

UDC 343.347
DOI: 10.33270/01211192.83

Human health issues in the draft Criminal Code of Ukraine

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■ **Abstract.** The purpose of the study – highlight the problematic issues related to criminal law protection of human health and propose appropriate changes to the current criminal legislation of Ukraine. To achieve this purpose, the following objectives were identified: to analyse the draft Criminal Code of Ukraine on causing harm to a human fetus, causing harm during sports, serious harm to health, suffering, violence, and domestic violence; to compare some provisions of the draft Criminal Code of Ukraine with the current criminal legislation. Methodology. The problems of human health care are the object of scientific research that has been ongoing since the emergence of the first states, thus they require a correct methodology. The choice of research methodology should ensure a systematic study of current trends in rulemaking in the field of criminal law protection of human health. Considering the purpose, the specifics of the object and the subject of the study, the appropriate methodological tools were developed, analysed and summarised the results of the study. In the process of analysing the current criminal legislation and the draft Criminal Code of Ukraine, the comparative legal method was applied, and a specific research method – the method of system analysis. The scientific originality of the study is that, based on the analysis of current criminal legislation and the draft Criminal Code of Ukraine, the possibility and expediency of improving criminal legislation in the field of human health is substantiated. Conclusions. The terminology of Ukrainian legislation on criminal liability should be accurate, consistent with the content and not contain unnecessary detail. Changing some provisions of the Criminal Code of Ukraine would ensure accurate and full compliance with the content of some terminology and its purpose; exhaustive scope of legal regulation, clarity and accessibility

■ **Keywords:** draft; Criminal Code of Ukraine; criminal offence; grievous harm; human health; human fetus; bodily injury; domestic violence

■ Suggested Citation:

Katerynychuk, K., & Hryshchenko, A. (2021). Human health issues in the draft Criminal Code of Ukraine. *Scientific Journal of the National Academy of Internal Affairs*, 26(2), 83-89. doi: 10.33270/01211192.83.

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■ Received: 02.18.2021; Revised: 04.04.2021; Accepted: 05.08.2021



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■ Introduction

Currently, the criminal legislation is being actively redefined, resulting in the discussion of the draft Criminal Code of Ukraine (hereinafter - the Draft). Individual provisions of the Draft relate to the following issues: harm to a human fetus; harm during sports; serious harm to health; suffering; violence; domestic violence, etc. As for the mentioned terminology, its features and definitions contained in the Draft, they require clarification and explanation.

The purpose of this study is to assess the legislation in the field of human health and to provide proposals for improving the criminal law protection of human health in Ukraine.

To accomplish this purpose, the following objectives should be implemented: 1) to analyse the Draft Criminal Code of Ukraine on causing harm to a human fetus; causing harm during sports; grievous harm to health; suffering; violence; domestic violence; 2) to compare some provisions of the Draft with the current criminal legislation.

According to the results of the study, conceptual provisions that have scientific originality in the field of human health were developed. The necessity to improve the current criminal legislation of Ukraine is substantiated. The shortcomings of the Draft CC of Ukraine that require elimination are outlined.

■ Outline of the Main Material

Among the developers of the Project (P.P. Andrushko, Y.V. Baulin, V.M. Burdin, O.P. Gorokh, N.O. Gutorova, V.O. Navrotskyi, Y.A. Ponomarenko, E.L. Streltsov, M.I. Khavroniuk) and other scholars in the theory of criminal law, discussions on updated terminology [1-3], criminal law institutions and other issues continue. It is not the first time [2] that the attention of the scientific community is drawn to the fact that relevant specialists with specific knowledge should be involved in the development of individual provisions of the Draft.

For example, it would be quite appropriate to involve forensic experts in the work on the sections of the Draft on crimes against life (4.1) and human health (4.2).

In case of infliction of any bodily injury resulting in termination of pregnancy, criminal liability arises under Article 121 of the Criminal Code of Ukraine (hereinafter – the CC of Ukraine). Thus, the injury that caused the excessive pregnancy does not depend on the gestational age. However, it is necessary to establish a causal connection between the injury and the termination of pregnancy through a forensic medical examination. According to paragraph 2.7.4 of the Rules for conducting forensic medical examinations (examinations) on sexual conditions, the Bureau of Forensic Medicine notes that in cases of determining a causal connection between the trauma and the termination of pregnancy (rupture of the fetal bladder,

placental abruption followed by miscarriage or premature birth), serious bodily harm is established.

In the presence of objective symptoms of the threat of miscarriage (bloody discharge, uterine irritability), which appeared shortly after the medical measures, and the pregnancy was preserved, the severity is determined by the duration of the treatment.

The Draft Criminal Code of Ukraine defines the harm that may be caused to a human fetus as the death of a human fetus (Articles 4.1.10, 4.1.11), grievous injury to a human fetus (injury caused during intrauterine development, which caused serious harm to health, which is established after the birth of the child (Article 4.2.1).

Firstly, the definition of “grave harm” (Article 2.1.9 of the Draft) refers to its main components: it is grave harm to human health (clause “d” of Part 1 of Article 1.3.4 of the CC of Ukraine) or human fetus, in particular, infection with a particularly dangerous infectious disease. Thus, the concepts of “grave harm to human health” and “grave harm to the health of the human fetus” are proposed. While the first terminology is obvious, the second one raises many questions.

Secondly, the definition of “grave injury to a human foetus” (Article 4.2.1) raises questions. What should be considered the object of encroachment - the ordinary development of the human fetus or the health of the human fetus? Is the human fetus endowed with health? Is criminal liability for minor injury to a human fetus excluded? Regarding the “specific features” of this definition, the authors of the Draft are trying to make positive adjustments to the CC of Ukraine, changing the terminology “bodily harm” to “harm to human health”, but currently use the incomprehensible term “grievous bodily harm”, which does not exist in jurisprudence or medicine; secondly, “intrauterine development” begins from the moment of conception (fertilisation) and ends with the removal or expulsion of the human fetus from the woman's body. Thus, development begins from the moment of fusion of the male germ cell with the female and the establishment of a new cell – the zygote, from which the organism begins to develop (Zavalniuk, 2016). However, the Instruction on determining the criteria for the perinatal period, live birth and stillbirth (hereinafter – the Instruction) defines that the fetus is an intrauterine product of conception, starting from the full 12th week of pregnancy (from 84 days from the first day of the last regular menstrual cycle) until expulsion/removal from the mother's body [4]. Thus, there is an inconsistency between the terminology in the Draft Criminal Code of Ukraine “grievous bodily harm to a human foetus” and the definition of this term, and it contradicts the provisions of medical science regarding the period (term) from which criminal legal protection is provided.

Thirdly, how can one cause serious harm to the health of a human fetus without causing serious harm to the health of a human mother?

Based on the above, everything is clear in the current Criminal Code of Ukraine (as regards the signs of bodily injuries and criminal law protection at the beginning of human life), since the theory and practice of criminal law have already been developed over the years and has a logical foundation. As for the provisions of the Draft, there are some ambiguities in the terminology, which will cause problems in its application in practice. In the Draft, it is proposed to clarify the term “termination of pregnancy” as one of the signs of grave harm before 22 weeks of pregnancy, and other terms: “grave harm to human health”, “grave harm to the health of the human fetus” should be clarified and detailed.

The definition of the term “pregnant woman” – a woman from the moment of internal or in vitro fertilisation until the end of childbirth, is provided in Draft clause 5 part 2 of Article 1.3.1. (Definition of the terms of the Criminal Code of Ukraine). Firstly, as noted above, it is appropriate to use the terminology “expulsion” or “removal” of the fetus, not the end of childbirth; secondly, “in vitro fertilisation” is fertilisation outside the human (female) body and is the way by which internal fertilisation is performed. In this case, pregnancy begins from the moment of “implantation” of a fertilised egg to a woman, from this moment a woman can theoretically be considered pregnant. The term of pregnancy is determined from the first day of the last regular menstrual cycle. The Guidelines for the definition of the perinatal period, live birth and stillbirth criteria define the gestational age in full days or full weeks (e.g., the period between the 280th and 286th day from the first day of the last regular menstrual period and corresponds to 40 weeks of pregnancy).

In summary, it should be noted that positive reform of legislation in any area requires the involvement of specialists with relevant knowledge, which will be a reliable guarantee of its proper quality and efficiency.

The authors of the Draft are trying to unify the provisions of the future Law on Criminal Liability, however, the text of the Draft, along with the term “harm to human health”, again contains “bodily injury” in clause 58, part 2, Article 1.3.1 and in clause “b”, part 6, Article 3.5.1.

In addition, the Draft contains terminology identical in its content, namely: “particular physical, mental or moral suffering” (clause “a” of part 35 of Art. 1.3.1); “particular mental or moral suffering” (clause “b” of part 35 of Art. 1.3.1); “physical suffering” (Art. 3.7; para. 3 of Art. 1.2.6); “psychological suffering” (para. 5 of para. 1 of Art. 4.7.1); “physical or psychological suffering” (para. “a” of para. 1 of Art. 4.7.3); “unbearable physical suffering” (para. “a” of para. 1 of Art. 4.1.1).

As for the proposed terminology in the Draft, there is a substitution of “mental” for “psychological”, or there is no precise distinction between the terms “mental suffering” and “moral suffering”. It would be appropriate to define this terminology to eliminate controversial issues, but this is not done in the Draft, except for the terminology “psychological suffering” – emotional maladjustment and disorientation, in which the victim of violence feels chronic guilt, depression, high anxiety, pessimism, decreased self-esteem and concentration, adverse feelings and disappearance of positive emotions, or psychosomatic disorders such as weight changes, allergic reactions, ulcers, unexplained pains, neuropsychiatric diseases (stuttering, tics, enuresis, encopresis, etc.) (clause 5, part 1, Article 4.7.1. Explanation of the terms used in this section).

Thus, some of the terminology used by the authors in the Draft is debatable and does not have precisely defined and established scientific features. First of all, it is “emotional maladjustment”, “disorientation”, and “neuropsychiatric diseases”, which are not provided by the International Classification of Diseases of the Tenth Revision (hereinafter – ICD-10) – Mental disorders and behavioural disorders.

Thus, using the concept of “maladaptation” is quite controversial and ambiguous, which can be traced mainly in the assessment of the place and role of maladaptive states with such categories as “norm” or “pathology”, since the parameters of “norm” and “pathology” in psychology are not sufficiently developed [5]. Thus, it is a debatable terminology that has no clearly defined and established scientific features. In addition, the combination of the terms “emotional maladjustment” is slightly incorrect, it would be more appropriate to use the term “emotional sphere maladjustment”. The next term is “disorientation”, the feature of which is that its types are not specified, it is not established whether it is disorientation in time, in space or disorientation in personality. These three “states” in psychiatry have different codes of diseases and conditions in class V: Mental disorders and behavioural disorders of ICD-10. Thus, the further list of diseases and conditions, in the definition of “psychological suffering”: chronic guilt, high anxiety, psychosomatic disorders; weight changes, allergic reactions, ulcers, unexplained pain; neurotic, stress-related and somatoform disorders (F40-F48) – the specified list of mental disorders placed in one subsection. Another list: depression, pessimism, decreased self-esteem and concentration, negative feelings and disappearance of positive emotions; mood disorders (affective disorders) (F30-F39). The term “neuropsychiatric diseases” is not used in psychiatry, as in ICD-10 diseases of the nervous system (G00-G99) and mental disorders and behavioural disorders (F00-F99) are contained in different sections.

The proposed list: stuttering, tics, enuresis, encopresis, etc. – are mental disorders and behavioural disorders. Therefore, the terminology proposed by the authors of the Draft requires clarification. The analysis of the legislation (Procedure for psychological support of service activities in the State Service for Special Communications and Information Protection of Ukraine and the Instruction on the procedure for organising and conducting psychoprophylactic work with the personnel of the State Border Guard Service of Ukraine) and special literature confirms the above opinion regarding the impossibility of using the terminology “nervous and mental illness”. For the most part, other concepts are used: neuropsychic stability - a complex of innate (biologically determined) and acquired personal qualities, mobilisation resources and reserve psychophysiological capabilities of the body, which ensure optimal functioning of the individual in adverse conditions of the professional environment; neuropsychic (emotional and volitional) instability - a tendency to breakdowns of the nervous system in case of significant mental and physical stress [6; 7].

Thus, the authors of the Draft in the definition of “psychological suffering” give too limited a list of possible diseases and conditions of the V class “Mental disorders and behavioural disorders” of ICD-10, without specifying the main features and signs of this concept. Thus, consider it necessary to refine this terminology with the subsequent exclusion of a limited list of possible mental disorders and the definition of the main features of the term “psychological suffering”.

One of the signs of grievous bodily harm (current CC of Ukraine) or grievous harm to health (Draft CC of Ukraine) - mutilation of the genital organ - remains controversial. This feature can be interchanged with other ones - “loss of any organ or its functions” or “health disorder combined with permanent disability of at least one-third”. The Rules of forensic medical determination of the severity of bodily injuries (paragraph 2.1.4) determine that non-life-threatening injuries, which are severe in terms of the final result and consequences, should include the loss of reproductive capacity - loss of ability to copulate or loss of ability to fertilise, conceive and give birth (child-birth). In some cases, genital mutilation can result in the loss of reproductive capacity [8].

In paragraph “c” of part 1 of Art. 1.3. 4 of the Draft contains the definition of “grave harm to health” – harm to health, which is characterised by: loss of any organ or its function; mutilation of a sexual organ; persistent mental disorder; health disorder combined with persistent loss of general working capacity (more than 33%) or complete loss of professional capacity; termination of pregnancy; irreparable disfigurement of the face or body or other consequences, the presence of which poses a danger to the life of a person. Thus, attempts to “regulate” the

signs of grievous bodily harm (current terminology) in the Draft will result in even greater inconsistency, as one of the signs “irreparable disfigurement of the face or body” fully covers another sign - “mutilation of the genital organ”, if it does not result in loss of reproductive capacity.

The current CC of Ukraine does not include causing harm during sports activities to the circumstances excluding the unlawfulness of the act, which is a precondition for scientific discussions. In Art. 2.7.8. Causing harm during sports activities of the Draft states: 1. It is lawful to cause harm to the life or health of a person during a sports competition or training, if: a) the relevant sport is duly recognised in Ukraine; b) the competition or training is officially organised; c) the person to whom the harm is caused has voluntarily and in advance agreed to engage in this sport; d) the person causing the harm adheres to the rules of this sport. 2. Causing harm during sport with violation of the provisions of part 1 of this article shall entail criminal liability on the general grounds provided by this Code. The conditions of lawful infliction of harm during sports listed in the Draft Law include the fact that “the person to whom the harm is inflicted has voluntarily and in advance agreed to engage in this sport”. Thus, it refers only to the consent to engage in a particular sport without mentioning the harm to the life and health of the person, in contrast to the title of the article (Causing harm during sports). In addition, the authors of the Draft did not specify the amount of damage - substantial, significant, or severe (Article 1.3.4 Amount of damage to health).

In the author's opinion, the consent of a person to cause harm to their health during sports activities should be assessed on general grounds.

Considering the crucial social necessity of criminalisation of domestic violence, and in the context of Ukraine's ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, a new Article 1261 “Domestic Violence” was introduced to the CC of Ukraine - intentional systematic commission of physical, psychological or economic violence against a spouse or former spouse or another person with whom the perpetrator is (was) in a family or close relationship, which results in physical or psychological suffering, health disorders, disability, emotional dependence or deterioration of the quality of life of the victim. In addition, a new aggravating circumstance has been introduced – “committing a criminal offence against a spouse or former spouse or another person with whom the perpetrator is (was) in the family or close relations” (paragraph 61, Part 1 of Article 67 of the CC of Ukraine).

In the General Part of the Draft (as of May 31, 2021) in Art. 1.3.1. The meaning of the terms of

the Criminal Code of Ukraine, the authors defined violence – as physical impact on another person, in particular by striking, beating, using acoustic, light, thermal or chemical factors or restricting his freedom (clause 27). The Special Part provides for liability for using domestic violence (Article 4.7.3. Domestic violence). A person who has systematically used physical, psychological or economic violence against a spouse or other close person, including a ex-spouse, resulting in: a) physical or psychological suffering; b) health disorders; c) disability; d) emotional dependence; e) deterioration of the victim's quality of life.

Thus, the consequences of domestic violence provided for in the Draft are debatable and require clarification and explanation. Thus, for example, the term “suffering” is fully covered by the definition of “special torture” provided in the Draft (infliction of harm to life or health), which: a) was accompanied by special physical, mental or moral suffering of the victim or b) was committed in the presence of a person close to the victim, who was thus subjected to special mental or moral suffering (paragraph 35 part 2 of Article 1.3.1). In addition, these two articles contain inconsistent terminology, namely: “psychological suffering” is occasionally substituted by another term – “mental suffering”.

Secondly, health disorders and disability are signs of harm to a person's health (now these are bodily injuries), which are defined in Art. 1.3.4, thus it is inappropriate to distinguish them in the article as different signs (consequences) of domestic violence.

Regarding the explanation provided in the Draft of the term “emotional dependence” (dependence on the relationship with the aggressor, which is characterised by the inability to choose in a destructive relationship, combined with an unbearable, desperate fear of loneliness (clause 2, part 1, Article 4.7.1), this definition can be fully explained by the following feature of domestic violence: “psychological suffering” - emotional maladjustment and disorientation, in which the victim of violence experiences chronic feelings of guilt, depression, high anxiety, pessimism,

reduced self-esteem and concentration, the occurrence of adverse feelings and disappearance of positive emotions or occurrence of psychosomatic disorders - weight changes, allergic reactions, ulcers, unexplained pains, neuropsychiatric diseases (stuttering, tics, enuresis, encopresis, etc. 5 part 1 Article 4.7.1). In addition, the criteria of “deterioration of the quality of life” – physical condition, intellectual dysfunctions, and social maladjustment and disorientation (clause 4, part 1, Article 4.7.1) completely duplicate the definition of mental suffering.

Thus, it is recommended that the signs of domestic violence – health disorders and disability – be stated as “harm to the health of a person”; “emotional dependence” be excluded from the list of signs; in the definition of the term “deterioration of the quality of life” only one of the criteria – economic insufficiency as a consequence of economic violence – should be preserved.

■ Conclusions

Summarising the above, it can be concluded that:

1. The terminology of the current legislation of Ukraine on criminal liability should be accurate, consistent with the content and not contain unnecessary detail. Changing some provisions of the CC of Ukraine would ensure precise and full compliance with the content of some terminology and its purpose, exhaustive scope of legal regulation, clarity and accessibility.

2. For the positive reform of legislation in any sphere, it is necessary to involve relevant specialists, which will be the key to its proper quality and efficiency. Thus, it would be appropriate to involve forensic experts in the work on the sections of the Project “Crimes against human life” (4.1) and “Crimes against human health” (4.2). In the current conditions, the terminology contained in the Draft contradicts the provisions of medical science, has inaccuracies, which will cause particular problems of application in practice, and it is debatable and requires clarification.

■ References

- [1] Hrys, A.M., & Holubniuk, V.O. (2016). Psychological factors of social maladaptation of adolescents. *Current problems of psychology*, 14(11), 14-26. Retrieved from <http://appspsychology.org.ua/data/jrn/v11/i14/4.pdf>.
- [2] Katerynychuk, K.V. (2020). Problems of criminal law characterization of premeditated murder by the mother of her newborn child. *Scientific notes of Tavriya National University named after V.I. Vernadsky*, vol. 31(70), 2, 41-46. doi: 10.32838/2707- 0581/2020.2-3/07.
- [3] Katerynychuk, K.V. (2021). Problems of defining the concept of “harm to human health” in the draft Criminal Code of Ukraine. *Scientific notes of Tavriya National University named after V.I. Vernadsky*, 32(71), 1, 95-99. doi: 10.32838/TNU-2707- 0581/2021.1/17 .
- [4] Katerynychuk, K.V., & Beshpal, O.L. (2020). Features of qualification of separate crimes against health of the person. *Word of the National School of Judges*, 1(30), 74-84. doi: 10.37566/2707-6849-2020-1(30)-6.
- [5] Kovalenko, I.A., & Katerynychuk, K.V. (2021). The right to protection of life and health of a person: civil and criminal aspects. *Science for Modern Man economics, management, marketing, tourism, law and political science*, 4(6), 145-151. doi: 10.30890/2709-2313.2021-04-06-054.

- [6] Order of the Ministry of Health of Ukraine “Rules for conducting forensic medical examinations (examinations) regarding sexual conditions in the forensic medical examination bureau” No. 6. (1995, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0253-95>.
- [7] Order of the Ministry of Health of Ukraine “About the statement of the Instruction on determining the criteria of perinatal period, live birth and stillbirth” No. 179. (2006, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0427-06#Text>.
- [8] Order of the Ministry of Justice of Ukraine “On approval of the Instruction on the procedure for organizing and conducting psychoprophylactic work with the staff of the State Border Guard Service of Ukraine” No. 318. (2008, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/z065708/ed20080727/find?text=%CD%E5%F0%E2%EE%E2%EE%EF%F1%E8%F5%B3%F7%ED%E0+%28%E5%EC%EE%F6%B3%E9%ED%EE%E2%EE%EB%FC%EE%E2%E0%29+%ED%E5%F1%F2%B3%E9%EA%B3%F1%F2%FC#ext>
- [9] Order of the Ministry of Justice of Ukraine “On approval of the Procedure for psychological support of official activities in the State Service for Special Communications and Information Protection of Ukraine and the List of psychological contraindications, the presence of which makes it impossible to serve (study) in the State Service for Special Communications and Information Protection of Ukraine” No. 431. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/z1009-15/ed20150731>.
- [10] Draft Criminal Code of Ukraine. (2021, May). Retrieved from <https://newcriminalcode.org.ua/upload/media/2021/06/01/1-kontrolnyj-tekst-proektu-kk-31-05-2021.pdf>.
- [11] Zavalniuk, A.Kh. (2016). *Forensic Medicine*. Ternopil: TDMU.

■ Список використаних джерел

- [1] Грись А. М., Голубнюк В. О. Психологічні чинники соціальної дезадаптації підлітків. Актуальні проблеми психології. 2016. № 14 (11). С. 14–26. URL: <http://appspsychology.org.ua/data/jrn/v11/i14/4.pdf>.
- [2] Катеринчук К. В. Проблеми кримінально-правової характеристики умисного вбивства матір'ю своєї новонародженої дитини. Вчені записки Таврійського національного університету імені В. І. Вернадського. 2020. Т. 31 (70). № 2. С. 41–46. (Серія «Юридичні науки»). doi: 10.32838/2707-0581/2020.2-3/07.
- [3] Катеринчук К. В. Проблеми визначення поняття «шкода здоров'ю особи» у проєкті Кримінального кодексу України. Вчені записки Таврійського національного університету імені В. І. Вернадського. 2021. Т. 32 (71). № 1. С. 95–99. (Серія «Юридичні науки»). doi: 10.32838/TNU-2707-0581/2021.1/17.
- [4] Катеринчук К. В., Беспаль О. Л. Особливості кваліфікації окремих злочинів проти здоров'я особи. Слово національної школи суддів. 2020. № 1 (30). С. 74–84. doi: 10.37566/2707-6849-2020-1(30)-6.
- [5] Коваленко І. А., Катеринчук К. В. Право на охорону життя і здоров'я особи: цивільно-правовий та кримінально-правовий аспекти. *Wissenschaft für den modernen Menschen wirtschaf, management, marketing, tourismus, rechts und politikwissenschaften*. 2021. Buch 4. Teil 6. С. 145–151. (Monografische Reihe «Europäische Wissenschaft»). doi: 10.30890/2709-2313.2021-04-06-054.
- [6] Правила проведення судово-медичних експертиз (обстежень) з приводу статевих станів в бюро судово-медичної експертизи : наказ Міністерства охорони здоров'я України від 17 січ. 1995 р. № 6. URL: <https://zakon.rada.gov.ua/laws/show/z0253-95>.
- [7] Про затвердження Інструкції з визначення критеріїв перинатального періоду, живонародженості та мертвонародженості : наказ Міністерства охорони здоров'я України від 29 берез. 2006 р. № 179. URL: <https://zakon.rada.gov.ua/laws/show/z0427-06#Text>.
- [8] Про затвердження Інструкції про порядок організації та проведення психопрофілактичної роботи з персоналом Державної прикордонної служби України : наказ Міністерства юстиції України від 14 квіт. 2008 р. № 318. URL: <https://zakon.rada.gov.ua/laws/show/z065708/ed20080727/find?text=%CD%E5%F0%E2%EE%E2%EE%EF%F1%E8%F5%B3%F7%ED%E0+%28%E5%EC%EE%F6%B3%E9%ED%EE%E2%EE%EB%FC%EE%E2%E0%29+%ED%E5%F1%F2%B3%E9%EA%B3%F1%F2%FC#Text>.
- [9] Про затвердження Порядку здійснення психологічного забезпечення службової діяльності в Державній службі спеціального зв'язку та захисту інформації України та Переліку психологічних протипоказань, наявність яких унеможливує проходження служби (навчання) в Державній службі спеціального зв'язку та захисту інформації України : наказ Міністерства юстиції України від 31 лип. 2015 р. № 431. URL: <https://zakon.rada.gov.ua/laws/show/z1009-15#Text>.
- [10] Проєкт Кримінального кодексу України (станом на 31 трав. 2021 р.). URL: <https://newcriminalcode.org.ua/upload/media/2021/06/01/1-kontrolnyj-tekst-proektu-kk-31-05-2021.pdf>.
- [11] Завальнюк А. Х. Судова медицина : тлумач. термінолог. довід. Тернопіль : ТДМУ. 2016. 516 с.

Проблеми охорони здоров'я людини в проєкті Кримінального кодексу України

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■ **Анотація.** Мета дослідження – висвітлити проблемні питання, пов'язані з кримінально-правовою охороною здоров'я людини, і запропонувати відповідні зміни до чинного кримінального законодавства України. Задля її досягнення було поставлено такі завдання: проаналізувати проєкт Кримінального кодексу України щодо заподіяння шкоди плоду людини, заподіяння шкоди під час заняття спортом, тяжкої шкоди здоров'ю, страждання, насильства, домашнього насильства; здійснити порівняльну характеристику деяких положень проєкту Кримінального кодексу України з чинним кримінальним законодавством. Методологія. Проблеми охорони здоров'я людини є об'єктом наукових пошуків, які тривають з часу виникнення перших держав, тому вони потребують коректної методології. Вибір методології дослідження має забезпечити системне вивчення сучасних тенденцій нормотворення у сфері кримінально-правової охорони здоров'я людини. З огляду на поставлену мету, специфіку об'єкта й предмета дослідження обрано відповідний методологічний інструментарій, здійснено опрацювання, аналіз й узагальнення результатів дослідження. У процесі аналізу чинного кримінального законодавства та проєкту Кримінального кодексу України застосовано порівняльно-правовий метод, а також спеціальний метод дослідження – метод системного аналізу. Наукова новизна дослідження полягає в тому, що на підставі аналізу чинного кримінального законодавства та проєкту Кримінального кодексу України обґрунтовано можливість і доцільність удосконалення кримінального законодавства у сфері охорони здоров'я людини. Висновки. Термінологія законодавства України про кримінальну відповідальність має бути точною, відповідати змісту й не містити зайвої деталізації. Зміна певних положень Кримінального кодексу України забезпечили б точну та повну відповідність змісту деякої термінології та її призначення; вичерпний обсяг правового регулювання, ясність і доступність

■ **Ключові слова:** проєкт; Кримінальний кодекс України; кримінальне правопорушення; тяжка шкода; здоров'я людини; плід людини; тілесне ушкодження; домашнє насильство