

MACAO SPECIAL ADMINISTRATIVE REGION

Law No. 2/2016

Law on Preventing and Combating Domestic Violence

The Legislative Assembly decrees, pursuant to Article 71, subparagraph 1) of the Basic Law of the Macao Special Administrative Region, the following with the force of law:

CHAPTER I

General provisions

Article 1

Object

This law establishes the legal framework for the intervention of public entities in situations of domestic violence, typifies the crime of domestic violence, sets forth the respective sanctions regime and adopts measures to protect and assist victims.

Article 2

Purposes

This law aims, *inter alia*:

- 1) To promote the respect for fundamental rights and personality rights, in particular for the dignity of the person and for the principle of equality and non-discrimination;
- 2) To promote family harmony;
- 3) To disseminate the importance of peaceful resolution of interpersonal conflicts;
- 4) To ensure an integrated response to situations of domestic violence, involving the areas of education, health, social affairs, security and justice;
- 5) To provide adequate assistance to victims.

Article 3

Measures

To achieve the purposes referred in the previous article, interdisciplinary measures of the following nature shall be adopted to prevent and combat domestic violence:

- 1) Preventive, such as at educational level, in particular through the promotion of respect for values related to gender equality, affection and sexuality, as well as of the rights of children, elderly, persons with disabilities and other vulnerable groups;

- 2) Protective, such as by making available the necessary protection, in a timely and effective manner, to persons who are or have the risk of becoming victims of domestic violence;
- 3) Sanctionatory, such as through the use of corresponding criminal law provisions, with respect for the principle of subsidiarity and of proportionality, aiming at the suppression and reduction of criminality, the defence of protected legal interests, the protection of victims and the reintegration of crime perpetrators into society;
- 4) Restorative, such as through a conciliatory intervention with the victim and the aggressor, aiming at the re-establishment of their relationships and social peace.

Article 4

Domestic violence

1. For the purposes of this law, any physical, mental or sexual ill-treatment in a family relationship or in an equivalent relationship shall be considered domestic violence.
2. For the purposes of the previous paragraph, family or equivalent relationships shall include:
 - 1) Family relationships by marriage, consanguinity or affinity in the direct line, and adoption;
 - 2) Family relationships by collateral consanguinity or affinity up to the fourth degree, when there is cohabitation;
 - 3) Existing relationships between persons who live in an analogous situation to that of spouses;
 - 4) Existing relationships between ex-spouses;
 - 5) Existing relationships between persons who have common descendants in the first degree and are not included in the previous subparagraphs;
 - 6) Guardianship and curatorship relationships;
 - 7) The situations of care or custody of minors, incapacitated or particularly vulnerable persons due to age, pregnancy, illness or physical or mental disability, not covered in the previous subparagraphs, whenever there is cohabitation.

CHAPTER II

Administrative organization

Article 5

Responsible entity

1. The Social Welfare Bureau, hereinafter referred to as the SWB, shall be the public entity responsible for coordinating preventive actions against domestic violence, for signalling risk situations and for executing the general protection measures provided for in this law.

2. Other public or private entities shall be obliged to cooperate whenever the SWB so requests, in compliance with the provisions of this law, without prejudice to their respective rights and legitimate interests.

Article 6

Duty to report

Public entities and their workers in the exercise of their respective functions, as well as private entities which provide medical and nursing services, care services for children, elderly and persons with disabilities, or which are engaged in teaching, social service or counselling activities, and their workers in the exercise of the corresponding activity, must report, immediately, to the SWB situations of domestic violence which they suspect or which come to their knowledge, without prejudice to the obligation to report them, provided for in the Criminal Procedure Code.

Article 7

Centralised registry

1. The SWB must set up and keep updated a centralised registry of domestic violence cases or risk situations that come to its knowledge, with the following purposes:

- 1) To collect data necessary for the study of the phenomena of domestic violence, its characteristics and trends;
- 2) To identify the causes of domestic violence, behaviour patterns and typical social and judicial response;
- 3) To contribute to the development of adequate activities to prevent and combat domestic violence.

2. The centralised registry must guarantee the respect for privacy of the persons involved, containing only the essential data for the purposes mentioned in the previous paragraph.

Article 8

Treatment of personal data

The SWB may, pursuant to Law No. 8/2005 (Personal Data Protection Law) and for the purposes of its Article 9, submit, exchange, confirm and use personal data, by any means, including data interconnection, with other public or private entities which hold relevant data for the purposes of this law.

Article 9

Professional secrecy

1. The workers of any public or private entity shall have the duty to keep professional secrecy regarding information about domestic violence cases which come to their knowledge in the exercise of their functions or their activity, even after the termination of the respective functions or activity, without prejudice to the duty to report provided for in Article 6 or the obligation to report provided for in the Criminal Procedure Code.
2. The breach of the duty of professional secrecy shall be subject to disciplinary, civil and criminal liability, pursuant to general terms.

CHAPTER III

Prevention of domestic violence

Article 10

Prevention plan

1. The SWB shall draw up and keep updated a domestic violence prevention plan, of multidisciplinary nature, identifying the respective causes, the priority intervention areas, the measures to be adopted and the specific competences of the different public entities involved.
2. For the purposes of the previous paragraph, the SWB shall establish regular cooperation mechanisms with the Public Security Police Force, the Judiciary Police, the Health Bureau, the Education and Youth Affairs Bureau, the Labour Affairs Bureau and the Housing Bureau.
3. The SWB may invite the associations which effectively provide services in preventing domestic violence or in supporting victims to participate in the drawing up and promotion of the domestic violence prevention plan.

Article 11

Dissemination, awareness raising and training

The SWB shall promote, by itself or through cooperation with other public or private entities:

- 1) Dissemination and awareness-raising actions, especially in schools, community neighbourhoods and the media, in relation to domestic violence prevention, promoting knowledge of victims' rights and available means of support, as well as the consequences of the conducts of the aggressors;
- 2) Training activities to identify risk situations and handle domestic violence cases, particularly for medical and nursing, teaching, social service, counselling personnel, personnel caring for children, elderly and persons with disabilities and personnel engaged in police action.

CHAPTER IV
Protection and assistance

SECTION I
General provisions

Article 12
Scope of intervention

The intervention of the SWB and of other public entities in situations of domestic violence or in risk situations shall take place regardless of the criminal qualification of the pertaining acts.

Article 13
Risk situations

1. The SWB shall signal the situations where there is a danger of the occurrence of domestic violence and conduct its follow up, whenever such situations come to its knowledge *ex officio*, upon request of persons at risk or through the report of the public and private entities provided for in Article 6 or of the associations provided for in paragraph 3 of Article 10, requesting the cooperation, whenever necessary, of other entities for the purposes of the respective follow up.
2. The follow up provided for in the previous paragraph is aimed at the protection of persons at risk and the prevention of the occurrence of domestic violence, and must, *inter alia*:
 - 1) Respect the will of the person at risk;
 - 2) Interfere in personal and family life strictly inasmuch as necessary for the prevention of the occurrence of domestic violence;
 - 3) Be necessary and adequate to the risk situation;
 - 4) Respect the privacy of persons involved, their intimacy, right to image and protection of private life;
 - 5) Pursue the superior interest of the child when the risk situation pertains to children;
 - 6) Correspond to the level of intellectual abilities and capacities of persons with disabilities, in particular mental disabilities, when the risk situation pertains to them.

Article 14
Consent

1. Any intervention to support a victim must be made after he/she gives his/her free and informed consent, being limited by the full respect for his/her will.

2. If the victim is a minor under the age of 16 or an interdicted person, the consent referred in the previous paragraph shall be given, successively, by the person exercising parental power, by the guardian or by the entity who has his/her *de facto* custody.

3. In the situation provided for in the previous paragraph, the consent shall be dispensed if:

1) For objective reasons, it is not possible to obtain the express consent of the persons or entities thereby referred;

2) The consent can only be given by the aggressor;

3) The victim is at the risk of being subject to new aggression.

4. If the measure of temporary shelter referred in subparagraph 1) of paragraph 1 of Article 16 is applied to a minor under the age of 16 and the consent is dispensed, the SWB must report such fact to the Public Prosecutions Office as soon as possible, for the purposes of the application of the social protection regime provided for in Decree-law No. 65/99/M, of 25 October.

5. The consent referred in paragraphs 1 and 2 may be freely revoked at any time by the person who gave it.

Article 15

Extension of protection and assistance

The protection and assistance measures provided for in this chapter may, upon the decision of the SWB or police entities, be extended to family members who cohabit with the victim or with the person at risk.

SECTION II

Protection measures

Article 16

General protection measures

1. The following protection and assistance measures may be made available to victims of domestic violence, or to persons at risk, individually or cumulatively, according to their specific needs:

1) Temporary shelter in social services facilities;

2) Emergency economic assistance, pursuant to law;

3) Access to emergency legal aid;

4) Free access to healthcare provided by public healthcare institutions, pursuant to Decree-law No. 24/86/M, of 15 March, with necessary adaptations, for the treatment of injuries resulting from domestic violence;

5) Assistance in access to education or employment;

- 6) Individual and family counselling;
 - 7) Provision of legal information and counselling services;
 - 8) Other protection and assistance measures necessary for safeguarding their safety and well-being.
2. The legal aid referred in subparagraph 3) of the previous paragraph may be granted, pursuant to Law No. 13/2012 (Legal Aid General Regime), before calculating the amount of available assets, without prejudice to the return of the sums borne when such amount exceeds the legal thresholds.
 3. The public healthcare institutions providing healthcare services referred in subparagraph 4) of paragraph 1 shall have, through the Health Bureau, the right of recourse against the perpetrator causing the injuries for the treatment expenses of the victim, together with statutory interest.
 4. The protection and assistance measures referred in paragraph 1 may be made available by the SWB or, upon its request, by other public or private entities.
 5. The SWB shall carry out an ongoing follow up of the execution of the protection and assistance measures referred in paragraph 1, being able to request the public and private entities involved in their execution to submit reports or data.

Article 17

Police protection measures

1. In handling domestic violence cases, police entities must timely adopt the necessary and adequate protection measures to safeguard the physical safety and well-being of the victim, or of the person at risk, and of his/her cohabiting family members, including to accompany him/her/them to:
 - 1) The medical institution;
 - 2) The place where the incident occurred, the domicile or another place, for the removal of belongings;
 - 3) The social services facilities.
2. The police entities may also adopt the protection measures referred in the previous paragraph upon request of the victim, the person at risk or the SWB.

CHAPTER V
Sanctions regime

SECTION I
Criminal provisions

Article 18
Crime of domestic violence

1. Whoever, in a family relationship or in an equivalent relationship, inflicts on another person any kind of physical, mental or sexual ill-treatment shall be punished with imprisonment from 1 to 5 years.
2. If the ill-treatment provided for in the previous paragraph was committed in circumstances which reveal the special censurability or perversity of the perpetrator, he/she shall be punished with imprisonment from 2 to 8 years.
3. Circumstances deemed to reveal the special censurability or perversity of the perpetrator shall include, *inter alia*:
 - 1) The victim being a minor under the age of 14, an incapacitated or a particularly vulnerable person due to age, pregnancy, illness or physical or mental disability;
 - 2) The act having occurred in the presence of a minor under the age of 14;
 - 3) The circumstances provided for in subparagraphs b), c), f) and g) of paragraph 2 of Article 129 of the Criminal Code.
4. If the facts provided for in the previous paragraphs result in:
 - 1) Serious offence to physical integrity, the perpetrator shall be punished with imprisonment:
 - (1) From 2 to 8 years, in the case of paragraph 1;
 - (2) From 3 to 12 years, in the case of paragraph 2.
 - 2) Death, the perpetrator shall be punished with imprisonment from 5 to 15 years.

Article 19
Accessory penalties

1. Whoever is sentenced for the commission of the crime of domestic violence may be subject, individually or cumulatively, for a period of 6 months to 5 years, to the following accessory penalties:
 - 1) Prohibition of contacting, harassing or following the victim;
 - 2) Prohibition of staying in specified areas, particularly those near the domicile of the victim or of his/her cohabiting family members, their workplace or the educational establishment they attend;

- 3) Prohibition of possessing arms, objects or tools capable of being used to facilitate the commission of further crimes of domestic violence;
 - 4) Prohibition of exercising certain professions;
 - 5) Injunction for participation in a special programme for the prevention of domestic violence or psychological counselling.
2. Whoever breaches the accessory penalties provided for in the previous paragraph shall be punished with imprisonment up to 2 years or with a fine up to 240 days.
 3. The period during which the perpetrator is deprived of liberty by virtue of a judicial decision shall not be taken into account in the prohibition period.

Article 20

Inhibition of parental power

Whoever is convicted of the crime of domestic violence may, considering the concrete seriousness of the fact and its connection with the function performed by the perpetrator, be inhibited from the exercise of parental power, guardianship or curatorship for a period of 1 to 5 years.

Article 21

Concurrence of crimes

If a heavier penalty is applicable to the crime of domestic violence provided for and punished under Article 18 by virtue of another legal provision, the heavier penalty shall apply, without prejudice to the application of the provisions of Articles 19 and 20.

SECTION II

Criminal proceedings provisions

Article 22

Scope of application

1. The provisions in this section shall be applicable to criminal proceedings initiated for the crime of domestic violence, provided for and punished under Article 18.
2. Articles 23 to 27 shall also be applicable to criminal proceedings concurring with those for the crime of domestic violence.

Article 23

Detention out of *flagrante delicto*

1. Without prejudice to the provisions of Article 240 of the Criminal Procedure Code, criminal police authorities may order detention out of *flagrante delicto*, on their own initiative, when there is a danger of continuation of criminal activity.
2. The provisions of the previous paragraph shall apply cumulatively with subparagraphs a) and c) of paragraph 2 of Article 240 of the Criminal Procedure Code.

Article 24

Acquiring the status of the party assisting the public prosecutor

1. The association providing concrete and effective support services to the victim may acquire the status of the party assisting the public prosecutor in proceedings for the crime of domestic violence, except:
 - 1) If there is express opposition of the victim;
 - 2) When the victim has acquired the status of the party assisting the public prosecutor, pursuant to paragraph 1 of Article 57 of the Criminal Procedure Code.
2. For the purposes of the previous paragraph, the judge shall notify the victim of the request of the association, without prejudice to the application of paragraph 5 of Article 57 of the Criminal Procedure Code.
3. Having received a victim's request to acquire the status of the party assisting the public prosecutor, in the acceptance order of such a request, the judge who decides shall also determine the immediate termination of the intervention in the proceedings of the acquisition of the status of the party assisting the public prosecutor pursuant to paragraph 1.
4. In the case provided for in paragraph 1, if the express opposition was given by the legal representative of the victim who is a minor under the age of 16 or an incapacitated person and, in the case that only the perpetrator of the crime is entitled to raise such opposition, the judge may authorise the association to acquire the status of the party assisting the public prosecutor if the interest of the victim so requires.
5. For the purposes of paragraph 1, the associations which intend to acquire the status of the party assisting the public prosecutor in criminal proceedings shall submit to the court a document certifying their activity, issued by the SWB.

Article 25

Coercive measures

1. If there are strong *indicia* of the commission of the crime of domestic violence, the judge may impose on the defendant, besides the coercive measures provided for in the Criminal Procedure Code, cumulatively or separately, the following coercive measures:

- 1) Removal from his/her domicile, when the defendant cohabits with the victim;
- 2) Prohibition of staying in specified areas, particularly those near the domicile of the victim or of his/her cohabiting family members, their workplace or the educational establishment they attend;
- 3) Prohibition of accompanying, lodging or receiving certain persons;
- 4) Prohibition of possessing arms, objects or tools capable of being used to facilitate the commission of further crimes of domestic violence.

2. The maximum duration provided for in Article 199 and in subparagraph a) of paragraph 1 and in paragraph 2 of Article 200 of the Criminal Procedure Code shall apply to the coercive measures provided for in the previous paragraph.

Article 26

Statements of the victim

1. The judge presiding over the trial may, *ex officio* or upon request of the Public Prosecutions Office or the victim, determine the examination (*inquirição*) of the victim in the hearing as witness, as the party assisting the public prosecutor or as the civil party to take place without the presence of the defendant.

2. In exceptional cases, judiciary authorities or criminal police bodies may authorise the victim to give statements in the proceedings as witness, as the party assisting the public prosecutor or as the civil party, being accompanied by a family member, doctor or healthcare professional, psychological counsellor, social services staff or other persons who the judiciary authorities or criminal police bodies deem adequate.

3. The provisions of the previous paragraphs shall be applicable, with necessary adaptations, to the giving of statements for future use and to the statements of other witnesses who have the rights provided for in paragraph 1 of Article 121 of the Criminal Procedure Code.

Article 27

Statements for future use

1. Without prejudice to paragraph 1 of Article 253 of the Criminal Procedure Code, the examining judge (*juiz de instrução*) may, upon request of the Public Prosecutions Office, the victim or the party assisting the public prosecutor, carry out an urgent examination of witnesses during the

inquiry stage (*fase de inquérito*) and the examining stage (*fase de instrução*), so that the testimony may, if necessary, be taken into consideration at trial, when it serves to ensure its spontaneity or when the vulnerability of the witness so requires.

2. In the situation provided for in the previous paragraph, the provisions of paragraphs 2 to 5 of Article 253 of the Criminal Procedure Code shall apply.

3. The reading of the statements taken pursuant to paragraphs 1 and 2 in the hearing is permitted.

4. The taking of statements pursuant to paragraph 1 does not prejudice the giving of testimony at the trial hearing, whenever it is possible and does not jeopardize the physical or psychological health of the person who should give it.

Article 28

Provisional suspension of the proceedings

1. If the crime is punishable with maximum imprisonment of up to 5 years, the Public Prosecutions Office may, *ex officio* or upon request of the defendant, the victim or the party assisting the public prosecutor, propose to the examining judge the provisional suspension of the proceedings, applying, with necessary adaptations, the provisions of Articles 263 and 264 of the Criminal Procedure Code.

2. Without prejudice to the injunctions and rules of conduct provided for in the Criminal Procedure Code, the examining judge may also impose on the defendant his/her participation in a special programme for the prevention of domestic violence or psychological counselling.

3. For the supervision and follow up of the compliance with injunctions and rules of conduct, the examining judge and the Public Prosecutions Office may resort to the SWB, criminal police bodies and other entities.

4. Without prejudice to paragraph 3 of Article 264 of the Criminal Procedure Code, the proceedings shall continue if, during the suspension, the defendant is convicted of other crimes, committed intentionally, against physical integrity, against personal liberty or against sexual freedom and self-determination, punishable by imprisonment for more than 3 years.

SECTION III

Restorative measures

Article 29

Conciliation meeting

1. During the provisional suspension of the proceedings, the examining judge may convene, upon request of the Public Prosecutions Office, the defendant, the victim or the party assisting the public

prosecutor, a conciliation meeting between the defendant and the victim, with the aim of making the defendant understand his/her wrongdoing, providing him/her with the opportunity to express his/her repentance and obtain the forgiveness of the victim.

2. The examining judge may request the submission of a social report by the SWB, in order to decide whether to convene the conciliation meeting, which may only be convened when the consent of the defendant and of the victim is obtained, and the physical safety of the latter is guaranteed.

3. The conciliation meeting shall be presided over by the examining judge and shall take place in the presence of the defendant, the victim and the Public Prosecutions Office, being also able to convene other persons whose presence the examining judge deems convenient to attend the meeting.

Article 30

Procedural consequences

Following the conciliation meeting, the Public Prosecutions Office may propose to the examining judge, *ex officio* or upon request of the defendant, the victim or the party assisting the public prosecutor:

- 1) To file the proceedings, which cannot be re-opened if it is considered that the prevention requirements of the case are fulfilled;
- 2) To modify the injunctions and rules of conduct applied.

Chapter VI

Final Provisions

Article 31

Amendment to the Criminal Code

Article 146 of the Criminal Code, approved by Decree-law No. 58/95/M, of 14 November, and amended by Laws No. 6/2001, No. 3/2006, No. 6/2008, No. 11/2009 and No. 17/2009, is amended as follows:

«Article 146

(Ill-treatment or excessive loads on minors or incapacitated persons)

1. [...]
2. [Repealed]

3. If the facts provided for in paragraph 1 result in serious offence to physical integrity, the perpetrator shall be punished with imprisonment from 2 to 8 years.

4. If the facts provided for in paragraph 1 result in death, the perpetrator shall be punished with imprisonment from 5 to 15 years.»

Article 32

Communication of judicial decisions

The courts and the Public Prosecutions Office shall send to the SWB, for the purposes of registration in the centralized registry of domestic violence cases, copy of decisions or orders which:

- 1) Apply coercive measures;
- 2) Order the provisional suspension of the proceedings and apply or modify the respective injunctions and rules of conduct;
- 3) Terminate the proceedings for the crime of domestic violence.

Article 33

Legislative evaluation report

1. The SWB shall prepare an evaluation report on the implementation of this law within 3 years from the date of its entry into force, including eventual proposals to amend legislation or policies for preventing and combating domestic violence which it deems convenient.

2. The legislative evaluation report may be prepared with the participation of the associations which effectively provide services in the area of domestic violence prevention or victim support.

Article 34

Repeal

Paragraph 2 of Article 146 of the Criminal Code is repealed.

Article 35

Entry into force

This law enters into force 120 days after the day of its publication.

Approved on 20 May 2016.

The President of the Legislative Assembly, *Ho Iat Seng*.

Signed on 25 May 2016.

To be published.

The Chief Executive, *Chui Sai On*.