

DOMESTIC VIOLENCE

Handbook and Pilot Project

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Written by: Sheena Swemmer and Karabo Makwela (Centre for Applied Legal Studies)

Reviewed by: Nicola Soekoe, Phyllia Ngoetje, Nester Ndebele and Fatima Valley
(Women Affected by Mining United in Action)

For any comments or queries on the contents of the handbook, kindly contact Sheena Swemmer at sheena.swemmer@wits.ac.za



PURPOSE OF THE HANDBOOK

The leadership of Women Affected by Mining United in Action (WAMUA) approached the Centre for Applied Legal Studies (CALs) in 2021 to partner in developing a series of handbooks and/or training guides around gender-based violence (GBV). This emerged from increased requests by various community members for training around specific forms of GBV and how to negotiate the criminal justice and judicial systems.

This specific handbook deals with how to go about securing a protection order in cases of **domestic violence** (such a physical and sexual abuse by an intimate partner) or **harassment** (such as stalking and intimidation by someone outside of your home). These are two separate legal processes based on two different forms of gender-based violence. Yet, the processes are almost identical, and unless there is a substantive difference in the process, they will both be dealt with under the procedure of domestic violence.

All types of domestic violence are set out in the **Domestic Violence Act 116 of 1998**. The process of securing a protection order where there have been domestic violence incidents is also set out in this act. All of the types of harassment are set out in the **Protection from Harassment Act 17 of 2011**.

The handbook contains relevant information, law and procedures that are correct and up to date in 2021. There may be additions that need to be made in the future when developments occur in legislation and/or policy.

ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
ARV	Anti-Retroviral
CAS	Case Administration System
CALS	Centre for Applied Legal Studies
DPP	Director of Public Prosecutions
DVA	Domestic Violence Act 116 of 1998
GBV	Gender-based violence
HIV	Human Immunodeficiency Virus
NPA	National Prosecuting Authority
PEP	Post-Exposure Prophylaxis
PHA	Protection from Harassment Act 17 of 2011
OB	Occurrence book
SAPS	South African Police Service
SORMA	Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
STI's	Sexually Transmitted Infections
TCC	Thuthuzela Care Centre
WAMUA	Women Affected by Mining United in Action

DEFINITIONS¹

Accused	<ul style="list-style-type: none"> • A person or group of people who are charged with or on trial for a crime.
Acquittal	<ul style="list-style-type: none"> • When a criminal case is complete, the presiding officer makes an order. This order can either be that the accused is found guilty or that they are acquitted. An order that an accused is acquitted means that the State did not prove the case beyond a reasonable doubt, and therefore the accused is free to go.
Case number	<ul style="list-style-type: none"> • The number is given by a court for a criminal offence case.
Certified copy	<ul style="list-style-type: none"> • This is a copy of the warrant where its authenticity is verified by the court, usually with a court stamp.
Complainant	<ul style="list-style-type: none"> • The person who is the victim of domestic violence and approaches the court for a protection order. And/or the person who reports a crime committed against them to the police.
Consent	<ul style="list-style-type: none"> • Legal: voluntary and uncoerced agreement to a sexual act.² • Plain language: an agreement between participants to engage in sexual activity. Consent should be clearly and freely communicated (not coerced).
Balance of probabilities	<ul style="list-style-type: none"> • Legal: that sufficient reliance can be placed on [the plaintiff's /applicant's/complainant's] story for there to exist a strong probability that [their] version is the true one.³ • Plain language: the plaintiff's /applicant's/complainant's story is more likely than not to have occurred.

¹ With definitions which have specific legal criteria, the definition as set out in law is referenced first and then a 'plain language' definition is supplied.

² Section 1(2) OF SORMA.

³ *South African Bank of Athens v 24 Hour Cash CC* (A3027/2016) [2016] ZAGPJHC 217.

Domestic Violence	<ul style="list-style-type: none"> • Legal: is physical abuse; sexual abuse; emotional, verbal and psychological abuse; economic abuse; intimidation; harassment; stalking; property damage; entry into the complainant’s residence without consent, where the parties do not share the same home; or 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.⁴ • Plain language: violent or aggressive behaviour within the home, typically involving the violent abuse of a spouse, partner or any other person in your family or your household.
Gaslighting	<ul style="list-style-type: none"> • The perpetrator makes the victim question their reality, memory and perceptions. This is a form of manipulation by the perpetrator to make the victim feel uncertain of her perceptions and feel a loss of control.
Harassment	<ul style="list-style-type: none"> • Legal: directly or indirectly engaging in conduct that the respondent knows or ought to know- (a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably- (i) following. Watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where 10 the complainant or a related person resides, works, carries on business, studies or happens to be; (ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or (iii) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to or brought to the attention of, the complainant or a related person;

⁴ Section 1 of the Domestic Violence Act 116 of 1998 (“DVA”).

	<p>or (b) amounts to sexual harassment of the complainant or a related person.⁵</p> <ul style="list-style-type: none"> • Plain language: violent or aggressive behaviour outside of the home, typically involving people who are not in your family or part of your household. Such as work colleagues or friends.
Legal duty	<ul style="list-style-type: none"> • This is an obligation that someone has that is set out in law. Sometimes failing to do this can be a criminal offence.
Magistrate's Court	<ul style="list-style-type: none"> • The main courts that hear criminal matters.
Marital rape/spousal rape	<ul style="list-style-type: none"> • This is rape that occurs within an intimate relationship. This form of rape is not isolated to married individuals. Section of the SORMA states that the old defence of 'conjugal rights' is not permitted in marital rape cases.⁶
Perpetrator	<ul style="list-style-type: none"> • A person who commits a criminal offence.
Presiding officer/magistrate/judge	<ul style="list-style-type: none"> • The person who hears the criminal case. In the Magistrates' Court this they are called magistrates. In the High Court, they are called Judges. An overarching term is 'presiding officer'.
Prima facie	<ul style="list-style-type: none"> • Based on the first impression or correct unless proven otherwise.
Prosecutor	<ul style="list-style-type: none"> • The person who represents the state in a criminal case. This is the person who usually argues that an accused person to be found guilty of an offence.
Defence lawyer/attorney/advocate	<ul style="list-style-type: none"> • The person who represents the perpetrator or the accused in a criminal case. They usually argue that the accused should not be found guilty of an offence.
Rape	<ul style="list-style-type: none"> • Legal: any person ("A") who unlawfully and intentionally commits an act of sexual penetration with a complainant

⁵ Section 1 of the Protection from Harassment Act 17 of 2011 ("PHA").

⁶ Section 56(1) of SORMA.

	<p>("B"), without the consent of B, is guilty of the offence of rape.⁷</p> <ul style="list-style-type: none"> • Plain language: the intentional and non-consensual sexual penetration of one person by another. Examples include: <ol style="list-style-type: none"> (1) The genital organs of Lee into the genital organs, anus or mouth of Mpho, (2) Any other part of Lee's body or any object, into the genital organs or anus of Mpho; (3) or the genital organs of an animal into the mouth of Mpho.⁸
Reporting officer	<ul style="list-style-type: none"> • The person at SAPS that a complainant reports a criminal offence to.
Respondent	<ul style="list-style-type: none"> • The perpetrator of domestic violence is called a 'respondent' in the application process for a protection order.
Sexual Assault	<ul style="list-style-type: none"> • Legal: (1) A person ("A") who unlawfully and intentionally sexually violates a complainant ("B"), without the consent of B, is guilty of the offence of sexual assault. (2) A person ("A") who unlawfully and intentionally inspires the belief in a complainant.⁹ • Plain language occurs when Lee intentionally sexually violates Mpho without the consent of Mpho. <p>Sexual Assault is also committed where Lee threatens to violate Mpho sexually. 'Sexual violation' includes any act which causes – direct or indirect contact between the genital organs, anus or female breasts of one person, and any part of the body of another person, an animal, or object; the mouth of one person and genital organs, anus or breasts of another; the mouth of another person; any other part of the body of another person which causes sexual</p>

⁷ Section 3 of SORMA.

⁸ Centre for Applied Legal Studies and Tshwaranang, *A summary of the Criminal Law Sexual Offences Amendment Act 32 of 2007*. Available at <https://shukumisa.org.za/wp-content/uploads/2017/09/A-summary-of-the-Criminal-Law-Sexual-Offences-Amendment-Act-CALS-and-TLAC.pdf>,

⁹ Section 5 of SORMA.

	<p>arousal; any object resembling genital organs, an anus or breasts; Mpho's mouth and the genital organs or anus of an animal; Masturbation of one person by another; or the insertion of any object similar to the genital organs of a person or animal into or beyond Mpho's mouth. For example, when Lee touches Mpho's breasts or kisses Mpho, without Mpho's consent.¹⁰</p>
Sexual offence	<ul style="list-style-type: none"> • Legal – Any offence set out in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SORMA) or common law. • Plain language – Sexual offences refer to any crimes of a sexual nature that are recognised in South African law. This includes (but is not limited to) rape, sexual assault, grooming, being forced into committing a sexual offence, being forced to watch a sexual offence, forcing children to watch pornography.
Station commander	<ul style="list-style-type: none"> • This is the person at SAPS who is the head of a police station.
Victim	<ul style="list-style-type: none"> • This is a person against whom a criminal offence was committed. Individuals often choose if they want to be described as a 'victim' or a 'survivor'.
Survivor	<ul style="list-style-type: none"> • This is a person against whom a criminal offence was committed. Individuals often choose if they want to be described as a 'victim' or a 'survivor'.
Witness	<ul style="list-style-type: none"> • A person who witnessed a crime being committed or know information about the commission of a crime: both the State and the defence can bring witnesses.

¹⁰ As above.

CHAPTERS

1.	What is domestic violence?	10 – 12
2.	What to do when domestic violence is committed?	13 – 15
3.	How to go about obtaining an interim protection order	16 – 18
4.	The final order	19 – 22
5.	Contravention of an interim or final order	23
6.	Laying a criminal charge	24
7.	Summary of how to get information or lay a complaint at each stage	25

CHAPTER 1

WHAT IS DOMESTIC VIOLENCE?

Did you know?

Approximately 26% of women in South Africa admit to experiencing physical, sexual or emotional abuse by their intimate partner. This is where over 51% of women in Gauteng admit to experiencing these forms of intimate partner violence (AfricaCheck, 2020).

- Domestic violence is defined under the Domestic Violence Act as ‘any form of abuse which includes physical; sexual; emotional, psychological or verbal abuse; economic abuse, damage to property, stalking, entry into a person's property without their consent and any other abusive or controlling behaviour where such a conduct causes harm or may cause harm to your health, safety, or wellbeing’.¹¹
- Examples of some of the types of domestic abuse:
 - Verbal abuse, emotional and psychological abuse –
 - Being called hurtful names, “You are ugly”, “You are fat”, “You are old”, “You are stupid”...
 - Being threatened with violence, “If you do not do not keep quiet, I am going to hit you”, “If you do not listen to me, I will kill you”...
 - Being gaslit, “You make me violent”, “You are imagining that I said that”, “You are overreacting”...
 - Economic abuse –
 - Having to hand over all your earnings to your partner and he deals with the money without your input.

¹¹ Section 1 of the Domestic Violence Act 116 of 1998.

- Threats that if you do not do what the perpetrator want he will not pay for groceries, toiletries or even school fees.
 - Forcing you to have intercourse (rape) so that he will pay for things like groceries, toiletries and/or school fees.
 - Forcing you to 'beg' for money.
- Physical abuse
 - Being hit, scratched, punched or bitten.
 - Being attacked with a deadly weapon (gun, panga, knife).
 - Being pushed, pulled, kicked.
 - Having things thrown at you.
 - Sexual abuse
 - This is where you do not consent to sexual intercourse (rape).
 - A husband does not have a right to intercourse in our law. If he asserts this, and you do not consent to intercourse, then it is rape.
- A 'domestic relationship' has a broad definition in terms of the DVA. This includes people who are or were married to one other, including marriage based on any law, tradition, or religion.¹² But, also includes those who live or have lived together in a marriage-like relationship.¹³
 - A 'domestic relationship' can include people who are the parents of a child or have a duty to look after a child (and are not currently or formerly in a relationship).
 - A 'domestic relationship' can also include family members.¹⁴ It can also include people who are not family but share a residence.

¹² Section 1 of the DVA.

¹³ As above.

¹⁴ As above.

- A 'domestic relationship' can be relationships between people who are heterosexual, bisexual or homosexual. And protects people who identify as women, men, non-binary, transgender, and intersex.

CHAPTER 2

WHAT TO DO WHEN DOMESTIC VIOLENCE IS COMMITTED?

Did you know

The police need to give you proper instructions on how to apply for a protection order. Furthermore, assist you if you need any medical intervention/shelter.

- If you or someone and/or your children are victims of domestic violence, you have the right to seek a protection order.¹⁵ A domestic violence protection order is a court-issued document that stops or prevents the perpetrator from continuing to violate you.¹⁶

- The order can include specific things that the perpetrator cannot do, such as:
 - Perpetrating an act of domestic violence against you (physical abuse; sexual abuse; emotional, psychological or verbal abuse; economic abuse and destroying property).
 - Getting the assistance of another individual (a friend or family member) to perpetrate an act of domestic violence against you.
 - Entering your home and or the home you share with the perpetrator (where court has ordered against this).

¹⁵ Department of Justice and Constitutional Development, *Apply for a domestic violence protection order*. Available at <https://justice.gov.za/services/dv-protection-order.html>.

¹⁶ As above.

- Accessing a specific area of such a shared home (where court has ordered against this).
 - visiting your house (where court has ordered against this).
 - accessing the complainant's workplace (where court has ordered against this).
 - Trying to stop you from entering your own home or the residence you share with the perpetrator.
 - Financially threatening you by withholding money which you may need for things like groceries, toiletries, household goods, medicine or school fees.¹⁷
- Who is can to apply for a protection order?
 - Anybody who is or has been a victim of domestic violence. This includes any form of domestic violence.
 - A minor on their own behalf (a person can apply for themselves and their children).
 - If the victim is a child then it is advisable that the child be accompanied, as the reporting process may be confusing and traumatic. However, a child is permitted to apply by themselves.
 - Anyone with a with a material interest in the complainant's wellbeing (for example a teacher can apply for a learner or a nurse could apply for a person with a severe mental illness).¹⁸

¹⁷ As above.

¹⁸ Section 1 and 4 of the DVA.

- The DVA states that the following individuals may apply for minors, mentally-ill persons, unconscious persons, or for individuals that a court deems is unable to provide consent:
 - Counsellors (includes religious figures providing counselling)
 - Health workers (nurse, doctors, mid-wife, paramedic, dentist)
 - Policemen
 - Social workers
 - Teachers¹⁹

¹⁹ As above.

CHAPTER 3

HOW TO GO ABOUT OBTAINING AN INTERIM PROTECTION ORDER

- Although, the Act says you can apply for a protection order at any time, including during and after court hours, public holidays, and weekends. This is not the case in practice.²⁰
- You can, however, apply from Monday to Friday at the Magistrates' Court where you live or work.²¹
- When applying for an order make sure you have gathered as much evidence as you can. Make a note of all the occurrences of domestic violence against you and/or your children. If you can, try to include dates and times of the different violations.
- Information which would be helpful to keep and include in your interim protection order application includes the following:
 - Pictures of the physical abuse (bruising, cuts, scratches).
 - Pictures of property that the perpetrator may have damaged or destroyed.
 - A picture of the perpetrator.
 - Text messages or emails from the perpetrator which may show abuse or abusive language.
 - Voice messages or recordings of the perpetrator being abusive.
 - Witness statements or affidavits that confirm that you have suffered from domestic abuse.

²⁰ Section 4 of the DVA.

²¹ Section 12 of the DVA.

*It is not compulsory to have all this information but it will assist the judicial officer in deciding your case.

- Although, you must apply for an interim protection order at a Magistrate Court, you can obtain assistance from any police officer in the form of information. The police must provide you with information about your rights and if you need emergency shelter, to provide you with a list of gender-based violence shelters in your area.²²

APPLYING FOR AN INTERIM ORDER – FORM 2

- When you apply for a protection order you will be handed, a Form 2: Interim Protection Order by the clerk at your nearest Magistrate's Court (see Annexure D).
- Form 2 is an affidavit which will ask you to describe the following:²³
 - Your particulars (such as name, identity number, home address, and contact number).
 - The perpetrators details (name, identity number, home address, work address and contact number).
 - People who may also be victims of domestic violence in the home (children, grandparents). The effect that the domestic violence has on them and if any of these individuals suffer from any disabilities.

²² Section 2 of the DVA.

²³ Regulation 4 of the Regulations under the Domestic Violence Act 116 of 1998.

- Set out all incidents of domestic violence. This must include is any weapons were used to threaten you or against you.
 - How urgent is this application? Do you need this order straight away because you fear for your life?
 - What should the order contain? Should the perpetrator be prohibited from entering the home? Should the perpetrator be prohibited from going to your workplace?
 - Additional conditions – do you want the court to order something specific? Does the perpetrator have a firearm, you can ask for the court to seize this. You can ask for emergency monetary relief. You can also ask if you want the perpetrator to be prohibited from seeing your children.
 - Which police station are you most likely to report a contravention of the order at?
- When the clerk receives your application, they will forward it to the magistrate, who will advise you on a date to come to see if the application was successful. Although, an interim protection order can in theory be issued the same day, this seldom happens in practice.
 - If your application is successful then the magistrate will issue a notice to the abuser. This notice will inform them of the interim protection order and the date on which they must appear in court.²⁴
 - The interim order offers you the same protection as a final order.

²⁴ As above.

CHAPTER 4

THE FINAL ORDER

- The interim protection order will set out a 'return date' for when the final order case will be decided. This interim order must have been served on the respondent, so that they are made aware of the return date and have an option to oppose if they choose to do so.
- You need to be at court on the day specified on the protection order. Magistrates' Court start at 9:00 each day. You should try to be at the court before court starts.
- In terms of the Domestic Violence Act, these proceedings are held in private. The only people that may be present are the parties involved, their legal representatives, anyone who has brought an application on your behalf, witnesses and the officers of court.
- You will wait outside of the court until such time as the court calls your case. Unfortunately, this can take many hours. Do not leave before being called as your case will be 'thrown out' or dismissed. You will then no longer have protection in terms of your interim protection order and your final protection order will have been seen as being unsuccessful.²⁵
- Once your case is called, you will go into the court room.
- If the respondent does not appear in court on the day of the hearing, the protection order will be made final.

²⁵ If you do fail to appear your matter can be re-enrolled. This, however, will require the court give you a new date to appear and that will need to be brought to the attention of the respondent.

- If the respondent does appear, the court will hear evidence from you, the respondent and any other witnesses that may have been called. The court will then consider all the evidence put before it in order to make a decision.
- If the respondent is not represented by a lawyer, the magistrate can order that they address all questions to the court and not to you.²⁶ This will ensure that you do not need to ‘face’ the respondent directly.
- This decision is made on a balance of probabilities. This means that the magistrate will consider your story and compare it to the respondent’s story and see whose version of events is more likely to have be true.
- If the court finds in your favour, then it will issue you with a final protection order.
- Once the court has issued a final order, the clerk of the court must make certain that the order is served on the respondent. They must also give the respondent the original of warrant of arrest that is issued alongside the order. This is a warrant that is held in a state of being suspended until such time as the respondent contravenes the order.²⁷ You will receive a certified copy of the warrant as well as a copy of the protection order. Finally, a certified copy of the warrant must also be sent to the local police station by the clerk of the court.²⁸

WHAT CAN ORDERS CONTAIN?

- The magistrate can make an order which deals with any of the following:²⁹
 - Prohibiting the respondent from committing *any* act of domestic violence (this can include sexual, physical, psychological, emotional, or economic);

²⁶ Section 6(3) of the DVA.

²⁷ Section 6(5) – 6(7) and 8.

²⁸ As above.

²⁹ Section 7(1) of the DVA.

- Prohibiting the respondent from getting assistance from another person to commit acts of domestic violence against you (e.g., getting friend to call and harass you);
 - Prohibiting the respondent entering your residence/home (if you have separate homes), entering part of your shared residence/home (when you live together);
 - Prohibiting the respondent from trying to stop you from entering your residence/home or your shared residence/home;
 - Prohibiting the respondent entering your place of work;
 - Prohibiting the respondent from committing any other act specified in the order. This will include any other act that the magistrate includes in the order. E.g., destroying your property.
- You have the right to ask the court to include certain acts of domestic violence or harassing behavior in the order. The magistrate will then determine if the evidence before them supports this and can decide whether to include this in the order.

SEIZURE OF FIREARMS OR OTHER DANGEROUS WEAPONS

- If the respondent has a firearm or any other dangerous weapon, you can request that the object be taken away by the police.³⁰
- In your application for an interim protection order (Chapter 3) you need to write down how the respondent has previously threatened to use and/or used this object against you and/or your children and/or your family.
- If you have set out how the object has been used to threaten or used against you then the court can make an order that the police must seize this object.

³⁰ Section 9 of the DVA.

Did you know?

- **Final protection orders do not have a ‘shelf-life’. They do not expire. The only time that a final protection order can be changed is if you or the respondent applies for a variation or setting aside of the order (DVA section 6(7)).**
- **If you have lost the warrant of arrest or it has been executed you can get a new one by filing in an affidavit and giving it to the court or the clerk. The affidavit will need to explain why you need a new warrant. See Annexure H**
- **You can apply for emergency monetary relief as part of your application. This is where you have used your own money for medical expenses, finding new accommodation, buying other household necessities (DVA section 7(4)).**

CHAPTER 5

CONTRAVENTION OF AN INTERIM OR FINAL ORDER

- Breaching or contravening a protection order is an offence.³¹ This means that if the state elects to prosecute the respondent for this breach or contravention, then the respondent may face up to 5 years in prison and/or a fine.³²
- In order for the police to be able to begin this process you will need to fill in Form 10 (Annexure I). This form details the incident and how the respondent breached or contravened the order.³³
- The police will determine if the breach or contravention may lead to your imminent harm and arrest the respondent immediately. Alternatively, if the police do not think you may face imminent harm then they must serve a Form 11 (Annexure J) on the respondent. This form will set out the date that the respondent will need to appear before the court for this breach or contravention.³⁴
- The National Prosecuting Authority (NPA) will make a decision around whether it will prosecute the respondent for the contravention or not. You have a right to information around the decision and reasons can be requested from the NPA for any decision they make.

³¹ Section 17(1) of the DVA.

³² Section 17 of the DVA.

³³ <https://www.justice.gov.za/services/dv-contravene-protection-order.html>

³⁴ As above.

CHAPTER 6

LAYING A CRIMINAL CHARGE

- This process is different to the one contained under Chapter 6 above. Here we are dealing with the right to report an act of domestic violence which *is also* considered as a criminal offence in our law.
- In terms of section 4(2)(b) of the Act the clerk of the court must advise you that you can also report certain acts of domestic violence to the police. This means that certain acts of domestic violence can attract criminal sanction (going to prison or paying a fine). The criminal process can run at the same time as your application for a protection order.
- You can report certain acts of domestic violence to the police so long as they are considered as criminal offences in our law. Some of acts of domestic violence which are also criminal offences are the following: assault, assault with intent to cause grievous bodily harm, all sexual offences (e.g. rape, sexual assault) and attempted murder.
- In order to report an offence, you need to follow the normal process of reporting a crime to the police.
- Important: although the police might say to you that you cannot lay a charge and must wait for the process around the protection order application to be finished, this is **NOT TRUE**. You have a right to have both processes run concurrently.

CHAPTER 7

SUMMARY OF HOW TO GET INFORMATION OR LAY A COMPLAINT AT EACH STAGE

<u>Stage of Process</u>	<u>Type of issue</u>	<u>What to do?</u>
Obtaining information from police	Police will not assist you with information around protection orders and/or shelters and/or psycho-social support	Ask to speak to the Station Commander. Also ask the individual officer who has failed to assist you for their name.
Applying for an interim order	Clerk of the court will not assist you.	You can speak to the magistrate dealing with domestic violence cases. Or You can speak to the court manager.
	Clerk of the court does not explain sufficiently	You can speak to the magistrate dealing with domestic violence cases. Or You can speak to the court manager.
Laying a charge for domestic violence which is also a criminal offence	Police refuse to open case and/or say it is not a crime and/or say it's a 'family matter'	Ask to speak to the Station Commander. Also ask the individual officer who has failed to assist you for their name.

LEGISLATION AND POLICY

Legislation

- Constitution of the Republic of South Africa, 1996
- Children's Act 38 of 2005
- Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
- Criminal Procedure Act 51 of 1977
- Domestic Violence Act 116 of 1998
- Promotion of Administration of Justice Act 3 of 2000
- Regulations under the Domestic Violence Act 116 of 1998

INDEX TO ANNEXURES

	<u>Annexure</u>	<u>Document description</u>
1.	A	Domestic Violence Act 116 of 1998
2.	B	Regulation to the Domestic Violence Act 116 of 1998
3.	C	Form 1: description of complainants rights
4.	D	Form 2: application for a protection order
5.	E	Form 5: notice by respondent to show cause why order should not be granted
6.	F	Form 6: protection order
7.	G	Form 7: protection order (no interim order issued)
8.	H	Form 9: affidavit for further warrants of arrest
9.	I	Form 10: affidavit on contravention of protection order
10.	J	Form 11: notice to appear in court on contravention of protection order
11.	K	Form 12: application for variation or setting aside of protection order

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 1 of 14

DOMESTIC VIOLENCE ACT 116 OF 1998

[ASSENTED TO 20 NOVEMBER 1998] [DATE OF COMMENCEMENT: 15 DECEMBER 1999]

(English text signed by the President)

as amended by

Judicial Matters Second Amendment Act 55 of 2003

also amended by

Jurisdiction of Regional Courts Amendment Act 31 of 2008 [with effect from a date to be proclaimed - see PENDLEX]

Regulations under this Act

DOMESTIC VIOLENCE REGULATIONS, 1999 (GN R1311 in GG 20601 of 5 November 1999) **ACT**

To provide for the issuing of protection orders with regard to domestic violence; and for matters connected therewith.

Preamble

RECOGNISING that domestic violence is a serious social evil; that there is a high incidence of domestic violence within South African society; that victims of domestic violence are among the most vulnerable members of society; that domestic violence takes on many forms; that acts of domestic violence may be committed in a wide range of domestic relationships; and that the remedies currently available to the victims of domestic violence have proved to be ineffective;

AND HAVING REGARD to the Constitution of South Africa, and in particular, the right to equality and to freedom and security of the person; and the international commitments and obligations of the State towards ending violence against women and children, including obligations under the United Nations Conventions on the Elimination of all Forms of Discrimination Against Women and the Rights of the Child;

IT IS THE PURPOSE of this Act to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby to convey that the State is committed to the elimination of domestic violence,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

1 Definitions

In this Act, unless the context indicates otherwise-

'arm' means any arm as defined in section 1 (1) or any armament as defined in section 32 (1) of the Arms and Ammunition Act, 1969 (Act 75 of 1969);

'clerk of the court' means a clerk of the court appointed in terms of section 13 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and includes an assistant clerk of the court so appointed;

'complainant' means any person who is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 2 of 14

domestic violence, including any child in the care of the complainant;

'court' means any court contemplated in the Magistrates' Courts Act, 1944 (Act 32 of 1944) or any family court established in terms of an Act of Parliament;

[NB: The definition of 'court' has been substituted by s. 10 (2) of the Jurisdiction of Regional Courts Amendment Act 31 of 2008, a provision which will be put into operation by proclamation. See PENDLEX .]

'damage to property' means the wilful damaging or destruction of property belonging to a complainant or in which the complainant has a vested interest;

'dangerous weapon' means any weapon as defined in section 1 of the Dangerous Weapons Act, 1968 (Act 71 of 1968);

'domestic relationship' means a relationship between a complainant and a respondent in any of the following ways:

(a) (b)

(c)

(d) (e)

(f)

(a) (b) (c) (d) (e) (f) (g) (h) (i)

(j)

they are or were married to each other, including marriage according to any law, custom or religion;

they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;

they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);

they are family members related by consanguinity, affinity or adoption;

they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or

they share or recently shared the same residence; **'domestic violence'** means-

physical abuse; sexual abuse;

emotional, verbal and psychological abuse; economic abuse;
intimidation;

harassment; stalking;
damage to property;

entry into the complainant's residence without consent, where the parties do not share the same residence; or

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;

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 3 of 14

'economic abuse' includes-

1. (a) the unreasonable deprivation of economic or financial resources to which a complainant is entitled under law or which the complainant requires out of necessity, including household necessities for the complainant, and mortgage bond repayments or payment of rent in respect of the shared residence;
2. (b) the unreasonable disposal of household effects or other property in which the complainant has an interest;

'emergency monetary relief' means compensation for monetary losses suffered by a complainant at the time of the issue of a protection order as a result of the domestic violence, including-

1. (a) loss of earnings;
2. (b) medical and dental expenses;
3. (c) relocation and accommodation expenses; or
4. (d) household necessities;

'emotional, verbal and psychological abuse' means a pattern of degrading or humiliating conduct towards a complainant, including-

1. (a) repeated insults, ridicule or name calling;
2. (b) repeated threats to cause emotional pain; or
3. (c) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's privacy, liberty, integrity or security;

'harassment' means engaging in a pattern of conduct that induces the fear of harm to a complainant including-

1. (a) repeatedly watching, or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be;
2. (b) repeatedly making telephone calls or inducing another person to make telephone calls to the complainant, whether or not conversation ensues;

3. (c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant;

'intimidation' means uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear;

'member of the South African Police Service' means any member as defined in section 1 of the South African Police Service Act, 1995 (Act 68 of 1995);

'peace officer' means a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977);

'physical abuse' means any act or threatened act of physical violence towards a complainant;

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 4 of 14

'prescribed' means prescribed in terms of a regulation made under section 19; **'protection order'** means an order issued in terms of section 5 or 6 but, in section 6,

excludes an interim protection order;

'residence' includes institutions for children, the elderly and the disabled;

'respondent' means any person who is or has been in a domestic relationship with a complainant and who has committed or allegedly committed an act of domestic violence against the complainant;

'sexual abuse' means any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the complainant;

'sheriff' means a sheriff appointed in terms of section 2 (1) of the Sheriffs Act, 1986 (Act 90 of 1986), or an acting sheriff appointed in terms of section 5 (1) of the said Act;

'stalking' means repeatedly following, pursuing, or accosting the complainant; **'this Act'** includes the regulations.

2 Duty to assist and inform complainant of rights

Any member of the South African Police Service must, at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, or when the incident of domestic violence is reported-

3

1. (a) render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment;
2. (b) if it is reasonably possible to do so, hand a notice containing information as prescribed to the complainant in the official language of the complainant's choice; and
3. (c) if it is reasonably possible to do so, explain to the complainant the content of such notice in the prescribed manner, including the remedies at his or her disposal in terms of this Act and the right to lodge a criminal complaint, if applicable.

Arrest by peace officer without warrant

A peace officer may without warrant arrest any respondent at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence against a complainant.

4 Application for protection order

(1) Any complainant may in the prescribed manner apply to the court for a protection order .

(2) If the complainant is not represented by a legal representative, the clerk of the court must inform the complainant, in the prescribed manner-

1. (a) of the relief available in terms of this Act; and
2. (b) of the right to also lodge a criminal complaint against the respondent, if a criminal offence has been committed by the respondent.

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 5 of 14

(3) Notwithstanding the provisions of any other law, the application may be brought on behalf of the complainant by any other person, including a counsellor, health service provider, member of the South African Police Service, social worker or teacher, who has a material interest in the wellbeing of the complainant: Provided that the application must be brought with the written consent of the complainant, except in circumstances where the complainant is-

1. (a) a minor;
2. (b) mentally retarded;
3. (c) unconscious; or
4. (d) a person whom the court is satisfied is unable to provide the required consent.

(4) Notwithstanding the provisions of any other law, any minor, or any person on behalf of a minor, may apply to the court for a protection order without the assistance of a parent, guardian or any other person.

(5) The application referred to in subsection (1) may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court is satisfied that the complainant may suffer undue hardship if the application is not dealt with immediately.

(6) Supporting affidavits by persons who have knowledge of the matter concerned may accompany the application.

(7) The application and affidavits must be lodged with the clerk of the court who shall forthwith submit the application and affidavits to the court.

5 Consideration of application and issuing of interim protection order

(1) The court must as soon as is reasonably possible consider an application submitted to it in terms of section 4 (7) and may, for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of the proceedings.

(1A) Where circumstances permit and where a Family Advocate is available, a court may, in the circumstances as may be prescribed in the Mediation in Certain Divorce Matters Act, 1987 (Act 24 of 1987), when considering an application contemplated in subsection (1), cause an investigation to be carried out by a Family Advocate, contemplated in the Mediation in Certain Divorce Matters Act, 1987, in whose area of jurisdiction that court is, with regard to the welfare of any minor or dependent child affected by the proceedings in question, whereupon the provisions of that Act apply with the changes required by the context.

[Sub-s. (1A) inserted by s. 19 of Act 55 of 2003.]

(2) If the court is satisfied that there is *prima facie* evidence that-

1. (a) the respondent is committing, or has committed an act of domestic violence; and
2. (b) undue hardship may be suffered by the complainant as a result of such domestic violence if a protection order is not issued immediately,

the court must, notwithstanding the fact that the respondent has not been given notice of the proceedings contemplated in subsection (1), issue an interim protection order against the respondent, in the prescribed manner.

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 6 of 14

(3) (a) An interim protection order must be served on the respondent in the prescribed manner and must call upon the respondent to show cause on the return date specified in the order why a protection order should not be issued.

(b) A copy of the application referred to in section 4 (1) and the record of any evidence noted in terms of subsection (1) must be served on the respondent together with the interim protection order.

(4) If the court does not issue an interim protection order in terms of subsection (2), the court must direct the clerk of the court to cause certified copies of the application concerned and any supporting affidavits to be served on the respondent in the prescribed manner, together with a prescribed notice calling on the respondent to show cause on the return date specified in the notice why a protection order should not be issued.

(5) The return dates referred to in subsections (3) (a) and (4) may not be less than 10 days after service has been effected upon the respondent: Provided that the return date referred to in subsection (3) (a) may be anticipated by the respondent upon not less than 24 hours' written notice to the complainant and the court.

(6) An interim protection order shall have no force and effect until it has been served on the respondent.

(7) Upon service or upon receipt of a return of service of an interim protection order, the clerk of the court must forthwith cause-

- (a) a certified copy of the interim protection order; and
- (b) the original warrant of arrest contemplated in section 8 (1) (a) ,

to be served on the complainant.

6 Issuing of protection order

(1) If the respondent does not appear on a return date contemplated in section 5 (3) or (4), and if the court is satisfied that-

1. (a) proper service has been effected on the respondent; and
2. (b) the application contains *prima facie* evidence that the respondent has committed or is committing an act of domestic violence,

the court must issue a protection order in the prescribed form.

(2) If the respondent appears on the return date in order to oppose the issuing of a protection order, the court must proceed to hear the matter and-

1. (a) consider any evidence previously received in terms of section 5 (1); and
2. (b) consider such further affidavits or oral evidence as it may direct, which shall form part of the record of the proceedings.

(3) The court may, on its own accord or on the request of the complainant, if it is of the opinion that it is just or desirable to do so, order that in the examination of witnesses, including the complainant, a respondent who is not represented by a legal representative-

1. (a) is not entitled to cross-examine directly a person who is in a domestic relationship with the respondent; and
2. (b) shall put any question to such a witness by stating the question to

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 7 of 14

the court,

and the court is to repeat the question accurately to the respondent.

(4) The court must, after a hearing as contemplated in subsection (2), issue a protection order in the prescribed form if it finds, on a balance of probabilities, that the respondent has committed or is committing an act of domestic violence.

(5) Upon the issuing of a protection order the clerk of the court must forthwith in the prescribed manner cause-

1. (a) the original of such order to be served on the respondent; and
2. (b) a certified copy of such order, and the original warrant of arrest

contemplated in section 8 (1) (a) , to be served on the complainant.

(6) The clerk of the court must forthwith in the prescribed manner forward certified copies of any protection order and of the warrant of arrest contemplated in section 8 (1) (a) to the police station of the complainant's choice.

(7) Subject to the provisions of section 7 (7), a protection order issued in terms of this section remains in force until it is set aside, and the execution of such order shall not be automatically suspended upon the noting of an appeal.

7 Court's powers in respect of protection order

(1) The court may, by means of a protection order referred to in section 5 or 6, prohibit the respondent from-

(a) (b) (c)

(d) (e) (f) (g)

(h)

committing any act of domestic violence;
enlisting the help of another person to commit any such act;

entering a residence shared by the complainant and the respondent: Provided that the court may impose this prohibition only if it appears to be in the best interests of the complainant;

entering a specified part of such a shared residence;

entering the complainant's residence;
entering the complainant's place of employment;

preventing the complainant who ordinarily lives or lived in a shared residence as contemplated in subparagraph (c) from entering or remaining in the shared residence or a specified part of the shared residence; or

committing any other act as specified in the protection order.

(2) The court may impose any additional conditions which it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the complainant, including an order-

1. (a) to seize any arm or dangerous weapon in the possession or under the control of the respondent, as contemplated in section 9; and
2. (b) that a peace officer must accompany the complainant to a specified place to assist with arrangements regarding the collection of personal property.

(3) In ordering a prohibition contemplated in subsection 1 (c) , the court may impose

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 8 of 14

on the respondent obligations as to the discharge of rent or mortgage payments having regard to the financial needs and resources of the complainant and the respondent.

(4) The court may order the respondent to pay emergency monetary relief having regard to the financial needs and resources of the complainant and the respondent, and such order has the effect of a civil judgment of a magistrate's court.

(5) (a) The physical address of the complainant must be omitted from the protection order, unless the nature of the terms of the order necessitates the inclusion of such address.

(b) The court may issue any directions to ensure that the complainant's physical address is not disclosed in any manner which may endanger the safety, health or wellbeing of the complainant.

(6) If the court is satisfied that it is in the best interests of any child it may-

1. (a) refuse the respondent contact with such child; or
2. (b) order contact with such child on such conditions as it may consider appropriate.

(7) (a) The court may not refuse-
(i) to issue a protection order; or

(ii) to impose any condition or make any order which it is competent to impose or make under this section,

merely on the grounds that other legal remedies are available to the complainant.

(b) If the court is of the opinion that any provision of a protection order deals with a matter that should, in the interests of justice, be dealt with further in terms of any other relevant law, including the Maintenance Act, 1998, the court must order that such a provision shall be in force for such limited period as the court determines, in order to afford the party concerned the opportunity to seek appropriate relief in terms of such law.

8

Warrant of arrest upon issuing of protection order

(1) Whenever a court issues a protection order, the court must make an order-

1. (a) authorising the issue of a warrant for the arrest of the respondent, in the prescribed form; and
2. (b) suspending the execution of such warrant subject to compliance with any prohibition, condition, obligation or order imposed in terms of section 7.

(2) The warrant referred to in subsection (1) (a) remains in force unless the protection order is set aside, or it is cancelled after execution.

(3) The clerk of the court must issue the complainant with a second or further warrant of arrest, if the complainant files an affidavit in the prescribed form in which it is stated that such warrant is required for her or his protection and that the existing warrant of arrest has been-

1. (a) executed and cancelled; or
2. (b) lost or destroyed.

(4) (a) A complainant may hand the warrant of arrest together with an affidavit in the

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 9 of 14

prescribed form, wherein it is stated that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order, to any member of the South African Police Service.

(b) If it appears to the member concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the member must forthwith arrest the respondent for allegedly committing the offence referred to in section 17 (a) .

(c) If the member concerned is of the opinion that there are insufficient grounds for arresting the respondent in terms of paragraph (b) , he or she must forthwith hand a written notice to the respondent which-

(i) (ii)

(iii)

specifies the name, the residential address and the occupation or status of the respondent;

calls upon the respondent to appear before a court, and on the date and at the time, specified in the notice, on a charge of committing the offence referred to in section 17 (a) ; and

contains a certificate signed by the member concerned to the effect that he or she handed the original notice to the respondent and that he or she explained the import thereof to the respondent.

(d) The member must forthwith forward a duplicate original of a notice referred to in paragraph (c) to the clerk of the court concerned, and the mere production in the court of such a duplicate original shall be *prima facie* proof that the original thereof was handed to the respondent specified therein.

(5) In considering whether or not the complainant may suffer imminent harm, as contemplated in subsection (4) (b) , the member of the South African Police Service must take into account-

1. (a) the risk to the safety, health or wellbeing of the complainant;
2. (b) the seriousness of the conduct comprising an alleged breach of the protection order; and
3. (c) the length of time since the alleged breach occurred.

(6) Whenever a warrant of arrest is handed to a member of the South African Police Service in terms of subsection (4) (a) , the member must inform the complainant of his or her right to simultaneously lay a criminal charge against the respondent, if applicable, and explain to the complainant how to lay such a charge.

9 Seizure of arms and dangerous weapons

(1) The court must order a member of the South African Police Service to seize any arm or dangerous weapon in the possession or under the control of a respondent, if the court is satisfied on the evidence placed before it, including any affidavits supporting an application referred to in section 4 (1), that-

(a) (b)

the respondent has threatened or expressed the intention to kill or injure himself or herself, or any person in a domestic relationship, whether or not by means of such arm or dangerous weapon; or

possession of such arm or dangerous weapon is not in the best interests of the respondent or any other person in a domestic relationship, as a result of the respondent's-

(i) state of mind or mental condition;

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 10 of 14

(ii) inclination to violence; or

(iii) use of or dependence on intoxicating liquor or drugs.

(2) Any arm seized in terms of subsection (1) must be handed over to the holder of an office in the South African Police Service as contemplated in section 11 (2) (b) of the Arms and Ammunition Act, 1969 (Act 75 of 1969), and the court must direct the clerk of the court to refer a copy of the record of the evidence concerned to the National Commissioner of the South African Police Service for consideration in terms of section 11 of the Arms and Ammunition Act, 1969.

(3) Any dangerous weapon seized in terms of subsection (1)-

(a) (b)

Provided that- (i)

(ii) (iii)

must be given a distinctive identification mark and retained in police custody for such period of time as the court may determine; and

shall only be returned to the respondent or, if the respondent is not the owner of the dangerous weapon, to the owner thereof, by order of the court and on such conditions as the court may determine:

if, in the opinion of the court, the value of the dangerous weapon so seized is below R200; or

if the return of the dangerous weapon has not been ordered within 12 months after it had been so seized; or

if the court is satisfied that it is in the interest of the safety of any person concerned,

the court may order that the dangerous weapon be forfeited to the State.

10 Variation or setting aside of protection order

(1) A complainant or a respondent may, upon written notice to the other party and the court concerned, apply for the variation or setting aside of a protection order referred to in section 6 in the prescribed manner.

(2) If the court is satisfied that good cause has been shown for the variation or setting aside of the protection order, it may issue an order to this effect: Provided that the court shall not grant such an application to the complainant unless it is satisfied that the application is made freely and voluntarily.

(3) The clerk of the court must forward a notice as prescribed to the complainant and the respondent if the protection order is varied or set aside as contemplated in subsection (1).

11 Attendance of proceedings and prohibition of publication of certain information

(1) No person may be present during any proceedings in terms of this Act except-

1. (a) officers of the court;
2. (b) the parties to the proceedings;
3. (c) any person bringing an application on behalf of the complainant in terms of section 4 (3);
4. (d) any legal representative representing any party to the proceedings;

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 11 of 14

(e) (f)

(g)

(h)

witnesses;

not more than three persons for the purpose of providing support to the complainant;

not more than three persons for the purpose of providing support to the respondent; and

any other person whom the court permits to be present:

Provided that the court may, if it is satisfied that it is in the interests of justice, exclude any person from attending any part of the proceedings.

(b) Nothing in this subsection limits any other power of the court to hear proceedings *in camera* or to exclude any person from attending such proceedings.

(2) (a) No person shall publish in any manner any information which might, directly or indirectly, reveal the identity of any party to the proceedings.

(b) The court, if it is satisfied that it is in the interests of justice, may direct that any further information relating to proceedings held in terms of this Act shall not be published: Provided that no direction in terms of this subsection applies in respect of the publication of a *bona fide* law report which does not mention the names or reveal the identities of the parties to the proceedings or of any witness at such proceedings.

12 Jurisdiction

(1) Any court within the area in which-

1. (a) the complainant permanently or temporarily resides, carries on business or is employed;
2. (b) the respondent resides, carries on business or is employed; or
3. (c) the cause of action arose,

has jurisdiction to grant a protection order as contemplated in this Act.

2. (2) No specific minimum period is required in relation to subsection (1) (a) .
3. (3) A protection order is enforceable throughout the Republic.

13 Service of documents

(1) Service of any document in terms of this Act must forthwith be effected in the prescribed manner by the clerk of the court, the sheriff or a peace officer, or as the court may direct.

(2) The regulations contemplated in section 19 must make provision for financial assistance by the State to a complainant or a respondent who does not have the means to pay the fees of any service in terms of this Act.

14 Legal representation

Any party to proceedings in terms of this Act may be represented by a legal representative.

15 Costs

The court may only make an order as to costs against any party if it is satisfied that such party has acted frivolously, vexatiously or unreasonably.

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 12 of 14

16 Appeal and review

The provisions in respect of appeal and review contemplated in the Magistrates' Courts Act, 1944 (Act 32 of 1944), and the Supreme Court Act, 1959 (Act 59 of 1959), apply to any proceedings in terms of this Act.

17 Offences

Notwithstanding the provisions of any other law, any person who-

1. (a) contravenes any prohibition, condition, obligation or order imposed in terms of section 7;
2. (b) contravenes the provisions of section 11 (2) (a) ;
3. (c) fails to comply with any direction in terms of the provisions of section

11 (2) (b) ; or

4. (d) in an affidavit referred to section 8 (4) (a) , wilfully makes a false statement in a material respect,

is guilty of an offence and liable on conviction in the case of an offence referred to in paragraph (a) to a fine or imprisonment for a period not exceeding five years or to both such fine and such imprisonment, and in the case of an offence contemplated in paragraph (b) , (c) , or (d) , to a fine or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

18 Application of Act by prosecuting authority and members of South African Police Service

(1) No prosecutor shall-

1. (a) refuse to institute a prosecution; or
2. (b) withdraw a charge,

in respect of a contravention of section 17 (a) , unless he or she has been authorised thereto, whether in general or in any specific case, by a Director of Public Prosecutions as contemplated in section 13 (1) (a) of the National Prosecuting Authority Act, 1998 (Act 32 of 1998), or a senior member of the prosecuting authority designated thereto in writing by such a Director.

(2) The National Director of Public Prosecutions referred to in section 10 of the National Prosecuting Authority Act, 1998, in consultation with the Minister of Justice and after consultation with the Directors of Public Prosecutions, must determine prosecution policy and issue policy directives regarding any offence arising from an incident of domestic violence.

(3) The National Commissioner of the South African Police Service must issue national instructions as contemplated in section 25 of the South African Police Service Act, 1995 (Act 68 of 1995), with which its members must comply in the execution of their functions in terms of this Act, and any instructions so issued must be published in the *Gazette* .

(4) (a) Failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act or the national instructions referred to in subsection (3), constitutes misconduct as contemplated in the South African Police Service Act, 1995, and the Independent Complaints Directorate, established in terms of that Act, must forthwith be informed of any such failure reported to the South African Police Service.

(b) Unless the Independent Complaints Directorate directs otherwise in any specific case, the South African Police Service must institute disciplinary proceedings against any member who allegedly failed to comply with an obligation referred to in paragraph (a) .

(5) (a) The National Director of Public Prosecutions must submit any prosecution policy and policy directives determined or issued in terms of subsection (2) to Parliament, and the first policy and directives so determined or issued, must be submitted to Parliament within six months of the commencement of this Act.

(b) The National Commissioner of the South African Police Service must submit any national instructions issued in terms of subsection (3) to Parliament, and the first instructions so issued, must be submitted to Parliament within six months of the commencement of this Act.

(c) The Independent Complaints Directorate must, every six months, submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4) (a) , and setting out the recommendations made in respect of such matters.

(d) The National Commissioner of the South African Police Service must, every six months, submit a report to Parliament regarding-

(i)

(ii)

(iii)

the number and particulars of complaints received against its members in respect of any failure contemplated in subsection (4) (a) ;

the disciplinary proceedings instituted as a result thereof and the decisions which emanated from such proceedings; and

steps taken as a result of recommendations made by the Independent Complaints Directorate.

19 Regulations

(1) The Minister of Justice may make regulations regarding-

1. (a) any form required to be prescribed in terms of this Act;
2. (b) any matter required to be prescribed in terms of this Act; and
3. (c) any other matter which the Minister deems necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) Any regulation made under subsection (1)-

1. (a) must be submitted to Parliament prior to publication thereof in the *Gazette* ;
2. (b) which may result in expenditure for the State, must be made in consultation with the Minister of Finance; and

3. (c) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding one year.

20 Amends section 40 (1) of the Criminal Procedure Act 51 of 1977 by adding paragraph (q) .

21 Repeal of laws and savings

(1) Sections 1, 2, 3, 6 and 7 of the Prevention of Family Violence Act, 1993 (Act 133 of 1993), are hereby repealed.

DOMESTIC VIOLENCE ACT 116 OF 1998 Page 14 of 14

(2) Any application made, proceedings instituted or interdict granted in terms of the Act referred to in subsection (1) shall be deemed to have been made, instituted or granted in terms of this Act.

22 Short title and commencement

This Act shall be called the Domestic Violence Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette* .

PENDLEX: Domestic Violence Act 116 of 1998 after amendment by the Jurisdiction of Regional Courts Amendment Act 31 of 2008

Section 1 - definition of 'court'

'**court**' means any magistrate's court for a district contemplated in the Magistrates' Courts Act, 1944 (Act 32 of 1944).

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2 No. 20601	GOVERNMENT GAZETTE, 5 NOVEMBER 1999
GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING	
DEPARTMENT OF JUSTICE DEPARTEMENT VAN JUSTISIE	
No. R. 1311	5 November 1999

**REGULATIONS UNDER THE DOMESTIC VIOLENCE ACT, 1998
(ACT NO. 116 OF 1998)**

The Minister of Justice has under section 19 of the Domestic Violence Act, 1998 (Act No. 116 of 1998), made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall have that meaning and, unless the context otherwise indicates -

"the Act" means the Domestic Violence Act, 1998 (Act No. 116 of 1998).

Notice containing information

2. The notice contemplated in section 2(b) of the Act must contain the information provided for in Form 1 of the Annexure.

Explanation of notice

3. For purposes of section 2(c) of the Act a member of the South African Police

Service must -

(a) explain to the complainant -

- (i) that a member of the South African Police Service will render such assistance as circumstances may require, including assisting or making arrangements to find a suitable shelter and to obtain medical treatment;
- (ii) his or her right to apply for a protection order to prohibit the respondent from committing further acts of domestic violence, even if no criminal complaint has been lodged, so as to ensure his or her safety, health and well-being;
- (iii) his or her right to lodge a criminal complaint; and
- (iv) the purpose of the notice ;

(b) if the complainant is unable to read the notice, read the notice referred to in regulation 2 to the complainant, or take such reasonable steps as may be necessary to have the notice read to the complainant ;

(c) inquire from the complainant whether he or she -

- (i) understands the contents of the notice ; and
- (ii) requires further information regarding his or her remedies in terms of the Act and the right to lodge a criminal complaint ;

(d) explain, to the best of his or her ability, to the complainant on request -

- (i) any part of the notice which the complainant does not understand;

and

(ii) his or her remedies in terms of the Act and the right to lodge a criminal complaint; and

(e) inform the complainant to obtain further information from the clerk of the magistrate's court should questions of the complainant remain unanswered.

Manner of application for protection order

4. (1) A complainant may apply to the court for a protection order in a form substantially corresponding to Form 2 of the Annexure.

(2) The application referred to in subregulation (1) must be made by way of an affidavit in which must be stated -

- (a) the facts on which the application is based;
- (b) the nature of the order applied for; and
- (c) the name of the police station where the complainant is likely to report any breach of the protection order applied for.

(3) Where the application is brought on behalf of a complainant by another person, the affidavit referred to in subregulation (2) must also set out or contain-

- (a) the grounds on which such person has a material interest in the well-being of the complainant;
- (b) the occupation of such person and capacity in which such person brings the application; and
- (c) except in cases excluded by the provisions of paragraphs (a) to (d) of section 4(3) of the Act, the written consent of the complainant.

Information to be given by clerk of the court

5. (1) For purposes of section 4(2) of the Act, the clerk of the court must, if the complainant is not represented by a legal representative -

(a) hand to the complainant a written notice which contains the information provided for in Form 3 of the Annexure, which must, if reasonably possible, be in the official language of the complainant's choice;

(b) read the notice or cause the notice to be read to the complainant, if the complainant is unable to read the notice;

(c) inquire from the complainant whether he or she -

(i) understands the contents of the notice ; and

(ii) requires further information concerning the relief available in terms of the Act and the right to lodge a criminal complaint; and

(d) on request of the complainant, further explain, to the best of his or her ability -

(i) any part of the notice which the complainant does not understand; and

(ii) the relief available in terms of the Act and the right to lodge a criminal complaint.

Issuing of interim protection order

6. An interim protection order contemplated in section 5(2) of the Act must be in the form of Form 4 of the Annexure.

Notice to show cause

7. The notice calling on the respondent to show cause on the specified return date why a protection order should not be issued, contemplated in section 5(4) of the Act, must be in the form of Form 5 of the Annexure.

Issuing of protection order

8. A protection order contemplated in section 6(1) of the Act must be -

- (a) in the event that an interim protection order was issued, in the form of Form 6 of the Annexure; or
- (b) in the event that an interim protection order was not issued, in the form of Form 7 of the Annexure.

Issuing of warrant of arrest

9. The warrant of arrest contemplated in section 8(1)(a) of the Act must be authorised and issued in the form of Form 8 of the Annexure.

Affidavit for further warrant of arrest

10. An affidavit contemplated in section 8(3) of the Act for purposes of obtaining a second or further warrant of arrest must be in a form substantially corresponding to Form 9 of the Annexure.

Affidavit regarding contravention of protection order

11. An affidavit contemplated in section 8(4)(a) of the Act in which it is stated that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order must be in a form substantially corresponding to Form 10 of the Annexure.

Written notice to respondent to appear before court

12. (1) The written notice contemplated in section 8(4)(c) of the Act calling on the respondent to appear before a court on a charge of committing the offence referred to in section 17(a) of the Act must be in a form substantially corresponding to Form 11 of the Annexure.

(2) Any respondent who is called upon to appear before the court in accordance with a written notice referred to in subregulation (1) and who fails to—
(a) appear at the place and on the date and time specified in that notice; or
(b) remain in attendance at the proceedings,
shall be guilty of an offence and liable to the punishment prescribed under subregulation (3)(b).

(3) (a) The court may if satisfied from the duplicate original of the notice referred to in section 8(4)(d) of the Act that the notice was handed to the respondent and that the respondent has failed to appear at the place and on the date and time specified in the notice, or if satisfied that the respondent has failed to remain in attendance at the proceedings concerned, issue a warrant for the respondent's arrest.

(b) The court may when the respondent is brought before it, in a summary manner enquire into his or her failure so to appear or to remain in attendance and unless the respondent satisfies the court that his or her failure was not due to any fault on his or her part, convict him or her of the offence referred to in subregulation (2) and sentence him or her to a fine or to imprisonment for a period not exceeding six months.

Application for variation or setting aside of protection order

13. An application for the variation or setting aside of a protection order, contemplated in section 10(1) of the Act, must be made in a form substantially corresponding to Form 12 of the Annexure.

Notice of variation or setting aside of protection order

14. (1) The notice of the variation or setting aside of a protection order, contemplated in section 10(3) of the Act, must be in the form of Form 13 of the Annexure.

(2) The notice referred to in subregulation (1) must be forwarded by the clerk of the court to the complainant and respondent by handing it to them personally or sending it to them by registered mail.

Service of documents

15. (1) Service of any document in terms of the Act or these regulations, except where the Act or regulations provide otherwise, must without delay be effected by-

- (a) the clerk of the court by handing or presenting for handing over a certified copy of the document to the person on whom the document is to be served or sending a certified copy of the document to that person by registered mail and endorsing the original document to this effect;
- (b) the sheriff in terms of the provisions of the Magistrate's Courts Act, 1944 (Act No. 32 of 1944), and Rules published in terms of section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985); or

(c) a peace officer in terms of the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), relating to the service of subpoenas.

(2) The clerk of the court sending a copy of the document in terms of subregulation (1)(a) to the person on whom the document is to be served, must require that proof of receipt thereof be returned to him or her by the relevant postal authority.

(3) A person authorised to effect service in terms of subregulation (1), who is not a member of the South African Police Service, may, in any case where resistance to the service of a document is encountered or is reasonably anticipated, request a member of the South African Police Service to assist him or her with the service of any document provided for in the Act and these regulations.

(4) The complainant or respondent who requires a document to be served in terms of the Act or these regulations shall be responsible for the costs of such service: Provided that the clerk of the court may, after consideration of such proof as he or she may require, direct that the State must be responsible for the costs of any service in terms of the Act or these regulations if he or she is satisfied that the complainant or respondent as the case may be, or both the complainant and respondent, do not have the means to pay for such costs at the time when service is required.

Short title

16. These regulations shall be called the **Domestic Violence Regulations, 1999**, and shall come into operation on 15 December 1999.



9

REPUBLIC OF SOUTH AFRICA

ANNEXURE FORM 1

[Regulation 2]

NOTICE TO COMPLAINANT IN A CASE OF DOMESTIC VIOLENCE SECTION 2(b) OF THE DOMESTIC VIOLENCE ACT, 1998 (ACT NO. 116 OF 1998)

This notice explains your rights and the steps you may take to protect yourself, your children and/or other members of the shared household. If, after reading this notice, there is anything you do not understand I will to the best of my ability explain the contents to you. If I or other members of the South African Police Service present are unable to answer any of your questions regarding this notice, you may contact the clerk of the magistrate's court for further information.

1. I, as a member of the South African Police Service will render such assistance to you as you may require in the circumstances including assisting or making arrangements to -

- # find a suitable shelter ; and/or
- # get medical treatment.

2. You may lay a criminal complaint against the person who committed the act of domestic violence (who will now be called the respondent) if the conduct of the respondent constitutes a criminal offence which will be investigated by the police.

3. In addition, you may apply, on any day and at any time, for a protection order at the Magistrate's Court in whose area -

- # you reside, carry on business or are employed, permanently or temporary ;
- # the respondent resides, carries on business or is employed; or
- # the act of domestic violence occurred.

4. I will provide you with an application form if you want to apply for such an order. It is not necessary to lay a

criminal charge in order to obtain a protection order.

5. The Court will consider your application and may thereafter issue a temporary order which will only come into effect -

- # after it has been delivered to the respondent (the cost of which you have to pay unless you do not have the

means to pay therefore) ; and

- # will be valid for a certain period of time.

6. After such period of time the court will consider to issue a permanent order.

7. In your application you may request the court to prohibit the respondent from -

- # committing any act of domestic violence;
- # getting the help of another to commit any act of domestic violence;
- # entering your workplace, home or the shared residence or any part thereof;
- # preventing you or any child who normally lives in the shared residence from entering or remaining in the

residence or any part thereof;

- # committing any other act determined by the court.

8. You may request the court not to disclose your physical address to the respondent. The court may also, in order to protect you and to provide for your safety, health and wellbeing -

- # order that the respondent pay rent, mortgage or other monetary relief (such as medical expenses and loss

of income);

- # refuse the respondent contact with your children;
- # order the seizure of any arm or dangerous weapon in the possession or under the control of the

respondent;

- # order that a peace officer accompany you to assist you with the collection of your personal property;
- # impose any other condition it deems reasonably necessary.

9. The court will, when an order is made, issue a warrant of arrest for the respondent. This means that the respondent may be arrested if he or she fails to comply with any provision of the protection order and after you have given the police the warrant and an affidavit explaining that the respondent has breached the order.

WARNING: It is a criminal offence if you knowingly give false information when applying for a protection order or when laying a criminal charge, you will be prosecuted and may be convicted.



Department of Justice and Constitutional Development

Annexure D



10



REPUBLIC OF SOUTH AFRICA

FORM 2

[Regulation 4]

APPLICATION FOR PROTECTION ORDER

SECTION 4(1) OF THE DOMESTIC VIOLENCE ACT, 1998 (ACT NO. 116 OF 1998)

1.PARTICULARS OF COMPLAINANT (Victim of domestic violence)

[Redacted area]



PART A : APPLICATION (To be completed by applicant)

Surname :
Full names :
Id.No / Date of birth
Home or temporary address :
Home/contact telephone number :
Work address :
Work telephone number :
Nature of domestic relationship with person who committed the act of domestic violence (Respondent):
Occupation :

2. PARTICULARS OF PERSON MAKING THE APPLICATION ON BEHALF OF THE COMPLAINANT (if applicable)

Surname :
Full names :
Id.No / Date of birth
Home address :
Home/contact telephone number :

Work address :	
Work telephone number :	
Occupation :	
Capacity in which application is made :	
Nature of relationship with the complainant :	
State reason(s) why application is made on behalf of the complainant:	
Indicate whether written consent of complainant has been obtained : (Delete whichever is not applicable)	Written consent *has been obtained and is attached/is not necessary since the complainant is- a minor (under the age of 21 years); mentally retarded; unconscious; unable to provide consent because

3. PARTICULARS OF PERSON WHO COMMITTED ACT OF DOMESTIC VIOLENCE (hereafter called the Respondent) - in so far as such particulars are available

Surname :
Full names :
Id.No / Date of birth
Home address :

Department of Justice and Constitutional Development

4.PERSONS AFFECTED BY DOMESTIC VIOLENCE

4.1 Particulars of children and adults sharing the residence :

4.2 How are these persons affected ?

6. INFORMATION REGARDING URGENCY OF APPLICATION

Submit the reasons why the Court has to consider the application as a matter of urgency and why undue hardship may be suffered if the application is not dealt with immediately

7.TERMS OF PROTECTION ORDER

It is requested that the Respondent must be ordered (Mark appropriate box and

Department of Justice and Constitutional Development

complete where necessary) :

14

(a)	Not to commit any act of domestic violence
(b)	Not to get the help of another person to commit any act of domestic violence
(c)	Not to enter the shared residence, situated at
(d)	Not to enter a specified part of the shared residence, namely
(e)	Not to enter the Complainant’s residence, situated at
(f)	Not to enter the Complainant’s place of employment, namely
(g)	Not to prevent the Complainant or any child who ordinarily live(s) or lived in the shared residence from entering or remaining in the shared residence or any part thereof, to wit
(h)	Not to commit any other act, namely

8.ADDITIONAL CONDITIONS

It is also requested that the Court must order that (mark appropriate box and complete where necessary) :

(a)	A peace officer, namely, is to accompany the Complainant to assist with arrangements regarding the collection of the Complainant’s personal property set out in paragraph 9, below.
(b)	A member of the South African Police Service is to seize the following arm(s) or dangerous weapon(s) in the possession of the Respondent:
(c)	The Respondent is to pay the following rent or mortgage payments:

Department of Justice and Constitutional Development

(d)	The Respondent is to pay the following emergency monetary relief:
(e)	The Respondent is refused any contact with the following child or children:
(f)	The Respondent is granted the following contact with the above- mentioned child or children:
(g)	The physical address of the Complainant's residence not be disclosed to the Respondent
(i)	Other conditions requested :

9.PERSONAL PROPERTY

Property description:	Grounds on which property is considered to be personal property :	Address where property is kept:

10. I am likely to report a breach of the Protection Order at the _____ Police Station.

DEPONENT DATE

(Person who applies for order)

Department of Justice and Constitutional Development



PART B : CERTIFICATION (for official use)



11. I hereby certify that before administering the *oath / taking the affirmation I asked the Deponent the following questions and noted *her/his answers in *her/his presence as indicated below:-

1. (a) Do you know and understand the contents of the above declaration?

Answer _____.

2. (b) Do you have any objection to taking the prescribed oath?

Answer _____.

3. (c) Do you consider the prescribed oath to be binding on your conscience?

Answer _____.

I hereby certify that the Deponent has acknowledged that *she/he knows and understands the contents of this declaration which was *sworn to / affirmed before me, and the Deponent's *signature / thumb print / mark was placed thereon in my presence.

Dated at _____ this ____ day of _____ year ____.

Justice of the Peace / Commissioner of Oaths

Full Names _____

Designation _____

Area for which appointed _____

Business Address _____

Department of Justice and Constitutional Development



21

REPUBLIC OF SOUTH AFRICA

FORM 5

[Regulation 7]

NOTICE TO RESPONDENT TO SHOW CAUSE (SUBMIT REASONS)

WHY A PROTECTION ORDER SHOULD NOT BE ISSUED SECTION
5(4) OF THE DOMESTIC VIOLENCE ACT, 1998 (ACT NO. 116 OF 1998)



IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF _____

HELD AT _____ APPLICATION NO. _____ / _____

In the matter between:

APPLICANT: _____

(*Id.No./Date of Birth: _____)

AND

RESPONDENT: _____

(*Id.No./Date of Birth: _____)



1. Particulars of Respondent:



2. Particulars of Application



3. Protection Order



3.1.

On (date), the Applicant applied for a protection order against you. The Court considered the application but has not issued an interim protection order but will on the undermentioned date decide whether or not to issue a protection order against you.

You are hereby called upon to give reasons why a protection order should not be issued against you by the above-mentioned Court on the day of at 08:30, on the basis of the application and supporting affidavits, if any, of which certified copies are attached hereto.

Home Address:

Work Address:

NOTICE TO RESPONDENT:

_____(Tel.No._____)_____

_____(Tel.No._____)_____.

Department of Justice and Constitutional Development

22

2. 3.2 If you so wish, the matter can be heard on a earlier date after you have given at least 24 hours` written notice to the applicant and the Court.
3. 3.3 The Court will issue a protection order against you if you do not appear in the court on the abovementioned date and time, and if the Court is satisfied that this notice was properly served on you and that you have committed an act of domestic violence.

CLERK OF THE COURT DATE



23

REPUBLIC OF SOUTH AFRICA

FORM 6 [Regulation 8(a)] PROTECTION ORDER

SECTION 6 OF THE DOMESTIC VIOLENCE ACT, 1998 (ACT NO. 116 OF 1998)

(This form must be completed if an interim protection order was issued in terms of section 5(2))



IN THE MAGISTRATE’S COURT FOR THE DISTRICT OF _____

HELD AT _____ APPLICATION NO. _____ / _____

In the matter between:

APPLICANT: _____

(*Id.No./Date of Birth: _____)

AND

RESPONDENT: _____

(*Id.No./Date of Birth: _____)

Whereas the Applicant successfully applied for a protection order which was issued on the day of , and after considering the facts of the matter;

The Court orders that the attached interim protection order be :

1.*Confirmed;

2.*Amended as follows: _____

_____ ; or

3.*Set Aside.

A copy of this order and interim protection order, as well as the warrant of arrest for the Respondent must be forwarded to the Police Station.

Dated at _____ this ____ day of _____ year _____.

MAGISTRATE DATE

*Delete whichever is not applicable

Department of Justice and Constitutional Development



24

REPUBLIC OF SOUTH AFRICA

FORM 7

[Regulation 8(b)]

PROTECTION ORDER

SECTION 6 OF THE DOMESTIC VIOLENCE ACT, 1998 (ACT NO. 116 OF 1998)

(This form must be completed if an interim protection order was not issued).



IN THE MAGISTRATE’S COURT FOR THE DISTRICT OF _____

HELD AT _____ APPLICATION NO. _____ / _____

In the matter between:

APPLICANT: _____

(*Id.No./Date of Birth: _____)

AND

RESPONDENT: _____

(*Id.No./Date of Birth: _____)



1. PARTICULARS OF RESPONDENT



Home Address:

Work Address:

_____ (Tel.No. _____)

_____ (Tel.No. _____),

Occupation: _____

Whereas the Applicant has applied for a Protection Order against the Respondent as per the affidavit(s) and record of oral evidence(if any) attached, and an interim

protection order was not issued, and after consideration of the application the Court now makes the order hereunder.

3.1 The Court orders that :

3.1.1 *The application for a Protection Order is dismissed; or

3.1.2 *An Interim Protection Order is granted; and the Respondent is ordered-

3.1.2.1 *not to commit the following act(s) of domestic violence _____

Department of Justice and Constitutional Development



2. PARTICULARS OF APPLICATION



3. ORDER BY COURT



25

_____;

3.1.2.2 *not to enlist the help of another person to commit the acts of domestic violence specified in paragraph 3.1.3;

3.1.2.3 *not to enter the shared residence at _____

3.1.2.4 *not to enter the following parts of the shared residence _____

at _____
_____;

3.1.2.5 *not to enter the Complainant’s residence at _____
_____;

3.1.2.6 *not to enter the Complainant’s place of employment at _____
_____;

3.1.2.7 *not to prevent the Complainant or any child who ordinarily live(s) or lived in the shared residence at _____ from entering or remaining in the shared residence, or any part thereof;

3.1.2.8 *not to commit any of the following acts, to wit _____

_____;

3.1.2.9 *to make rent or mortgage payments in the sum of R_____ per month / annum;

3.1.2.10 *to pay the sum of R_____ to the Complainant as emergency monetary relief.

4.1 It is further ordered that :

4.1.1 *A peace officer, namely, accompanies the Applicant to the following residence in order to assist with arrangements regarding the collection of personal property, i.e._____.

_____;

4.1.2 *A member of the South African Police Service at _____ seizes the following arm(s) or dangerous weapon(s) in the possession of the



4. ADDITIONAL ORDERS



Department of Justice and Constitutional Development

26

Respondent, i.e. _____

_____;

4.1.3 *The Complainant’s physical address not be disclosed to the Respondent;

4.1.4 *The Respondent is ordered not to have any contact with the following child(ren) _____

_____;

4.1.5 *The Respondent is allowed contact with the following child(ren) _____

_____, on the following basis: _____

_____;

4.1.6 *The Respondent _____

_____;

2. 4.2 A Warrant is authorised for the arrest of the Respondent, the execution of which is suspended subject to the Respondent's compliance with the provisions of the Protection Order as stated above.
3. 4.3 A copy of this order and the warrant of arrest must be forwarded to the _____ Police Station, once this order has been served on the Respondent.

MAGISTRATE DATE

*Delete whichever is not applicable

Department of Justice and Constitutional Development



28

REPUBLIC OF SOUTH AFRICA

FORM 9

[Regulation 10]

**AFFIDAVIT FOR PURPOSES OF FURTHER WARRANT OF ARREST
SECTION 8(3) OF THE DOMESTIC VIOLENCE ACT, 1998 (ACT NO.116 OF 1998)**



IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF _____

HELD AT _____ APPLICATION NO. _____ / _____

In the matter between:

APPLICANT: _____

(*Id.No./Date of Birth: _____)

AND

RESPONDENT: _____

(*Id.No./Date of Birth: _____)



PART A : AFFIDAVIT (To be completed by complainant)



1. PARTICULARS OF COMPLAINANT

Surname :
Full names :
Id.No / Date of birth :
Home or temporary address :
Home/contact telephone number :
Work address :
Work telephone number :
Occupation :

2. PARTICULARS OF PROTECTION ORDER

3. PARTICULARS OF RESPONDENT

29

A protection order was granted and a warrant of arrest authorised on :	(Date)
In the Magistrate`s Court at :	
Against :	(Name of Respondent)
Surname :	
Full names :	
Id.No / Date of birth	
Home address :	
Home telephone number :	
Work address :	
Work telephone number :	

4. PARTICULARS OF APPLICATION

4.1 I require a *second/further warrant of arrest for my protection.

4.2. The existing warrant of arrest has been - (a) *executed and cancelled; or
(b)*lost / destroyed, under the following

_____ Signature of Deponent Date

*Delete whichever is not applicable



PART B : CERTIFICATION (for official use)



Department of Justice and Constitutional Development

circumstances:



30

I hereby certify that before administering the *oath / taking the affirmation I asked the Deponent the following questions and noted *her/his answers in *her/his presence as indicated below:-

(a) Do you know and understand the contents of the above declaration?

Answer _____.

(b) Do you have any objection to taking the prescribed oath?

Answer _____.

(c) Do you consider the prescribed oath to be binding on your conscience? Answer

_____.

I hereby certify that the Deponent has acknowledged that *she/he knows and understands the contents of this declaration which was*sworn to/affirmed before me, and the Deponent's *signature / thumb print / mark was placed thereon in my presence.

Dated at _____ this ____ day of _____ year ____.

Justice of the Peace / Commissioner of Oaths

Full Names _____

Designation _____

Area for which appointed _____

Work Address _____

*Delete whichever is not applicable

Department of Justice and Constitutional Development

Annexure I



REPUBLIC OF SOUTH AFRICA

FORM 10

[Regulation 11]

AFFIDAVIT REGARDING CONTRAVENTION OF PROTECTION ORDER SECTION 8(4) OF THE DOMESTIC VIOLENCE ACT, 1998 (ACT NO. 116 OF 1998)

APPLICANT: _____
(*Id.No./Date of Birth: _____)

AND RESPONDENT: _____

(*Id.No./Date of Birth: _____)



PART A : AFFIDAVIT (To be completed by complainant)



1 PARTICULARS OF COMPLAINANT

Surname :
Full names :
Id.No / Date of birth :
Home or temporary address :
Home/contact telephone number :
Work address :
Work telephone number :
Occupation :

2. PARTICULARS OF PROTECTION ORDER

A protection order was granted and a warrant of arrest authorised on :	(Date)
In the Magistrate's Court at :	
Against :	(Name of Respondent)
A copy of the Protection Order (indicating what orders were made), and the original warrant of arrest are attached.	

Department of Justice and Constitutional Development

3. PARTICULARS OF RESPONDENT

4. INFORMATION REGARDING BREACH OF PROTECTION ORDER

2 J608

A certified copy of the Protection Order and warrant of arrest were forwarded to the following Police Station :

Surname :
Full names :
Id.No / Date of birth :

Home address :	
Home telephone number :	
Work address :	
Work telephone number :	
Date(s) of breach of protection order:	
Place(s) where breach of protection order took place:	
Full details on how the conditions of the protection order were breached :	
Reasons, if any, for believing that imminent harm may be suffered as a result of the breach of the protection order by the Respondent:	

Signature of Deponent

Date

Department of Justice and Constitutional Development



PART B: CERTIFICATION (for official use)



11. I hereby certify that before administering the *oath / taking the affirmation I asked the Deponent the following questions and noted *her/his answers in *her/his presence as indicated below:

1. (a) Do you know and understand the contents of the above declaration? Answer _____.
2. (b) Do you have any objection to taking the prescribed oath? Answer _____.
3. (c) Do you consider the prescribed oath to be binding on your conscience? Answer _____.

I hereby certify that the Deponent has acknowledged that *she/he knows and understands the contents of this declaration which was *sworn to / affirmed before me, and the Deponent's *signature / thumb print / mark was placed thereon in my presence.

Dated at this day of year
.....

Justice of the Peace / Commissioner of Oaths

Full Names
Designation
Area for which appointed
..... Work Address
.....
.....
.....

_____ ***Delete**
whichever is not applicable

3 J608 Department of Justice and Constitutional Development



Annexure J

FORM 11
[Regulation 12(1)]
NOTICE TO APPEAR BEFORE COURT

SECTION 8(4)(c) OF THE DOMESTIC VIOLENCE ACT, 1998 (ACT NO.116 OF 1998)

CASE NO. _____

IN THE MAGISTRATE`S COURT FOR THE DISTRICT _____
HELD AT _____ COURT _____
DATE OF TRIAL _____

TO :

Name of Respondent:

You are hereby notified that you must appear personally before the above-mentioned Court on the date stated above at 08:30 on the following charge:

PARTICULARS OF CHARGE:



Home address:		
Sex:	Occupation/Status:	Id No./Date of birth:

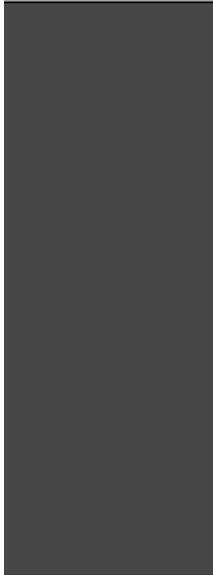
You are guilty of the offence of contravening section 17(a) of the Domestic Violence Act, 1998 (Act No. 116 of 1998), in that upon or about the _____ day of _____ and at or near _____ in the district of _____ you

Note: (1) Please produce this document to the Clerk of the Court on the date of trial.
(2) By failing to appear before the Court as notified you may be convicted of an offence and upon conviction be sentenced to a fine or imprisonment for a period not exceeding six months.

CERTIFICATE:

I _____ (rank and name), in my capacity as a member of the South African Police Service stationed at _____, hereby certify that I have handed the original of this notice to the Respondent mentioned therein at _____ (place) on _____ (date) and that I explained the contents thereof to the said Respondent.

_____ (Name, rank and service no. of Member and date)



Annexure K



36

REPUBLIC OF SOUTH AFRICA

FORM 12

[Regulation 13]

APPLICATION FOR VARIATION OR SETTING ASIDE OF PROTECTION ORDER
SECTION 10(1) OF THE DOMESTIC VIOLENCE ACT, 1998 (ACT NO. 116 OF
1998)

(A copy of this Form must be forwarded to the other party)



IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF _____

HELD AT _____ APPLICATION NO. _____ / _____

In the matter between:

APPLICANT: _____

(*Id.No./Date of Birth: _____)

AND

RESPONDENT: _____

(*Id.No./Date of Birth: _____)



PART A : AFFIDAVIT (To be completed by applicant)



1. PARTICULARS OF APPLICANT

Surname :
Full names :
Id.No / Date of birth :
Home or temporary address :
Home/contact telephone number :
Work address :
Work telephone number :

*Delete whichever is not applicable

Department of Justice and Constitutional Development

2. PARTICULARS OF RESPONDENT

37

Surname :
Full names :
Id.No / Date of birth :
Home address :
Home/contact telephone number :
Work address :
Work telephone number :

3. PARTICULARS OF PROTECTION ORDER

A protection order was granted on :	(Date)
In the Magistrate`s Court at :	
Against :	(Name of Respondent)

4. APPLICATION REGARDING PROTECTION ORDER

I wish to apply for:	* (a) The setting aside of the above-mentioned Protection Order
	* (b) The variation of the Protection Order as follows :

*Delete whichever is not applicable

Department of Justice and Constitutional Development

Signature of Deponent

Date

38

The reasons for my request are as follows :

PART B : CERTIFICATION (for official use)



I hereby certify that before administering the *oath / taking the affirmation I asked the Deponent the following questions and noted *her/his answers in *her/his presence as indicated below:-

(a) Do you know and understand the contents of the above declaration?

Answer _____.

(b) Do you have any objection to taking the prescribed oath?

Answer _____.

(c) Do you consider the prescribed oath to be binding on your conscience? Answer

_____.

I hereby certify that the Deponent has acknowledged that *she/he knows and understands the contents of this declaration which was *sworn to / affirmed before me, and the Deponent's *signature / thumb print / mark was placed thereon in my presence.

Dated at _____ this ____ day of _____ year ____.

Justice of the Peace / Commissioner of Oaths

Full Names _____

Designation _____

Area for which appointed _____

Work Address _____

*Delete whichever is not applicable

CONTACT NUMBERS & ADDRESSES

1. Police Stations

Mecklenburg Police Station situated in Moroke village

Station Commander name: Shirinda F S

Number: 0824142696

Mecklenburg Victim Empowerment Programme office

Name: Maria

Number:0760558857

Apel Police Station situated in Ntshabeleng Village

Station Commander Name: Mrs Moela

Number: 0825658260

Office of Family Violence, Child Protection and Sexual Offences (FCS) in Burgersfort

Warrant Seoke

Number: 0726591818

Malepisi Police Station situated in Mathabatha village

Station number:0726463693 name of a person: Mr Mohlatlole

Malepisi Victim Empowerment Programme office

Name: Elliase Juba

Number: 0720198848

National Prosecuting Authority GBV Command Centre

0800 428 428 / *120*7867# from any cell phone

National Prosecuting Authority Women Abuse Helpline:

0800 150 150

National Prosecuting Authority GBVF-related service complaints about SAPS

0800 333 177

Provincial Hotline

0824517170

2. GBV Helplines

National

0800428428

National (SMS)

*134*7355#

3. Thuthuzela Care Centres in Limpopo

Grobersdal Hospital

0132623024

Mankweng Hospital, Polokwane

0152861000

Mokopane Hospital, Mokopane

0154834000

Monsina Hospital

0155340446

Nkhesani Hospital, Giyani

0158120227 or 0158120233

Seshego Hospital

0152230483

Tshilidzini Hospital, Thohoyandou

0159643257

4. Shelters

Ekuphumleni Restoration Home ThyREST, Polokwane

Contact person: Nobesuthu Carol Javu

0152230091 or 0731749185 or thyrest@gmail.com

Khuseleka One Stop Centre (Government-run)

Contact person: Emma Pilusa

0152931182-5 or 0844668212 or emma66@gmail.com

5. Courts and parole

14. Sekhukhune Magistrate Court

Address: Next to Police Station, Sekhukhune

15. Parole Office

Area Commissioner

Ms M C Maile

Cel: 079 341 6358

Tel: 018 487 900

LEGISLATION AND POLICY

Legislation

- Constitution of the Republic of South Africa, 1996
- Correctional Services Act 11 of 1998
- Children's Act 38 of 2005
- Criminal Law Amendment Act 105 of 1997
- Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
- Criminal Procedure Act 51 of 1977
- Domestic Violence Act 116 of 1998
- Promotion of Administration of Justice Act 3 of 2000
- Prescription in Civil and Criminal Matters (Sexual Offence) Amendment Act 15 of 2020

Policy

- National Policy for Victims of Sexual Offences, Department of Correctional Services
- National Policy Guidelines of Sexual Offences, South African Police Service (SAPS) Support to Victims of Sexual Offences
- Prosecution Policy and Directives, 1 December 2015
- SAPS National Instruction 3/2008, Sexual Offences
- Service Charter for Victims of Crime in South Africa
- Standing Order (General) 325: Closing of case dockets

