

STOP DOMESTIC VIOLENCE!

What you need to know



the doj & cd

Department
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



PUT A STOP TO DOMESTIC VIOLENCE!

The Domestic Violence Act No. 116 of 1998 allows a victim of domestic abuse or violence to seek a Protection Order from the Magistrate's Court against the person who is committing the abuse.

This booklet is intended to give the victim the information that he or she needs to bring an application for a Protection Order in terms of the Domestic Violence Act. Both men and women can be guilty of or be victims of domestic violence. However, For the purposes of this booklet however, we have depicted violence against women as this is more commonly encountered.

APPLICATION FOR PROTECTION ORDER

- Any complainant may in the prescribed manner apply to the court for a protection order.
- The application may also be brought by any person with material interest in the wellbeing of the complainant e.g. Social worker teacher, police official, doctor or relative.
- Any minor or any person on behalf of the minor, may apply for a protection order.
- The application may be heard in private and the complainant/respondent may be allowed to not more than three persons for purpose of providing support.
- The protection order is valid for life and enforceable throughout the Republic.

Against whom may you seek protection?

- The person to whom you are married, whether by civil or customary rites;
- Your partner (whether of the same or opposite sex) who lives or has lived together with you, even though you were not married to each other or are not able to be married to each other (if, for example, one of you was already married to someone else);
- The other parent of your child or person(s) who shares parental responsibility with you for a child;
- Persons who are related to you by blood ties, marriage or adoption;



- The person with whom you shared an engagement, customary or dating relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration;
- A person with whom you share or have recently shared the same residence.

WHAT IS DOMESTIC VIOLENCE?

- physical abuse
- sexual abuse
- emotional abuse ,verbal and psychological abuse
- economic abuse
- intimidation
- harassment
- stalking or entry into the complainant's residence without consent, where the parties do not share the same residence
- damage to property or other personal assets
- any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

Both men and women can be guilty of, and be victims of domestic violence.

WHAT MUST I DO?

- If you are a victim of any act of domestic violence as listed above, approach the local Magistrate Court family request and request assistance in bringing an application for a Protection Order.
- The Clerk of the Court will assist you to complete the necessary application forms and take you before a Magistrate who will determine whether to grant the Order or not.
- The details of service providers who can give advice and help you in this regard are provided at the end of this booklet.
- You may come to court with no more than 3 persons to support you, especially when you feel traumatised as a result of domestic violence.
- Remember that in emergencies, this service is available 24 hours a day.

WHICH COURT SHOULD I APPROACH?

Approach the Court nearest to where you live or work. If you were forced to leave your place of residence as a result of the violence and are living elsewhere temporarily, you may approach the Court closest to your temporary residence.

WHAT IS AN AFFIDAVIT?

An affidavit is a statement made under oath. This means that the person who is making the statement has sworn to speak the truth and is aware that he/she will be prosecuted if it is found out that the contents (or parts thereof) of the affidavit are untrue. It is an offence in a court of law to make a false statement.



WHAT WILL THE INTERIM PROTECTION ORDER STATE?

- The interim Protection Order will order the Respondent (the person who is committing the abuse) not to abuse you in the specific manner alleged in your affidavit, e.g. to stop physically or verbally abuse you or the children.
- In extreme cases, the Magistrate may consider it appropriate to prohibit the Respondent from entering the shared house or restrict him/her to certain areas of the shared residence.
- If the children are or may possibly be victims of the abuse, the Court may order that the Respondent has no or limited contact with the children.
- The Court may make an order for emergency monetary relief. For instance, if you need to claim medical expenses or alternate accommodation costs which arose directly as a result of the abuse, you must provide proof of the expenses incurred and request the Court to consider this application.

- The Court may order the police to seize the Respondent's firearm if he/she has made any threat against your life.

To fully appreciate the nature of the particular abuse that you are experiencing, the Court relies on the affidavit that you draft when making your application. You must therefore provide the Court with all the relevant information in your affidavit, for example, details of the incidents of abuse, the date and place and nature of the last incident.

WHAT DO I DO WITH THE INTERIM PROTECTION ORDER?

- The interim Protection Order must be served on the Respondent as soon as possible. You cannot personally hand over the Order to the Respondent as this will not constitute proper service. In other words, handing over the interim Protection Order is the responsibility of someone in an official capacity i.e. a Police Officer, Sherriff, or any other person authorised by the court.



- You must take the interim Protection Order to the Office of the Sheriff or to the police station closest to the respondent's residential or work address. At the police station, please remember to take down the name and/or badge number of the police person to whom you hand the Order.
- This will enable you to easily track the Order at a later stage. Most police stations have a designated Officer who handles domestic violence matters.
- Arrange with the Police Officer to collect the Return of Service (Proof of Service).
- This proves that the interim Protection Order has been served on the Respondent and that he/she has personally received it. Do not arrange for the police to deliver or post the Return of Service directly to the Court as this is often too slow and does not get to Court before the return date.



- Remember that in terms of the law, the Police must assist you in whatever manner stipulated in the Court Order, for example with the collection of personal belongings, your ID document, children's books or clothes, etc. If you find that the Police Officer is unhelpful and refuses to cooperate in terms of the Order, you may report this to the office of the civilian secretariat for police at: 012 393 2500.

Also note that it is not the duty of the Police to assist you with the removal of furniture, computers, crockery, etc.

- The interim protection order becomes valid as soon as it is served on the respondent. What this means is that the respondent can be arrested by the police when he violates the interim protection order.

WHAT IS THE RETURN DATE?

The return date is the date set to allow the Court an opportunity to hear the Respondent before the Interim Protection Order is made final.



WHAT HAPPENS ON THE RETURN DATE?

In the presence of the Complainant, the Respondent has the opportunity to present his side of the story to the Magistrate. The Respondent may file an opposing affidavit or request an opportunity to file an opposing affidavit. These papers will be served on you. You will then be given an opportunity to file a reply.

WILL THE RESPONDENT BE ARRESTED WITH THE PROTECTION ORDER?

The Respondent will not be arrested upon service of the Protection Order. It is only upon a breach of the terms of the order that the Respondent may be arrested.



- The matter may be postponed to another date for hearing. The Clerk of the Court will assist you or direct you to someone who will assist you with the drafting of the reply.
- At the date of the hearing, the Magistrate will consider the matter and make a decision based on the affidavits which both parties have filed. The Magistrate may ask either or both of you for clarification of certain issues.
- The Magistrate may decide to confirm the Order, set aside the Order or order that oral evidence be heard.
- If the Respondent fails to appear at the civil hearing and you have the proof that the Protection Order was served on him (the Return of Service), the Magistrate may make the order final. The Magistrate must be satisfied that your affidavit clearly confirms that abuse has taken place, before he/she makes the Protection Order final.

- The final order must also be served on the respondent by the sheriff, police or any other person authorised by the court.
- You will also be served with the final order by the clerk of the court, from which will be accompanied by the suspended warrant for the arrest of the respondent. you are only authorised to use this warrant when the respondent breaches the protection order.

WHAT IS A BREACH OF THE PROTECTION ORDER?

This is when the Respondent fails to comply with the terms of the Order, e.g. when he repeats the abusive behaviour that, according to the Protection Order served; he has been prohibited from committing.

**DOMESTIC VIOLENCE
HURTS EVERYONE**

WILL THERE BE A FORMAL HEARING?

If the Magistrate is unable to make a decision on the affidavits presented to him because of the conflict of facts between your version and the Respondent's version, i.e. if there is a dispute in the information given by both parties, the Magistrate will postpone the matter for a formal hearing.

At the hearing, both parties will be required to give oral evidence under oath and to be cross-examined by the other party. However, the respondent is only allowed to ask complainant questions via his attorney or the Magistrate.

Both parties may call witnesses and to give any other supporting evidence that they need to prove their case, for example, medical certificates, hospital records, photographs, documents, etc.



WHAT IF THE PROTECTION ORDER IS BREACHED?

- If the Respondent breaches the Protection Order by repeating the abuse, you may file a complaint at the nearest police station and hand in the Warrant of Arrest and the protection order to the police who may then arrest the Respondent.
- Once arrested, the Respondent will face criminal charges and be tried in a criminal court for breaching the Protection Order served on him/her.

Remember, however, that if the Court finds that the Warrant of Arrest is used maliciously (to have the Respondent arrested without just cause), then you may be prosecuted in terms of the Act.



CAN THE CRIMINAL CHARGES BE WITHDRAWN?

Once the Respondent has been arrested for a breach of the Protection Order, you cannot withdraw the charges.

Only the Senior Public Prosecutor has the right to withdraw charges.

CAN I SET ASIDE THE ORDER?

- The protection order is valid for life. However, you may, at any time, make an application to have the Order set aside. It is however, at the discretion of the Magistrate as to whether or not to set aside the Order.
- This will mean that the Protection Order will be declared null and void.
- It is important to note that in a court of law, it is the Magistrate's final decision as to whether a Protection Order may be set aside.



USEFUL NUMBERS

**People Opposing Women Abuse
(POWA): 011 642 4345**

**Stop Women Abuse:
0800 150 150**

**Adapt:
011 885 3332**

**Domestic Violence Network:
012 321 4959**

**NICRO (Crime Prevention):
011 403 2953**

**South African Human Rights Commission:
011 484 8300**



Child line:

011 938 8745

FAMSA National:

011 833 2057

LIFELINE:

011 728 1347/0861 322 322

Commission for Gender Equality (CGE):

011 403 7182

Independent Complaints Directorate (ICD):

012 320 0431

Police National:

10111



**FOR MORE INFORMATION, PLEASE
CONTACT THE FOLLOWING:**

**DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

**CHIEF DIRECTORATE: PROMOTION OF THE
RIGHTS OF VULNERABLE GROUPS.**

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