

2016

STOP DOMESTIC VIOLENCE!

What you need to know

English



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



**STOP
DOMESTIC
VIOLENCE!**





PUT A STOP TO DOMESTIC VIOLENCE!

The **Domestic Violence Act 116 of 1998** allows a victim of domestic abuse or violence to **seek a Protection Order** from the Magistrate's Court against the person who is **committing the abuse**. The purpose of this Guide is intended to **give the victim the information** that he or she needs to bring an application for a Protection Order in terms of the Domestic Violence Act. Both men and women can be abusers, and victims of domestic violence. However for the purposes of this Guide the victim is considered as a woman.

“ Both men and women can be guilty of or be victims of domestic violence. ”



WHAT IS DOMESTIC VIOLENCE?

In general, domestic violence may:

- Be an on-going pattern of coercive control
- Increase in severity over time
- Be complicated due to the fact that the victim and perpetrator often share financial, social and familial tie

FORMS OF ABUSE IN TERMS OF THE DOMESTIC VIOLENCE ACT

PHYSICAL ABUSE MAY INCLUDE:

- Shoving, slapping, punching, kicking, throttling, biting
- Assault with objects, guns, knives or any other dangerous weapon

SEXUAL ABUSE MAY INCLUDE:

- Rape, attempted rape, indecent assault
- On-going verbal abuse with sexual slurs such as bitch, whore, slut, etc.

EMOTIONAL, VERBAL AND PSYCHOLOGICAL ABUSE MAY INCLUDE:

- Constant insults, ridicule or name calling
- Repeated threats of violence or death to cause emotional pain

ECONOMIC ABUSE MAY INCLUDE:

- Selling of shared property e.g. livestock, matrimonial house without the consent of the victim
- Accessing a joint bank account for personal use without the consent of the victim

INTIMIDATION COULD BE:

- Sending written or verbal death threats to the victim
- Sending beheaded dolls, small coffins, dead flowers or dead pets to the victim

HARASSMENT MAY INCLUDE:

- Repeatedly watching the victim outside or near her house, workplace, school or business premises or any place where she happens to be
- Repeatedly phoning the victim or causing any other person to phone her whether or not the caller speaks to the complainant

STALKING MEANS, FOR EXAMPLE:

- Constantly approaching the victim and asking or demanding to talk to her against her will

DAMAGE TO PROPERTY MAY INCLUDE ACTS OF:

- Breaking the window to gain entry into the victim's house
- Cutting, breaking or damaging in any other manner shared furniture

UNAUTHORISED ENTRY INTO THE VICTIM'S RESIDENCE MAY INCLUDE:

- Using a duplicate key to gain access may also constitute domestic violence

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

WHO CAN APPLY FOR PROTECTION ORDER?

- Any person who is the victim of an act of domestic violence may apply to the court for a protection order
- The application may also be brought by any person who has a material interest in the wellbeing of the complainant e.g. parent, social worker, teacher etc.
- Any unassisted minor or any person on behalf of the minor may apply for a protection order.
- The application may be heard in camera (private)
- The complainant/respondent may be allowed not more than three persons for purpose of providing support.
- The protection order is valid for life and is enforceable throughout the Republic.

AGAINST WHOM MAY YOU SEEK PROTECTION?

It must be a person that you have a domestic relationship with, e.g.

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

- The person with whom you shared an engagement, customary or dating relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration (e.g. one night stand)
- A person with whom you share or have recently shared the same residence.

WHAT MUST I DO?

If you are a victim of any act of domestic violence as listed above, approach the local Magistrate Court and request assistance to apply for a Protection Order. The Clerk of the Court will assist you to complete the necessary forms and take you before a Magistrate who will determine whether to grant the Order or not. The details of service providers who can give advice and help you in this regard are provided at the beginning of this Guide.

REMEMBER THAT IN EMERGENCIES, THIS ECONOMIC ABUSE MAY INCLUDE:

- Selling of shared property e.g. livestock, matrimonial house without the consent of the victim
- Accessing a joint bank account for personal use without the consent of the victim

INTIMIDATION COULD BE:

- Sending written or verbal death threats to the victim
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HARASSMENT MAY INCLUDE:

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REMEMBER THAT IN EMERGENCIES, THIS SERVICE IS AVAILABLE 24 HOURS A DAY.

The Clerk of the Court will assist you in completing the necessary forms and taking you before a Magistrate.

WHICH COURT SHOULD I APPROACH?

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WHICH COURT SHOULD I APPROACH?

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

WHAT IS AN AFFIDAVIT?

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

WHEN CAN I APPLY FOR INTERIM PROTECTION ORDER?

If the respondent is committing any acts of domestic violence I may apply for the protection order, the court will consider my application and if the court is satisfied that there is sufficient evidence that:

- (a) The respondent is committing or has committed an act of domestic violence and;
- (b) Undue hardship may be suffered by me (applicant) as a result of such domestic violence if an interim protection order is not issued immediately



WHAT WILL THE INTERIM PROTECTION ORDER STATE?

The interim Protection Order will request the Respondent (the person who is committing the abuse) not to abuse you in the specific manner alleged in your affidavit e.g. order:

- The Respondent not to sexually abuse you or the children

In extreme cases, the Magistrate may consider it appropriate to prohibit the Respondent from entering the shared house or certain areas of the shared house e.g. your bedroom

If the children are victims of the abuse, the Court may order that the Respondent has no or limited contact with the children.

The Court may make an order for emergency monetary relief. This means that if you need to claim medical expenses or alternate accommodation costs which arose directly as a result of the abuse, you must provide proof of the expenses incurred and request the Court to consider this application.

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

To fully appreciate the nature of the alleged abuse, the Court relies on your affidavit. You must therefore provide the Court with all the relevant information in your Affidavit, for example, details of the incidents of abuse, the date and place and nature of the last incident.

The court may not refuse to issue a protection order; or to impose any condition or make any order which is competent to impose or make merely on the grounds that other legal remedies are available to the complainant.

WHAT DO I DO WITH THE INTERIM PROTECTION ORDER?

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

You must take the interim Protection Order to the Office of the Sheriff or to the police station closest to the respondent's residential or work address. At the police station, **please remember to take down the name and/or badge number of the police person to whom you hand the Order.** This enables you to easily track the Order at a later stage. Most police stations have a designated Officer to handle domestic violence matters.

Arrange with the Police Officer to collect the Return of Service (Proof of Service). This proves that the interim Protection Order has been served on the Respondent and that they have personally received it. Do not arrange for the police to deliver or post the Return of Service directly to the Court as this is often too slow and does not get to Court before the return date.

Remember that in terms of the law, the Police must assist you in whatever manner stipulated in the Court Order, for example with the collection of personal belongings, your ID document, children's books or clothes, etc. If you find that the Police Officer is unhelpful and refuses to cooperate in terms of the Order, you may report this to the Independent Complaints Directorate.

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

WHAT DO I DO WITH THE PROOF OF SERVICE?

You will need to provide the Clerk of the Court with the Proof of Service of the Protection Order as soon as possible. Once the Clerk has this document, the Court will authorise a suspended Warrant of Arrest for the Respondent. This Warrant may only be used against the Respondent for any future violations of the Protection Order

WHAT IS THE RETURN DATE?

The return date is the date set so as to allow the respondent the opportunity to show why the final order should not be granted against him

WHAT HAPPENS ON THE RETURN DATE?

The court must hear the matter, and consider any evidence or any affidavit as well as oral evidence. If the court is satisfied on balance of

probabilities that the respondent has committed or is committing an act of domestic violence, a protection order must be issued

WILL THE RESPONDENT BE ARRESTED WITH THE PROTECTION ORDER?

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

WHAT IS CONTEMPT OF COURT?

This is when the Respondent who has breached the Order, has failed to appear in a Criminal Court to answer the charges laid against him.

WHAT IS A BREACH OF THE PROTECTION ORDER?

This is when the respondent fails to comply with the conditions of the protection order, e.g. when he repeats the abusive behaviour that, according to the protection order served; he has been prohibited from committing.

The matter may be adjourned to another date for hearing. The Clerk of the Court will assist you or direct you to someone who will assist you with the drafting of the reply.

At the date of the hearing, the Magistrate will consider the matter and make a decision based on the affidavits which both parties have filed. The Magistrate may ask either or both of you for clarification of certain issues. The Magistrate may decide to confirm the order, set aside the order.

If the Magistrate is satisfied that the Affidavit drawn up by the applicant clearly confirms that abuse has taken place, the Magistrate will make the Protection Order final.

WILL THERE BE A FORMAL HEARING?

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

At the hearing, both parties will be required to give oral evidence under oath and to be cross-examined by the other party. However, the respondent is only allowed to ask complainant questions via his attorney or the Magistrate. Both parties may call witnesses to give any other supporting evidence that they need to prove their case, for example, medical certificates, hospital records, photographs, documents, etc.





WHAT IF THE PROTECTION ORDER IS BREACHED?

If the Respondent breaches the Protection Order by repeating physical or verbal abuse on you in the manner described at the beginning of this brochure, you may file a complaint at the police station and hand in the Warrant of Arrest to the police who will then arrest the Respondent.

This decision to use the Warrant of Arrest after a breach of the Order is entirely yours. Once arrested, the Respondent will face criminal charges and be tried in a Criminal Court for breaching the Protection Order.

Remember, however, that if the Court finds that the Warrant of Arrest is used maliciously (to have the Respondent arrested without just cause), then you may be prosecuted in terms of the Act. The Respondent will appear in the Criminal Court to be tried under Criminal Charges for breaching the terms of the Protection Order served on him/her.

CAN THE CRIMINAL CHARGES BE WITHDRAWN?

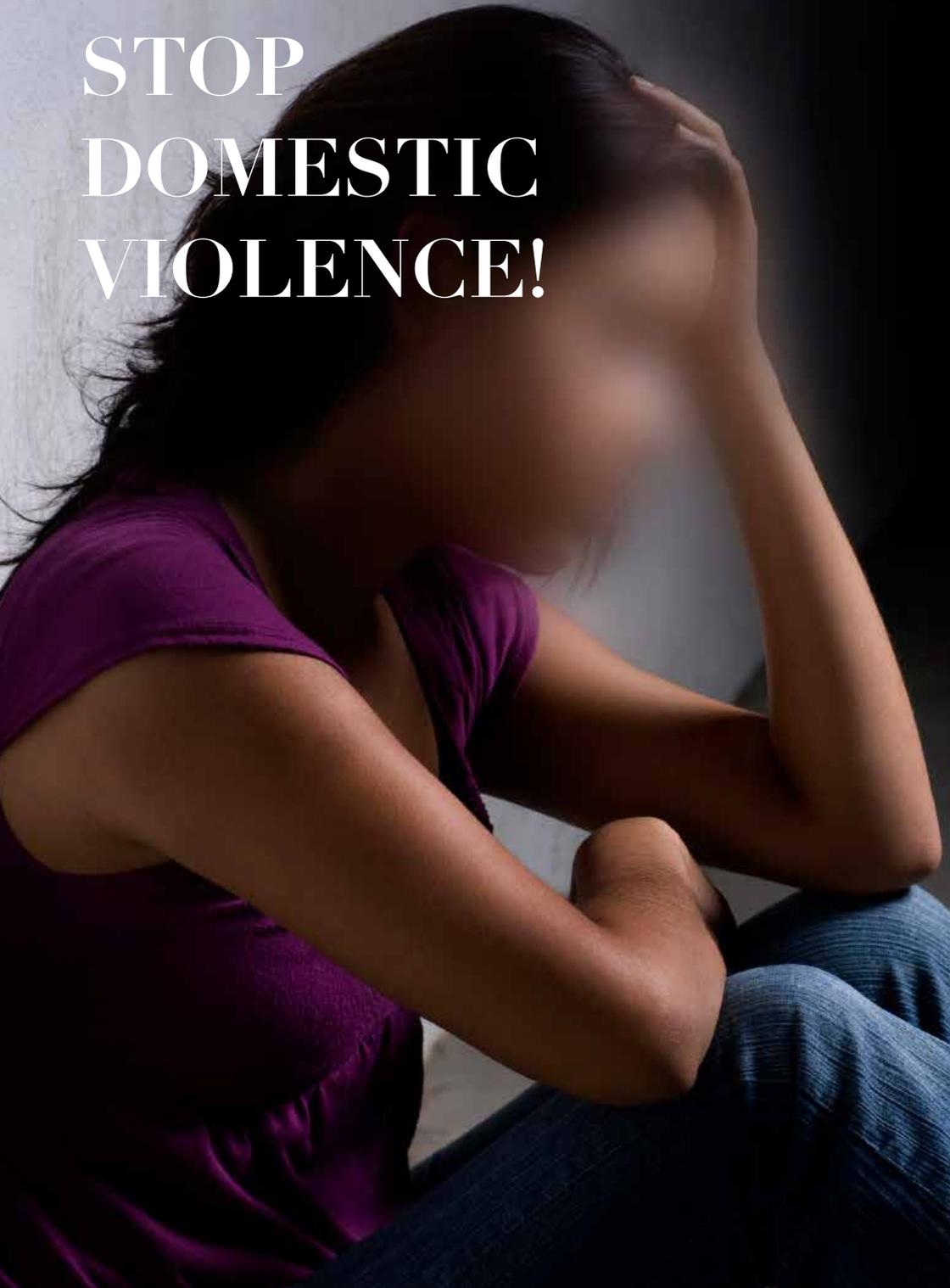
Once the Respondent has been arrested for a breach of the Protection Order, the Applicant may not decide to withdraw the charges. The Senior Public Prosecutor has the sole discretion to withdraw charges.

CAN I SET ASIDE THE ORDER?

You may, at any time, make an application to have the Order set aside. It is however, at the discretion of the Magistrate as to whether or not to set aside the Order. This will mean that the Protection Order will be declared null and void.



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USEFUL CONTACT NUMBERS

Department of Justice and Constitutional Development (DoJ&CD)

Tel: (012) 315 1111

Department of Social Development (DSD)

Tel: (012) 312 7500

Gender - Based Violence Command Centre (GBVCC)

Tel: 0800 428 428

Department of Women

Tel: (012) 359 0000

South African Police Service (SAPS)

Tel: 10111

Independent Police Investigative Directorate (IPID)

Tel: (012) 399 0000

Commission for Gender Equality (CGE)

Tel: (011) 403 7182

South African Older Persons' Forum

Tel: (021) 422 5286

South African Human Rights Commission

Tel: (011) 484 8300

FAMSA-National

Tel: (011) 833 2057

LIFE LINE

Tel: (011) 728 1347/ 0861 322 322

Stop Women Abuse

Tel: 0800 150 150

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

**DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

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

TEL: (012) 315 1111

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