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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

KYRGYZSTAN

**DRAFT LAW OF THE KYRGYZ REPUBLIC
ON AMENDMENTS TO THE LAW OF THE KYRGYZ REPUBLIC
“ON THE PROTECTION AND DEFENCE AGAINST DOMESTIC
VIOLENCE” AND TO THE CODE OF THE KYRGYZ REPUBLIC
“ON OFFENSES”**

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Project

I. LAW OF THE KYRGYZ REPUBLIC
On Amendments to the Law of the Kyrgyz Republic
"On the protection and defence against domestic violence" and in
Code of the Kyrgyz Republic "On Offenses"

Article 1.

To introduce the following changes to the Law of the Kyrgyz Republic “On protection and defence against domestic violence” (Erkin-Too newspaper, May 9, 2017):

1) supplement part one of Article 29 with subparagraph 31) of the following content:

“31) the obligation of the person who has committed domestic violence to implement measures to ensure control over the execution of the terms of the temporary protection order using technical means;”;

2) Supplement Article 29¹ with the following content:

"29¹ Measures to ensure control over the execution of the terms of a temporary protection order using technical means

1. Measures to ensure control over the execution of the terms of a temporary protection order using technical means – remote control and tracking of the location of the person in respect of whom a temporary protection order has been issued, using electronic and other technical means in order to ensure that he/she complies with the prohibitions and/or restrictions imposed on him/her.

2. The decision to apply a measure to ensure control over the execution of the terms of a temporary protection order using technical means is made by the relevant internal affairs agency.

The decision on the application of measures to ensure control over the execution of the terms of a temporary protective order using technical means shall specify the conditions for their execution (the territory which he cannot leave, the territory in which he cannot be, the prohibitions and (or) restrictions established in relation to him), and shall also indicate the body and (or) official who is responsible for monitoring compliance with the established restrictions.

A person who has committed domestic violence is required to sign a written commitment not to leave the relevant territory without permission from the body that applied the measure to ensure control over the execution of the terms of the temporary protective order using technical means, and to comply with the established prohibitions and/or restrictions.

3. The conditions for the implementation of measures to ensure control over the execution of the terms of a temporary protection order using technical means

shall be determined by the authorized state body in the sphere of internal affairs of the Kyrgyz Republic."

Article 2

To make the following changes to the Code of the Kyrgyz Republic on Offenses (Erkin-Too newspaper dated November 16, 2021, No. 122-133):

1) supplement Article 28 with subparagraph 32 of the following content:

"32) prohibitions and (or) restrictions with electronic surveillance;"

2) Chapter 6 shall be supplemented with Article 31² of the following content:

"Article 31². Prohibitions and (or) restrictions with electronic surveillance

1. Prohibitions and/or restrictions with electronic surveillance shall be applied for the commission of offenses related to domestic violence in cases provided for in the articles of the Special Part of this Code.

2. Prohibitions and/or restrictions with electronic surveillance are imposed by the court for a period of up to 3 months.

3. In the cases provided for in Part 1 of this article, the court has the right to impose the following prohibitions and restrictions:

- prohibition of direct and indirect contacts with the victim;
- restriction of parental rights in terms of contacts with minor children;
- restrictions on location in certain territories.";

3) in the first sentence of part 1 of Article 33, the words "up to seven" shall be replaced by the words "up to fourteen";

4) the second paragraph of Article 56 shall be set out as follows:

"entails prohibitions and/or restrictions with electronic surveillance for up to 3 months, community service for 40 hours, or arrest for three to seven days.";

5) the second paragraph of Article 57 shall be set out as follows:

"entails prohibitions and/or restrictions with electronic surveillance for up to 3 months, community service for 40 hours, or arrest for three to seven days.";

6) the second paragraph of Article 70 shall be set out as follows:

"entails prohibitions and/or restrictions with electronic surveillance for up to 3 months, community service for 40 hours, or arrest for three to seven days.";

7) Articles 71 and 72 shall be set out as follows:

"Article 71. Failure to comply with the terms of a temporary protection order and prohibitions and (or) restrictions

Failure to comply with the terms of a temporary protective order issued to a victim of domestic violence, or with the prohibitions and/or restrictions established by this Code with electronic surveillance, in the absence of elements of a crime in the act -

shall entail community service for 40 hours or arrest for seven to fourteen days.

Article 72. Evasion by a person who has committed domestic violence from undergoing a correctional program, complying with prohibitions and (or) restrictions

Evasion by a person who has committed domestic violence, as well as offenses provided for in Articles 56 and 57 of this Code, from undergoing a correctional program, or the prohibitions and (or) restrictions established by this Code with electronic surveillance -

shall entail community service for 40 hours or arrest for seven to fourteen days.";

8) Chapter 58 shall be supplemented with Article 564³ of the following content:

"Article 564³. Procedure and terms for the execution of prohibitions and (or) restrictions with electronic surveillance

1. Court-imposed prohibitions and/or restrictions with electronic surveillance shall be enforced by internal affairs agencies.

2. A person against whom a penalty has been imposed in the form of prohibitions and (or) restrictions with electronic surveillance is obliged to comply with the requirements of the established prohibitions and (or) restrictions.

3. Control over a person against whom a penalty has been imposed in the form of prohibitions and (or) restrictions with electronic surveillance is assigned to the internal affairs agencies.

4. A person who evades the imposed penalty in the form of prohibitions and (or) restrictions with electronic surveillance shall be held liable in accordance with this Code.

5. The procedure and conditions for electronic surveillance and the procedure for using electronic and other technical means of control shall be determined by the Cabinet of Ministers of the Kyrgyz Republic."

Article 3.

1. This Law shall enter into force upon expiration of ten days from the date of official publication.

2. The Cabinet of Ministers of the Kyrgyz Republic shall, within six months, bring its regulatory legal acts into conformity with this Law.

**President
Kyrgyz Republic**

S.N.Japarov

II. REFERENCE JUSTIFICATION

On Amendments to the Law of the Kyrgyz Republic "On Protection and Defense from Domestic Violence" and the Code of the Kyrgyz Republic on Offenses"

1. Objectives and tasks

The main objectives of the proposed draft law are to improve the effectiveness of the implementation of the international obligations of the Kyrgyz Republic under the Declaration on the Elimination of Violence against Women (Adopted by General Assembly resolution 48/104 of 20 December 1993), the Convention on the Elimination of All Forms of Discrimination against Women (Adopted by General Assembly resolution 34/180 of 18 December 1979), as well as paragraph 25.2. Goal 8 of the National Action Plan for Achieving Gender Equality for 2022–2024, approved by Resolution No. 513 of the Cabinet of Ministers of the Kyrgyz Republic dated 16 September 2022.

The objectives of the proposed law are to expand the means and methods of monitoring the behavior of individuals who have committed acts of domestic violence using electronic and other technical means.

2. Descriptive part

The regulatory framework for the proposed law includes:

- Code of the Kyrgyz Republic on Offenses dated October 28, 2021 No. 128;
- Law of the Kyrgyz Republic “On protection and defence against domestic violence” dated April 27, 2017 No. 63;
- Declaration on the Elimination of Violence against Women of 20 December 1993;
- Convention on the Elimination of All Forms of Discrimination against Women of December 18, 1979.

In accordance with this law, the Kyrgyz Republic plans to create an effective system for preventing gender-based violence and discrimination, following the principle of “zero tolerance” for manifestations of gender-based violence, developing access and means of judicial protection, ensuring the principle of inevitability of punishment for perpetrators of gender-based crimes and violence, creating an effective system for providing services and assistance to victims.

As a result of the implementation of the proposed law in the area of protection from domestic violence, new measures will be taken to more effectively influence the subjects of legal relations, including strengthening control measures over persons who have committed domestic violence.

The safety of victims of domestic violence will be ensured using modern technologies.

For these purposes, it is proposed to expand the list of penalties by adding subparagraph 32 to Article 28 with the following content:

"32) prohibitions and (or) restrictions with electronic surveillance;"

In order to disclose the content of this new type of penalty, the relevant amendments are made, namely Article 312 of the following content. Thus, prohibitions and (or) restrictions with electronic surveillance are applied for the commission of offenses related to domestic violence, are appointed by the court for a period of 3 months. The court has the right to appoint the following prohibitions and restrictions:

- prohibition of direct and indirect contacts with the victim;
- restriction of parental rights in terms of contacts with minor children."

In order for the above-mentioned norms to operate systematically, it is proposed to introduce a new type of penalty in the form of prohibitions and (or) restrictions with electronic surveillance into the sanctions of Articles 56, 57, 70, 71 and 72 of the Code of the Kyrgyz Republic on Offenses.

In order to establish uniform rules for the execution of this type of penalty, it is proposed to supplement the procedure and terms for the execution of prohibitions and (or) restrictions with electronic surveillance. Thus, prohibitions and (or) restrictions with electronic surveillance imposed by the court are executed by the internal affairs agencies. Control over the person against whom a penalty in the form of prohibitions and (or) restrictions with electronic surveillance has been imposed is assigned to the internal affairs agencies. The procedure and conditions for electronic surveillance and the procedure for using electronic and other technical means of control are determined by the Cabinet of Ministers.

3. Forecasts of possible social, economic, legal, human rights, gender, environmental, corruption consequences of the adopted law

There are no negative social, economic, legal, human rights, gender, environmental or corruption consequences of the adopted law.

4. Information on the results of public discussion

In accordance with Article 22 of the Law of the Kyrgyz Republic "On Regulatory Legal Acts of the Kyrgyz Republic", the draft underwent a public discussion procedure by posting it on the Unified Portal of Public Discussions of Regulatory Legal Acts of the Kyrgyz Republic (ID4501 dated November 26, 2024).

5. Analysis of the project's compliance with legislation

The proposed draft law is fully consistent with and based on the following norms:

- Code of the Kyrgyz Republic on Offenses dated October 28, 2021 No. 128;

– Law of the Kyrgyz Republic “On protection and defence against domestic violence” dated April 27, 2017 No. 63;

– Declaration on the Elimination of Violence against Women of 20 December 1993;

– Convention on the Elimination of All Forms of Discrimination against Women of December 18, 1979.

The presented draft Law of the Kyrgyz Republic does not contradict the norms of current legislation, as well as international treaties that have entered into force in the established manner, to which the Kyrgyz Republic is a party.

6. Information on the need for funding

No additional funding will be required to implement the proposed law.

7. Information on the regulatory impact analysis

The presented project does not require a regulatory impact analysis, since it is not aimed at regulating entrepreneurial activity.

Minister

A.B. Baetov

III. COMPARATIVE TABLE

On Amendments to the Law of the Kyrgyz Republic "On Protection and Defense from Domestic Violence" and the Code of the Kyrgyz Republic on Offenses"

Law of the Kyrgyz Republic "On protection and defense from domestic violence" from April 27, 2017 No. 63	
current edition	proposed revision
<p>Article 29. Conditions of a temporary protection order</p> <p>1. A temporary protection order provides for the following conditions simultaneously:</p> <p>1) a ban on direct and indirect contacts with a person who has suffered from domestic violence, as well as with the child/children of the person who has committed domestic violence, or the child/children of the person who has suffered from domestic violence;</p> <p>2) a ban on being in a place of joint residence (stay) with a person who has suffered from domestic violence;</p> <p>3) a ban on searching, personally or through third parties, for a person who has suffered from domestic violence if he or she is in a place unknown to the person who committed the domestic violence, or pursuing him or her;</p>	<p>Article 29. Conditions of a temporary protection order</p> <p>1. A temporary protection order provides for the following conditions simultaneously:</p> <p>1) a ban on direct and indirect contacts with a person who has suffered from domestic violence, as well as with the child/children of the person who has committed domestic violence, or the child/children of the person who has suffered from domestic violence;</p> <p>2) a ban on being in a place of joint residence (stay) with a person who has suffered from domestic violence;</p> <p>3) a ban on searching, personally or through third parties, for a person who has suffered from domestic violence if he or she is in a place unknown to the person who committed the domestic violence, or pursuing him or her;</p>

<p>4) the obligation of the person who committed domestic violence to undergo a correctional program to change violent behavior in accordance with the standard correctional program approved by the Cabinet of Ministers of the Kyrgyz Republic.</p> <p>2. A temporary protection order contains information about the right of a person who has suffered from domestic violence to apply to the court with the demands specified in Part 1 of Article 32 of this Law, as well as information about the liability of the person who has committed domestic violence for failure to comply with the terms of the temporary protection order.</p> <p>3. The form of a temporary protection order is approved by the Cabinet of Ministers of the Kyrgyz Republic.</p>	<p>31) the obligation of the person who committed domestic violence to implement measures to ensure control over the execution of the terms of the temporary protection order using technical means;</p> <p>4) the obligation of the person who committed domestic violence to undergo a correctional program to change violent behavior in accordance with the standard correctional program approved by the Cabinet of Ministers of the Kyrgyz Republic.</p> <p>2. A temporary protection order contains information about the right of a person who has suffered from domestic violence to apply to the court with the demands specified in Part 1 of Article 32 of this Law, as well as information about the liability of the person who has committed domestic violence for failure to comply with the terms of the temporary protection order.</p> <p>3. The form of a temporary protection order is approved by the Cabinet of Ministers of the Kyrgyz Republic.</p>
<p>does not contain</p>	<p>29¹. Measures to ensure control over the execution of the terms of a temporary protection order using technical means</p> <p>1. Measures to ensure control over the execution of the terms of a temporary protection order using technical means – remote control and tracking of the location of the person in respect of whom a temporary protection order</p>

	<p>has been issued, using electronic and other technical means in order to ensure that he/she complies with the prohibitions and/or restrictions imposed on him/her.</p> <p>2. The decision to apply a measure to ensure control over the execution of the terms of a temporary protection order using technical means is made by the relevant internal affairs agency.</p> <p>The decision on the application of measures to ensure control over the execution of the terms of a temporary protective order using technical means shall specify the conditions for their execution (the territory which he cannot leave, the territory in which he cannot be, the prohibitions and (or) restrictions established in relation to him), and shall also indicate the body and (or) official who is responsible for monitoring compliance with the established restrictions.</p> <p>A person who has committed domestic violence is required to sign a written commitment not to leave the relevant territory without permission from the body that applied the measure to ensure control over the execution of the terms of the temporary protective order using technical means, and to comply with the established prohibitions and/or restrictions.</p> <p>3. The conditions for the implementation of measures to ensure control over the implementation of the terms of a temporary protection order using technical means are</p>
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	determined by the Cabinet of Ministers of the Kyrgyz Republic.
Code of the Kyrgyz Republic on Offenses dated October 28, 2021 No. 128	
current edition	proposed revision
<p>Article 28. Types of penalties</p> <p>The following types of penalties may be applied for committing offenses:</p> <ol style="list-style-type: none"> 1) warning; 2) community service; 3) fine; 31) deprivation of the right to drive vehicles; 4) expulsion of foreign citizens; 5) arrest. <p><i>(As amended by the Law of the Kyrgyz Republic of February 15, 2023 No. 27)</i></p>	<p>Article 28. Types of penalties</p> <p>The following types of penalties may be applied for committing offenses:</p> <ol style="list-style-type: none"> 1) warning; 2) community service; 3) fine; 31) deprivation of the right to drive vehicles; 32) prohibitions and (or) restrictions with electronic surveillance; 4) expulsion of foreign citizens; 5) arrest.
does not contain	<p>Article 31². Prohibitions and (or) restrictions with electronic surveillance</p> <p>1. Prohibitions and/or restrictions with electronic surveillance shall be applied for the commission of offenses related to domestic violence in cases provided for in the articles of the Special Part of this Code.</p> <p>2. Prohibitions and/or restrictions with electronic surveillance are imposed by the court for a period of up to 3 months.</p>

	<p>3. In the cases provided for in Part 1 of this article, the court has the right to impose the following prohibitions and restrictions:</p> <ul style="list-style-type: none"> – prohibition of direct and indirect contacts with the victim; – restriction of parental rights in terms of contacts with minor children; - restrictions on location in certain areas.
<p>Article 33. Arrest</p> <p>1. Arrest consists of holding the offender in conditions of isolation from society in places determined by the internal affairs agencies, and is applied for a period of up to seven days.</p> <p>The place where detainees are held must comply with sanitary standards and exclude the possibility of acquiring (infecting) any diseases.</p> <p>The procedure for the functioning of places of detention and the requirements for the detention of persons in them shall be approved by the Cabinet of Ministers of the Kyrgyz Republic.</p> <p>2. Arrest is applied to an individual for the purpose of restoring law and order and educating the individual, as well as preventing the commission of new offenses by the individual himself or by other individuals.</p>	<p>Article 33. Arrest</p> <p>1. Arrest consists of holding the offender in conditions of isolation from society in places determined by the internal affairs agencies, and is applied for a period of up to fourteen days.</p> <p>The place where detainees are held must comply with sanitary standards and exclude the possibility of acquiring (infecting) any diseases.</p> <p>The procedure for the functioning of places of detention and the requirements for the detention of persons in them shall be approved by the Cabinet of Ministers of the Kyrgyz Republic.</p> <p>2. Arrest is applied to an individual for the purpose of restoring law and order and educating the individual, as well as preventing the commission of new offenses by the individual himself or by other individuals.</p>

<p>3. Arrest is applied by the court at the place where the offense was committed, and in conditions of emergency or martial law – by the commandant.</p> <p>4. Arrest may not be applied to children, women over the age of fifty-five and men over the age of sixty, pregnant women, women with children under the age of three, and persons raising a child under the age of sixteen alone, as well as to persons with disabilities of the first and second groups.</p> <p>5. Arrest of military personnel shall be applied in cases provided for by this Code for a period of up to five days.</p> <p>The military personnel are being held in the guardhouse.</p>	<p>3. Arrest is applied by the court at the place where the offense was committed, and in conditions of emergency or martial law – by the commandant.</p> <p>4. Arrest may not be applied to children, women over the age of fifty-five and men over the age of sixty, pregnant women, women with children under the age of three, and persons raising a child under the age of sixteen alone, as well as to persons with disabilities of the first and second groups.</p> <p>5. Arrest of military personnel shall be applied in cases provided for by this Code for a period of up to five days.</p> <p>The military personnel are being held in the guardhouse.</p>
<p>Article 56. Beatings</p> <p>Inflicting beatings or committing other violent acts that cause physical pain, if these actions do not contain qualifying features for which criminal liability is provided, shall entail community service for 40 hours or arrest for three to seven days.</p>	<p>Article 56. Beatings</p> <p>Inflicting beatings or committing other violent acts that cause physical pain, if these actions do not contain qualifying features for which criminal liability is provided, entails prohibitions and/or restrictions with electronic surveillance for up to 3 months, community service for 40 hours, or arrest for three to seven days.</p>
<p>Article 57. Intentional infliction of minor bodily harm</p> <p>Intentional causing of minor bodily harm to a person that does not result in short-term health impairment –</p>	<p>Article 57. Intentional infliction of minor bodily harm</p> <p>Intentional causing of minor bodily harm to a person that does not result in short-term health impairment –</p>

<p>shall entail community service for 40 hours or arrest for three to seven days.</p>	<p>entails prohibitions and/or restrictions with electronic surveillance for up to 3 months, community service for 40 hours, or arrest for three to seven days.</p>
<p>Article 70. Domestic violence</p> <p>Domestic violence (domestic violence) is the intentional use of physical, psychological, economic violence or the threat of physical violence, as well as neglect, committed by one family member/a person equivalent to him/her against another family member/a person equivalent to him/her, -</p> <p>shall entail community service for 40 hours or arrest for three to seven days.</p>	<p>Article 70. Domestic violence</p> <p>Domestic violence (domestic violence) is the intentional use of physical, psychological, economic violence or the threat of physical violence, as well as neglect, committed by one family member/a person equivalent to him/her against another family member/a person equivalent to him/her, -</p> <p>entails prohibitions and/or restrictions with electronic surveillance for up to 3 months, community service for 40 hours, or arrest for three to seven days.</p>
<p>Article 71. Failure to comply with the terms of a temporary protection order</p> <p>Failure to comply with the terms of a temporary restraining order issued to a victim of domestic violence, in the absence of elements of a crime in the act—</p> <p>shall entail community service for 40 hours or arrest for three to seven days.</p>	<p>Article 71. Failure to comply with the terms of a temporary protection order and prohibitions and (or) restrictions</p> <p>Failure to comply with the terms of a temporary protective order issued to a victim of domestic violence, or with the prohibitions and/or restrictions established by this Code with electronic surveillance, in the absence of elements of a crime in the act -</p> <p>entails community service for 40 hours or arrest for seven to fourteen days.</p>

<p>Article 72. Evasion of a person who has committed domestic violence from undergoing a correctional program</p> <p>Evasion of a person who has committed domestic violence from undergoing a correctional program entails community service for 40 hours.</p>	<p>Article 72. Evasion by a person who has committed domestic violence from undergoing a correctional program, from fulfilling prohibitions and (or) restrictions</p> <p>Evasion by a person who has committed domestic violence, as well as offenses provided for in Articles 56 and 57 of this Code, from undergoing a correctional program, or the prohibitions and (or) restrictions established by this Code with electronic surveillance -</p> <p>shall entail community service for 40 hours or arrest for seven to fourteen days.</p>
<p>does not contain</p>	<p>Article 564³. Procedure and terms for the execution of prohibitions and (or) restrictions with electronic surveillance</p> <p>1. Court-imposed prohibitions and/or restrictions with electronic surveillance shall be enforced by internal affairs agencies.</p> <p>2. A person against whom a penalty has been imposed in the form of prohibitions and (or) restrictions with electronic surveillance is obliged to comply with the requirements of the established prohibitions and (or) restrictions.</p> <p>3. Control over a person against whom a penalty has been imposed in the form of prohibitions and (or) restrictions with electronic surveillance is assigned to the internal affairs agencies.</p>

	<p>4. A person who evades the imposed penalty in the form of prohibitions and (or) restrictions with electronic surveillance shall be held liable in accordance with this Code.</p> <p>5. The procedure and conditions for electronic surveillance and the procedure for using electronic and other technical means of control shall be determined by the Cabinet of Ministers.</p>
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