

What happens when you report the crime of Domestic Violence?

There is a public interest in the clarification of crimes and their repercussion and therefore the citizen in a situation of crime, can denounce it to the Police and the Public Prosecutor, who are the competent authorities to receive complaint / denunciations of crimes.

The Public Prosecution Service is the holder of the criminal action.

The Public Prosecutor's Office is the public authority that has the power to initiate a crime inquiry, to promote or apply measures in defense of the victim, and/or to contain or repress the offender, to direct and close the investigation, prosecute or temporarily suspend process, as well as to support the prosecution at trial, being the case.

All complaints filed in any criminal police body are reduced to writing and sent to the Public Prosecution Service.

Denounce means reporting facts to the competent authority: telling what, who, when, where, how, why.

The complaint can be made orally and in person at the competent authority, or in writing, in paper or electronic mail at the address of the Public Prosecutor's Office, or by the Electronic Complaint System.

The citizen can go to any police station or police station and make, on the spot, the report, declaration and delivery of documents, identifying himself.

You do not have to file a complaint in the service of the place where the crime occurred, any service can receive the complaint and then forward it to the Public Prosecutor's Office.

The oral complaint is always reduced to writing.

With the exception of so-called private crimes where there is a court fee (but in the case of a lack of financial resources, you can ask for legal aid), it is not necessary to pay any amount for the victim of a crime to complain or denounce it, or for a citizen to report a public crime of which he was aware. Anyone who denounces a crime does not have to be able to legally qualify the type of crime in question (the "name" of the crime). You do not have to know the identity of the perpetrator. You do not need to have a lawyer. You do not have to pay.

If the crime is of a public nature, such as domestic violence, any citizen can denounce it (eg a neighbor, a relative).

The victim can denounce the aggressor, but the common citizen is not obliged to denounce him. The obligation to report public crimes only exists for the police and for officials who have knowledge of it in the exercise of their functions or because of them.

The victim can denounce the offender.

The victim, when reporting the crime, must tell the facts - concrete things that the perpetrator has done to him/her, behaviors that the aggressor develops - and if he/she has evidence, he/she must take them with him/her or indicate them (witnesses, photographs, clinical documentation, sms received, etc.). This allows you to assess your risk even if you have left your home – allowing a faster decision on coercion and protection measures.

The crime of domestic violence provided for in article 152 of the Criminal Code has a public nature, which implies that it is compulsory for police officers (always) and for employees that take notice of them in the exercise of their functions and because of them to denounce it.

Once the complaint of the practice of the crime of domestic violence has been presented, a criminal complaint of domestic violence is elaborated at a police station. If there is no strong indication that the complaint is unfounded, the criminal police or competent judicial authorities shall assign to the victim, for all legal purposes, the Victim Statute, according to article 14 of Law 112 / 2009 of 16 September.

If the victim is physically injured, he / she is notified to attend a legal and forensic medical examination at the Legal Medical Office of the National Institute of Legal Medicine and Forensic Sciences (NILMFS) - Justice - National Institute of Legal Medicine and Forensic Sciences (NILMFS).

The National Institute of Legal Medicine and Forensic Sciences (NILMFS) is a public institute of special regime, integrated in the indirect administration of the State, under the oversight and tutelage of the Ministry of Justice.

In the scope of its tutelage and attributions, NILMFS has the nature of a state laboratory and is considered a national reference institution. It is a central body, with jurisdiction over the entire national territory, based in Coimbra, with decentralized services, called delegations, in Oporto, Coimbra and Lisbon, depending on which medical-legal and forensic offices work.

The mission of NILMFS is to ensure the provision of forensic and legal medical services, scientific coordination of the activity in the field of legal medicine and other forensic sciences, as well as the promotion of training and research in this field, overseeing and guiding the activity of the medical-legal services and the professionals hired for the exercise of these functions.

The functions of NILMFS, among others, are to cooperate with the courts and other services and entities that intervene in the system of administration of justice, performing the examinations and medical-legal and forensic examinations that are requested, under the law, as well as providing technical and specialized laboratory support, including forensic chemistry and toxicology, and forensic genetics and biology.

With regard to persons who are victims of violence, it is incumbency of NILMFS to carry out examinations for the description and evaluation of the damage caused to the psychophysical integrity in the various areas of Law, particularly in criminal, civil and labor Law, as well as for evaluations of psychiatric and forensic psychological nature. The NILMFS also promotes, when necessary, the access of victims of violence to specialized support institutions or to health services.

In the case of victims of sexual violence, medical-legal expert examination also involves the collection of any biological traces for subsequent production of evidence. These examinations are performed every day in the Forensic Clinical and Pathological Services of the three delegations, as well as in all medical-legal and forensic offices, within their working hours. Outside the opening hours and within the areas of territorial jurisdiction of the delegations, there is a doctor who is scheduled (whose telephone contact is known to the judicial authorities, criminal police agencies and hospitals, their respective area of activity) to carry out these examinations, if they are considered "urgent acts". In this way it is possible to preserve the comfort of the victim and avoid the loss of any vestiges that the delay of the examination could cause.

It is with the criminal complaint, that most of the time, the inquiry and the investigation starts.

1. INVESTIGATION PHASE

The inquiring phase is the investigation phase of the crime.

At this stage, it is intended to identify several elements, such as:

- A) Who committed the crime?
- B) How did the crime happen?
- C) Where did the crime take place?
- D) When did the crime take place?
- E) Who are the victims of this crime?
- F) What happened and in the most detailed way possible.

In order to answer all these questions, the Public Prosecutor, who is the owner of the criminal action and therefore the entity responsible for conducting the investigation, relies on the Criminal Police Organs, and in the most serious and violent crimes (homicide, rape, abduction ...) has the support of the Judicial Police, Police only with criminal investigation functions, to gather the evidence and testimonies of the occurrence of this crime and investigate its authors, in order that the case can be presented in Judgment and the responsibility of the authors can be determined.

The victim is the most important witness because it was she/he who suffered the crime, it was she/he who was in contact with the author of it. Thus, her/his testimony is very important, as important as the vestiges left in her/his body, in her/his clothes and in the objects that she/ brought, which can be object of expert examinations.

- **Protection and Psychological Support**

For the immediate protection of the victim, and with the consent of the victim, the Public Prosecutor's Office may decide to apply the teleassistance to the victim, provided for in article 20, number 4 of Law n.º 122/2009.

Teleassistance consists of an electronic device that is delivered to the victim and that the victim activates for help. This aid can vary between psychological support to police intervention. The Commission for Citizenship and Gender Equality (IGC) is the responsible for the teleassistance.

- **Welcoming in a shelter**

The criminal police agencies and the Public Prosecutor's Office may contact the victim support entities with the objective of the possible reception of the victim and minor children who are with him/her in a Shelter House, in accordance of articles 53 and followings of Law n.º112/2009 and Regulatory Decree N.º 1/21006, 25 January.

In an emergency situation call number 144.

- **Possibility of not having to go to trial**

The victim may be questioned using videoconference or teleconference or for future memory, according to the articles 32 and 33 of Law n.º 112/2009.

- **Protection of victims and witnesses**

As a witness, it may eventually benefit from the witness protection regime provided for in Law n.º 93/99, of 14th July, having the Public Ministry having jurisdiction to promote measures.

- **Child protection**

The Magistrate of the Public Prosecutor who directs the criminal investigation coordinates, if necessary, with the Magistrate of the Public Prosecution in the Court of Family and Minors for the promotion of decisions on children and young people that must be taken, such as the action of regulation of parental responsibilities, which includes food, suspension or conditioning of the visit regime, according to the law.

- **Receive a monetary amount as compensation**

The victim of the crime of domestic violence in a situation of serious economic difficulties resulting from the crime committed in Portuguese territory is entitled to an advance payment of compensation by the State, that may be required to the Commission for the Protection of Victims of Crimes (CPVC), in accordance with Law n.º 104/2009, of 14th September, regulated by Decree n.º 120/2010, of 27th October. This request may be filed by the Public Prosecutor's Office (it may also be filed by associations or entities supporting the victim of domestic violence, at their request and on their behalf).

- **Detention and pre-trial detention of the offender**

According to article 30 of Law n.º 112/2009, the Public Prosecutor's Office and, in certain circumstances, criminal police agencies may order the detention of the offender, even without flagrante delicto, by issuing arrest warrants, if there is Danger of continuing criminal activity or if the detention is indispensable for the protection of the victim, for presentation to a Criminal Investigation Judge in order to apply the coercive measures.

- **Measures of coercion**

Measure of coercion is a restriction on the freedom of the accused, which may be applied in the course of the criminal proceedings if there is a danger of escape, danger of obtaining and retaining evidence of the crime, danger to public order and / or danger of continuation of criminal activity.

Under the promotion of the Public Prosecutor's Office, if there is a danger of continuity of criminal activity, it is possible to subject the aggressor to coercion measures that protect the victim and / or help the aggressor to recover:

- Removal of the aggressor

As a coercive measure in the investigation, the removal of the defendant from the residence where the crime was committed or where the victim lives may be **imposed, even if the victim has left the residence because of the crime or because of a serious threat of crime;**

- Prohibition of contacts with the victim, prohibition of stay in certain places.

It may be imposed on the accused not to contact the victim or certain persons or not to attend certain places;

- The non-acquisition, non-use, or delivery, immediately, of weapons or other objects and utensils that the accused detains, capable of facilitating the continuation of criminal activity;

- Submission of the accused to the frequency of programs with his/her consent.

These measures should be **supervised by means of technical control at a distance**, with the consent of the defendant and the victim, in cases of medium / high risk, unless the Judge considers that the technical means of remote control are indispensable for the protection of the victim's Rights (Article 35 and 36 of Law N.º 112/2009), in which case the consent of the defendant is not necessary.

- **The crime of domestic violence allows for preventive detention.**

Pre-trial detention may be cumulated with a prohibition of contacts when there is a serious risk of disturbance to the acquisition, retention or veracity of the evidence, namely the danger of the victim altering his or her testimony as a result of the defendant's action, through threats , coercion of the victim, the children or other family members) or when the victim, at his/her request or at the request of the accused, visits prison and is threatened and injured or is very foreseeable the occurrence of such facts.

- **Apprehension of firearms**

If firearms are available, the Judge may order the delivery of the firearm as a measure of urgent coercion according to article 31 of Law n.º 112/2009 or apprehended the weapons and their license revoked in accordance with the Articles 107 and 108 of Law n.º 5/2006, of 23 February. If the crime

is committed with a weapon, there is an aggravation of the sentence under the terms of n.º 3 and 4 of Law n.º 5/2006 ("Arms Law")

- **Technical Means of Distance control**

Technical Means of distance control are from the responsibility of the General-Direction for Social Reintegration and consist of a device applied to the accused and another delivered to the victim, which indicates the approximation (prohibited) of the accused to the victim or to his/her home (Article 35 Of Law 112/2009 of 16/09). These technical means may be applied to the defendant, as a precautionary measure in the investigation, in the context of the Provisional Suspension of the Process or in compliance with punishment.

- **Support to remove personal property from the house**

The Law assigns to the victim the right, with police follow-up, if necessary, to remove from the home all personal goods, own movable property and also the children or adopted minors goods (art. 21, 4, of Law 112/2009 of 16/09).

- **An accessory penalty prohibiting contact with the victim and banning the use and possession of weapons for up to five years**

If the defendant is charged and convicted, even if he or she is detained in custody (and, after the judicial decision becomes a convict serving a sentence), it is possible to apply an accessory penalty prohibiting contact with the victim and prohibiting the use and possession of arms for up to five years (which must be requested in the indictment), which protects the victim in case of precarious exits or conditional release of the aggressor (article 152 of the Criminal Code).

- **Provisional Suspension of the Process**

Since the crime of domestic violence has a public nature, after the denunciation or participation, it is not permissible for the victim / offended to give up. However, in the criminal proceedings, in addition to the accusation leading to the aggressor's judgment, the Public Prosecutor's Office may decide - **with the agreement of the Investigating Judge and with the victim's free and informed request** - by the Provisional Suspension of the Process, that is, the close of the investigation), by imposing injunctions and rules of conduct (article 281, n.º 6 of the Code of Criminal Procedure). In case the aggressor / accused complies with the injunctions and rules specifically set, the process is filed without trial.

These rules and injunctions may consist of subjecting the perpetrator to programs to change their behavior - the PAVD - Program for Aggressors of Domestic Violence, under the responsibility of the Directorate General for Social Reintegration.

The objective is "To promote in the aggressors the awareness and assumption of the responsibility of their violent behavior as well as the learning of strategies alternative to the violent behavior, with the purpose of reducing the relapse".

In addition to this Program, the Directorate-General for Social Reintegration may establish for other cases recovery plans in conjunction with other entities, for example, frequency of programs or removal under technical control.

FOR THE VICTIM, IT IS VERY IMPORTANT THAT IT CAN BE PROVEN THAT THE CRIME HAS OCCURRED!

For her/him, who suffered aggression and mistreatment, there is no doubt about this crime, but in the Portuguese penal and procedural criminal system, the principle of innocence operates, where all persons are presumed innocent until proven guilty and sentenced in trial, the facts imputed to the aggressor must be proved in court.

- **How the victim can prove the crime suffered?**

A CRIME ONLY EXISTS IF PROVEN!

- Present the medical information you brought from the hospital or health center. In the case of physical aggression, the victim must have an examination or legal medical examination, so that there may be a record of that aggression, as well as the identification of the injuries suffered by the aggression.

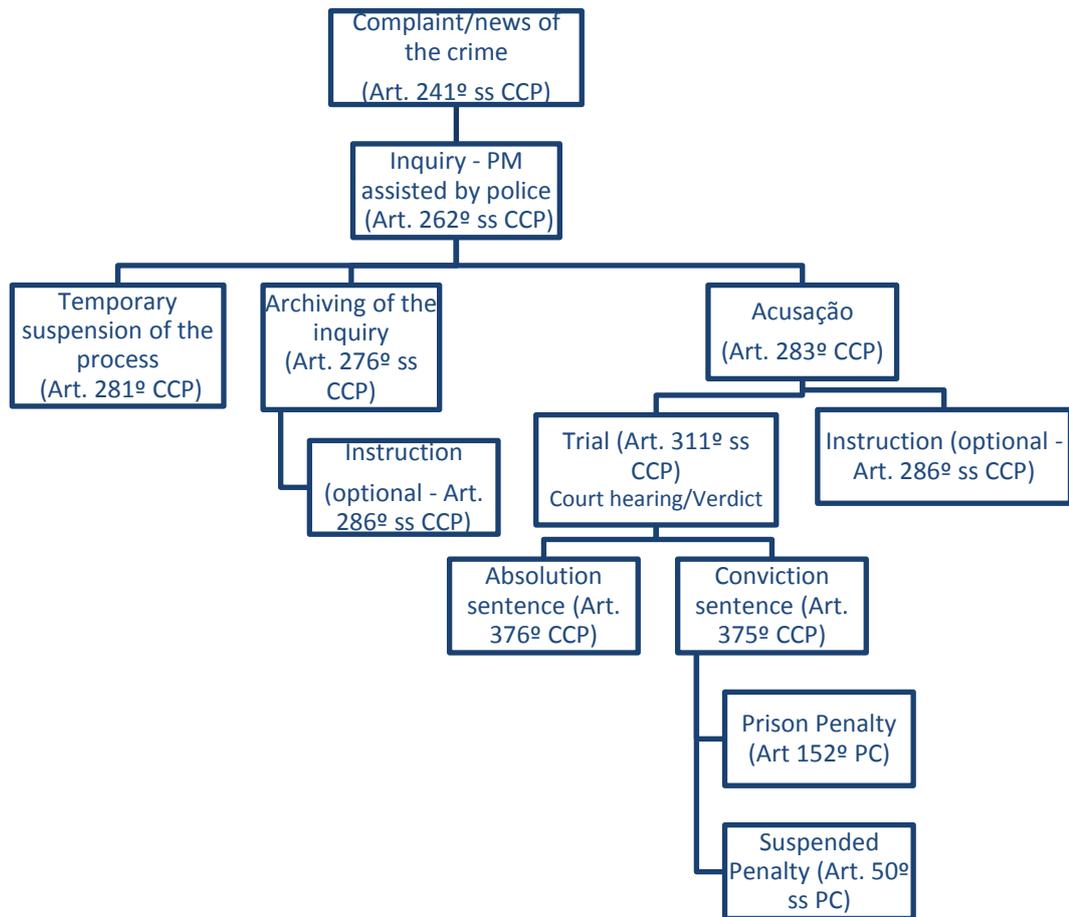
- Take pictures if you have physical marks. Photographs are a powerful way to document injuries.

- Keep all messages (sms, emails ...) sent to you by the attacker with threats and at the time you present criminal complaint, say that you have these messages and / or emails, requesting that they be transcribed and joined to the criminal process.

- Identify witnesses of the crime, witnesses who can confirm what happened. It is essential that the witnesses have seen in person or heard the assaults.

- Attend the medical examination.

Path of complaint.



2. PROVISIONAL SUSPENSION OF THE CRIME PROCESS:

- During the investigation phase, the Public Prosecutor's Office may decide - with the agreement of the Investigating Judge and the free and clarified request of the victim - for the Provisional Suspension of the Process.
- Provisional suspension of proceedings applies to less serious forms of violence in which it is possible, with the agreement of the victim and the aggressor, to adopt consensual measures so that violence does not repeat, applying rules of conduct to the perpetrator.
- If the aggressor successfully meets the agreed rules of conduct, the process will be filed. If he fail to comply, the process will continue.
- He can seek counseling from an office of support for victims of domestic violence.

3. ENDING THE INVESTIGATION

- **What happens after the Public Prosecutor's Office itself, or through the Criminal Police**

departments, finish the investigation and thus close the Inquiry phase?

1. If, during the Inquiry, evidence has been collected that strongly indicates that the perpetrator committed the crime, the Public Prosecutor's Office shall deduct an accusation against the offender.
2. If the evidence gathered during the Inquiry is not strong enough, that allows with some degree of certainty, a conviction in court, or if no evidence is collected, the prosecutor must file the case, issuing the filing order.
3. After the Indictment or Filing, the instruction phase may take place, which is optional and may be requested by the accused (if there was an accusation) or by the victim (if there was a filing).
4. If the INSTRUCTION Phase occurs, then the evidence already collected by the Public Prosecutor's Office, or another that may still result from new steps indicated by the victim, will be analyzed by the Investigating Judge, who will then decide whether or not the proceeding will follow for Judgment.

If the Investigating Judge understands that the evidence collected is strong and that they can make a conviction, he / she issues the PRONOUNCEMENT DISPATCH and the criminal proceeding will follow to the JUDGMENT phase.

However if the Investigating Judge understands that the evidence collected is weak, and does not allow the accused to be indicted with a degree of certainty in a conviction, then he / she issues the DISPATCH OF NO PRONUNCIATION and the process is filed.

In order to be able to request the OPENING OF THE INSTRUCTION PHASE, the victim has to be an assistant in the process and be represented by a lawyer.

If the victim does not have the financial resources to have a lawyer, he / she should apply to Legal Aid, and should go to the social security services to request the appointment of a lawyer who, according to Law 7-A / 2016, March 30th, State Budget for 2016, the Victims of Domestic Violence who have been granted victim status are exempt from costs.

Article 207.º

Amendment to the Procedural Costs Regulation

The article 4.º of the Procedural Costs Regulation, approved by Decree-Law n.º 34/2008, of February 26, is repaced by the following:

«Article 4.º

[...]

1 - ...

a) ...

b) ...

c) ...

d) ...

e) ...

f) ...

g) ...

h) ...

i) ...

j) ...
l) ...
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o) ...
p) ...
q) ...
r) ...
s) ...
t) ...
u) ...
v) ...
x) ...

z) **Persons who have been granted the status of victims of domestic violence, according to the provisions of article 14 of Law no. 112/2009, of September 16, as changed by Laws 19 / 2013, 21 February, 82-B / 2014, 31 December and 129/2015, of 3 September, when they intervene in their criminal proceedings in any of the qualities referred to in Articles 67a to 84 Of the Code of Criminal Procedure.**

2 - ...

a) ...

b) ...

c) ...

d) ...

e) ...

f) ...

g) ...

3 - ...

4 - ...

5 - ...

6 - ...

7 - ...»

4. THE JUDGMENT

- The Trial phase is intended to confirm before the Court, whether or not there has been a crime, or at least whether it is possible to prove the existence of a crime, the crime denounced by the victim. For this, it is necessary, that in a hearing of judgment, it is possible to produce the necessary proof, so that the defendant can be condemned.
- In cases where such evidence is not produced, where it is not possible to prove the facts that the accused was charged, the Court shall decide on the absolution of the accused.
- In order to convict or absolve an accused, the Court must repeat at a trial hearing all the evidence that has already been produced in the Inquiry phase, through a new inquiry of the victim (unless he/she provided statements for future memory), the inquiry of all the witnesses, at least of the most important witnesses, those who have brought some kind of personal evidence to the records, to re-examine all the documentation attached to the records, such as expertise and medical examinations, transcripts of sms's, email's or voice messages, and the interrogation of the defendant, who only makes declarations if he wishes.
- Sometimes, in domestic violence crimes, the victim refuses to make statements in court, benefiting from the prorogation that the law confers on her not to make statements that incriminate her husband / partner.
- In these cases, the victim should be fully aware that if he/she refuses to testify in a Trial (which, as we have just said, is his/her own decision), the accused may be acquitted, which would imply that the facts for which he was accused in that case can not be assessed in another investigation, thus being unpunished that violence.
- In the case of conviction, the accused will be condemned to a prison sentence, which may be suspended under

certain conditions.

The suspension of execution of the sentence of imprisonment of a convicted person for the practice of domestic violence provided for in article 152 of the Criminal Code is always subject to the fulfillment of duties or compliance with rules of conduct or monitoring of the proof regime, including the separation between the victim and the aggressor, the removal of the offender from his residence or place of work, and the prohibition of contacts by any means. - Article 34 - B of Law 112/2009 of 16 September.

- In addition to the prison sentence, even if it is suspended, the following additional penalties may also be applied to the defendant:

1. Prohibition of contact with the victim and prohibition of use and possession of weapons, for a period of six months to five years;

2. Obligation to attend specific programs to prevent domestic violence;

3 - Depending on the seriousness of the facts, inhibition of paternal power, for a period of one to ten years.

- The accessory punishment prohibiting contact with the victim must include , the removal of the offender from his residence or place of work and the fulfilment of these rules must be supervised by technical means of remote monitoring (electronic surveillance).

- Finally, in case of conviction, the accused may be obliged to compensate the victim for the amount requested by him/her or, even if the victim does not ask for it, for the amount fixed by the court - article 21 of the law 112/2009 of 16 September.

What to do if you are a victim of Domestic Violence?

- If you are not in danger of life and you are not sure if you want to report the crime, ask for specialized assistance from a Victim Support Association.

You can find the address of one of these entities on the Equality and Gender Commission website, therefore you can seek help from the Association that is closest to your home.

- If for any reason you do not want to go to any service in search of information, or to tell your situation, you can do it through the Green Line, available 24 hours, where you will find help and expert advice - GREEN LINE 800 202 148.

If you are **being assaulted or in danger:**

- Call 112 immediately and get help.

- Always indicate in the first place where the aggression is occurring.

- Try to run away, get out of the house, yell for help, and go to the nearest police station in your area of residence.

- It's important that your neighbors or family listen. Later on you will need witnesses to prove the crime.

- After the assault, go immediately to the nearest hospital or health center in order to be helped. Even if you do not

need treatments, report what happened and ask for a medical report, which may help you to have evidence later.

- Report the crime to the authorities as soon as possible.

Who can report?

- The crime of domestic violence is a public crime, so anyone, other than the victim, can and should report this occurrence.

Where to report?

- You can report the crime preferably at a PSP station, at a GNR station, also at the police station in the Court in the section of the Public Prosecutor's Office (MP), through an electronic complaint or at the Legal Medicine Institute.

But what is Domestic Violence anyway?

It is a violent behavior - physical (eg, kicking, slapping, throwing things), sexual (eg, subjecting the victim to sexual practices against his/her will), or psychological (eg blackmail, threatening, humiliating) - which occurs in a family environment. Although this type of violence is mostly carried out on women, it also affects men, and directly or indirectly, children, the elderly and other vulnerable people, such as people with disabilities. Domestic violence can happen to anyone, regardless of age, social class, gender, religion, sex or ethnicity.

- ✓ Are you afraid of the temperament of your boyfriend or girlfriend?
- ✓ Are you afraid of his/her reaction when you do not agree with each other?
- ✓ Does he/she constantly ignore your feelings?
- ✓ Does he/she laugh with the things you tell him?
- ✓ Does he/she tries to put you on the ridiculous or make you feel bad in front of your friends or other people?
- ✓ Has he/she ever threatened to assault you?
- ✓ Has he/she ever hit you, kicked you, pushed you, or shot you with anything?
- ✓ You can not be with your friends and family because he/she is jealous?
- ✓ Have you ever been forced to have sex?
- ✓ Are you afraid to say "no" when you do not want to have sex?
- ✓ Are you forced to justify everything you do?
- ✓ Is he or she constantly threatening to reveal your relationship?
- ✓ Have you ever been unfairly accused of being involved or having sex with other people?
- ✓ Do you always have to ask for permission to go out?

The presence of one or more of these behaviors, especially those that are used to control the life of another person, as a rule, the person you live with, could mean that you are a victim of physical, psychological or sexual

violence in your relationship.

Domestic violence is a crime, just as violence between same sex in their relationship is also domestic violence.

The Law through Article 152 of the Criminal Code defines Domestic Violence, as the conduct of "Who, whether repeatedly or not, inflict physical or psychological abuse, including corporal punishment, deprivation of liberty and sexual offenses, to the spouse or ex-spouse, The person of another or the same sex with whom the agent maintains or has maintained a relationship of courtship or a relationship similar to that of the spouses, even without cohabitation, The parent of common descendant in 1st degree; Or The particularly defenseless person, especially on account of age, disability, illness, pregnancy or economic dependency, who lives with him.