disputes between family members specified in Articles 14 and 15 of this Law in the following cases: a/ They are involved in criminal cases, unless victims request not to handle under the Penal Code; b/ They are involved in illegal acts subject to administrative sanction.
- Article 13. Conflict and dispute conciliation by families or family lines
A family shall promptly detect and conciliate conflicts and disputes between its members.

When a family fails to conciliate or at request of family members, the head or a prestigious person of the family line may conduct conciliation or invite a prestigious person in the community to conduct conciliation.

Article 14. Conflict and dispute conciliation by agencies and organizations

Agencies or organizations may conciliate conflicts and disputes between their employees and family members of these employees at the request of their family members; when necessary, they may coordinate with local agencies or organizations in conducting conciliation.

Article 15. Conflict and dispute conciliation by grassroots conciliation organizations

1. Grassroots conciliation organizations may conciliate conflicts and disputes between family members according to the law on grassroots conciliation.
2. People's Committees of communes, wards or townships (below referred to as commune-level People's Committees) may coordinate with Vietnam Fatherland Front Committees of the same level and their member organizations in guiding, assisting, and facilitating grassroots organizations to conciliate conflicts and disputes between family members.

Section 3. COUNSELING, COMMENT AND CRITICISM CONCERNING DOMESTIC VIOLENCE PREVENTION BY COMMUNITIES

Article 16. Family counseling at grassroots level

1. The State facilitates and encourages organizations and individuals to provide family counseling at grassroots level to community members for domestic violence prevention.
2. Grassroots-level family counseling covers the following activities:

a/ Providing information, knowledge and laws on marriage, family and domestic violence prevention and control; b/ Guiding the code of conduct in families; skills of handling conflicts or disputes between family members.
3. The following target groups shall be provided with grassroots-level family counseling:

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- a/ Persons committing acts of domestic violence;
- b/ Domestic violence victims;
- c/ Alcohol and drug addicts, and gamblers;
- d/ To-be-married persons.

4. Commune-level People's Committees shall take the prime responsibility for, and coordinate with Vietnam Fatherland Front Committees of the same level in, guiding and facilitating activities of grassroots-level family counseling.

Article 17, Comment and criticism by communities

1. Communities shall comment on and criticize acts of domestic violence-committing people aged full 16 or older who have been conciliated by a grassroots conciliation group but continue committing acts of domestic violence.
2. Heads of hamlets or villages, heads of street population groups or heads of equivalent units (below collectively referred to as community heads) shall decide and organize comment-and criticism by communities. People giving comment and criticism include representatives of families, neighboring families and other persons invited by community heads.
3. Commune-level People's Committees shall assist and facilitate community heads in commenting on and criticizing persons committing acts of domestic violence.

Chapter II

PROTECTION OF AND SUPPORT FOR DOMESTIC VIOLENCE VICTIMS Section 1. MEASURES TO PROTECT AND SUPPORT DOMESTIC VIOLENCE VIÉTIMS

Article 18. Detecting and reporting domestic violence

1. Persons who detect domestic violence shall promptly report it to the nearest police office or the commune-level Another family members Committee or community head of the locality when it occurs, except for the cases prescribed in Clause 3, Article 23 and Clause 4, Article 29 of this Law. °
2. Police offices, commune-level People's Committees or community heads who detect or are reported on domestic violence shall promptly deal with it or propose to and request competent agencies or persons to deal with it, keep secret the identity of persons detecting and/or reporting domestic violence and, when necessary, apply measures to protect these persons.

Article 19. Stoppage and protection measures

1. Stoppage and protection measures to be promptly taken to protect domestic violence victims, stop acts of domestic violence and reduce their consequences include:
 - a/ To force prompt termination of acts of domestic violence;
 - b/ To give first aid to domestic violence victims,
 - c/ Stoppage measures under the laws on handling of administrative violations or criminal procedures applied to those committing acts of domestic violence;
 - d/ To ban persons committing acts of domestic violence from approaching their victims and using telephones or other communication devices to commit acts of domestic violence to their victims (below referred to as ban-from-contact measure).
2. Persons present at the place where domestic violence occurs shall, depending on the nature and severity of acts of domestic violence and their capacity, take measures specified at Points a and b, Clause 1 of this Article.
3. The competence of and conditions for applying, changing and canceling measures specified at Point c, Clause 1 of this Article comply with the law on handling of administrative violations or criminal procedures.
4. Measures specified at Point d, Clause 1 of this Article shall be applied in accordance with Articles 20 and 21 of this Law.

Article 20. Ban from contact under decisions of presidents of commune-level People's Committees

1. The president of the commune-level Another family members Committee of the locality where domestic violence occurs shall decide to apply the measure to ban from contact for not more than three days when all the following conditions are met:
 - a/ To receive a written request from domestic violence victims, their guardians or representatives-at-law or competent agencies or organizations; when a competent agency or organization makes such request, it must obtain the consent of domestic violence victims.
 - b/ Acts of domestic violence cause damage or threaten to cause damage to the health or threaten the life of domestic violence victims;
 - c/ Persons committing acts of domestic violence and domestic violence victims have different places of residence at the time of banning from contact.

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2. Presidents of commune-level People's Committees shall consider and decide to apply the ban-from-contact measure within 12 hours from the time of receiving a written request, when they do not issue such decision, they shall send a notice to request makers, clearly stating the reason.

A ban-from-contact decision takes effect after its signing and shall be sent to persons committing acts of domestic violence, domestic violence victims, and heads of the communities where domestic violence victims reside.

3. Presidents of commune-level People's Committees who have issued a ban-from-contact decision may cancel this decision when domestic violence victims make a written request or when this measure is considered no longer necessary.

4. When a family has a funeral- or marriage-related affair, or in other special cases in which the person committing acts of domestic violence and the victim have to contact each other, the person committing acts of domestic violence shall report it to the head of the community where the domestic violence victim resides.

5. Persons committing acts of domestic violence who violate the ban-from-contact decision may be taken into administrative custody or be administratively sanctioned.

6. The Government shall specify the application and termination of the ban-from-contact measure and handling of acts of domestic violence-committing persons who violate ban-from-contact decisions prescribed in this Article.

Article 21. Ban from contact under courts' decisions

1. The court which handles or settles a civil case between a domestic violence victim and the person committing acts of domestic violence may decide to apply the ban-from-contact measure for not more than four months when the following conditions are met:

a/ The domestic violence victim, his/her guardian or representative-at-law or a competent agency or organization makes a written request, when this request is made by a competent agency or organization, this agency or organization must obtain the consent of the domestic violence victim.

b/ Acts of domestic violence cause damage or threaten to cause damage to the health threaten the life of the domestic violence victim;

c/ The person committing acts of domestic violence and the victim have different places of residence during the time of banning from contact.

2. A ban-from-contact decision takes effect after its signing and shall be sent to the person committing acts of domestic violence, domestic violence victim, the president of the commune-level Another family members Committee, the head of the community where the domestic violence victim resides and the People's Procuracy of the same level.

3. The People's Court which has issued a ban-from-contact decision may annul that decision when the domestic violence victim makes a written request or when finding this measure no longer necessary.

4. When the family has a funeral- or marriage-related affair, or in other special cases in which the person committing acts of domestic violence and the victim have to contact each other, the person committing acts of domestic violence shall report it to the head of the community where domestic violence victim resides.

5. The competence and order of, and procedures for applying, changing or canceling the ban-from-contact measure prescribed in this Article comply with the civil procedure law concerning temporary urgent measures.

Article 22. Supervising implementation of ban-from-contact decisions

1. When receiving a ban-from-contact decision of presidents of commune-level People's Committees or competent courts, community heads shall coordinate with concerned grassroots organizations in designating a person to supervise the implementation of this decision.

2. The person designated to the supervision has the following tasks:

a/ To supervise the compliance of the decision to ban from contact between the person committing acts of domestic violence and the victim; when detecting that the person committing acts of domestic violence contacts the victim, to request this person to strictly comply with the ban-from-contact decision;

b/ When the person committing acts of domestic violence intentionally attempts to contact the victim, to report it to the community head for taking measures to force that person to terminate his/her act.

3. In case the person committing acts of domestic violence is allowed to contact the victim under Clause 4, Article 20 and Clause 4, Article 21 of this Law, other family members shall supervise to ensure that domestic violence does not occur.

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Article 23. Taking care of domestic violence victims in healthcare establishments

1. When receiving medical examination and treatment at healthcare establishments, domestic violence victims may be certified for their medical examination and treatment at request.
2. Expenses for medical examination and treatment of domestic violence victims shall be paid by the health insurance fund for persons covered by health insurance.
3. When performing their tasks, health workers shall keep secret information on domestic violence victims; when detecting that acts of domestic violence show signs of crime, they shall promptly report them to heads of healthcare establishments for report to the nearest police office.

Article 24. Counseling for domestic violence victims

1. A domestic violence victim may receive healthcare, domestic code of conduct, legal and psychological counseling to deal with domestic violence.
2. Healthcare establishments, social security establishment, domestic violence victim support establishments, domestic violence prevention and control counseling establishments, individuals and organizations specified in Articles 27, 28, 29 and 30 of this Law shall, within the scope of their functions and tasks, provide appropriate counseling for domestic violence victims.

Article 25. Urgent support for essential needs

Commune-level People's Committees shall take the prime responsibility for, and coordinate with Vietnam Fatherland Front Committees of the same level and their member organizations and other local social organizations and domestic violence victim support establishments in, providing urgent support for essential needs of domestic violence victims when necessary.

Section 2. DOMESTIC VIOLENCE VICTIM ASSISTANCE ESTABLISHMENTS

Article 26. Domestic violence victim assistance establishments

1. A domestic violence victim assistance establishment is a place to provide care, counseling, temporary shelter and other necessary support for domestic violence victims.
2. Domestic violence victim assistance establishments include: a/ Healthcare establishments;
b/ Social security establishments;
c/ Domestic violence victim support establishments,
d/ Domestic violence prevention and control counseling establishments;
e/ Reliable community addresses. t
3. The Government shall detail and guide activities of domestic violence victim assistance establishments.

Article 27. Healthcare establishments

1. Healthcare establishments shall provide healthcare services under Article 23 of this Law and healthcare counseling services.
2. Apart from complying with Clause 1 of this Article, state healthcare establishments shall, depending on their capacity and realities, arrange temporary shelter for domestic violence victims for not more than one day at the victims' request.

Article 28. Social security establishments

Social security establishments shall provide care, psychological counseling, temporary shelter and other necessary supports for domestic violence victims.

Article 29. Domestic violence victim support establishments and domestic violence prevention and control counseling establishments

1. The State encourages and creates conditions for organizations and individuals to set up domestic violence victim support establishments and domestic violence prevention and control counseling establishments: finances a number of these establishments under programs and plans on domestic violence prevention and control; the Government shall prescribe support funds and beneficiaries.
2. According to their operation regulations or functions and tasks, domestic violence victim support establishments and domestic violence prevention and control counseling establishments may provide counseling services on law, psychology, healthcare, temporary shelters and other necessary conditions for domestic violence victims.
3. Domestic violence victim support establishments and domestic violence prevention and control counseling establishments must meet the following conditions:
a/ Having facilities and professional staff suitable to domestic violence victim assistance activities; b/ Having financial sources to cover expenses for domestic violence victim assistance activities.

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4. Counselors must possess moral qualities and professional qualifications as prescribed by law. in the course of providing counseling for domestic violence victims, counselors shall keep secret information on domestic violence victims; when detecting that acts of domestic violence show signs of crime, they shall report them to heads of their establishments for report to the nearest police office.

Article 30. Reliable community addresses

1. Reliable community addresses are individuals and organizations that have prestige and conditions and voluntarily assist domestic violence victims in communities.
2. Individuals and organizations shall notify commune-level People's Committees of localities where they register to be reliable addresses and the location of the reliable addresses.
3. Depending on their actual conditions and abilities, reliable community addresses may receive domestic violence victims, provide support, counseling and temporary shelter for victims and notify competent agencies thereof.
4. Commune-level People's Committees shall make and announce a list of reliable community addresses; guide and train in domestic violence prevention and control and protection of reliable community addresses when necessary.
5. Vietnam Fatherland Front Committees of communes, wards and townships and their member organizations shall coordinate with People's Committees of the same level in propagating information on, mobilizing and setting up reliable community addresses.

Chapter IV

RESPONSIBILITIES OF INDIVIDUALS, FAMILIES, AGENCIES AND ORGANIZATIONS IN DOMESTIC VIOLENCE PREVENTION AND CONTROL

Article 31. Responsibilities of individuals

1. To comply with the laws on domestic violence prevention and control, marriage and family, gender equity, prevention and control of drugs, prostitution and other social evils.
2. To promptly stop acts of domestic violence and notify competent agencies, organizations or individuals thereof.

Article 32. Responsibilities of families

1. To educate and remind family members to comply with the laws on domestic violence prevention and control, marriage and family, gender equity, prevention and control of drugs, prostitution and other social evils.
2. To conciliate conflicts and disputes between family members; to advise persons committing acts of domestic violence to stop their acts; to take care of domestic violence victims.
3. To coordinate with agencies, organizations and communities in preventing and controlling domestic violence. 4. To take other domestic violence prevention and control measures according to this Law.

Article 33. Responsibilities of the Vietnam Fatherland Front and member organizations

1. To disseminate, educate, encourage members and people to comply with, the laws on domestic violence prevention and control, marriage and family, gender equity, prevention and control of drugs, prostitution and other social evils.
2. To propose to concern state agencies necessary measures to enforce the laws on domestic violence prevention and control, marriage and family, gender equity, prevention and control of drugs, prostitution and other social evils; to participate in domestic violence prevention and control, care for, support and protection of domestic violence victims.
3. To participate in supervising the implementation of the law on domestic violence prevention and control. Article

34. Responsibilities of the Vietnam Women's Union

1. To perform responsibilities prescribed in Article 33 of this Law.
2. To organize domestic violence prevention and control counseling establishments and domestic violence victim assistance establishments.
3. To organize vocational training, credit and savings activities to support domestic violence victims.
4. To coordinate with concerned agencies and organizations in protecting and assisting domestic violence victims.

Article 35. Domestic violence prevention and control state management agencies

1. The Government shall perform the unified state management of domestic violence prevention and control.
2. The Ministry of Culture, Sports and Tourism shall take responsibility before the Government for performing the state management of domestic violence prevention and control.
3. Ministries, ministerial-level agencies shall, within the scope of their tasks and powers, coordinate with the Ministry of Culture, Sports and Tourism in performing the state management of domestic violence prevention and control.

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4. People's Committees of all levels shall, within the scope of their tasks and powers, perform the state management of domestic violence prevention and control in localities;
5. Annual socio-economic reports of commune-level People's Committees to Another family member's Councils of the same level must include the situation and results of domestic violence prevention and control in localities.

Article 36. Responsibilities of the Ministry of Culture, Sports and Tourism

1. To elaborate and submit to competent agencies for promulgation or promulgate according to competence, legal documents, programs and plans on domestic violence prevention and control.
2. To take the prime responsibility for, and coordinate with ministries, ministerial-level agencies, government-attached agencies and provincial/municipal People's Committees in, implementing legal documents, programs and plans on domestic violence prevention and control.
3. To guide family counseling activities at grassroots level, formation and closure of domestic violence prevention and control counseling establishments, domestic violence victim assistance establishments.
4. To assume the prime responsibility for, and coordinate with concerned agencies and organizations in, promulgating and implementing regulations on training of domestic violence prevention and control workers.
5. To inspect and examine the implementation of the law on domestic violence prevention and control.
6. To carry out international cooperation in domestic violence prevention and control.
7. To assume the prime responsibility for and guide the review and analysis of the situation of domestic violence prevention and control; to direct the reporting of and statistical work on domestic violence prevention and control; to sum up experience in and expand models of domestic violence prevention and control.
8. To assume the prime responsibility for, and coordinate with concerned agencies in, editing and supplying information on domestic violence prevention and control.

Article 37. Responsibilities of the Ministry of Health

1. To promulgate and implement a regulation on receipt of and healthcare for patients who are domestic violence victims in healthcare establishments.
2. To guide healthcare establishments in making statistics and reports on patients who are domestic violence victims.
3. To promulgate guidelines for detoxification of alcohol addicts.

Article 38. Responsibilities of the Ministry of Labor, War Invalids and Social Affairs

1. To direct the integration of domestic violence prevention and control contents into programs on hunger eradication and poverty reduction, vocational training and employment.
2. To guide the assistance of domestic violence victims in social security establishments.

Article 39. Responsibilities of the Ministry of Education and Training, schools and other educational institutions within the national education system

1. The Ministry of Education and Training shall direct the integration of domestic violence prevention and control knowledge into education and training programs in response to the requirements of each discipline and educational level.
2. Schools and other educational institutions within the national education system shall carry out education programs that integrate domestic violence prevention and control knowledge.

Article 40. Responsibilities of the Ministry of Information and Communication and mass media agencies

1. The Ministry of Information and Communication shall direct mass media agencies in reporting on and disseminating the law and policies on domestic violence prevention and control.
2. Mass media agencies shall provide prompt and accurate information on the law and policies on domestic violence prevention and control.

Article 41. Responsibilities of police offices, courts and procuracies

Police offices, courts and procuracies shall, within the scope of their tasks and powers, take the prime responsibility for, and coordinate with concerned agencies and organizations in, protecting the lawful rights and interests of domestic violence victims; proactively prevent and promptly detect, stop and handle violations of the law on domestic violence prevention and control, coordinate with and create conditions for domestic violence prevention and control state management agencies in making statistics on domestic violence prevention and control.

Chapter V

HANDLING VIOLATIONS CONCERNING DOMESTIC VIOLENCE PREVENTION AND CONTROL AND COMPLAINTS AND DENUNCIATIONS

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Article 42. Handling violators of domestic violence prevention and control

1. Those who commit acts of violation of the law on domestic violence prevention and control shall, depending on the nature and severity of their violations, be administratively sanctioned, disciplined or examined for penal liability; if causing damage, they shall pay compensation according to law.
2. Cadres, public employees and servants and persons of another family member's armed forces who commit acts of domestic violence and are administratively sanctioned under Clause 1 of this Article shall have their acts notified to heads of their agencies, organizations or units.
3. The Government shall specify administrative violations in domestic violence prevention and control, sanctioning forms and remedy measures applicable to violators of the law on domestic violence prevention and control.

Article 43. Application of educational measures in communes, wards and townships and confinement to educational establishments and reform schools

1. People who still commit acts of domestic violence within six months from the date of receiving comment and criticism by their communities which are not serious enough to be examined for penal liability are subject to educational measures at communes, wards or townships.
2. People committing acts of domestic violence who have been educated at communes, wards or townships but recommit acts of domestic violence which are not serious enough to be examined for penal liability may be confined to educational establishments; people aged under 18 may be confined to reform schools.
3. The competence, time limit and order of and procedures for applying educational measures in communes, wards and townships or confining to educational establishments and reform schools comply with the law on handling of administrative violations.

Article 44. Complaints and denunciations and settlement of complaints and denunciations

Complaints and denunciations concerning violations of the law on domestic violence prevention and control and their settlement comply with the law on complaints and denunciations.

Chapter VI IMPLEMENTATION PROVISIONS

Article 45. implementation effect This Law takes effect on July 1, 2008.

Article 46. implementation guidance

The Government shall detail and guide the implementation of this Law.

[Penal Code, 1999](#)¹⁷⁴

Article 151. Ill-treating or persecuting grand-parents, parents, spouses, children, grandchildren and/or fosterers

Those who ill-treat or persecute their grand-parents, parents, spouses, children, grand-children or fosterers, thus causing serious consequences or who have already been administratively sanctioned for such acts but repeat their violations, shall be subject to warning, non-custodial reform for up to three years or a prison term of between three months and three years.

[Civil Procedure Law, 2015](#)¹⁷⁵

Article 114. Provisional emergency measures

[...]

12. Prohibit contact with domestic violence victims.

[...]

Article 129. Prohibition of contact with domestic violence victims

¹⁷⁴ Penal Code, No. 15/1999/QH10 (21 December 1999), available at <https://wipo.int/en/text/385615> (last visited December 30, 2018).

¹⁷⁵ Civil Procedure Law No. 92/2015, available at <https://thuvienphapluat.vn/van-ban/Thu-tuc-To-tung/Bo-luat-to-tung-dan-su-2015-296861.aspx> (last visited December 30, 2018). Unofficial translation by Compendium team.

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Prohibition of contact with domestic violence victims shall be applied if such measures are necessary to protect the lives, health and honor of victims of domestic violence in accordance with Law on Domestic Violence Prevention.

41. ZAMBIA

[The Anti-Gender-Based Violence Act, 2010](#) ¹⁷⁶

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Anti-Gender-Based Violence Act, 2010.

Application of relevant Acts

2. (1) An act of gender-based violence shall be inquired into, tried, and otherwise dealt with in accordance with the Criminal Procedure Code, the Penal Code and any other written law.

(2) Subject to the Constitution, where there is any inconsistency between the provisions of this Act and the provisions of any other written law the provisions of this Act shall prevail to the extent of the inconsistency.

Interpretation

3. (1) In this Act, unless the context otherwise requires—

“ abuse ” means conduct that harms or is likely to cause harm to the safety, health or wellbeing of a person;

“ aggravated ” in relation to gender-based violence, means any act of gender-based violence which—

(a) causes the victim to suffer wounding or grievous bodily harm; or (b) the court otherwise considers to be so serious as to be aggravated, taking into account— (i) whether a weapon was used; (ii) evidence of pre-meditation; (iii) whether the victim is particularly vulnerable; (iv) any failure, by the police, the court or any official body, to respond to previous warnings; and (v) any other consideration the court considers appropriate;

“ applicant ” means a victim who applies for a protection order, or on whose behalf an application for a protection order is made, under this Act;

“ associated respondent ” means a person associated with a person against whom an application for a protection order is made;

“ care institution ” includes an educational institution;

“ child ” means a person below sixteen years;

“ court ” means a subordinate court;

“ domestic relationship ” means a relationship, between a victim and a respondent in any of the following ways:

(a) the victim and the respondent are or were married to each other, under any law, custom or religion;

(b) the victim cohabits with the respondent in a relationship in the nature of a marriage notwithstanding that they are not married, were not married to each other or could not or cannot be married to each other;

(c) the victim is engaged to the respondent, courting the respondent or in an actual or perceived romantic, intimate, cordial or sexual relationship of any duration;

(d) the victim and the respondent are parents of a child, are expecting a child together or are foster parents to a child;

(e) the victim and the respondent are family members related by consanguinity, affinity or adoption, or would be so related if they are married either customarily or under any law or religion, or are able to be married, or if they are living together as spouses although they are not married;

(f) the victim and the respondent, share or shared the same residence or are co-tenants;

(g) the victim is a house-help in the household of the respondent;

(h) the victim lives in or attends a public or private care institution and is under the care and control of the respondent; or

(i) the victim is in a relationship with the respondent determined by the court to be a domestic relationship;

“ economic abuse ” means— (a) the unreasonable deprivation of any economic or financial resources to which a victim, or a family member or dependant of the victim is entitled under any law, requires out of necessity or has a reasonable expectation of use, including household necessities, medical expenses or school fees and mortgage bond repayments or rent payments in respect of a shared household;

(b) denying a person the right to seek employment or to engage in an income-generating activity;

¹⁷⁶ The Anti-Gender-Based Violence Act, No.1 (12 April 2011), available at https://zambialii.org/system/files/legislation/act/2011/1/Anti-Gender-Based_Violence_Act%5B1%5D.pdf (last visited December 30, 2018)

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(c) unreasonably depriving a victim, a family member or dependant of the victim, of property in which the victim, family member or dependant of the victim has an interest or a reasonable expectation of use, or unreasonably disposing of such property; or

(d) intentionally destroying or damaging property in which the victim of gender-based violence, a family member or a dependant of the victim of gender-based violence has an interest or a reasonable expectation of use;

“ emergency monetary relief ” means compensation for monetary loss suffered by a victim of gender-based violence at the time of the issue of a protection order as a result of the gender-based violence, including, as appropriate—

(a) loss of earnings;

(b) medical and dental expenses;

(c) relocation and accommodation expenses; and

(d) household necessities;

“ emotional, verbal and psychological abuse ” means a pattern of degrading or humiliating conduct towards a person, including—

(a) insults, ridicule or name-calling;

(b) threats to cause emotional pain or distress;

(c) the exhibition of obsessive possessiveness which is such as to constitute a serious invasion of the person’s privacy, liberty, integrity or security; or

(d) any act, omission or behaviour constituting gender based violence which, when committed in the presence of minor members of the family, is likely to cause them mental injury;

“ gender ” means female or male and the role individuals play in society as a result of their sex and status;

“ gender-based violence ” means any physical, mental, social or economic abuse against a person because of that person’s gender, and includes—

(a) violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to the person, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life; and

(b) actual or threatened physical, mental, social or economic abuse that occurs in a domestic relationship;

“ harassment ” means engaging in a pattern of conduct that induces in a person the fear of imminent harm or feelings of annoyance and aggravation, including—

(a) sexual contact without the consent of the person with whom the contact is made and making unwanted sexual advances;

(b) following, pursuing or accosting a person or making persistent, unwelcome communication with a person and includes—

(i) watching, loitering outside or near a building where the harassed person resides, works, carries on business, studies or happens to be;

(ii) repeatedly making phone calls or using a third party to make phone calls to the harassed person, whether or not conversation ensues;

(iii) repeatedly sending, delivering or causing the delivery of offensive or abusive letters, telegrams, packages, facsimiles, electronic mail or other offensive objects or messages to the harassed person; or

(iv) engaging in any other menacing behaviour;

“ HIV ” means human immunodeficiency virus;

“ household chattels ” include jewellery, clothes, books, furniture and furnishings, refrigerator, television, radiogram, other electrical and electronic appliances, kitchen and laundry equipment, simple agricultural equipment, hunting equipment, motor vehicles, other than vehicles used wholly for commercial purposes, and household livestock;

“ imminent harm ” in relation to an applicant, includes harm that the applicant fears is likely to happen taking into consideration the history of the respondent’s violent behaviour towards the complainant or other relevant factors;

“ interim protection order ” means an order made by the court under subsection (6) of section twelve pending the final determination of an application;

“ intimidation ” means intentionally inducing fear of imminent harm in a person whether by words or actions and whether by oneself or by the use of a third party by—

(a) threatening to abuse that person or a third party;

(b) threatening to damage, destroy or dispose of property in which that person or a third party has a material interest; or

(c) exhibiting a weapon before that person;

“ marriage ” includes marriage under any law, custom or religion;

“ next friend ” means a person who intervenes to assist a victim who is a child or who has a mental disability to bring a legal action;

“ order ” means a protection order or other order that the court may make under this Act;

“ physical abuse ” means physical assault or use of physical force against another person, including the forcible confinement or detention of another person and the deprivation of another person of access to adequate food, water, clothing, shelter, rest, or subjecting another person to torture or other cruel, inhuman or degrading treatment or punishment;

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“ physical, mental, social or economic abuse ” means any act, omission or behaviour or threat of any such act, omission or behaviour which results in death or is likely to result in the direct infliction of physical, sexual or mental injury to any person, and includes—

- (a) physical abuse;
- (b) sexual abuse;
- (c) emotional, verbal or psychological abuse, including any conduct that makes another person feel constantly unhappy, humiliated, ridiculed, afraid or depressed or to feel inadequate or worthless;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) stalking;
- (h) controlling behaviour such as isolating a person from the person’s family and friends, monitoring the person’s movement and restricting the person’s access to information or assistance;
- (i) malicious damage to property;
- (j) forcible entry into a person’s residence, where the parties do not share the same residence;
- (k) depriving a person of, or hindering a person from access to or a reasonable share of the use of the facilities associated with the person’s residence or forcible entry into a person’s room or into a room occupied by a person, where the parties share the same residence;
- (l) the unreasonable disposal of household effects or other property in which a person has interest;
- (m) abuse delivered from the following cultural or customary rites or practices:
 - (i) forced virginity testing;
 - (ii) female genital mutilation;
 - (iii) pledging of a person for purposes of appeasing spirits;
 - (iv) forced marriage;
 - (v) sexual cleansing;
 - (vi) child marriage;
 - (vii) forced spouse inheritance; or
 - (viii) sexual intercourse between persons within the prohibited relations of affinity or consanguinity;
- (n) abuse perpetrated on a person by virtue of the person’s age, physical or mental incapacity, disability or illness;
- (o) conduct that in any way harms or may harm another person, including any omission that results in harm and either—
 - (i) endangers the safety, health or wellbeing of another person;
 - (ii) undermines another person’s privacy, integrity or security; or
 - (iii) detracts or is likely to detract from another person’s dignity or worth as a human being; and
- (p) trafficking in persons;

“ place of safety ” means premises where the welfare of a victim of gender-based violence is assured;

“ protection order ” means an order made by the court under sections thirteen, fourteen, fifteen and seventeen on the final determination of an application;

“ respondent ” means a person against whom an application for a protection order is made or against whom a protection order has been granted;

“ sexual abuse ” includes the engagement of another person in sexual contact, whether married or not, which includes sexual conduct that abuses, humiliates or degrades the other person or otherwise violates another person’s sexual integrity, or sexual contact by a person aware of being infected with HIV or any other sexually transmitted infection with another person without that other person being given prior information of the infection;

“ stalking ” includes following, pursuing or accosting a person; and

“ victim ” means a person against whom an act of gender based violence has been, is being or is likely to be committed.

(2) A court shall, in determining whether a person is in a domestic relationship, have regard to—

- (a) the place where the person’s time is ordinarily spent;
- (b) the manner in which the person’s time is spent; and
- (c) the duration of the relationship.

(3) Without prejudice to subsection (1), a person is in a domestic relationship where the person—

- (a) is providing refuge to a victim whom a respondent seeks to attack; or
- (b) is acting as an agent of the respondent or encouraging the respondent to commit an act of gender-based violence.

PART II
FILING OF, AND DEALING WITH, COMPLAINTS OF GENDER-BASED-VIOLENCE

Number of acts amounting to gender-based violence

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4. A single act may amount to gender-based violence.

Duty to assist or inform complainant of rights, etc.

5. A police officer, labour inspector, social worker, counsellor, medical practitioner, legal practitioner, nurse, religious leader, traditional leader, teacher, employer or other person or institution with information concerning the commission of an act of gender-based violence shall—

- (a) inform a victim of the victim's rights and any basic support which may be available to assist the victim;
- (b) obtain for the victim, or advise the victim how to obtain shelter, medical treatment, legal services, counselling or other service that may be required in the circumstances; and
- (c) advise the victim of the victim's right to lodge a complaint against the respondent including remedies available to the victim under this Act.

Filing of complaint to police

6. (1) A victim of gender-based violence may file a complaint about the gender-based violence.

(2) A child or a person with a mental disability may be assisted by a next friend to file a complaint of gender-based violence.

(3) Notwithstanding subsection (1), a complaint of gender-based violence may be filed by any other person or institution with information about the gender-based violence where the intervention is in the interest of the victim.

(4) A complaint of gender-based violence shall be filed with the police at the place—

- (a) where the offender resides;
- (b) where the victim resides;
- (c) where the gender-based violence occurred or is occurring or is likely to occur;
- (d) if the victim has left the victim's usual place of abode, where the victim is residing temporarily; or
- (e) that is convenient for the person filing the complaint.

Police to respond promptly

7. A police officer shall respond promptly to a request by any person for assistance from gender-based violence and shall offer such protection as the circumstances of the case or the person who made the report requires even when the person reporting is not the victim of the gender-based violence.

Police assistance after receipt of complaint

8. (1) Where a police officer receives a complaint under subsection (4) of section six, the police officer shall—

- (a) interview the parties and witnesses to the gender-based violence;
- (b) record the complaint in detail and provide the victim with an extract of the complaint, upon request, in a language the victim understands;
- (c) assist the victim to obtain medical treatment, where necessary;
- (d) assist the victim to a place of safety as the circumstances of the case or as the victim requires where the victim expresses concern about safety;
- (e) protect the victim to enable the victim retrieve personal belongings, where applicable; and
- (f) assist and advise the victim to preserve evidence.

(2) Where one of the parties or witnesses to an act of gender-based violence, a complaint of which has been made under subsection (4) of section six, is a child, a police officer who receives the complaint shall interview the child in the presence of —

- (a) the parent or guardian of the child; or
- (b) a next friend, where the parent or guardian is the respondent.

(3) Police assistance to a victim under paragraph (c) of subsection (1) consists of issuing a medical form to the victim and, where necessary, sending the victim to a health facility.

(4) A victim of gender-based violence who is assisted by the police to obtain medical treatment under paragraph (c) of subsection (1), shall be entitled to free medical treatment at a public health facility and a free medical report within a reasonable period of time.

(5) Family mediation or intervention shall not be a bar to the investigation or prosecution of a complaint of gender-based violence.

(6) For the purposes of this section, " health facility " has the meaning assigned to it in the Health Professions Act, 2009.

Arrest by police

9. A police officer may, without a warrant, arrest a person where the police officer has reasonable grounds to believe that the person—

- (a) is committing, or has committed, an offence under this Act;

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- (b) is about to commit an offence under this Act and there is no other way to prevent the commission of the offence;
- (c) unless arrested, will—
 - (i) escape or cause an unreasonable delay, trouble or expense in being made answerable to justice;
 - (ii) interfere with the witnesses; or
 - (iii) tamper with, or destroy, relevant evidence or material;
- (d) is willfully obstructing the police officer in the execution of police duties; or
- (e) has contravened or is contravening an order issued under this Act.

PART III
PROTECTION ORDERS

Application for protection order

10. (1) A victim may, in the prescribed manner, apply to a court for a protection order to prevent—

- (a) a respondent;
- (b) an associated respondent; or
- (c) both a respondent and an associated respondent; from carrying out a threat of gender-based violence against the victim or to prevent the respondent, an associated respondent, or both, from further committing acts which constitute gender-based violence against the victim.

(2) If the victim is not represented by a legal representative, the clerk of court shall inform the applicant—

- (a) of the remedies available to the victim in terms of this Act; and
- (b) of the procedure for lodging an application for a protection order.

(3) Notwithstanding subsection (1) and any other law, and subject to subsections (4) and (5), where a victim is for any reason unable to apply for a protection order personally, any other person with information about the gender-based violence may assist the victim to apply for a protection order.

(4) Where the gender-based violence involves a child or a person with a mental disability the application shall be made by—

- (a) a person with whom the child or person with a mental disability normally resides or resides on a regular basis;
- (b) a parent or guardian of the child with a mental disability;
- (c) a social worker;
- (d) a police officer or probation officer;
- (e) a medical officer;
- (f) a representative of a non-governmental organisation; or
- (g) an institution with information about the gender-based violence.

(5) A person who assists a victim to make an application shall—

- (a) obtain the victim's consent, in writing, except where the victim—
 - (i) is a child;
 - (ii) has a mental disability ;
 - (iii) is unconscious; or
 - (iv) is a person whom the court is satisfied is unable to provide the required consent; and
- (b) seek the leave of the court to make an application without the consent of the victim.

(6) The application may be filed in a court situated where—

- (a) the victim resides, carries on business or is employed;
- (b) the respondent resides, carries on business or is employed;
- (c) the act of gender-based violence occurred or is occurring or is likely to occur; or
- (d) the victim is residing temporarily, if the victim has left the victim's usual place of abode.

(7) An application or action shall be commenced in the prescribed manner and form.

(8) A court before which criminal proceedings in relation to gender-based violence are pending may, on its own motion, considering the circumstances of the case, or on an application by the victim, issue a protection order in respect of the victim.

Conduct of proceedings

11. (1) Notwithstanding any other law, proceedings for a protection order shall be held in chambers in the presence of the parties, their legal representatives and any other person permitted by the court to be present.

(2) Notwithstanding subsection (1), where the court is of the opinion that the presence of the respondent is likely to have a serious adverse effect on the victim or a witness, the court may take such steps as it considers necessary to separate the respondent from the victim or the witness.

(3) Subject to subsection (3) of section ten, the court shall consider an application for a protection order within a period of fourteen days of the filing of the application, and may, for such purpose—

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- (a) enquire whether an interim protection order or protection order has at any time been issued to either of the parties;
 - (b) call for any evidence whether oral or by affidavit, as it considers necessary including medical evidence supported by a police report forming the basis on which a victim's examination was conducted; or
 - (c) examine any witness before the court.
- (4) Where a respondent is not represented by a legal representative, the respondent shall not address the applicant directly but shall address the applicant through the court.
- (5) A person who utters a false statement in an affidavit knowing the statement to be false commits an offence and is liable, upon conviction, to imprisonment for a term not exceeding three years.
- (6) The court may request a report on any of the parties to the proceedings and the report shall be prepared and submitted to the court by a social worker, probation officer or other person appointed by the court, as appropriate.
- (7) The report shall contain details of the circumstances of the gender-based violence, an assessment of the effect of the violence and any other information considered expedient by the social worker, probation officer or other person appointed by the court.

Interim protection order

12. (1) Where an application is made ex-parte to the court for a protection order, the court shall issue an interim protection order if it considers the order to be in the best interest of the applicant.
- (2) In determining whether it is in the best interest of the applicant to issue an interim protection order, the court shall take into account—
- (a) whether there is a risk of harm to the applicant or a relation or friend of the applicant if the order is not made immediately;
 - (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
 - (c) whether there is reason to believe that the respondent is deliberately evading service of notice of the proceedings and the applicant, or any person in a domestic relationship with the respondent, will be prejudiced by the delay involved in effecting service.
- (3) An interim protection order shall be for a period of three months and the court may, where it thinks fit, extend it for a period not exceeding three months.
- (4) The court shall, when making an interim protection order where the respondent is not already before the court, summon the respondent to appear within the period of three months referred to in subsection (3) to show cause why the interim order should not be made final.
- (5) If the respondent fails to appear before the court in accordance with subsection (4), the order shall become final.
- (6) Where an application is made on notice to the court for a protection order and the court is of the opinion that—
- (a) the respondent is committing, has committed or is likely to commit an act of gender-based violence; and
 - (b) the applicant will suffer significant harm if a protection order is not issued; the court may issue an interim protection order pending the consideration of the order applied for.
- (7) Where the court grants an interim protection order, it shall apply the provisions of section thirteen and subsection (1) of section fifteen and may apply any of the provisions contained in section fourteen.

Issuance of protection order

13. The court may issue a protection order to prohibit a respondent from committing or threatening to commit an act of gender-based violence personally or otherwise, against an applicant or a relation or associate of the applicant.

Effect of protection order

14. A protection order may prohibit the respondent or an associated respondent, or both, from—
- (a) physically assaulting or using physical force against the applicant or any relation, friend, a legal representative or any other person associated with the applicant;
 - (b) forcibly confining or detaining the applicant or any relation or friend of the applicant;
 - (c) depriving the applicant access to adequate food, water, clothing, shelter or rest;
 - (d) forcing the applicant to engage in any sexual contact, whether married or not;
 - (e) engaging in any sexual conduct that abuses, humiliates or degrades the complainant or otherwise violates the applicant's integrity, whether married or not;
 - (f) depriving or threatening to deprive the applicant of —
 - (i) economic or financial resources to which the applicant is entitled by law, including house mortgage repayments or rent payments or any other payments; and
 - (ii) household chattels required by the applicant as a matter of necessity;
 - (g) contacting the applicant at work or other places frequented by the applicant;
 - (h) contacting the applicant by telephone or any other form of communication;

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- (i) disposing of, or threatening to dispose of, movable or immovable property in which the applicant has an interest;
- (j) destroying or damaging, or threatening to destroy or damage, property in which the applicant has an interest;
- (k) hiding or hindering the use of property in which the applicant has an interest;
- (l) threatening to abuse the applicant;
- (m) harassing the applicant;
- (n) entering the applicant's residence without consent, where the parties do not share the same residence;
- (o) emotionally, verbally or psychologically abusing the applicant;
- (p) coming within one hundred metres of the applicant;
- (q) enlisting the assistance of another person to commit an act of gender-based violence against the applicant; or
- (r) doing any act which the court considers not in the best interest of the applicant.

Conditions of protection order

15. (1) A protection order may, at the request of the applicant or on the court's own motion, include any or all of the following:

- (a) a provision which—
 - (i) binds the respondent to be of good behaviour;
 - (ii) directs the respondent to seek counselling or other rehabilitative service; or
 - (iii) forbids the respondent to be, except under conditions specified in the order, at or near places frequented by the applicant or by any child or other person in the care of the applicant;
 - (b) a provision directing the respondent to surrender any firearm or other specified weapon in the possession of the respondent to the police, which may also include, if appropriate—
 - (i) a provision suspending any firearm licence in the name of the respondent for the duration of the protection order; or
 - (ii) a provision authorising the police to search for and seize any weapon at any specified place where there is probable cause to believe that the weapon may be located;
 - (c) a provision restraining the applicant or respondent, or both, from taking, converting, damaging, or otherwise dealing in property in which the other party may have an interest or a reasonable expectation of use;
 - (d) a provision temporarily directing the respondent to make periodic payments in respect of the maintenance of the applicant, and of any child of the applicant, if the respondent is legally liable to support the applicant or the child, as an emergency measure where no such maintenance order is already in force, together with such other emergency monetary relief as is appropriate;
 - (e) a provision granting temporary sole custody—
 - (i) of a child of the applicant to any appropriate custodian other than the respondent; or
 - (ii) of any child of the applicant or any child in the care of the applicant to the applicant or to another appropriate custodian if the court is satisfied that that is necessary for the safety of the child in question;
 - (f) a provision temporarily—
 - (i) forbidding contact between the respondent and any child of the applicant;
 - (ii) specifying that contact between the respondent and a child of the applicant, must take place only in the presence and under the supervision of a social worker or a family member designated by the court for that purpose; or
 - (iii) allowing such contact only under specified conditions designed to ensure the safety of the applicant, any child who may be affected, and any other family members; if the court is satisfied that that is reasonably necessary for the safety of the child in question;
 - (g) a provision ordering the relocation of the applicant to a shelter to be provided by the Minister responsible for social welfare, or other place of safety, and compelling the respondent to pay rent for the period the applicant resides in such other place of safety if the court is satisfied that that is reasonably necessary for the safety of the applicant or any child or person in the care of the applicant; and
 - (h) any other provisions that the court considers necessary to ensure the safety of the applicant or any child or other person who is affected.
- (2) A court shall not refuse to issue a protection order or impose any other condition solely on the ground that other legal remedies are available to the applicant.

Modification of protection order

16. An applicant or respondent may apply to the court which granted an order, for the modification or cancellation of the order.

Duration of final protection order

17. A final protection order issued by the court shall not exceed twelve months in the first instance but may, for good cause shown, be extended, modified or rescinded by the court on application by the applicant in the original proceedings.

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Extension of protection order to other persons

18. (1) A court may extend a protection order to any person specified in the order other than the applicant if the court is satisfied that—

- (a) the respondent is engaging in or has engaged in conduct, which, if the person specified in the order, were or had been in a domestic relationship with the respondent, the conduct would amount to gender-based violence against the specified person;
- (b) the respondent's conduct towards the specified person is due, in whole or in part to the applicant's relationship with the specified person; or
- (c) the extension of the protection order is necessary for the protection of the specified person.

Grant of protection order not to exclude criminal liability

19. The grant of a protection order under subsection (8) of section ten does not exclude a person's criminal liability under the Penal Code or any other law.

Occupation order

20. (1) Subject to subsections (2) and (3), where the court, in issuing a protection order, considers it expedient to issue an occupation order, the court may issue an order requiring a respondent to vacate the matrimonial home or other home which the respondent shares with the applicant and to continue to pay rent, mortgage payment and maintenance to the applicant.
- (2) The court shall issue an occupation order after it considers a social enquiry report, prepared by a social worker, a probation officer or other person appointed by the court, as appropriate.
- (3) Where the applicant and the respondent are in a marital relationship, the court shall consider the effect of the order or omission of the order on the health, education and development of the family.
- (4) A landlord shall not evict an applicant solely on the basis that the applicant is not a party to a lease, where a residence is rented by a respondent but exclusive occupation is given to the applicant by the court.
- (5) A landlord shall, in furtherance of subsection (4), provide the details of the lease to the applicant on request.

Appeals

21. A person who is aggrieved by a decision of court may appeal to the High Court.

Power to discharge protection order

22. (1) A court may discharge an order on an application by an applicant or a respondent in the prescribed manner and form, where the court is satisfied that the circumstances that led to the grant of the order have ceased to exist.
- (2) The discharge of the order may occur even though the order—
- (a) applies for the benefit of a specified person in the order other than the applicant; or
 - (b) applies against an associated respondent.
- (3) Where an order is discharged under subsection (2), the order shall cease to have effect for the benefit of any specified person or associated respondent as if the specified person or associated respondent had applied for or been granted a discharge of the order.
- (4) Where a discharge order applies for the benefit of a specified person or against an associated respondent, the specified person or associated respondent may apply for the order to be discharged in so far as it applies to them.
- (5) An application may be made under this section for the discharge of an interim order.
- (6) Where an application is made under subsection (5) the court shall, within thirty days of the filing of the application, fix a hearing date.

Contravention of protection order

23. (1) A person who contravenes an order commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding two years.
- (2) An applicant who, with intent to induce a police officer or a judicial officer to perform any act or exercise any power provided in this Act in relation to a contravention of a protection order, intentionally gives false information to the police officer or judicial officer or fails to provide information to the police officer or judicial officer in order to induce the police officer to do any act or exercise any power under this Act, commits an offence and is liable, upon conviction, to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a period not exceeding one year, or to both.

PART IV
SHELTER FOR VICTIMS

Establishment of shelters for victims

24. The Minister responsible for social welfare shall—

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- (a) from money appropriated by Parliament for that purpose, establish and operate shelters for victims; and
- (b) ensure an appropriate spread of such shelters throughout Zambia.

Minimum norms and standards of shelters

25. A shelter for victims shall comply with the norms and standards as the Minister may, by statutory instrument, prescribe.

Inspectors of shelters

26. (1) The Minister may appoint suitably qualified persons as inspectors to ensure compliance with the norms and standards prescribed pursuant to section twenty-four.

(2) An inspector shall be provided with a certificate of appointment which shall be produced by the inspector when any person requires it to be produced.

(3) An inspector may, during an inspection—

(a) examine and make copies of any book, records or other documents containing information relevant to the administration or enforcement of this Act;

(b) examine any computer and retrieve any information relevant to the administration or enforcement of this Act;

(c) open and inspect any package or container;

(d) inspect any shelter or facility relevant for the purposes of this Act; and

(e) examine or inspect anything relevant to the administration or enforcement of this Act.

(4) An inspector may, at any reasonable time, for the purposes of performing that inspector's functions under this Act, without warrant, enter into any shelter or other premises which the inspector reasonably believes is being used as a shelter in contravention of this Act.

(5) A person who—

(a) delays or obstructs an inspector in the performance of the inspector's functions;

(b) refuses to give an inspector such reasonable assistance as the inspector may require for the purpose of exercising the inspector's functions or powers;

(c) gives an inspector false or misleading information in answer to any query made by the inspector; or

(d) impersonates or falsely presents oneself to be an inspector; commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Shelters for child victims

27. A shelter for child victims—

(a) shall secure the physical safety of a child victim;

(b) shall provide temporary basic material support for the care of a child victim;

(c) shall offer a programme for—

(i) the provision of counselling to child victims; and

(ii) the provision of rehabilitation services to child victims; and

(d) shall, in cooperation with the Ministry responsible for education, offer a programme aimed at the provision of education to child victims.

Shelters for adult victims

28. A shelter for adult victims—

(a) shall secure the safety of adult victims;

(b) shall offer a programme aimed at—

(i) the provision of counselling to adult victims;

(ii) the provision of rehabilitation services to adult victims; and

(iii) the reintegration of adult victims into their families and communities;

(c) may, in cooperation with the Ministry responsible for education, offer a programme aimed at the provision of education to adult victims; and

(d) may, in cooperation with the Ministry responsible for vocational training, offer a programme aimed at the provision of skills development training to adult victims.

(2) A shelter for adult victims that provides accommodation to an adult victim who has a child in the victim's care shall offer a programme aimed at the reception, care and development of such a child.

(3) Subject to subsection (4), a child referred to in subsection (2) may be cared for at any other premises only with the explicit consent of the adult victim.

(4) A child referred to in subsection (2) shall be referred to a designated social worker for investigation to determine whether the child is in need of care and protection.

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Assessment of victim

29. Upon admission of a victim to a shelter, an assessment shall be made by a social worker to determine—
- (a) the risks to the safety and life of the victim;
 - (b) the immediate needs of the victim; and
 - (c) the long term needs of the victim.

Rehabilitation of victim

30. (1) The Ministry responsible for social welfare shall provide mechanisms and programs for the rehabilitation of victims.
(2) Victims may receive financial assistance from the Fund under this Act.
(3) The best interest of the child shall be paramount in any assistance given to rescue, rehabilitate or reintegrate the child.

PART V
ANTI-GENDER-BASED VIOLENCE COMMITTEE

Anti-Gender-Based Violence Committee

31. (1) There is hereby established the Anti-Gender-Based Violence Committee.
(2) The provisions of the Schedule apply in respect to the Committee.
(3) The Committee shall—
- (a) monitor the activities of all the relevant institutions on matters connected with gender-based violence;
 - (b) make recommendations for a national plan of action against gender-based violence;
 - (c) monitor and report on the progress of the national plan of action;
 - (d) advise the Minister on policy matters connected with gender-based violence;
 - (e) propose and promote strategies to prevent and combat gender-based violence;
 - (f) recommend guidelines for disbursements from the Fund; and
 - (g) deal with any matter relating to gender-based violence.

PART VI
ANTI-GENDER-BASED VIOLENCE FUND

Establishment of Fund

32. (1) There is hereby established the Anti-Gender-Based Violence Fund.
(2) The Fund shall consist of—
- (a) voluntary contributions to the Fund from any person;
 - (b) such monies as Parliament may approve for purposes of the Fund; and
 - (c) any grants from any source within or outside Zambia with approval of the Minister.
- (3) The monies of the Fund shall be applied for—
- (a) the basic material support of victims; and
 - (b) any other matter connected with the counselling and rehabilitation of victims in their best interest.

Administration and management of Fund

33. (1) The Fund shall be vested in the Minister responsible for finance and shall be managed and administered by the Minister responsible for social welfare.
(2) The Committee shall develop guidelines for the disbursements from the Fund.

Accounts and audit

34. (1) The Ministers referred to in section thirty-three shall cause to be prepared proper books of account in relation to the Fund.
(2) The accounts of the Fund for each financial year shall be audited by the Auditor-General and, for that purpose, the Auditor-General and any officer authorised by the Auditor-General shall have access to all books and other records relating to the accounts of the Fund.
(3) The Auditor-General shall, not later than twelve months after the end of each financial year, submit a report on the accounts of the Fund for that financial year to the Minister.
(4) The Ministers referred to in subsection (1) of section thirty-three shall, not later than seven days after the first sitting of the National Assembly next after the receipt of the report, lay it before the National Assembly.

PART VII

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GENERAL PROVISIONS

Service of process

35. (1) Subject to subsections (2) and (3), the provisions of the Subordinate Courts Act apply with respect to service of process of any document issued pursuant to this Act and for which service is required.
- (2) Service of process shall be made by the Clerk of court or such other person as the court may order.
- (3) The court shall not direct a complainant to serve any document.

Settlement of matter out court

36. (1) Where in a criminal trial in respect of gender-based violence which is not aggravated—
- (a) the complainant expresses the desire to have the matter settled out of court, the court shall refer the case for settlement by any alternative dispute resolution method; or
- (b) the court is of the opinion that the case can be amicably settled, it may, with the consent of the complainant refer the case for settlement by any alternative dispute resolution method.
- (2) Where any case is referred for settlement under subsection (1), the court shall, in addition—
- (a) refer the complainant and the offender for counselling;
- (b) where necessary, require the offender to receive psychiatric help; or
- (c) after consultation with the Ministry responsible for home affairs, appoint a probation officer to observe and report on the subsequent conduct of the offender to the court.
- (3) Where a probation officer reports that the offender has engaged in any act of gender-based violence after the settlement, the offender shall be brought before the court and shall, subject to section two, be prosecuted.
- (4) In any criminal trial in respect of gender-based violence which is aggravated, the court shall not consider or approve any settlement of the matter out of court, whether in accordance with subsections (1), (2) and (3), or not.

Proceedings in camera

37. Proceedings under this Act may be held in camera.

Publication of proceedings prohibited

38. (1) A person shall not publish a report of proceedings under this Act, other than criminal proceedings, except with the leave of court.
- (2) Where a person reports proceedings under subsection (1), the person shall protect the identity of the complainant and any witness to the proceedings.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Public education

39. The Minister responsible for gender shall, for the purpose of this Act, provide for public education on gender-based violence and the contents of this Act.

Rules of court

40. The Chief Justice may, by rules of court, make provision with respect to the procedure on applications to any court under this Act, and in particular as to—
- (a) the manner and form for the commencement of an action under this Act;
- (b) the giving of notice to persons affected by an application under this Act;
- (c) the joinder of the persons referred to in paragraph (b) as parties to the proceedings;
- (d) the discharge of an order issued pursuant to this Act; and
- (e) the forms necessary for the purposes of this Act.

Regulations

41. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.
- (2) Without limiting the generality of subsection (1), regulations made under that subsection may provide for—
- (a) the training of the police and court officials on genderbased violence;
- (b) the education and counseling of victims and perpetrators of gender-based violence;
- (c) places of shelter for victims;
- (d) enhancement of social welfare services for victims;
- (e) the modalities for the provision of free medical treatment for victims; and
- (f) any matter for the effective implementation of this Act.

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SCHEDULE

Composition of Committee

1. (1) The Committee shall consist of the following part-time members:

(a) one representative each from the Ministries responsible for—

- (i) social services;
- (ii) gender;
- (iii) children and youth;
- (iv) health; and
- (v) education;

(b) a representative of the Attorney-General;

(c) a representative from the Human Rights Commission;

(d) a representative of the House of Chiefs;

(e) a representative of the Law Association of Zambia;

(f) a representative of the Zambia Police Force;

(g) a representative of a non-governmental organization dealing with matters concerning gender-based violence; and

(h) two other persons.

(2) The members shall be nominated by their institutions and appointed by the Minister.

(3) The Chairperson and the Vice-Chairperson shall be appointed by the Minister from amongst the members.

Tenure of office and vacancies

2. (1) Subject to the other provisions of this Act, a member shall hold office for a period of three years from the date of appointment and may be re-appointed for a further like period.

(2) The office of a member shall become vacant if—

(a) the member has been absent without reasonable excuse from three consecutive meetings of the Committee of which the member has had notice;

(b) the member dies;

(c) the member is adjudged bankrupt;

(d) the member is removed by the Minister;

(e) the member becomes mentally or physically incapable of performing the duties of a member of the Committee; or

(f) the member is convicted of an offence under any other written law and sentenced therefor to imprisonment for a term exceeding six months.

Proceedings of Committee

3. (1) Subject to the other provisions of this Act, the Committee may regulate its own procedure.

(2) The Committee shall meet for the transaction of business at least once in every three months at such places and at such times as the Chairperson may determine.

(3) Upon giving notice of not less than fourteen days, a meeting of the Committee may be called by the Chairperson and shall be called if not less than one-third of the members so request in writing: Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) The quorum at any meeting of the Committee shall be one-half of the members.

(5) There shall preside at any meeting of the Committee—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of the Chairperson and the Vice-Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) A decision of the Committee on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to the deliberative vote.

(7) Where a member is for any reason unable to attend any meeting of the Committee, the member may, in writing, nominate another person from the same organisation to attend such meeting in that member's stead and such person shall be considered to be a member for the purpose of such meeting.

(8) The Committee may invite any person whose presence is in its opinion desirable to attend and to participate in the deliberations of a meeting of the Committee but such person shall have no vote.

(9) The validity of any proceedings, act or decision of the Committee shall not be affected by any vacancy in the membership of the Committee or by any defect in the appointment of any member or by reason that any person not entitled so to do, took part in the proceedings.

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(10) The Committee shall cause minutes to be kept of the proceedings of every meeting of the Committee and of any subcommittee established by the Committee.

Sub-committees of Committee

4. (1) The Committee may, for the purpose of performing its functions under this Act, constitute any sub-committee and may delegate to any such sub-committee such of its functions as it thinks fit.

(2) The Committee may appoint as members of the subcommittees constituted under subparagraph (1), persons who are or are not members of the Committee and such persons shall hold office for such period as the Committee may determine.

Allowances of members

5. There shall be paid to the members of the Committee or any sub-committee of the Committee such allowances as the Committee may, with the approval of the Minister, determine.

Disclosure of interest

6. (1) If a member is present at a meeting of the Committee or any sub-committee of the Committee at which any matter in which the member or the member's spouse is directly or indirectly interested in a private capacity, is the subject of consideration, the member shall, as soon as is practicable after the commencement of the meeting, disclose such interest, and shall not, unless the Committee or the sub-committee otherwise directs, take part in any consideration or discussion of or vote on any question relating to that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Immunity of members

7. No action or other proceedings shall lie or be instituted against any member or any member of a sub-committee for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise or purported exercise of the member's functions under this Act.

Prohibition of publication or disclosure of information to unauthorized persons

8. (1) A person shall not, without the consent in writing given by, or on behalf of, the Committee, publish or disclose to any other person, otherwise than in the course of the person's duties, the contents of any document, communication or information whatsoever, which relates to, and which has come to the person's knowledge in the course of that person's duties under this Act.

(2) Any person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(3) A person who, having information which to that person's knowledge has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Secretariat of Committee

9. (1) The Minister shall appoint a Secretariat of the Committee comprising such staff as the Minister may determine.

(2) The Secretariat of the Committee shall be based at the Ministry.

[Violence Against Persons \(Prohibition\) Act, 2015](#)¹⁷⁷

[...]

PART I-OFFENCES

[...]

Prohibition of female circumcision or genital mutilation

6. (1) the circumcision or genital mutilation of the girl child or woman is hereby prohibited.

¹⁷⁷ Violence Against Persons (Prohibition) Act (23 May 2015), available at <http://lawnigeria.com/LawsOfTheFederation/Violation-Against-Persons-%28Prohibition%29-Act%2C-2015.html> (last visited December 30, 2018).

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(2) A person who performs female circumcision or genital mutilation or engages another to carry out such circumcision or mutilation commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding N200,000.00 or both.

(3) A person who attempts to commit the offence provided for in subsection (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N100,000.00 or both.

(4) A person who incites, aids, abets, or counsels another person to commit the offence provided for in subsection (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N100,000.00 or both.

[...]

Forcefully ejection from home

9. (1) A person who forcefully evicts his or her spouse from his or her home or refuses him or her access commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N300,000.00 or both.

(2) A person who attempts to commit the offence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(3) A person who incites, aids, abets, or counsels another person to commit the offence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

[...]

Damage to property with intent to cause distress

11(1) A person who causes mischief or destruction or damage to property of another with intent to cause or knowing that it is likely to cause distress or annoyance to the victim, commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N300,000.00 or both.

(2) A person who attempts to commit the offence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(3) A person who incites, aids, abets, or counsels another person to commit the offence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

Forced financial dependence or economic abuse

12.(1) A person who causes forced financial dependence or economic abuse of another commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N500,000.00 or both.

(2) A person who attempts to commit the offence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding 1200,000.00 or both.

(3) A person who incites, aids, abets, or counsels another person to commit the offence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

Forced isolation or separation from family and friends

13(1) A person who forcefully isolates or separates another from family and friends commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

(2) A person who attempts to commit the act of violence provided for in subsection(1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding N100,000.00 or both.

(3) A person who incites, aids, abets, or counsels another person to commit the offence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding N100,000.00 or both.

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(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding NJ 00,000.00 or both.

Emotional, verbal and psychological abuse

14.(1) A person who causes emotional, verbal and psychological abuse on another commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(2) A person who attempts to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

(3) A person who incites, aids, abets, or counsels another person to commit the act of violence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

Harmful widowhood practices

15.(1) A person who subjects a widow to harmful traditional practices commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N500,000.00 or both.

(2) A person who attempts to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(3) A person who incites, aids, abets, or counsels another person to commit the act of violence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

Abandonment of children, spouse and other dependants without means of sustenance

16.(1) A person who abandons a wife or husband, children or other dependent without any means of sustenance commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding N500,000.00 or both.

(2) A person who attempts to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N200,000.00 or both.

(3) A person who incites, aids, abets, or counsels another person to commit the act of violence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N200,000.00 or both.

(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding NJ 00,000.00 or both.

Stalking

17.(1) A person who stalks another commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N500,000.00 or both.

(2) A person who attempts to commit the act of violence provided for in subsection (1) of section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to fine not exceeding N200,000.00 or both.

(3) A person who incites, aids, abets, or counsels another person to commit the act of violence as provided for in subsection(1) of this section commits an offence and is liable on conviction to 0 term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N100,000.00 or both.

Intimidation

18.(1) A person who intimidates another commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(2) A person who attempts to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

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(3) A person who incites, aids, abets, or counsels another person to commit the act of violence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

Spousal Battery

19.(1) A person who batters his or her spouse commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding N200,000.00 or both.

(2) A person who attempts to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N100,000.00 or both.

(3) A person who incites, aids, abets, or counsels another person to commit the act of violence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

Harmful Traditional Practices

20.(1) A person who carries out harmful traditional practices on another commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding N500,000.00 or both.

(2) A person who attempts to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N300,000.00 or both.

(3) A person who incites, aids, abets, or counsels another person to commit the act of violence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N300,000.00 or both.

(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 2 year or to a fine not exceeding N200,000.00 or both.

[...]

Incest [Schedule to the Act]

25. A person who knowingly and wilfully have carnal knowledge of another within the prohibited degrees of consanguinity and affinity contained in the Schedule to this Act with or without consent, commits incest and is liable on conviction to a minimum term of-

(a) 10 years imprisonment without an option of fine,

(b) where the two parties consent to commit incest, provided that the consent was not obtained by fraud or threat, 5 years imprisonment without an option of fine.

[...]

PART II - JURISDICTION OF THE COURT

Jurisdiction

27. Only the High Court of the Federal Capital Territory, Abuja empowered by an Act of Parliament shall have the jurisdiction to hear and grant any application brought under this Act

Application of Protection Order

28. (1) An application for a protection order may, be made before the High Court following a complaint of violence by the complainant and such order, if granted, shall be effective throughout the Federal Republic of Nigeria and no time limit or prescription shall apply in relation to a person seeking to apply for such protection order.

(2) Any complainant may, in the prescribed manner, apply to the Court for a protection order.

(3) If the complainant is not represented by counsel, the police officer with whom a complaint of violence has been lodged shall inform the complainant of the remedies he or she may be entitled to under this Act including the right to lodge a criminal complaint against the respondent if a criminal offence has been committed under this Act.

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(4) Notwithstanding the provisions of any other law, the application may be brought on behalf of the complainant by any other person, including a police officer, a protection officer, an accredited service provider, a counsellor, health service provider, social worker or teacher who has interest in the well-being of the complainant.

Provided that the application shall be brought with the written consent of the complainant, except in circumstances where the complainant is -

- (a) A minor;
- (b) Mentally retarded;
- (c) Unconscious; or
- (d) A person who the court is satisfied is unable to provide the required consent.

(5) Notwithstanding the provisions of any other law, any minor, or any person on behalf of a minor, may apply to the Court for a protection order without the assistance of a parent guardian or any other person and supporting affidavit by persons who have knowledge of the matter concerned may accompany the application.

(6) The application and affidavits shall be filed in Court.

Consideration of Application

29.(1) The Court shall as soon as is reasonably possible, consider an application submitted to it under section 30 (6) of this Act and may, for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of the proceedings.

(2) If the Court is satisfied that there is prima facie evidence that the respondent is committing, has committed or that there is imminent likelihood that he may commit an act of domestic violence, the Court shall, notwithstanding the fact that the respondent has not been given notice of the proceedings contemplated in subsection (1) of this section, issue an interim protection order against the respondent, in the prescribed manner.

(3) An interim protection order shall be served on the respondent in the prescribed manner and must call on the respondent to show cause on the return date, specified in the order why a protection order should not be issued.

(4) A copy of the application referred to in section of this Act and the record of any evidence taken under subsection (1) of this section shall be served on the respondent together with the interim protection order.

(5) If the Court does not issue an interim protection order under subsection (2) of this section, the Court shall direct the Registrar of the Court to cause certified copies of the application concerned and any supporting affidavit to be served on the respondent in the prescribed manner, together with a prescribed notice calling on the respondent to show cause on the return date, specified in the notice, why a protection order should not be issued.

(6) An interim protection order shall be served on the respondent in the prescribed manner and shall call on the respondent to show cause on the return date, specified in the order why a protection order, should not be issued.

(7) The return dates referred to in subsections (3) and (5) of this section may not be less than 5 days after service has been effected upon the respondent.

Issuing of Protection Orders

30. (1) If the respondent does not appear on a return date contemplated in section 29 (3) or (5) of this Act, and if the Court is satisfied that-

- (a) proper service has been effected on the respondent, and
 - (b) the application contains a prima facie evidence that the respondent has committed, is committing or that there is an imminent likelihood that he may commit an act of domestic violence,
- the court shall issue a protection order in the prescribed form.

(2) If the respondent appears on the return date in order to oppose the issuing of a protection order, the court shall proceed to hear the matter and consider -

- (a) any evidence previously received under section 29 (1) of this Act; and
- (b) such further affidavits or oral evidence as it may direct, which shall form part of the record of the proceedings.

(3) The Court may, on its own accord or on the request of the complainant, if it is of the opinion that it is just or desirable to do so, order that in the examination of witnesses, including the complainant, a respondent who is not represented by a legal practitioner-

- (a) is not entitled to cross-examine directly a person who is in a domestic relationship with the respondent; and
- (b) shall put any question to such a witness by stating the question to the Court, and the court is to repeat the question accurately to the witness.

(4) The Court shall, after a hearing as contemplated in subsection (2) of this section, issue a protection order in the prescribed form if it finds, on a balance of probabilities, that the respondent has committed, is committing or that there is an imminent likelihood that he may commit an act of domestic violence.

(5) Upon the issuing of a protection order, the Registrar of the Court shall, in the prescribed manner, cause-

- (a) the original of such order to be served on the respondent; and
- (b) a certified copy of such order, and the original warrant of arrest contemplated in section 33 (1) (a),

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to be served on the complainant.

(6) The Registrar of the Court shall, in the prescribed manner, forward certified copies of any protection order and of the warrant of arrest contemplated in section 33 (1) (a) to the police station of the complainant's choice.

(7) Subject to the provisions of section 31 (7) of this Act, a protection order issued under this section remains in force until it is set aside, and the execution of such order shall not be automatically suspended upon the filing of an appeal.

Court's Powers in Respect of Protection Orders

31 (1) The Court may, by means of a protection order referred to in section 48 or 29 of this Act, prohibit the respondent from-

- (a) committing any act of domestic violence;
- (b) enlisting the help of another person to commit any such act;
- (c) entering a shared household provided that the court may impose this prohibition only if it appears to be in the best interests of the complainant;
- (d) entering a specified part of such a shared household;
- (e) entering the complainant's residence;
- (f) entering the complainant's place of employment;
- (g) preventing the complainant from entering or remaining in the shared household or a specified part of the shared household;
- (h) alienating or disposing the shared household or encumbering same;
- (i) renouncing his or her rights in the shared household except in favour of the complainant; or
- (j) committing any other act as specified in the protection order.

(2) The Court may impose any additional condition, which it deems reasonably necessary to protect and provide for the safety, health or well-being of the complainant, including an order-

- (a) to seize any arm or dangerous weapon in the possession or under the control of the respondent;
- (b) that a police officer shall accompany the complainant to a specified place to assist with arrangements regarding the collection of personal property;
- (c) directing the respondent to secure alternative accommodation for the complainant;
- (d) order a temporal relocation to any safe place as may be deemed fit in the interest of the complainant; or
- (e) approve a mediation channel upon submission by the complainant.

(3) In ordering a prohibition under subsection 1 (c) of this section, the Court may impose on the respondent obligations as to the discharge of rent or mortgage payments having regard to the financial needs and resources of the complainant and the respondent.

(4) The Court may order the respondent to pay emergency monetary relief having regard to the financial needs and resources of the complainant and the respondent, and such order has the effect of a civil judgment of a court.

(5) The Court may issue any direction to ensure that the complainant's physical address is not disclosed in any manner, which may endanger the safety, health or well-being of the complainant.

(6) If the court is satisfied that it is in the best interests of any child, it may-

- (a) refuse the respondent contact with such child; or
- (b) order contact with such child on such conditions as it may consider appropriate.

(7) The Court may not refuse to issue a protection order or impose any condition or make any order which it is competent to impose or make under this section, merely on the grounds that other legal remedies are available to the complainant.

(8) If the Court is of the opinion that any provision of a protection order deals with a matter that should, in the interests of justice, be dealt with further under any other relevant law, including the Matrimonial Causes Act, Cap. M7 Laws of the Federation, 2004, Child's Rights Act, the Court shall order that such a provision shall be in force for such limited period as the court determines, in order to afford the party concerned the opportunity to seek appropriate relief under such law.

Power of Police

32.(1) A police officer, at the scene of an incident of violence or as soon thereafter as reasonably possible or to whom a report of violence has been made, shall have the duty of -

- (a) assisting a victim of violence to file a complaint regarding the violence;
- (b) providing or arranging safe transport for the victim to an alternative residence, safe place or shelter where such is required;
- (c) providing or arranging transportation for the victim to the nearest hospital or medical facility for treatment of injuries where such treatment is needed;
- (d) explaining to the victim his or her rights to protection against violence and remedies available in terms of this Act;
- (e) explaining to the victim that he or she has the right to lodge a criminal complaint in addition to any remedy provided under this Act; and
- (f) accompanying the victim to victim's residence to collect personal belongings.

(2) A police officer may, without an order from the Court or a warrant of arrest, arrest any person whom-

- (a) he or she suspects upon reasonable grounds to have committed any of the offences under Part 1 of this Act; and

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- (b) a complaint has been made for having committed any of the offences under Part I of this Act.
- (3) A police officer in carrying out his or her duties under this Act shall have the power to -
 - (a) remove or supervise the removal of a person excluded from a shared residence where the court has issued such an order under this Act;
 - (b) remove or supervise the removal of any dangerous weapon used in order to commit an act of violence as contemplated in this Act;
 - (c) collect and store fingerprints including DNA of accused and convicted offenders; and
 - (d) perform any other act considered necessary in order to ensure the safety and well-being of the complainant.

Warrant of Arrest upon Issuing Protection Order

33. (1) Whenever a court issues a protection order, the court shall make an order-
- (a) authorizing the issue of a warrant for the arrest of the respondent, in the prescribed form; and
 - (b) suspending the execution of such warrant subject to compliance with any prohibition, condition, obligation or order imposed under section 31 of this Act.
- (2) The warrant referred to in subsection (1)(a) of this section remains in force unless the protection order is set aside, or it is cancelled after execution.
- (3) The Registrar of the Court shall issue the complainant with a second or further warrant of arrest, if the complainant files an affidavit in the prescribed form in which it is stated that such warrant is required for her or his protection and that the existing warrant of arrest has been-
- (a) executed or cancelled; or
 - (b) lost or destroyed.
- (4) A complainant may hand the warrant of arrest together with an affidavit in the prescribed form, where it is stated that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order, to any police officer.
- (5) If it appears to the police officer concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the police officer shall forthwith arrest the respondent for allegedly committing the offence referred to in Part I of this Act.
- (6) If the police officer concerned is of the opinion that there are insufficient grounds for arresting the respondent under subsection (5), he or she shall hand a written notice to the respondent which-
- (a) specifies the name, the residential address and the occupation or status of the respondent;
 - (b) calls upon the respondent to appear before a court, and on the date and at the time specified in the notice, on a charge of committing the offence referred to in section 31 (1); and
 - (c) contains a certificate signed by the police officer concerned to the effect that he or she handed the original notice to the respondent and that he or she explained the import thereof to the respondent.
- (7) The police officer shall forward a duplicate original of a notice referred to in subsection (6) to the Registrar of the Court concerned, and the mere production in the Court of such a duplicate original shall be a prima facie proof that the original was handed to the respondent specified therein.
- (8) In considering whether or not the complainant may suffer imminent harm, as contemplated in subsection (5), the police officer shall take into account the-
- (a) risk to the safety, health or well-being of the complainant;
 - (b) seriousness of the conduct comprising an alleged breach of the protection order; and
 - (c) length of time since the alleged breach occurred.
- (9) Whenever a warrant of arrest is handed to a police officer under subsection (4) (a) of his section, the police officer shall inform the complainant of his or her right to

Variation or Setting aside of Protection Order

34. (1) A complainant or a respondent may, upon written notice to the other party and the court concerned, apply for the variation or setting aside of a protection order referred to in section 30 in the prescribed manner.
- (2) If the Court is satisfied that a good cause has been shown for the variation or setting aside of the protection order, it may issue an order to this effect, provided that the Court shall not grant such an application to the complainant unless it is satisfied that the application is made freely and voluntarily.
- (3) The Registrar of the Court shall forward a notice as prescribed to the complainant and the respondent if the protection order is varied or set aside as contemplated in subsection (1) of this section.

Discharge

35. Where a protection order has been made, any of the following persons may apply to have it discharged-
- (a) if the application for the order was made by a commissioner in respect of any dependent person by -
 - (i) the commissioner,

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- (ii) the person who brought the application, or
- (iii) the respondent to that application;
- (b) if the application for the order was made by a commissioner in any other case by virtue of section 28-
 - (i) the commissioner,
 - (ii) the person who was the applicant for the order, or
 - (iii) the respondent to that application;
- (c) in any other case-
 - (i) the person who was the applicant for the order, or
 - (ii) the person who was the respondent to the application for the order and the Court, upon hearing any such application, shall make such order, as it considers appropriate in the circumstances.

Offences Relating to Protection Orders

36. (1) A respondent who contravened an interim protection order or a protection order, or while an interim protection order is in force, refuses to permit the applicant or any dependent person to enter and remain in the place to which the order relates or does any act for the purpose of preventing the applicant or such dependent person from so entering or remaining commits an offence and is liable, on summary conviction, to a fine not exceeding N300,000.00 or to a term of imprisonment not exceeding 6 months both.
- (2) The provisions of subsection (1) shall be without prejudice to any punishment or sanction as to contempt of court or any other liability, whether civil or criminal that may be incurred by the respondent concerned.
- (3) A person who, in an affidavit referred to in this section, willfully makes a false statement in a material respect commits an offence and is liable on conviction to a fine of not exceeding N200,000.00 or, at the discretion of the Court, to a term of imprisonment not exceeding 6 months.

Application and Forms of Protection Order

37. The affidavit, application and forms of Protection Order referred to in this Part of the Act shall be in accordance with the Schedule to this Act.

Right of Victims

- 38 (1) In addition to the rights guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, or any other international human rights instrument to which Nigeria is a party, every victim of violence, as defined in section 1 of this Act, is entitled to the following rights -
- (a) to receive the necessary materials, comprehensive medical, psychological, social and legal assistance through governmental agencies or non-governmental agencies providing such assistance;
 - (b) to be informed of the availability of legal, health and social services and other relevant assistance and be readily afforded access to them;
 - (c) to rehabilitation and re-integration programme of the State to enable victims to acquire, where applicable and necessary, pre-requisite skills in any vocation of the victim's choice and also in necessary formal education or access to micro credit facilities;
 - (d) any rules and or regulations made by any institution or organization prohibiting or restraining the reporting of offences or complaint with the provisions of this Act, shall, to the extent of the inconsistencies be null and void: and
 - (e) no complainant of any offence under this Act shall be expelled, disengaged, suspended or punished in any form whatsoever by virtue of the action of compliance with the provisions of this Act.
- (2) Any head of institution who violates the provisions of this subsection is guilty of an offence and is liable on conviction to a term of imprisonment for 6 months or a fine of N200,000 or both.
- (3) No person may be present during any proceedings under this Act except-
- (a) officers of the Court;
 - (b) the parties to the proceedings;
 - (c) any person bringing an application on behalf of the complainant under section 28 (3):
 - (d) any legal practitioner representing any party to the proceedings;
 - (e) accredited service provider;
 - (f) witnesses;
 - (g) not more than 3 persons for the purpose of providing support to the complainant;
 - (h) not more than 3 persons for the purpose of providing support to the respondent; and
 - (i) any other person whom the Court permits to be present provided that the court may, if it is satisfied that it is in the interests of justice, exclude any person from attending any part of the proceedings.
- (4) Nothing in this section limits any other power of the Court to hear proceedings in camera or to exclude any person from attending such proceedings.

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PART III - SERVICE PROVIDERS

Prohibition of Publication of certain Information

39.(1) No person shall publish in any manner any information which might, directly or indirectly, reveal the identity of any party to the proceedings.

(2) The Court if it is satisfied that it is in the interest of justice, may direct that any further information relating to proceedings held under this Act shall not be published provided that no direction under this subsection applies in respect of the publication of a bona fide law report which does not mention the names or reveal the identities of the parties to the proceedings or of any witness at such proceedings.

(3) A person who contravenes the provisions of this subsection commits an offence and is liable on conviction to a term imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

Registration and Powers of Service Providers

40(1) Subject to such rules as may be made, any voluntary association registered under the Companies and Allied Matters Act 1990 by the Corporate Affairs Commission or any other law for the time being in force with the objective of protecting the rights and interests of victims of violence by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

(2) The appropriate Government Ministry shall-

(a) keep a register of all accredited service providers and circulate same to all police stations, protection officers and the courts; and

(b) draw up guidelines for the operation of the accredited service providers.

(3) A service provider so registered under subsection (1) shall have the power to-

(a) record the violence incidence report in the prescribed form if the aggrieved person so desires and forward a copy to the Magistrates and the Protection Officer having jurisdiction in the area where the violence took place;

(b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the locality of which the violence act took place; and

(c) ensure that the aggrieved person is provided shelter in a shelter home, if he or she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the Police station within the locality of which the violence act took place.

(4) No suit, prosecution or other legal proceeding shall lie against any service provider who is, or who is deemed to be acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of violence.

Protection Officers

41.(1) The appropriate Government Ministry shall appoint such number of protection officers in each Area Council as it may consider necessary, to assist the Court in the discharge of its duties under this Act to co-ordinate the activities of the police and the accredited service providers in his or her Area Council to ensure that the victims or survivors of violence-

(a) have easy access to accredited service providers;

(b) have easy access to transportation to an alternative residence or a safe shelter, the nearest hospital or medical facility for treatment, if the complainant so requires;

(c) are able to collect their belongings or properties from a shared household or her residence, if the complainant so requires;

(d) are able to access the court for orders under this Act; or

(e) have access to every possible assistance in the service of interim protection order on the respondent, and the enforcement of any order that may have been made by the court under this Act.

(2) The protection officer may, upon the failure of the respondent to make payment ordered by the Court under this Act, direct an employer or a debtor of the respondent or any bank in which the respondent operates any account, to directly pay to the complainant or deposit with Court a portion of the wages or salaries or debt due to or accrued to the credit of respondent or monies in any bank account operated by the respondent, which amount may be adjusted towards the emergency monetary relief payable by the respondent.

Coordinator for Prevention of Domestic Violence

42. The body vested with the enforcement of this Act shall appoint a person as the Coordinator for the prevention of domestic violence who shall submit annual report to the Federal Government on the implementation of this Act, a copy of which shall be deposited with the National Bureau for Statistics.

[...]

PART V -CONSEQUENTIAL AMENDMENT

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General Savings and Repeal

45. (1) Any offence committed or proceedings instituted before the commencement of this Act under the provisions of the -

(a) Criminal Code, Cap. LFN, 2004

(b) Penal Code, Cap. LFN, 2004

(c) Criminal Procedure Code, Cap. LFN, 2004

(d) any other law or regulation relating to any act of violence defined by this Act shall as the case may require be enforced or continue to be enforced by the provisions of this Act.

(2) Any provision of the Act shall supersede any other provision on similar offences in the Criminal Code, Penal Code and Criminal Procedure Code.

PART VI - INTERPRETATION

Interpretation

46. In this Act-

"Abandonment of women, children and other persons" means deliberately leaving women, children and other persons. under the perpetrator's care, destitute and without any means of subsistence;

"accredited service provider" means governmental, non-governmental, faith based, voluntary and charitable associations or institutions providing shelter, homes, counseling, legal, financial, medical or other assistance to victims of domestic violence and are registered with the appropriate Government Ministry under the provisions of this Act;

"circumcision of a girl or woman" means cutting off all or part of the external sex organs of a girl or woman other than on medical ground;

"civil proceedings" means-

(a) proceedings for the making, variation or discharge of a protection order, safety order or interim protection order;

(b) proceedings by way of appeal or case stated which are related to proceedings to which paragraph (a) applies; or

(c) proceedings under this Act for compensation or award; "Court" means both the Magistrates Court and High Court;

"damage to property" means the wilful destruction or causing of mischief to any property belonging to a person or in, which a person has, a vested interest;

"dangerous weapon" means any instrument or machine directed toward a person with the intention of inflicting bodily harm on such person and includes a gun, knife, stick, whip or other household appliance capable of inflicting bodily harm on a person;

"domestic relationship" means a relationship between any person and a perpetrator of violence constituted in any of the following ways—

(a) they are or were married to each other, including marriages according to any law, custom or religion;

(b) they live or have lived together in a relationship in the nature of marriage, although they are not or were not married to each other;

(c) they are the parents of a child or children or are the persons who have or had a parental responsibility for that child or children;

(d) they are family members related by consanguinity, affinity or adoption;

(e) they are or were in an engagement, dating or customary relationship, including actual or perceived romantic, intimate or sexual relationship of any duration; or

(f) they share or recently shared the same residence.

"domestic violence" means any act perpetrated on any person in a domestic relationship where such act causes harm or may cause imminent harm to the safety, health or well being of any person;

"economic abuse" means -

(a) forced financial dependence;

(b) denial of inheritance or succession rights,

(c) the unreasonable deprivation of economic or financial resources to which any person is entitled or which any person requires out of necessity, including -

(i) household necessities,

(ii) mortgage bond repayments, or

(iii) payment of rent in respect of a shared residence; or

(d) the unreasonable disposal or destruction of household effects or other property in which any person has an interest;

"emergency monetary relief" means compensation for monetary losses suffered by any person arising from an act of violence and does not in any way constitute a maintenance order, including -

(a) loss of earnings;

(b) medical and dental expenses;

(c) relocation and accommodation expenses; (d) household necessities; or

(e) legal fees related to obtaining and serving the protection order.

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"emotional, verbal and psychological abuse" means a pattern of degrading or humiliating conduct towards any person, including -

- (a) repeated insults,
- (b) ridicule or name calling;
- (c) repeated threats to cause emotional pain; or
- (d) the repeated exhibition of obsessive possessiveness, which is of such a nature as to constitute a serious invasion of such person's privacy, liberty, integrity or security;

"forced isolation from family and friends" includes preventing a person from leaving the home or from having contact with family, friends or the outside community;

"harassment" means engaging in a pattern of conduct that induces fear of harm or impairs the dignity of a person including –

- (a) stalking;
- (b) repeatedly making telephone calls or inducing another person to make telephone calls to a person, whether or not conversation ensues; and
- (c) repeatedly sending, delivering or causing delivery of information such as letters, telegrams, packages, facsimiles, electronic mail, text messages or other objects to any person;

"harmful traditional practices" means all traditional behaviour, attitudes or practices, which negatively affect the fundamental rights of women, girls, or any person and includes harmful widowhood practices, denial of inheritance or succession rights, female genital mutilation or female circumcision, forced marriage and forced isolation from family and friends;

"incest" means an indecent act or an act which causes penetration with a person who is, to his or her knowledge, his or her daughter or son, granddaughter or son, sister or brother, mother or father, niece or nephew, aunt/uncle, grandmother or granduncle;

"indecent exposure" means the intentional exposure of the genital organs, or a substantial part thereof, with the intention of causing distress to the other party;

"intimidation" means the uttering or conveying of a threat or causing any person to receive a threat, which induces fear, anxiety or discomfort;

"perpetrator" means any person who has committed or allegedly committed an act of violence as defined under this Act;

"persons" in this Act is as defined in the Interpretation Act under section 18, Cap. 192, Laws of the Federation of Nigeria, 2004;

"physical abuse" means acts or threatened acts of physical aggression towards any person such as slapping, hitting, kicking and beating;

[...]

"protection officer" means an officer appointed under section 39 of this Act in relation to and for the purpose of this Act;

"protection Order" means an official legal document, signed by a Judge that restrains an individual or State actors from further abusive behaviour towards a victim;

"sexual abuse" means any conduct which violates, humiliates or degrades the sexual integrity of any person;

"sexual assault" means the intentional and unlawful touching, striking or causing of bodily harm to an individual in a sexual manner without his or her consent;

"sexual exploitation" occurs where a perpetrator, for financial or other reward, favour or compensation invites, persuades, engages or induces the services of a victim, or offers or performs such services to any other person;

"sexual harassment" means unwanted conduct of a sexual nature or other conduct based on sex or gender which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment and this may include physical, verbal or non-verbal conduct;

"Sexual intimidation" means -

- (a) any action or circumstances which amount to demand for sexual intercourse with either a male or a female under any guise, as a condition for passing examination, securing employment, business patronage, obtaining any favour in any form, as defined in this Act or any other enactment;
- (b) the actual demand for sexual intercourse with either a male or female under any guise, as a condition for passing examination, securing employment, business patronage and or obtaining any favour in any form, as defined in this Act or any other enactment;
- (c) acts of deprivation, withholding, replacing or short-changing of entitlements, privileges, rights, benefits, examination or test marks or scores, and any other form of disposition capable of coercing any person to submit to sexual intercourse for the purpose of receiving reprieve thereto; or
- (d) any other action or inaction construed as sexual intimidation or harassment under any other enactment in force in Nigeria.

"spouse" means husband or wife as recognised under the Matrimonial Causes Act, Islamic and Customary Law;

"spousal battery" means the intentional and unlawful use of force or violence upon a person, including the unlawful touching, beating or striking of another person against his or her will with the intention of causing bodily harm to that person:

"stalking" means repeatedly -

- (a) watching, or loitering outside of or near the building or place where such person resides, works, carries on business, studies or happens to be; or

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b) following, pursuing or accosting any person in a manner which induces fear or anxiety;
"State actors" means group of persons; structured or organised institutions and agencies;
"substance attack" means the exposure of any person to any form of chemical, biological or any other harmful liquid with the intention to cause grievous bodily harm, which includes acid attack, hot water, or oil;

[...]

"victim" -

(a) means any person or persons, who, individually or collectively, have suffered harm, including-

(i) physical or mental injury,

(ii) emotional suffering,

(iii) economic loss, or

(iv) substantial impairment of their fundamental rights, through acts or omissions that are in violation of this Act or the criminal laws of the country; and

(b) includes the immediate family or dependants of the direct victim and any other person who has suffered harm in intervening to assist victims in distress;

"violence" means any act or attempted act, which causes or may cause any person physical, sexual, psychological, verbal, emotional or economic harm whether this occurs in private or public life, in peace time and in conflict situations:

"violence in the private sphere" means any act or attempted act perpetrated by a member of the family, relative, neighbour or member of a community, which causes or may cause any person physical, sexual, psychological, verbal, emotional or economic harm;

"violence in the public sphere" means any act or attempted act perpetrated by the State or non-State actors before, during and after elections, in conflict or war situations, which threatens peace, security and well-being of any person or the nation as a whole;

[...]

"vulnerable groups" means women, children, persons living under extreme poverty, persons with disability, the sick and the elderly, ethnic and religious minority groups, refugees, internally displaced persons, migrants and persons in detention.

47. This Act applies only to the Federal Capital Territory, Abuja.

48. This Act may be cited as the Violence Against Persons (Prohibition) Act, 2015.

42. ZIMBABWE

[Domestic Violence Act, 2006](#) ¹⁷⁸

[...]

Act No. 24 of 2006

To make provision for the protection and relief of victims of domestic violence and to provide for matters connected with or incidental to the foregoing.

PART I PRELIMINARY

1 Short title and date of commencement

(1) This Act may be cited as the Domestic Violence Act [*Chapter 5:16*].

(2) This Act shall come into operation on a date to be fixed by the President by statutory instrument:

Provided that the President may fix different dates of commencement for different provisions of this Act.

2 Interpretation

(1) In this Act—

"complainant", in relation to a respondent, means—

(a) a current, former or estranged spouse of the respondent; or

(b) a child of the respondent, whether born in or out of wedlock, and includes an adopted child and a step-child; or

(c) any person who is or has been living with the respondent, whether related to the respondent or not; or

(d) any person who—

(i) co-habits with the respondent; or

(ii) is or has been in an intimate relationship with the respondent;

¹⁷⁸ Domestic Violence Act, Act No. 24/2006 (published in the Government Gazette 26 February 2007), available at https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/domestic_violence.pdf (last visited December 30, 2018).

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who applies for a protection order or in respect of whom a protection order may be issued;

"complainant's representative" means any one of the following persons who may make an application for a protection order on behalf of a complainant—

- (a) a police officer;
- (b) a social welfare officer;
- (c) an employer of the complainant;
- (d) a person acting on behalf of—
 - (i) a church or other religious institution;
 - (ii) a private voluntary organisation concerned with the welfare of victims of domestic violence;
- (e) a relative, neighbour or fellow employee of the complainant;
- (f) a counsellor;
- (g) such other class of persons as the Minister may appoint by notice in a statutory instrument;

"court" means a magistrates court, the High Court and, for purposes of section 18, a local court;

"domestic violence" means violence as defined in section 3;

"Council" means the Anti-Domestic Violence Council established in terms of section 16;

"counsellor" means an anti-domestic violence counsellor appointed in terms of section 15;

"Minister" means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

"private voluntary organisation" means a private voluntary organisation registered in terms of the Private Voluntary Organisations Act [*Chapter 17:05*] or any other law that may be substituted for it;

"protection order" means an order issued in terms of section 10;

"respondent" means a person who is alleged to be the perpetrator of an actual or threatened act of domestic violence;

"social welfare officer" means a person registered as a social worker in terms of the Social Workers Act [*Chapter 27:21*] (No. 9 of 2001) or employed in any Ministry responsible for social welfare, health, child welfare or gender or women's affairs.

3 Meaning of domestic violence and its scope

(1) For the purposes of this Act, domestic violence means any unlawful act, omission or behaviour which results in death or the direct infliction of physical, sexual or mental injury to any complainant by a respondent and includes the following—

- (a) physical abuse;
- (b) sexual abuse;
- (c) emotional, verbal and psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) stalking;
- (h) malicious damage to property;
- (i) forcible entry into the complainant's residence where the parties do not share the same residence;
- (j) depriving the complainant of or hindering the complainant from access to or a reasonable share of the use of the facilities associated with the complainant's place of residence;
- (k) the unreasonable disposal of household effects or other property in which the complainant has an interest;
- (l) abuse derived from the following cultural or customary rites or practices that discriminate against or degrade women—
 - (i) forced virginity testing; or
 - (ii) female genital mutilation; or
 - (iii) pledging of women or girls for purposes of appeasing spirits; or
 - (iv) forced marriage; or
 - (v) child marriage; or
 - (vi) forced wife inheritance; or
 - (vii) sexual intercourse between fathers-in-law and newly married daughters-in-law;
- (m) abuse perpetrated on the complainant by virtue of complainant's age, or complainant's physical or mental incapacity;
- (n) abuse perpetrated on the complainant by virtue of complainant's physical, mental or sensory disability, including a visual, hearing or speech functional disability;
- (o) abuse perpetrated on the complainant by virtue of complainant's mental illness, arrested or incomplete development of the mind, psychopathic disorder or any other disorder or disability of the mind;
- (p) any act of domestic violence described in paragraphs (a), (b), (c), (e), (f), (g), (h) or (i) when it is perpetrated on the person or property of the complainant's representative.

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2. For the purposes of—

(a) subsection (1)(a), "physical abuse" includes any act or threatened act of physical violence towards a complainant;

(b) subsection (1)(b), "sexual abuse" includes any conduct that humiliates, degrades or otherwise violates the sexual integrity of the complainant;

(c) subsection (1)(c), "emotional, verbal and psychological abuse" means a pattern of degrading or humiliating conduct towards a complainant, including but not limited to the following—

(i) repeated insults, ridicule or name-calling; or

(ii) repeated threats to cause emotional pain; or

(iii) the repeated exhibition of obsessive possessiveness which is such as to constitute a serious invasion of the complainant's privacy, liberty, integrity or security; or

(iv) any act, omission or behaviour constituting domestic violence as defined in subsection (1) which, when committed in the presence of minor members of the family, is likely to cause them mental injury;

(d) subsection (1)(d), "economic abuse" includes—

(i) the unreasonable deprivation of economic or financial resources to which a complainant is entitled under the law or which the complainant requires out of necessity, including household necessities, medical expenses, school fees, mortgage bond and rent payments, or other like expenses;

(ii) denying the complainant the right to seek employment or engage in any income-generating activity;

(e) subsection (1)(e), "harassment" means engaging in a pattern of conduct that induces in a complainant the fear of imminent harm or feelings of annoyance and aggravation, including—

(i) watching or loitering outside or near the building or place where the complainant resides, works, carries on business, studies or happens to be;

(ii) repeatedly making or sending or causing another person to repeatedly make or send abusive phone calls or electronically-transmitted messages to the complainant, whether or not conversation ensues;

(iii) sending, delivering or causing the delivery of offensive or abusive letters, telegrams, packages, facsimiles, electronic mails or offensive objects to the complainant;

(f) subsection (1)(f), "intimidation" includes uttering or conveying a threat or causing a complainant to receive a threat which induces a fear of imminent harm in the complainant;

(g) subsection (1)(g), "stalking" includes following, pursuing, or accosting the complainant.

(3) For the purposes of subsection (2)(e) and (f) "imminent harm", in relation to a complainant, includes harm that the complainant fears to be imminent taking into consideration the history of respondent's known violent behaviour towards the complainant or other relevant factors.

4 Offence of domestic violence and acts excluded from its scope

(1) Subject to subsection (2), any person who commits an act of domestic violence within the meaning of section 3 shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) The following acts of domestic violence shall not constitute an offence—

(a) emotional, verbal and psychological abuse referred to section 3(1)(c) and defined in section 3(2)(c)(i), (ii), (iii) and (iv); and

(b) economic abuse referred to in section 3(1)(d) and defined in section 3(2)(d)(i) and (ii).

PART II

DUTIES OF POLICE AND POWERS OF ARREST IN RESPECT OF DOMESTIC VIOLENCE

5 Duties of police officers in relation to domestic violence

(1) There shall be a section at every police station which shall, where practically possible, be staffed by at least one police officer with relevant expertise in domestic violence, victim friendly or other family-related matters.

(2) A police officer to whom a complaint of domestic violence is made or who investigates any such complaint shall—

(a) obtain for the complainant, or advise the complainant how to obtain, shelter or medical treatment, or assist the complainant in any other suitable way;

(b) advise the complainant of the right to apply for relief under this Act and the right to lodge a criminal complaint: Provided that, where a complainant so desires, the statement of the nature of the domestic violence suffered by the complainant shall be taken by a police officer of the same sex as that of the complainant.

(3) A complainant who is not satisfied with the services of a police officer to whom he or she has reported a case of domestic violence shall have the right to register a complaint in accordance with any procedure prescribed for that purpose under section 19.

6 Arrest by police officer without warrant

(1) A police officer shall, after taking into account the factors mentioned in subsection (2), arrest without warrant any person

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whom he or she reasonably suspects has committed or who is threatening to commit an act of domestic violence which, in terms of section 4, constitutes a criminal offence towards a complainant.

- (2) In considering whether or not to arrest any person in terms of subsection (1), a police officer shall take into account—
- (a) the risk to the safety, health or well-being of the complainant; and
 - (b) the seriousness of the conduct constituting the alleged act of domestic violence referred to in subsection (1); and
 - (c) any other factor that makes him or her reasonably believe that the person has committed or is threatening to commit an act of domestic violence referred to in subsection (1).
- (3) The police officer shall take all reasonable steps to bring the person suspected of having committed or threatening to commit an act of domestic violence before a magistrate within forty-eight hours.

PART III PROTECTION ORDERS

7 Application for protection order

(1) Where an act of domestic violence has been or is being committed or is threatened, an application for a protection order may be made to a court by—

- (a) the complainant; or
- (b) any person acting with the consent of the complainant; or
- (c) any person having care or custody of a complainant who is a minor; or
- (d) any person acting as the complainant's representative, with or without the consent of the complainant:

Provided that the complainant's representative shall seek the leave of the court to make an application for a protection order without the consent of the complainant.

- (2) In determining whether or not to grant leave in terms of the proviso to subsection (1)(d) the court shall have regard to all the circumstances including—
- (a) the reasons why the consent of the complainant has not been obtained; and
 - (b) generally, whether or not it is in the best interests of the complainant that the application be permitted despite the absence of the complainant's consent.
- (3) An application for a protection order shall be lodged with the clerk or registrar of the court and, where directed by the court, shall be supported by the affidavit of any person who can depose to matters which are relevant to the application.
- (4) If the complainant is not represented by a legal practitioner, the clerk or registrar of the court shall inform the complainant of—
- (a) the relief available in terms of this Act; and
 - (b) the effect of any order which may be granted and the means provided by law for its enforcement under this Act; and
 - (c) the right to also lodge a criminal complaint against the respondent if a criminal offence has been committed by the respondent; and
 - (d) the right to claim compensation for any loss suffered or injury caused by any act of domestic violence.
- (5) The clerk or registrar of the court shall, as soon as possible and in any event not later than forty-eight hours after the application for a protection order has been lodged with him or her, place the application before the court.
- (6) The application for a protection order may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court is satisfied that the complainant may suffer undue hardship if the application is not dealt with immediately.

8 Determination of application

- (1) The court shall as soon as possible consider an application made in terms of section 7 and may for such purposes—
- (a) enquire whether an interim protection order or protection order has at any time been issued to either of the parties;
 - (b) call for such evidence, whether oral or by affidavit, as it considers necessary, including medical evidence: Provided that any such medical evidence shall be supported by a police report forming the basis on which an examination of a victim of domestic violence was made;
 - (c) examine any witness before the court.
- (2) Where the inquiry provided for in subsection (1)(a) reveals that there is an existing interim protection order or protection order the court shall—
- (a) consider whether there is any change in circumstances that warrants the granting of a fresh protection order; and
 - (b) where appropriate, direct the parties to make application under section 12.

9 Issue of interim protection order

- (1) Where, upon an application made in terms of section 7, the court is satisfied that *prima facie*—
- (a) the respondent has committed, is committing or is threatening to commit an act of domestic violence; and
 - (b) it is necessary or desirable to issue immediately an order to protect the complainant from serious or substantial

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harm or discomfort or inconvenience, whether physical, emotional or economic, which results or may result from such actual or threatened domestic violence;

the court shall issue an interim protection order against the respondent notwithstanding that he or she has not been given notice of the application or has not been before the court.

(2) An interim protection order may, where appropriate, contain any direction, prohibition or award which may be contained in a protection order issued in terms of section 10.

(3) An interim protection order must be served on the respondent in the prescribed manner and must contain a notice calling upon the respondent to show cause, on a date specified in the order, why a protection order should not be issued.

(4) Whenever a court issues an interim protection order the court shall issue a warrant for the arrest of the respondent which shall be attached to the order and which shall be suspended on condition that the respondent complies with the order.

(5) Where upon an application made in terms of section 7 the court is satisfied that, *prima facie*, the respondent has committed, is committing or threatening to commit an act of domestic violence but that the circumstances do not justify or require the issue of an interim protection order, it may issue a notice calling upon the respondent to show cause why a protection order should not be made.

(6) An interim protection order (together with the suspended warrant of arrest issued in terms of subsection (4)) or a notice issued in terms of subsection (5) shall be served upon the respondent as soon as possible by any police officer:

Provided that, where the complainant so requires, service may be effected, at the complainant's expense, by the messenger of the court or deputy sheriff, as the case may be.

(7) The clerk or registrar of the court that issues an interim protection order shall supply the complainant or the complainant's representative with a certified copy of any interim protection order (together with the suspended warrant of arrest issued in terms of subsection (4)) or notice issued in terms of subsection (5), and, additionally or alternatively, forward the same to the police station nominated by the complainant or the complainant's representative.

(8) An interim protection order shall remain in force until it is replaced by a protection order or varied or revoked by a competent court.

(9) Any person who fails to comply with the terms and conditions of an interim protection order shall be guilty of an offence and liable to a fine not exceeding level five or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

10 Issue of protection order

(1) On the return day specified in an interim protection order or in a notice issued in terms of section 9(5), the court may issue a protection order if satisfied on a balance of probabilities that an act of domestic violence has been committed, is being committed or is threatened by the respondent.

(2) A protection order may be issued in the absence of the respondent if the court is satisfied that the respondent has been served with or has otherwise had notice of the application for such an order.

(3) Whenever a court issues a protection order the court shall issue a warrant for the arrest of the respondent which shall be attached to the order and which shall be suspended on condition that the respondent complies with the order for a period of at least five years.

(4) For the purpose of determining whether or not to issue a protection order the court may—

(a) call for such evidence, whether oral or by affidavit, as it considers necessary, which shall form part of the record of the proceedings; and

(b) consider any evidence previously received in terms of 8(1); and

(c) examine any witness before the court.

(5) A protection order shall be served upon the respondent as soon as possible, and in any event not later than forty-eight hours after it is issued, by a police officer:

Provided that, where the complainant so requires, service may be effected at the complainant's expense by the messenger of court or deputy sheriff, as the case may be.

(6) The clerk or registrar of the court shall supply a certified copy of any protection order issued in terms of subsection (1), to the complainant or the complainant's representative, and, additionally or alternatively, to the police station nominated by the complainant or the complainant's representative.

(7) Any respondent who fails to comply with the terms and conditions of a protection order shall be guilty of an offence and liable to a fine not exceeding level five or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(8) Any respondent who repeatedly breaches a protection order, whether or not that respondent has been previously prosecuted for such breach, shall be guilty of an offence and liable to imprisonment for a period not exceeding five years.

(9) An application for a protection order shall not in any way bar criminal proceedings against a respondent.

(10) Where appropriate, the court may, in addition to other remedies provided for under this Act, order that the complainant or the respondent, or any other affected member of the family of the complainant or respondent, undergo counselling by a counsellor.

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11 Contents of protection order

(1) A protection order may, where appropriate— -9-

- (a) prohibit the respondent from committing or enlisting the help of another person to commit any act of domestic violence;
- (b) direct the respondent to stay away from any premises or place where the complainant resides, or any part of such premises or place;
- (c) prohibit the respondent from entering or approaching any place or premises where or at which the complainant works, attends or frequents, or any part of such premises or place;
- (d) direct the respondent to pay emergency monetary relief in respect of the complainant's needs and those of any child or dependant of the respondent, including household necessities, medical expenses, school fees and mortgage bond or rent payments;
- (e) award the temporary custody of any child or dependant of the respondent to any person or institution and regulate rights of access by the respondent to such child or dependant;
- (f) direct the respondent to afford the complainant or any child or dependant of the complainant access to their place of residence and use of the facilities associated therewith;
- (g) direct the respondent to pay adequate compensation in the prescribed manner for any personal or physical injury, pain, trauma or loss suffered by the complainant;
- (h) direct that the complainant or the respondent or both undergo counselling by a counsellor with the respondent paying all the necessary expenses;
- (i) generally, direct the respondent to do or omit to do any act or thing which the court considers necessary or desirable for the well-being of the complainant or any child or dependant of the complainant.

(2) Subject to subsection (3), a protection order shall remain in force for a minimum period of five years or until revoked or varied by the court in terms of section 12.

(3) Any direction to pay emergency monetary relief and any award of temporary custody of any person which is contained in a protection order shall remain in force for such period not exceeding six months as the court may specify unless, prior to the expiry of that period, the direction or award is revoked or extended by the court in terms of section 12 or an order or award is made in respect of the same matter by any other competent court:

Provided that no such extension shall exceed a period of three months at a time.

12 Application for revocation, variation or extension of protection orders

(1) Where there is a change of circumstances, a complainant, complainant's representative or respondent may apply to the court for the revocation or variation of an interim protection order or a protection order or for the extension of any time limit attached to any direction or award contained therein.

(2) A complainant's representative may, with the leave of the court, apply for a revocation, variation or extension of a protection order without the consent of the complainant and the court, in determining whether or not to grant leave, shall have regard to all the circumstances including those referred to in section 7(2).

(3) A complainant's representative shall not, under any circumstances, make an application for a revocation, variation or extension of a protection order that may prejudice the complainant.

(4) An application under subsection (1) or (2) shall be lodged with the clerk or registrar of the court who shall—

- (a) fix a date for the hearing of the application; and
- (b) place the application before the court as soon as possible, and in any event not later than forty-eight hours after lodging the application; and
- (c) give notice of the date of hearing to other interested parties.

(5) On the date fixed for the hearing of the matter, the court shall consider the application and may for that purpose—

- (a) call for such evidence, whether oral or by affidavit, as it considers necessary;
- (b) examine any witness before the court.

(6) If the court is satisfied that good cause has been shown it may revoke or vary any interim protection order or protection order or may extend any such order by a period not exceeding twenty-four months.

(7) The clerk or registrar of the court shall give notice to interested parties of any revocation, variation or extension granted in terms of this section.

13 Issue of further copies of orders and warrants of arrest

A complainant, complainant's representative or police officer may apply to the clerk or registrar of a court for a further certified copy of an interim protection order or protection order, together with the relevant warrant of arrest attached thereto, if the copy which was previously issued—

- (a) has been lost or destroyed; or
- (b) has been utilised for effecting the arrest of the respondent.

14 Enforcement of protection order

(1) If, within five years after the date of issue of an interim protection order or protection order, the respondent breaches any term or condition of the order, the complainant or the complainant's representative may request any police officer to enforce the warrant of arrest attached to the order.

(2) A request in terms of subsection (1) shall be accompanied by one or more affidavits given by a person or persons who can depose to the facts alleged in connection with the breach of the interim protection order or protection order.

(3) If the police officer to whom a request in terms of subsection (1) is made is satisfied that—

- (a) the respondent concerned has been served with or has had notice of the order; and
- (b) there are reasonable grounds for believing that—

(i) the respondent concerned has committed, is committing or is threatening to commit a breach of the order concerned; and
(b) it is necessary or desirable to do so to protect the complainant from serious or substantial harm, discomfort or inconvenience, whether, physical, emotional or economic;

he or she shall arrest the respondent in terms of the warrant concerned.

(4) A respondent arrested in terms of subsection (3) shall be held in custody and brought before a court as soon as possible and in any event not later than forty-eight hours after the arrest on a charge of contravening section 9 or 10, as the case may be.

(5) Where a police officer to whom a request in terms of subsection (1) is made is satisfied that—

- (a) the respondent concerned has been served with or has had notice of the order; and
- (b) there are reasonable grounds to believe that the respondent concerned has committed, is committing or is threatening to commit a breach of the order concerned; and
- (c) it is not necessary or desirable to arrest the respondent in terms of any warrant of arrest attached to the order; he or she shall serve a summons on the respondent to appear before a court on a charge of contravening section 9 or 10, as the case may be.

PART IV

ANTI-DOMESTIC VIOLENCE COUNSELLORS AND ANTI-DOMESTIC VIOLENCE COUNCIL

15 Anti-domestic violence counsellors

(1) For the better implementation of this Act, the Minister shall in consultation with the Ministers responsible for social welfare, health, child welfare and gender or women's affairs, appoint a panel consisting of—

- (a) social welfare officers or any officer involved in community work; and
- (b) members or employees of private voluntary organisations concerned with the welfare of victims of domestic violence;
- (c) chiefs or headmen as defined in the Traditional Leaders Act [*Chapter 29:17*];

who shall carry out the duties of anti-domestic violence counsellors in terms of this Act:

Provided that this section shall not limit the right of any complainant or respondent to obtain professional counselling from any person other than an anti-domestic violence counsellor.

(2) An anti-domestic violence counsellor shall have the following functions—

- (a) advising, counselling and mediating the solution of any problems in personal relationships that are likely to lead or have led to the use of domestic violence; and
- (b) carrying out, upon the instruction of a court, investigations in relation to the financial status of complainants and respondents; and
- (c) carrying out investigations and making arrangements for the accommodation of the complainants prior to the issue of an interim protection order or protection order; and
- (d) making immediate arrangements for the medical or other examination of a child where there is a reasonable suspicion that he or she is a complainant; and
- (e) providing counselling to complainants and respondents; and
- (f) performing any other function which the Minister may assign to him or her for the purposes of this Act.

(3) An anti-domestic violence counsellor may, in carrying out his or her duties, seek the assistance of any police officer.

16 Anti-Domestic Violence Council

(1) The Minister shall, for the purpose of this Act, establish a council to be known as the Anti-Domestic Violence Council which shall consist of the following members—

- (a) one representative nominated by each of the following —
 - (i) the Ministry responsible for justice; and
 - (ii) the Ministry responsible for gender or women's affairs; and
 - (iii) the Ministry responsible for health and child welfare; and
 - (iv) the Department of Social Welfare in the Ministry responsible for social welfare; and
 - (v) the Zimbabwe Republic Police; and

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- (vi) the Ministry responsible for education; and
- (vii) the Council of Chiefs referred to in section 37 of the Traditional Leaders Act [*Chapter 29:17*] (No. 25 of 1998) or any other law that may be substituted for it;

and

- (b) three persons representing the interests of private voluntary organisations concerned with the welfare of victims of domestic violence, children's rights and women's rights; and
- (c) one person representing the interests of churches in Zimbabwe; and
- (d) one person representing the interests of any other body or organisation which the Minister considers should be represented on the Council.

(2) The members of the Council shall be persons with no criminal record.

(3) The chairperson and the deputy chairperson of the Council shall be persons qualified in the prescribed disciplines and shall be appointed by the Minister in consultation with the Minister responsible for social welfare.

(4) Members of the Council shall be appointed by the Minister for such period, not exceeding three years, as he or she shall specify on their appointment.

(5) The Minister shall prescribe the terms and conditions of service of all members of the Council.

(6) Members of the Council shall be paid, out of moneys appropriated for the purpose by Act of Parliament, such remuneration and allowances as may be prescribed.

(7) The Council shall—

- (a) hold its meetings at least four times a year and in accordance with such procedure; and
- (b) keep and furnish to the Minister such records of its meetings;

as may be prescribed or as may be directed by the Minister.

(8) Half the members of the Council shall constitute a quorum at any meeting of the Council.

(9) The Council shall have the following functions—

- (a) to keep under constant review the problem of domestic violence in Zimbabwe;
- (b) to take all steps to disseminate information and increase the awareness of the public on issues of domestic violence;
- (c) to promote research into the problem of domestic violence;
- (d) to promote the provision of services necessary to deal with all aspects of domestic violence and monitor their effectiveness;
- (e) to monitor the application and enforcement of this Act and any other law relevant to issues of domestic violence;
- (f) to promote the establishment of safe-houses for the purpose of sheltering the victims of domestic violence, including their children and dependants, pending the outcome of court proceedings under this Act;
- (g) to promote the provision of support services for complainants where the respondent who was the source of support for the complainant and her or his dependants has been imprisoned;
- (h) to do anything necessary for the effective implementation of this Act.

(10) The Council shall submit annual reports to the Minister on issues related to domestic violence and may append to such reports such recommendations for legislative or other action as it deems fit.

(11) The Council shall appoint one or more committees on which it may confer such of the functions of the Council as it thinks fit:

Provided that the vesting of any functions in a committee in terms of this section shall not thereby divest the Council of such functions and the Council may amend or rescind any decision of any committee in the exercise of its functions.

(12) The Minister, with the approval of the Public Service Commission, shall assign as staff of the Council such persons employed in his or her Ministry as will enable the Council to properly carry out its functions in terms of this Act.

PART V GENERAL

17 General provisions as to offences

(1) Any person who makes any false statement in any application or affidavit made in terms of this Act, knowing such statement to be false or not believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level five or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Where any offence other than one referred to in this Act is committed by a respondent upon a complainant during or in furtherance of the commission any act of domestic violence, the court convicting the respondent therefor shall regard such circumstances as aggravating when assessing the sentence to be imposed.

(3) For the avoidance of doubt it is declared that the prosecution of a respondent under this Act or any other law shall not prevent the complainant from seeking protection and redress in terms of this Act.

18 Special jurisdiction of local courts

Local courts shall have jurisdiction to deal with cases involving the following acts of domestic violence and, within the limits of their ordinary jurisdiction under Part IV of the Customary Law and Local Courts Act [*Chapter 7:05*], to issue protection orders in respect thereof—

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- (a) emotional, verbal and psychological abuse referred to in section 3(1)(c) and defined in section 3(2)(c)(i), (ii), (iii) and (iv); or
- (b) economic abuse referred to in section 3(1)(d) and defined in section 3(2)(d)(i) and (ii).

19 Regulations

- (1) The Minister may make regulations prescribing anything which under this Act needs to be prescribed or which in his or her opinion is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without derogating from the generality of subsection (1), regulations made under that provision may provide for—
 - (a) the form of applications in terms of this Act;
 - (b) the form of warrants and orders issued in terms of this Act;
 - (c) the method of service of documents in terms of this Act;
 - (d) the procedure of the Council;
 - (e) the functions of clerks or registrars of court under this Act.



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