Fighting Domestic Violence - Israel

5. Prosecutorial considerations

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# 5.1 Police procedures

# 5.1.1 When do the police get involved in domestic disputes or legal actions?

The Prevention of Family Violence Law, 1991, was enacted based on the civil principle of protection orders. The law stipulates that the courts are authorized to issue immediate protection orders to ensure the safety and well-being of any family member who is threatened or views himself or herself as threatened by the person named in the order. This procedure is unique in that it is relatively fast and can be conducted *ex parte*, and it does not stipulate that a prior complaint has to be filed with the police. A protection order can be effectuated by the threatened person and by another person, it is temporary and for a limited time.[3]

Please note that due to the differences between rabbinical (Orthodox) and civil courts, compromises between the two have allowed ultra-Orthodox religious law to govern family law.[4]

In addition, and with very few exceptions, Israeli civil law does not permit marriages between Jews and non-Jews within the state of Israel. The Israeli government will recognize marriages between Israeli Jewish citizens and non-Jews that take place outside of Israel. Israeli law does permit marriages in Israel between converts.[5]

For divorce adjudicated in religious courts, the husband, in Jewish law, has the exclusive power to grant a get (religious divorce under Jewish law). The rabbinical court only supervises the divorce proceedings. This balance of power in favor of the husband often leaves Jewish women in the Orthodox community and in Israel at the mercy of their abusive husbands, who refuse to grant them a get. Rarely does the rabbi advise the victim to leave her husband or instruct the abuser that he must grant his wife a divorce. Without a divorce, the woman cannot remarry and any children that she would have would be considered mamzerim (illegitimate). A woman who leaves her husband without a divorce is also likely to be considered a shonde (source of shame) and be ostracized by her own community and possibly her own family. As a result, many battered Orthodox women see themselves as having no choice other than to remain with their abusive husbands. The rabbinical courts in Israel wield tremendous power in matrimonial affairs because there is no civil divorce in Israel. Although the courts can order men to grant their wives divorces and enforce penalties if they do not, very few men, including batterers, are ever sanctioned.[6]

In recent years, many rabbinical courts consider it a moral obligation to help an abused wife get away from her husband and receive a get. However, the husband is still the one who must begin the get proceedings.[7]

# 5.1.2 What circumstances effect law firm involvement?

Traditionally, only a husband can start the get process.[8] Because of their deep-seated power, rabbinical courts have complete control of Israeli family law,[9] which seems to infer that civil action is not possible. However, legal aid may be available for women in some cases.[10]

# 5.2 Standard of proof

# 5.2.1 Is proof required by any legal means?

The Prevention of Family Violence Law, 1991, which "was enacted, based on the civil principle of protection orders," protects victims of domestic violence.

The law stipulates that the courts are authorized to issue immediate protection orders to ensure the safety and well-being of any family member who is threatened or views himself or herself as threatened. Therefore, for a protection order, no proof other than the victim's testimony is necessary.

# 5.2.2 Are there any requirements regarding evidence and documents?

For protection orders, the victim's testimony is sufficient.

# 5.2.3 Is proof "beyond a reasonable doubt" required?

N/A

# 5.2.4 Is the standard of proof different for ex parte orders?

N/A

# 5.3 Affirmative defenses

# 5.3.1 Are affirmative defenses available to the accused?

In 2019, the Israeli Penal Code was amended in a way that establishes a new offense of "killing in circumstances of reduced liability,"[11] which allows the court to alleviate the criminal liability of victims of abuse who take the life of the abuser. According to [this](https://www.gov.il/he/departments/news/dead_offenses) statement from the official Ministry of Justice website, the amendment embodies a shift from a "reduced punishment" model to a model of "reduced liability," which allows not only mitigation of punishment but also relief in the labeling that accompanies a conviction. For example, a battered woman who, due to severe mental distress, killed her abusive spouse will be convicted not of murder but of the offense of killing in circumstances of reduced liability.

Theoretically, there are a number of general defenses listed in the Israeli Penal Code, such as "self-defense" and "necessity defense."

# 5.3.2 Is willful intent required?

According to the new offense of "killing in circumstances of reduced liability":

[…] anyone who **intentionally or indifferently** causes a person's death by an act that was committed when the defendant was in a state of severe mental distress, due to severe and ongoing abuse of him/her or his/her family member, by the person who's death is caused by the defendant, is liable to fifteen years imprisonment.

# 5.3.3 Are false accusations punishable for the victim?

Yes, there are several sections in the Israeli Penal Code that state that a false complaint is a criminal offense. For example, according to Section 243, whoever submits to a police officer or to a person authorized to file a criminal claim, information of an offense when he/she knows that the information is false, is liable to imprisonment for three years, and if the offense is a crime, to five years' imprisonment; and it does not matter whether a criminal lawsuit was filed following the information or not.

There are also other sections in the Penal Code as well as in other laws (such as the Prevention of Family Violence Law, 1991) that authorize the court to order the complainant to pay legal costs in favor of the accused party or in favor of the state (and, in some cases, compensation for the accused party) if it turns out that the complaint is a "spiteful complaint" or filed without foundation.

# 5.3.4 How is consent discussed in the law?

The age of consent in Israel is 16 years old. The age of consent is the minimum age at which an individual is considered legally old enough to consent to participate in sexual activity. In Israel, individuals aged 15 or younger are not legally able to consent to sexual activity, and such activity may result in prosecution for statutory rape or the equivalent local law.[12]

In Israel, statutory rape law is violated when an individual has consensual sexual contact with a person under 26. If the age difference between the partners is less than 3 years, the sexual contact was done outside of "regular friendly relations," and without any abuse of power. However, males over 18 are prohibited from having sexual relations with a female under 18.[13]

Generally, rape, under Section 345 of the Penal Law, is punishable by 16 years of imprisonment. Rape consists of intercourse with a woman in any of the following circumstances:

without her consent

with consent, which was obtained by deceit in respect of the identity of the person or the nature of the act

with a minor who is less than 14 years old, regardless of whether the victim consented

by exploiting the woman's state of unconsciousness or other condition that prevents her from giving her free consent

by exploiting the fact that she is mentally ill or deficient, if — due to her illness or mental deficiency — her consent was not given freely

However, the maximum penalty for rape is increased to 20 years, if committed in the following cases:

if the victim is a minor under the age of 16, under the circumstances set forth in items (1), (2) (4) and (5) above

if the act was committed under threat of a firearm or other weapon

if it was committed by causing physical or emotional harm, or pregnancy

if abuse was committed before, during or after the act

if it was committed in the presence of one or more persons, who joined together in order for any of them to commit the act[14]

# 5.3.5 Is self-defense or insanity a defense?

**Self-defense**

No person will bear criminal responsibility for an act that was immediately necessary in order to repel an unlawful attack, which posed real danger to his own or another person's life, freedom, bodily welfare or property; however, a person is not acting in self-defense when his own wrongful conduct caused the attack, and they foresaw the possibility of such a development.

**Necessity**

No person will bear criminal responsibility for an act that was immediately necessary in order to save his own or another person's life, freedom, bodily welfare or property from a real danger of severe injury, due to the conditions prevalent when the act was committed, there being no alternative but to commit the act.

**Lack of control**

No person will bear criminal responsibility for an act committed by him when he was not free to choose between its commission or abstention from it, because he did not have control of his bodily movements in respect of that act; for an act committed under physical coercion that the perpetrator could not overcome; in a reflexive or convulsive reaction; while he was asleep; or in a condition of automatism or under hypnosis.

**Mental incompetence**

No person will bear criminal responsibility for an act committed by him, if — at the time the act was committed, because of a disease that adversely affected his spirit or because of a mental impediment — he lacked any real ability (1) to understand what he did or the wrongful nature of his act; or (2) to abstain from committing the act.[15]

# 5.4 Witness status

# 5.4.1 What is a witness's duty to testify honestly and completely?

According to the Rights of Victims of Crime Law, 2001, witnesses must answer truthfully. This law also states that victims do not need to testify as witnesses, but if they choose to do so, they must testify truthfully.[16]

The Hague Conference on Private International Law, in response to the question: "Is an oath generally administered to a witness?", states for Israel:

The witness is notified of his or her duty to testify truthfully and is informed that there are penalties under law for giving a false testimony. The witness must then confirm that he or she understands this and must undertake to testify truthfully. In addition, the court may require an oath or affirmation if there are grounds to believe that doing so would assist in uncovering the truth.[17]

# 5.4.2 Who may abstain from testifying in certain situations?

N/A

# 5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

N/A

# 5.4.4 What is the impact of domestic violence on witnesses who are children?

The [Evidence (Protection of Children) (Amendment No. 17) Law, 5777-2017](http://fs.knesset.gov.il/20/law/20_lsr_390362.pdf), sets out a special procedure for receiving testimony from children under 14 for sexual offenses and domestic violence offenses, these include:

limitations to testimony

requirements for certain party's presences in the courtroom during testimony[18]

# 5.4.5 Can children be called upon to testify?

Children may testify:

[…] dependent on the condition that the defendant will not be present in the courtroom; the testimony will be given in the presence of the defense attorney via closed-circuit television or other means.[19]

The child's testimony is limited to the day on which it commences.

# 5.4.6 What is the effect of a child victim on the charges against the offender?

N/A

# 5.5 Penalties and sentencing; penalty enhancements

# 5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

The remedies most commonly petitioned for by battered women are: 1) a restraining order; 2) temporary custody of minor children; 3) and court-mandated treatment against domestic violence for the violent man. The two most common remedies, which the courts grant in almost all cases of *ex parte* petitions, are: 1) restraining orders; and 2) prohibition against carrying firearms.[20]

# 5.5.2 Are there criminal penalties?

Rape, including spousal rape, is a felony, punishable by 16 years in prison.[21] We were unable to find any other specific criminal penalties or sentencing laws.

# 5.5.3 What is the result of a violation of an existing order for protection?

Where a complaint has been filed with the police in respect of a breach of a protection order that includes a prohibition pursuant to Section 2 (a) (1), a police officer may arrest the offender.[22]

# 5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

According to the Prevention of Family Violence Law, 5751-1991, an individual may apply for, and obtain, a court protection order against any family member who behaves violently toward other family members. Violence can be physical, emotional, financial or of a different kind. The protection order may be given in the presence of the applicant alone, but a hearing with both parties present must take place within seven days of issuing the protection order. The protection order can, for example, prohibit the violent person from entering the family's residence, harassing any family member, etc. The website of the Ministry of Justice indicates that, under the Prevention of Family Violence Law, 5751-1991, the court may remove the violent family member from the home for a period of up to three months and may extend this period, if the total period does not exceed six months. However, in special circumstances, the "judge has power to extend the [protection order] for a period of not exceeding one year from the date of removal."[23]

# 5.6 Post-release restrictions

# 5.6.1 Does the law notify the victim of the offender's release from custody?

N/A

©Copyright © 2024 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.