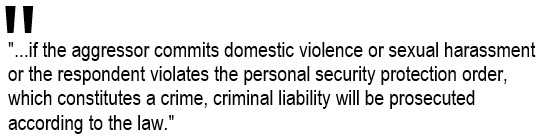
Fighting Domestic Violence - China

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# 1. Legal provisions

## 1.1 What are the relevant statutes and codes?

In the People's Republic of China (PRC), the Anti-Domestic Violence Law regulates "domestic violence." In addition, other laws, regulations, court opinions and government guidelines are aimed at preventing "domestic violence." The following are the major laws and regulations on domestic violence/abuse in the PRC. As the PRC's regulations on domestic violence are scattered across various legal documents, the following list is non-exhaustive.

**Constitution Law**

This legislation contains the fundamental rules that mothers are protected by the state and abuse of women is prohibited.[1]

**Civil Code**

This legislation expressly prohibits domestic violence and provides for the rights and remedies of victims of domestic violence in divorce cases.[2]

**Anti-Domestic Violence Law**

This law specifically prevents and stops domestic violence. It protects the rights and interests of family members, and provides legal remedies for victims of domestic violence.

**Guiding Opinions on Good Shelter and Rescue Work for Victims of Domestic Violence**

This guiding opinion — formulated by the Ministry of Civil Affairs and the All-China Women's Federation — is aimed at strengthening the protection of victims of domestic violence, especially the personal safety and other rights and interests of women and other vulnerable groups who are victims of domestic violence, as well as focusing on sheltering and aiding victims of domestic violence.

**Guide to Hearing Matrimonial Cases Involving Domestic Violence**

This court guide — compiled by the Supreme People's Court of the PRC ("**Supreme People's Court**") — provides a professional resource manual for judges handling cases involving domestic violence in marriage and family to facilitate the improvement of the efficiency of handling cases and the quality of distributing justice.

However, this guide is not a judicial interpretation and it cannot be used as a legal basis for judges to adjudicate cases, but it can be cited as a basis for the reasoning part of the judgment.

**Several Opinions on the Prevention and Stopping Domestic Violence**

These opinions — jointly issued by the Central Propaganda Department, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of Civil Affairs, the Ministry of Justice, the Ministry of Health, the All-China Women's Federation and seven other departments — are aimed at further preventing and stopping domestic violence; protecting the legitimate rights and interests of citizens, especially women and children in accordance with the law; establishing equal and harmonious family relations; maintaining family and social stability; and promoting the construction of a harmonious socialist society.

**Reply of the Supreme People's Court on Procedural Issues Related to Personal Security Protection Order Cases**

This reply was issued by the Supreme People's Court at the request of the Beijing High People's Court on procedural issues related to personal security protection order cases, including whether to charge litigation fees, whether to provide security, what procedures apply, whether to listen to the views of the respondent, the respondent's reconsideration, etc.

**Circular of the Supreme People's Court on Giving Full Play to Civil Trial Functions to Safeguard the Lawful Rights and Interests of Women, Children and the Elderly in Accordance with the Law**

This circular — formulated by the Supreme People's Court in response to the requirements of a civil trial — is aimed at giving full play to the function of a civil trial and protecting the legitimate rights and interests of women and other groups in accordance with the law.

This circular explicitly calls for opposing domestic violence and protecting the legitimate rights and interests of women and other victimized groups.[3]

**Opinions of the Supreme People's Court on Further Deepening the Reform of Family Trial Methods and Working Mechanisms (for Trial Implementation)**

This trial opinion was proposed by the Supreme People's Court based on summarizing the pilot work of some courts since 1 June 2016 to further deepen the reform of family trial methods and working mechanisms.

This trial opinion provides remedies such as family investigators, psychological counseling and personal security protection orders in its articles.[4]

**Notice on Further Strengthening Cooperation to Establish a Sound Working Mechanism for the Protection of Women's and Children's Rights and Interests**

This notice — issued jointly by the Supreme People's Court and the All-China Women's Federation — is aimed at requiring the courts and women's federations at lower levels to combine the practical implementation of relevant laws and regulations, to strengthen cooperation in the process of deepening the reform of family trials, and to safeguard the legitimate rights and interests of women and children in accordance with the law.[5]

**Law of the PRC on Public Security Administration Punishment**

This legislation provides administrative penalties for abusing family members. It provides that if a family member is abused, the perpetrator can be sentenced to detention for up to five days or given a warning.[6]

**Criminal Law**

This legislation criminalizes intentional homicide, intentional injury, negligent infliction of serious injury,[7] abandonment, insults and violent interference with the freedom of marriage.

**Opinions on Legally Handling Domestic Violence Crimes**

This opinion — jointly issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice — is aimed at actively preventing and effectively punishing domestic violence crimes, effectively safeguarding human rights and strengthening the criminal judicial protection of victims of domestic violence. This opinion provides in detail the principles, procedures, convictions, sentences and other related measures for handling cases involving domestic violence crimes.

**Law on the Protection of the Rights and Interests of Women**

This legislation prohibits sexual harassment and domestic violence against women.[8] It provides for administrative and criminal liability for sexual harassment or domestic violence against women.[9]

**Special Regulations on the Labor Protection of Female Employees**

This legislation stipulates that the employer will provide protection for female employees in the workplace regarding the prevention and suppression of sexual harassment.[10]

## 1.2 What is the controlling case law?

The PRC is a civil law country and it does not practice a case law system. However, from time to time, the Supreme People's Court and the Supreme People's Procuratorate will issue typical cases on anti-domestic violence, which can serve as guidance to the lower courts and procuratorates for handling similar cases. Below is a list of typical cases issued by the Supreme People's Court and the Supreme People's Procuratorate since the implementation of the Anti-Domestic Violence Law.

**1.**

**Publication authority:**Supreme People's Court

**Publication date:** 14 March 2015

**Publication title:** "Supreme Court issues typical cases of crimes involving domestic violence"[11]

**Source:** <http://www.court.gov.cn/zixun-xiangqing-13615.html>

**2.**

**Publication authority:**Supreme People's Court

**Publication date:**8 March 2017

**Publication title:**"The Supreme People's Court issued ten typical cases of the first anniversary of the implementation of the Anti-Domestic Violence Law"[12]

**Source:**<https://www.pkulaw.com/chl/b4df475fcf4b2cf1bdfb.html>

**3.**

**Publication authority:** Supreme People's Court

**Publication date:**25 November 2020

**Publication title:** "Top Ten Typical Cases of the Supreme People's Court on PS PO"[13]

**Source:** <http://www.court.gov.cn/zixun-xiangqing-274801.html>

**4.**

**Publication authority:**Supreme People's Procuratorate

**Publication date:**28 April 2021

**Publication title:** "Typical cases of domestic violence crimes punished according to law"[14]

**Source:**<https://www.spp.gov.cn/xwfbh/wsfbt/202105/t20210507_517255.shtml#2>

## 1.3 What are the specific parts of the court system that address domestic violence?

The civil trial courts and criminal trial courts in the PRC can address incidents of domestic violence.

Since 1 June 2016, the Supreme People's Court has announced that more than 100 designated intermediate and first instance courts nationwide will carry out a two-year pilot project on reforming family trial mechanisms. Most of the pilot courts have set up "family-oriented" courtrooms by creating family courtrooms, and they have formulated corresponding trial rules by taking into account the characteristics of local family trials.[15] However, the family court is still a branch of the civil court.

According to the relevant provisions of the Anti-Domestic Violence Law and the Law on the Protection of the Rights and Interests of Women, if the aggressor commits domestic violence or sexual harassment or the respondent violates the personal security protection order, which constitutes a crime, criminal liability will be prosecuted according to the law.[16] Cases involving domestic violence crime are heard by the criminal trial courts.[17]

In short, the civil trial courts and criminal trial courts in the PRC address incidents of domestic violence, while some pilot courts have set up particular civil trial courts to better address domestic violence cases.

## 1.4 What are potential causes of action?

In the PRC, victims of domestic violence may file civil and criminal lawsuits.

For civil lawsuits, the types of cases filed by victims of domestic violence include "personal security protection order cases," "marriage and family cases and their incidental cases (including divorce, marriage annulment, etc.)," "cohabitation relationship dispute cases," etc.[18] Our observation is that, currently, "personal security protection order cases" and "divorce cases" represent the majority of civil cases in practice.

For criminal proceedings, domestic violence cases mainly involve the crimes of "intentional injury," "intentional homicide," "negligent infliction of serious injury," "abandonment," "abuse" and "violent interference with freedom of marriage." However, according to the PRC's criminal procedural rules, domestic violence cases involving "intentional injury," "intentional homicide," "negligent infliction of serious injury" and "abandonment" will be prosecuted by the public prosecutor, i.e., the people's procuratorate. In the case of domestic violence involving "abuse" and "violent interference with freedom of marriage," the victim, their legal representative or close relatives may file a private prosecution with the people's court if voluntarily pursuing criminal responsibility. In these cases, the courts and people's procuratorates do not intervene on their own initiative, and it is up to the victims to take action to defend their rights and interests.

# 2. Introduction: framework guiding domestic violence law

## 2.1 Are there civil and criminal legal remedies for domestic violence victims?

Yes, victims of domestic violence can apply for civil remedies, administrative remedies and criminal remedies.

**Civil remedies**: Victims of domestic violence and their legal representatives can take the following measures of civil remedies:

complain, reflect or seek help from the perpetrator's or the victim's unit, residents' committee, villagers' committee, women's federation and other units[19]

complain to women's organizations[20]

apply to the people's courts for a personal security protection order[21]

receive appropriate care in the division of property[22]

request compensation for damages and for mental distress[23]

request assistance from women's organizations[24]

**Administrative remedies**: This mainly includes administrative penalties such as a warning and/or detention for the perpetrator.[25]

**Criminal remedies**: If the act of the aggressor constitutes a crime, criminal responsibility will be prosecuted according to the law.[26]

## 2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

In the PRC's legal framework, no law explicitly states that women's rights and interests related to domestic violence are a fundamental human right. However, Chapter 2 of the Constitution Law, "Fundamental Rights and Duties of Citizens," clearly prohibits undermining the freedom of marriage or abusing older people, women and children.[27] Moreover, President Xi Jinping stated in his speech at the Global Women's Summit at the United Nations Headquarters in New York in September 2015 that "women's rights and interests are fundamental human rights."[28] In addition, the National Human Rights Action Plan (2016-2020) released by the State Council on 29 September 2019 clearly states that the state will implement the Anti-Domestic Violence Law; improve the multi-sectoral cooperation mechanism for preventing and stopping domestic violence, as well as the integrated working mechanism of prevention, stopping and rescue; encourage and support social organizations to participate in anti-domestic violence work; and prevent and stop sexual harassment against women.[29]

In short, although domestic abuse (or protection from it) is not specifically identified under national law as a human right, the Constitution of the PRC defines women's rights and interests as a fundamental right of citizens, which is also emphasized by the PRC government.

## 2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210)?

No, the PRC has not yet signed or ratified the convention.

## 2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?

N/A

## 2.5 If it has not ratified or signed the Istanbul Convention, is it envisaged that your country will do so?

Up to 2021, there have been no official reports or news regarding the PRC's plan to accede to the Istanbul Convention. However, the PRC attaches importance to the protection of women's rights and interests. It has issued the Anti-Domestic Violence Law and its implementing regulations, and proactively promoted the reforms of family trials to protect women's rights and interests in a timely manner to the greatest extent. Therefore, while the PRC is not a party to the convention, the PRC has taken steps to, will fully support and will actively participate in the worldwide women's rights protection campaign.

## 2.6 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

The PRC decided at the 16th Meeting of the Standing Committee of the Fifth National People's Congress on 29 September 1980 to ratify the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. At the same time, the PRC confirmed the declaration made by Kang Keqing upon signing the convention that the PRC does not consider itself bound by Article 29(1) of the convention.[30]

The government's commitment to combating violence against women is fully reflected in the State Council's 2011 Program for the Development of Chinese Women (2011-2020),[31] the third National Human Rights Action Plan (2016-2020) released in 2016[32] and the China Country Program for the Implementation of the 2030 Agenda for Sustainable Development announced by Premier Li Keqiang at the United Nations Headquarters in New York in September 2016,[33] as detailed below:

implementing the Anti-Domestic Violence Law; improving the multi-sectoral cooperation mechanism; and encouraging and supporting the participation of social organizations in anti-domestic violence work

eliminating all forms of discrimination and prejudice against women and girls

preventing and stopping all forms of violence against women and girls

preventing and combating sexual harassment and all forms of sexual assault

## 2.7 If the 1979 Convention has not been ratified or signed, is it envisaged that your country will do so?

N/A

# 3. Similarities and differences in terminology

## 3.1 Domestic violence

Domestic violence refers to physical and mental aggression between family members by beating, tying up, mutilation, restricting personal freedom, as well as frequent verbal abuse and intimidation.[34]

## 3.2 Stalking

Although there is no strict legal definition of "stalking," this act could constitute sexual harassment if it is of a sexual nature and is unwelcomed by the recipient of the act.

## 3.3 Harassment

There is no specific definition of "harassment" under the law, but the concept of "sexual harassment" is defined in the nonbinding "Shenzhen Prevention and Control of Sexual Harassment Guidelines." In these guidelines, sexual harassment refers to an unwelcome infringement of another person's rights by means of words, texts, images, physical acts, etc., with sexual content, which causes offense, coercion and humiliation, and leads to negative psychological effects or a hostile and unfriendly working (study) environment.[35]

## 3.4 Victim

There is no statutory definition of a victim.

## 3.5 Abuser

There is no statutory definition of an abuser.

## 3.6 Civil protection order

A personal security protection order is a civil compulsory measure, which is a ruling made by the people's court to protect the personal safety of victims of domestic violence, their children and specific relatives and to ensure the normal conduct of civil proceedings.[36]

## 3.7 Causes of action

There are multiple causes of action that can be pursued depending on the nature of the abuse suffered by the victim — see above.

## 3.8 Marital rape

Marital rape is the act of sexual intercourse with one's spouse without the spouse's consent. Marital rape is not specifically defined under the law. Nevertheless, judging from the literal provisions of Article 236 of the Criminal Law, marital rape is not excluded from the crime of rape. The rape of a wife by a husband could constitute the crime of rape.

## 3.9 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

N/A

# 4. Protection for domestic violence victims and relief granted

## 4.1 Civil protection orders

## 4.1.1 Are there civil protection orders available to victims of domestic abuse?

Yes, there are. The protection order for victims of domestic violence in the PRC is called personal security protection order.

## 4.1.2 Who can petition for civil protection orders?

Under the Anti-Domestic Violence Law, the applicant includes the following:

the person who has suffered from domestic violence or who is in real danger of domestic violence

their close relatives, public security authorities, women's federation, residents' committee, villagers' committee and the relief administration agency

According to the law, if the party concerned does not have civil capacity or only has limited civil capacity, or is unable to apply for a personal security protection order due to coercion or intimidation, their close relatives, public security authorities, women's federation, residents' committee, villagers' committee or the relief administration agency may apply on their behalf. Victims of domestic violence, their close relatives, friends, neighbors and colleagues, as well as villagers'/residents' committee, people's mediation committee, women's federation, the communist youth league, the disabled persons' federation, hospital, school, kindergarten, etc., units and organizations will have the right and obligation to promptly report, charge or report to the public security authorities, procuratorate or court when they discover domestic violence.[37]

## 4.1.3 Are there temporary custody of a child or child support orders?

If a person without civil capacity or with limited civil capacity suffers serious physical injury, facing threats to personal safety or is in a dangerous state such as unattended care due to domestic violence, the public security authorities will notify and assist the authority of civil affairs to place them in a temporary shelter, a relief administration agency or a welfare institution.

For custody, if the guardian implementing domestic violence toward wards that seriously infringes the lawful rights and interests of the ward, the court, a procuratorate or the public security authorities may notify the ward, other persons and units with guardianship to apply to the court to revoke the qualification of that guardian and to appoint a new guardian according to the law. [38]

## 4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

Yes. The measures of a personal security protection order are broad and can be flexible depending on the circumstances of the case. These include the following:

requiring the abuser to move out from where the victim lives or stay away from the place where the victim frequents

prohibiting the respondent from committing domestic violence

prohibiting the respondent from harassing, tracking or contacting the applicant and their close relatives

prohibiting the respondent from harassing or intimidating the applicant and their close relatives by telephone, short message, WeChat or other means[39]

prohibiting the respondent from moving within 200 meters of the applicant's residence, school, workplace or other places frequented by the applicant;

during the effective period of the personal security protection order, one party will not take the liberty to dispose the greater value of the community property[40]

## 4.1.5 Are there any other types of emergency, preventive and civil protection orders?

Yes, there are personal security protection orders for healthcare personnel.

## 4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

If the party concerned is without civil capacity or with limited civil capacity, or is unable to apply for a personal security protection order due to coercion or intimidation, their close relatives, public security authorities, women's federation, residents' committee, villagers' committee or the relief administration agency may apply on their behalf.[41]

## 4.1.7 Are there different types of civil protection orders, e.g., for a short- term period?

No. Generally, a personal security protection order cannot last more than six months. The judge will decide the validity term based on the actual circumstances of the case.

## 4.1.8 Are ex parte orders permitted without the aggressor being present?

Yes. In general, it does not necessarily require that the domestic violence is ongoing, i.e., that the abuser is actively abusing. According to Article 28 of the Anti-Domestic Violence Law, it does not matter whether the abuser is present as long as one of the following conditions is met:

a clear respondent, that is, the abuser, their name, ID number, address or other basic information

have a specific request, such as in a personal security protection order, requiring the respondent to move out of the residence, stop the harassment of the victim and their close relatives or other measures

the applicant suffered domestic violence or is in actual danger of domestic violence

The violence in the application conditions includes the actual violence and the violence that is sufficient to constitute a threat of violence where it is not subject to the occurrence of actual damage but the threat of domestic violence.

## 4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

Yes. A request can be made in the personal security protection order application for the protection of the victim's family members, and for their close relatives to be free from physical distance intimidation and harassment and communication devices (such as WeChat) intimidation and harassment.

## 4.1.10 How long do the orders last?

The term of validity of a personal security protection order starts from the date of issuance and does not exceed six months. Before the personal security protection order becomes invalid, the applicant may apply to the court for a cancellation, alteration or extension.[42]

## 4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any relevant demographics information, e.g., police reports, convictions, etc.

N/A

## 4.2 Steps for receiving a protective order

## 4.2.1 What documentation is needed to obtain a civil protection order?

The applicant should file a written application to obtain a personal security protection order. The application should be clear on the respondent and the specific request. The applicant should provide evidence of domestic violence or the threat of domestic violence, including but not limited to police attendance records, warning letters, injury evaluation opinions and other evidence.

If the applicant truly has difficulties making a written application, an oral application may be acceptable, for which the court will make a written record.[43]

## 4.2.2 Does the victim need to attend a hearing?

No, the victim does not need to attend a hearing unless there is an ongoing family lawsuit. If the applicant is applying for a personal security protection order, the judge will decide according to the specific circumstances whether it is necessary to hear the views of the respondent, but will not ask the victim to attend the hearing.[44] The judge may consider the victim's safety when requesting the respondent's or the victim's attendance.

## 4.2.3 Can you request remedies?

The Anti-Domestic Violence Law does not directly prescribe remedies. However, according to the Civil Code, in the case of divorce due to domestic violence, the innocent party is entitled to claim compensation for damages. In addition, the victim has the right to demand reasonable expenses for treatment and rehabilitation (including but not limited to medical expenses, nursing expenses, transportation expenses, nutrition expenses, hospital food subsidies, etc.) and reduced income due to absence from work as a result of personal injury caused by the abuser. The applicant has the right to request the cost of assistive devices, compensation for disability, funeral expenses and compensation for death, and compensation for mental damage if serious mental damage was caused to the victim.[45]

## 4.2.4 Are there time limits?

The term of validity of a personal security protection order starts from the date of issuance and will not exceed six months. Before the personal security protection order becomes invalid, the applicant may apply to the court for a cancellation, alteration or extension.[46]

## 4.2.5 Are there different rules in emergencies?

The court will issue a personal security protection order or reject the application within 72 hours after accepting the application. The decision will be made within 24 hours for urgent situations.[47]

## 4.3 Judicial discretion

## 4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

If there is no family lawsuit in progress in the court where the application has been received, the case will be heard by the judge on a sole trial basis. As to whether it is necessary to hear the respondent's opinion on issuing a personal security protection order, it is up to the judge to decide based on considerations of the specific circumstances of the case.

## 4.3.2 Are there age limits on who can obtain orders?

No. Generally, there is no age limit for the victim to obtain a personal security protection order if the statutory requirements are satisfied. Only if the party concerned is without civil capacity or with limited civil capacity, or is unable to apply for a personal security protection order due to coercion or intimidation, their close relatives, public security authorities, women's federation, residents' committee, villagers' committee or the relief administration agency may apply on their behalf.

## 4.4 Restitution and remedies available to victims

## 4.4.1 Can victims obtain reimbursement for costs and restitution paid?

Yes, victims can ask for costs and restitution to be paid. The Anti-Domestic Violence Law does not have clear guidelines on paying expenses and compensation. However, according to the Civil Code, tort damages, reasonable expenses for treatment and rehabilitation can be required (including but not limited to medical expenses, nursing expenses, transportation expenses, nutrition expenses, hospital meals subsidies, etc.), as well as reduced income due to missing work and compensation for mental damages.

## 4.4.2 Can they recover wages and profits lost?

Yes, they can request to recover wages and profits lost as tort damages under the Civil Code.

## 4.4.3 Is a separate civil process required?

The Anti-Domestic Violence Law does not directly stipulate the procedure to be applied in personal security protection order cases. The court may try the case according to special procedures. If a party in a family lawsuit applies to the court for a personal security protection order, the judicial organization for the family lawsuit hearing will decide whether to issue a personal security protection order. If the applicant for a personal security protection order has no family lawsuit in progress with the court where the application has been received, the judge will hear the case on a sole trial basis. As to whether it is necessary to hear the respondent's opinion on the issue of a personal security protection order, it is up to the judge to decide considering the specific circumstances of the case.[48]

# 5. Prosecutorial considerations

## 5.1 Police procedures

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

The police get involved in domestic disputes upon reporting by the victim, their legal representative, relatives, or for a person without capacity of civil activities or a person with limited capacity of civil activities, school, kindergarten, medical institution, community committee, social service institution, aid agencies and welfare institutions.[49]

## 5.1.2 What circumstances effect law firm involvement?

A victim of domestic violence, their legal representative or relatives may bring a cause of action to the court to obtain compensation under the Civil Code or to seek punishment on the abuser under criminal law. In both cases, the legal aid agency will provide legal aid to victims, their legal representative or relatives who suffer financial hardship.[50] In the case that a female victim of domestic violence is charged with a crime of domestic violence and claims self-defense, if she is in economic hardship, she is able to apply for legal aid.[51]

## 5.2 Standard of proof

## 5.2.1 Is proof required by any legal means?

The Criminal Law and the Civil Code provide protections for domestic violence victims. If domestic violence leads to divorce, the innocent party will have the right to claim compensation.[52] Under the Civil Code, victims of domestic violence have the right to claim compensation for expenses incurred for treatment and rehabilitation if needed.[53] Where the victim, their legal representative or relative brings up lawsuits under the Civil Code or prosecution against the abuser under the Criminal Law, they must provide evidence to prove their assertion.[54]

## 5.2.2 Are there any requirements regarding evidence and documents?

Where the victim, their legal representative or relative brings up a lawsuit under the Civil Code or prosecution against the abuser under the Criminal Code, they must provide evidence to prove their assertion.[55]For civil cases, judges will verify the evidence under applicable legal procedures in a comprehensive and objective manner, and independently apply the preponderance of the evidence standard.[56] For criminal cases, the evidence should be authentic and sufficient, and the burden of proof should be beyond a reasonable doubt.[57]

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

Yes,  proof "beyond a reasonable doubt" is required for criminal cases.

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

Yes. To request an *ex parte* order, evidence is only required to prove existing domestic violence or potential domestic violence.[58]

## 5.3 Affirmative defenses

## 5.3.1 Are affirmative defenses available to the accused?

Yes. The accused can present affirmative defenses to show that they do not bear criminal liability or that they should be exempted from punishment due to legitimate reasons such as justifiable self-defense,[59] insanity,[60] etc.

## 5.3.2 Is willful intent required?

Under the Criminal Law, to prove crimes of intentional injury[61] and maltreatment,[62] willful intent is required. By contrast, under the Civil Code, willful intent is not required to claim compensation for damages as a result of domestic violence.

## 5.3.3 Are false accusations punishable for the victim?

Yes. The Criminal Law lists false accusations as a serious circumstance that will be applicable to all cases without distinguishing a domestic violence case from others.[63]

## 5.3.4 How is consent discussed in the law?

In a private prosecution case, the private prosecutor may reach a settlement with the defendant or withdraw the private prosecution before the judgment is pronounced.[64]

In public prosecution cases that meet certain conditions, the victim and the criminal suspect or defendant may reach a settlement, and the public security bureau, the people's procuratorate and the people's court can give a more lenient sentence to the criminal suspect or defendant.[65]

## 5.3.5 Is self-defense or insanity a defense?

Yes. The accused can present evidence of affirmative defenses to prove that they should not be criminally liable or that they should be exempted from punishment due to legitimate reasons such as justifiable self-defense,[66] insanity,[67] etc. However, compensation for damages cannot be exempted as a result of an affirmative defense such as self-defense or insanity.

## 5.4 Witness status

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

A witness will testify and provide truthful evidence according to the requirements of courts, procuratorates and public security organs.[68] In a criminal procedure, if a witness refuses to testify before the court without a justifiable reason, the court may order the witness to appear before the court, unless the witness is the spouse, a parent or a child of the defendant.[69] By contrast, in a civil procedure, while it is a general rule that the witness must appear physically and testify in the hearing, under some specific circumstances and upon the consent of the court, a witness may testify through a written testimony, audiovisual transmission technique, audiovisual materials, etc.[70]

A witness will be liable for intentionally falsifying, concealing or destroying evidence. If the witness is dishonest, a fine may be imposed and/or detention and/or they will be charged criminally in accordance with the law.[71]

## 5.4.2 Who may abstain from testifying in certain situations?

A domestic violence victim who is not a physically or mentally disabled person or minor cannot refuse to testify due to fear of retaliation from an abuser or other reasons according to the Criminal Procedure Law.

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

The potential excuses that a witness may raise to refuse to testify in a domestic violence action include the following:

unwillingness to disclose sensitive private affairs

fear of retaliation

worry about a witness's own misconduct

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

Yes. The Criminal Procedure Law[72] and the Law on the Protection of Minors provide special protections to minors who are testifying in domestic violence proceedings.

## 5.4.5 Can children be called upon to testify?

Yes. Children can be called upon to testify as long as they are provided with special protections, including notifying children's legal agents or adult relatives, representatives of schools or other suitable adults to be present, as well as taking other protective measures such as technical means and psychological intervention to protect children's privacy and legitimate rights and interests.[73]

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

The offender committing the crimes against minors will be severely punished according to the law. Probation is generally not applicable to adult criminals who rape minors. An injunction may be announced prohibiting criminals from engaging in work and activities related to minors during the probation period for suspension, and from entering primary and secondary school campuses, kindergarten parks and other places where minors are concentrated. Foreign offenders may be deported from the PRC in addition to the penalty.[74]

## 5.5 Penalties and sentencing; penalty enhancements

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

There are no specific penalties and sentencing laws for first-time domestic violence offenses. Generally, punishment will be aggravated for frequent domestic violence offenses. An offender who commits domestic violence will be subject to administrative penalties or to criminal liability if the act constitutes a crime.[75]

## 5.5.2 Are there criminal penalties?

Yes, but not all. Serious behaviors may trigger criminal liabilities. In a less severe situation, administrative penalties may apply.

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

If the offender violates an existing order for protection and their act constitutes a crime, they will be subject to criminal liabilities; if it does not constitute a crime, the court will admonish the respondent and may impose a fine of no more than CNY 1,000 and detention of no more than 15 days, as determined based on the seriousness of the case.[76]

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

The penalty for domestic violence offenses may include a warning,[77] admonishment and an order to accept the guidance of family education,[78] reprimanding the perpetrator, ordering the perpetrator to guarantee not to commit domestic violence, apologizing to the victim or paying an indemnity to the victim.[79] A pecuniary fine and/or the death penalty[80] could be imposed in addition to incarceration and liberty restriction.

## 5.6 Post-release restrictions

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

The law does not require any judicial authority or government authority to notify the victim of the offender's release from custody. However, a copy of the judgment or verdict will be provided to the victim[81] so that the victim will know how long the offender will remain in custody.

# 6. Special issues

## 6.1 Battered woman syndrome

## 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered Woman Syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

Under the Criminal Law, victims are allowed to act in self-defense in limited circumstances when being attacked and may be exempted from criminal liability in such circumstances. If damage is caused to the wrongdoer in the course of self-defense, it will be deemed a legitimate act and be free from criminal liability.[82] This applies to victims of domestic violence cases.

The following is according to the Opinions on Legally Handling Domestic Violence Crimes, which was jointly issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice in 2015:

The person shall not be criminally liable if he/she takes an action to stop domestic violence that is occurring, in order to save his/her own or another's personal rights from unlawful infringement to the extent of legitimate defense. If the defense is excessive, he/she shall be criminally responsible, but should be reduced or be exempted from punishment.

The standard of "significantly more than necessary" refers to being sufficient to stop and protect the defender from domestic violence, as determined based on the factors such as the severity of the domestic violence being committed by the abuser, the cruelty of the means, the environment in which the defender is, the degree of danger he/she faces, the means to stop the violence, the degree of significant damage caused to the abuser, and the severity of previous domestic violence incidents, etc.[83]

At the same time, the Opinion on Legally Handling Domestic Violence Crimes provides the following:

[…] full consideration of the factors of defense and fault responsibility in the case. For the intentional killing of the abuser due to severe domestic violence, physical and mental damage; or intentional killing of the abuser due to unbearable long-term domestic violence, the circumstances of the crime are not particularly bad, and the means are not particularly cruel, it can be considered as a lesser circumstance of intentional homicide under the Criminal Law.[84]

This issue is discussed in "Typical Cases of Punishing Domestic Violence Crimes According to Law," which was released by the Supreme People's Procuratorate on 28 April 2021. Specifically, the Supreme People's Procuratorate indicates that the case should be handled in a manner that correctly identifies the crime of intentional injury caused by domestic violence and legitimate defense, and properly grasps the special nature of criminal cases arising from domestic violence. The determination of defense should be made in accordance with the various factors stipulated in the Opinions on Legally Handling Domestic Violence Crimes.[85]

## 6.2 Domestic violence in the workplace

## 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

Probably no. Under the law, there is no legal basis for courts to issue orders to protect employees suffering from domestic violence in the workplace. Nevertheless, there are legal requirements for employers to prevent and stop the sexual harassment of female employees.

## 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

It is unclear under the law. In practice, the likelihood for the employee to successfully claim constructive termination and severance pay for a reason related to domestic violation is very low. Under the Employment Contract Law, employees may resign and claim severance for the employer's failure to provide "employment protections" and "work conditions." However, the law does not elaborate what circumstances can fall within the scope of "employment protections" and "work conditions." Few court rulings consider this issue.

In addition, the Special Regulations on the Labor Protection of Female Employees require the employer to prevent and stop the sexual harassment of female employees. If the employer violates this provision and infringes on the legal rights and interests of female employees, the female employees may file complaints, reports, appeals and lawsuits in accordance with the law.[86] In theory, if the employer fails to protect a female employee from sexual harassment at the workplace, the female employee could be able to resign and claim severance. However, it is rare to see court rulings where female employees brought this type of claim and successfully won the case.

Therefore, we think that departure cannot be deemed "for good cause" if it is related to domestic violence.

## 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

Currently, no employment law in the PRC provides for family members of victims of domestic violence to apply for leave for the purpose of helping the victim to seek treatment or assisting the victim. As a practical matter, family members of a victim may apply for annual leave to help the victim. In addition, if the company policy provides paid or unpaid personal leave, the employee may consider utilizing personal leave for taking time off and assisting the victim.

## 6.3 Immigration

## 6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents from using immigration laws to perpetrate domestic violence against their spouse?

PRC law is silent on this.

## 6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

PRC law is silent on this.

## 6.3.3 Does domestic violence law discuss asylum accessibility?

PRC law is silent on this.

## 6.4 Armed forces

## 6.4.1 Can a victim seek a military protective order if the abuser is in active military?

No, there is no provision in the law regarding military protective orders if the abuser is in active military. According to the Civil Code and the Provisions on Certain Issues Concerning the Implementation of the Marriage Law of the PRC by the Military, if a military personnel is grossly at fault, their spouse may request a divorce.[87] In practice, major faults include domestic violence or abuse of family members. However, there is no legal provision for military spouses or other victims of domestic violence by active duty military personnel to seek military protection.

## 6.5 Child custody and child/spousal support

## 6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

PRC law provides special protection for minors in domestic violence cases, such as restricting visitation and custody rights, depriving the abuser of guardianship, etc.

Rules on the custody and visitation rights of children are set forth under the Anti-Domestic Violence Law, the Guide to the Trial of Marital Cases Involving Domestic Violence, the Guidance on the Work of Sheltering and Assisting Victims of Domestic Violence and the Opinions on Legally Handling

Domestic Violence Crimes, e.g., depriving the abuser of guardianship, the principle of having the victim directly raise the children, soliciting opinions from the minor children before deciding on custody, suspending the aggressor's child visitation rights, restoring the aggressor's visitation rights, the manner, timing and place of the aggressor's visitation, etc.[88]

## 6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

The Guidelines for Hearing Marital Cases Involving Domestic Violence issued by the Supreme People's Court in 2008 stipulate that the credibility of the victim's statement is greater than that of the aggressor. Children are usually the only witnesses of domestic violence perpetrated on or by their parents, and their testimony can be considered important evidence. When judging the probative value of children's testimony, the court should consider the possibility that one or both parties may unduly influence them. The court should take measures to minimize the harm that testifying may bring to minor children.[89]

## 6.6 Housing rights of domestic violence victims

## 6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

PRC law is silent on this.

## 6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

PRC law is silent on this.

## 6.6.3 Can an order exclude the abuser from the residence?

According to the Anti-Domestic Violence Law, a personal security protection order issued by the court may include ordering the respondent to move out of the applicant's residence.[90]

## 6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

PRC law is silent on this.

# 7. Endnotes

[1]    Article 49 of the Constitution of the PRC.

[2]    Articles 1042, 1079, 1081 and 1091 of the Civil Code.

[3]    Article 2 of the Circular of the Supreme People's Court on Giving Full Play to Civil Trial Functions to Safeguard the Lawful Rights and Interests of Women, Children and the Elderly in Accordance with the Law.

[4]    Articles 25, 28 and 45 of the Opinions of the Supreme People's Court on Further Deepening the Reform of the Family Trial Mode and Working Mechanism (for Trial Implementation).

[5]    Articles 1, 8 and 14 of the Notice on Further Strengthening Cooperation to Establish a Sound Working Mechanism for the Protection of Women's and Children's Rights and Interests.

[6]    Article 45 of the Law of the PRC on Public Security Administration Punishment.

[7]    Articles 232, 234 and 235 of the Criminal Law.

[8]    Articles 40 and 46 of the Law on the Protection of the Rights and Interests of Women.

[9]    Article 58 of the Law on the Protection of the Rights and Interests of Women.

[10]    Article 11 of the Special Regulations on the Labor Protection of Female Employees.

[11]    The official website of the Supreme People's Court: <http://www.court.gov.cn/zixun-xiangqing-13615.html>.

[12]    <https://www.pkulaw.com/chl/b4df475fcf4b2cf1bdfb.html>.

[13]    The official website of the Supreme People's Court: <http://www.court.gov.cn/zixun-xiangqing-274801.html>.

[14]    Supreme People's Procuratorate official website: <https://www.spp.gov.cn/xwfbh/wsfbt/202105/t20210507_517255.shtml#2>.

[15]    Opinions of the Supreme People's Court on the Pilot Reform of the Family Judgment Mode and Working Mechanism (Law [2016] No. 128); Opinions of the Supreme Court and Other 15 departments on the Establishment of a Joint Conference System for the Reform of the Family Judgment Mode and Working Mechanism (Law [2017] No. 18); Opinions of the Supreme People's Court on Further Deepening the Reform of the Family Judgment Mode and Working Mechanism (for Trial Implementation) (Law Fa [ 2018] No. 12).

[16]    Articles 33 and 34 of the PRC Anti-Domestic Violence Law; Article 56 of the Law on the Protection of the Rights and Interests of Women.

[17]    Part II of the Opinions on Legally Handling Domestic Violence Crimes (Fafa [2015] No. 4).

[18]    Part V of the Opinions of the Supreme People's Court on the Pilot Reform of Family Trial Methods and Working Mechanisms (Law [2016] No. 128).

[19]    Article 13 (1) of the Anti-Domestic Violence Law.

[20]    Article 53 of the Law on the Protection of the Rights and Interests of Women.

[21]    Article 23 of the Anti-Domestic Violence Law.

[22]    Articles 55 and 56 of the Guide to the Trial of Matrimonial Cases Involving Domestic Violence.

[23]    Article 1091 of the Civil Code; Article 59 of the Guide to the Trial of Matrimonial Cases Involving Domestic Violence.

[24]    Article 54 of the Law on the Protection of the Rights and Interests of Women.

[25]    Article 45 of the Law of the PRC on Public Security Administration Punishment; Article 33 of the Anti-Domestic Violence Law; Article 56 of the Law on the Protection of the Rights and Interests of Women.

[26]    Articles 33 and 34 of the Anti-Domestic Violence Law; Article 56 of the Law on the Protection of the Rights and Interests of Women.

[27]    Article 49, paragraph 4 of the Constitution of the PRC.

[28]    Xi Jinping: "Promoting Women's Comprehensive Development and Building a Better World Together - Speech at the Global Women's Summit," New York, 27 September 2015.

[29]    National Human Rights Action Plan (2016-2020), issued by the State Council Information Office on 29 September 2016.

[30]    Decision of the Standing Committee of the Fifth National People's Congress on the Ratification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

[31]    Development Program for China Women ([2011-2020](http://www.nwccw.gov.cn/2017-04/05/content_149165.htm)).

[32]    National Human Rights Action Plan (2016-2020), issued by the State Council Information Office on 29 September 2016.

[33]    China Country Program for the Implementation of the 2030 Agenda for Sustainable Development.

[34]    Article 2 of the Anti-Domestic Violence Law.

[35]    Part II of the Shenzhen City Guide to Preventing Sexual Harassment.

[36]    Article 26 of the Guide to the Trial of Matrimonial Cases Involving Domestic Violence.

[37]    Article 23 of the Anti-Domestic Violence Law.

[38]    Article 14 of the Anti-Domestic Violence Law.

[39]    No. 4 Order Yue 0705 Civil Insurance Order (2017) Jiangmen Xinhui District People's Court.

[40]    No. 1 Order Chengdu Sichuan 0115 Civil Guarantee Order (2016) Wenjiang District People's Court.

[41]    Article 23 of the Anti-Domestic Violence Law.

[42]    Article 30 of the Anti-Domestic Violence Law.

[43]    Article 24 of the Anti-Domestic Violence Law.

[44]    Article 3 of the Reply of the Supreme People's Court on Procedural Issues Related to Personal Security Protection Order Cases.

[45]    Articles 1091 (3) and 1179 of the Civil Code.

[46]    Article 30 of the Anti-Domestic Violence Law.

[47]    Article 28 of the Anti-Domestic Violence Law.

[48]    Article 3 of the Reply of the Supreme People's Court on Procedural Issues Related to Personal Security Protection Order Cases.

[49]    Articles 13, 14, 15 and 16 of the Anti-Domestic Violence Law.

[50]    Article 19 of the Anti-Domestic Violence Law; Articles 10, 11 and 12 of the Legal Aid Regulation; Article 52 of the Law on the Protection of the Rights and Interests of Women.

[51]    Article 11 of the Legal Aid Regulation.

[52]    Article 1091 of the Civil Code.

[53]    Articles 1179 and 1183 of the Civil Code.

[54]    Article 64 of the Civil Procedure Law and Article 51 of the Criminal Procedure Law.

[55]    Article 64 of the Civil Procedure Law and Article 51 of the Criminal Procedure Law.

[56]    Article 85 of Several Provisions of the Supreme People's Court on Evidence for Civil Actions.

[57]    Article 55 of the Criminal Procedure Law.

[58]    Article 27 of the Anti-Domestic Violence Law.

[59]    Article 20 of the Criminal Law.

[60]    Article 18 of the Criminal Law.

[61]    Article 234 of the Criminal Law.

[62]    Article 260 of the Criminal Law.

[63]    Article 243 of the Criminal Law.

[64]    Article 212 of the Criminal Procedure Law.

[65]    Article 288 of the Criminal Procedure Law.

[66]    Article 20 of the Criminal Law.

[67]    Article 18 of the Criminal Law.

[68]    Article 54 of the Criminal Procedure Law and Article 67 of the Civil Procedure Law.

[69]    Article 193 of the Criminal Procedure Law.

[70]    Article 73 of the Civil Procedure Law.

[71]    Article 61 of the Criminal Procedure Law and Article 111 of the Civil Procedure Law.

[72]    Part V of the Special Procedures Related to Juvenile Criminal Cases Under the Criminal Procedure Law.

[73]    Article 110 of the Law on the Protection of Minors.

[74]    Guiding Opinions of the People's Court on Sentencing (Invalid) and Opinions on Punishing Crimes of Sexual Assault Against Minors Legally.

[75]    Article 33 of the Anti-Domestic Violence Law.

[76]    Article 34 of the Anti-Domestic Violence Law and Article 23 of the Opinions on Legally Handling Domestic Violence Crimes.

[77]    Article 45 of the Law of the PRC on Public Security Administration Punishment.

[78]    Article 118 of the Law on the Protection of Minors.

[79]    Article 18 of the Opinions on Legally Handling Domestic Violence Crimes.

[80]    Chapter IV named "Crime of Infringement Upon Citizens' Right of the Person and Democratic Rights of Criminal Law."

[81]    Articles 202 and 229 of the Criminal Procedure Law.

[82]    Article 20 of the Criminal Law.

[83]    Article 19 of the Opinions on Legally Handling Domestic Violence Crimes.

[84]    Article 20 of the Opinions on Legally Handling Domestic Violence Crimes.

[85]    Notice on the Issuance of Typical Cases of Punishing Domestic Violence Crimes According to Law (Source: Official Website of the Supreme People's Procuratorate; 28 April 2021), Case 4 — Mao Moumou's Intentional Injury Case.

[86]    Articles 11 and 14 of the Special Regulations on the Labor Protection of Female Employees.

[87]    Article 1081 of the Civil Code; Article 11 of the Provisions on Certain Issues Concerning the Implementation of the Marriage Law of the PRC by the Military.

[88]    Article 21 of the Anti-Domestic Violence Law; Articles 63-68 of the Guide to the Trial of Marital Cases Involving Domestic Violence; Part 3, Point 2 of the Guidance on Providing Shelter and Assistance to Victims of Domestic Violence; Article 22 of the Opinions on Legally Handling Domestic Violence Crimes.

[89]    Articles 41 and 43 of the Guide to Hearing Matrimonial Cases Involving Domestic Violence.

[90]    Article 29 of the Anti-Domestic Violence Law.

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