

woman

know your rights



WOMEN'S LEGAL CENTRE

**A SIMPLIFIED GUIDE TO THE
DOMESTIC VIOLENCE ACT**

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Written by Jody Fredericks and Cherith Sanger
Edited by Sanja Bornman

Layout and Design by Cassandra Pireu

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The Women's Legal Centre

7th Floor
Constitution House
124 Adderley Street
Cape Town
8000
Tel: 021 424 5660
Fax: 021 424 5206
<http://www.wlce.co.za/>
Email: info@wlce.co.za
Twitter: @WLCCapeTown
Facebook: <https://www.facebook.com/WLCCapeTown>

INTRODUCTION



This booklet explains how you can use the Domestic Violence Act to protect yourself from domestic abuse.

WHAT IS THE DOMESTIC VIOLENCE ACT?

The Domestic Violence Act 116 of 1998 (“the DVA”) is the law that deals with domestic violence in South Africa. This law exists to give people who are experiencing domestic violence the best possible protection that the law can, and it commits the government to stopping domestic violence.

You can use the DVA to protect yourself if:

- The abuse is coming from a person with whom you are in a “domestic relationship”, and
- You have experienced one or more of the types of abuse that the DVA talks about.



THE PURPOSE OF THE DOMESTIC VIOLENCE ACT

- The DVA makes it possible for you to get a protection order against an abuser.
- The protection order will prohibit the abuser from committing more acts of domestic violence against you.
- If the abuser commits an act of domestic violence against you that is prohibited in the protection order, he can be arrested and taken to court for disobeying the protection order.

Definition: PROTECTION ORDER

An order of the court, where a magistrate lists the various things that an abuser may and may not do, to stop the abuser from abusing you.



DOMESTIC RELATIONSHIPS

The DVA says that you are in domestic relationship with someone if:



You currently live, or lived in the past, under the same roof with that person in an intimate relationship (like boyfriend or girlfriend), in a civil marriage, or a customary marriage.



You do not live with the person, but you are married to or are in an intimate relationship with the person.



You currently live under the same roof with that person, or you did so recently.



The person is a family member of yours (like your father, cousin, son or aunt) or a family members of your current husband or partner, or ex-husband or partner.



You and that person share responsibilities for a child. You do not need to be the natural, adoptive parents or legal guardians of the child, but could be.



The person believes or thinks that they are in an intimate relationship with you.

Important to note:

The person that is abusing you can be a man or a woman.

Women can abuse other women, and men can abuse other men, and women can also abuse men.



Child abuse is very serious, and must be reported to the police!

DOMESTIC ABUSE

You are experiencing domestic violence if a person with whom you are in a domestic relationship does one or more of these things to you:



PHYSICAL ABUSE: When the person harms you physically, like beating, slapping, punching, choking, kicking, stabbing, scratching, burning or shooting you.



SEXUAL ABUSE: When the person harms you sexually, like raping or sexually assaulting you.



EMOTIONAL ABUSE: When the person harms you emotionally, like saying things on purpose to hurt your feelings, shouting at you and calling you bad names. He could be doing or saying things that make you feel bad about yourself, or scared, like threatening to take your child away from you if you divorce him, or threatening to hurt you physically.



PSYCHOLOGICAL ABUSE: When the person harms you psychologically, like saying or doing things on purpose to affect your mental or psychological state of mind. He could be undermining you, or making you feel like you are a worthless and bad person without dignity.



VERBAL ABUSE: When the person harms you verbally, like swearing at you, calling you bad words and names, and shouting at you a lot.

Definition: DIGNITY



Every person has the right to have her human dignity respected. Dignity is the feeling that you are a human being that has emotions with self-respect or self-esteem.

DOMESTIC ABUSE

You are experiencing domestic violence if a person with whom you are in a domestic relationship does one or more of these things to you:



ECONOMIC ABUSE: When the person harms you economically or financially, like using money to try to control you or your behaviour. For example, she steals your money or belongings, refuses to buy food for the children, to pay the children's school fees or refuses to give you money for groceries unless you stop seeing your friends.



INTIMIDATION: When the person threatens to hurt or harm you, your children, friends or family if you do not do what she wants. Also, if she bullies you, scares you, or puts you under pressure to do or not do something. Psychological, emotional and verbal abuse can also be intimidation.



HARASSMENT: When the person watches you or follows you all the time, or sends you unwanted letters, messages on your phone or emails. Also if the person calls you all the time even when you've asked them to stop.



STALKING: When the person follows you around, or watches you all the time, and you do not want him to do so.



DAMAGE TO PROPERTY: When the person damages or destroys your belongings on purpose. For example, she breaks, destroys or spoils your personal things, kitchen things or furniture, or breaking the doors and windows of the place where you stay.



When the person comes into the place where you live, which you do not share with that person, without your invitation or agreement.



Any other behavior by the person that is abusive or harmful, and has a bad effect on your safety, health or wellbeing.

PROTECTION ORDER

WHO CAN APPLY FOR A PROTECTION ORDER?

- You can apply for a protection order in terms of the DVA if you are abused by somebody with whom you are in a domestic relationship.
- You can also apply for a protection order on behalf of someone else who is a victim of domestic violence.
- Any person who is concerned that you are being abused, including a social worker, teacher, a health worker or police service member.

WHERE CAN YOU APPLY FOR A PROTECTION ORDER?

- You can apply for a protection order at the domestic violence section of your nearest magistrate's court, or the magistrate's court that is closest to where the person who is abusing you lives or works.
- When you arrive, ask to be shown where the domestic violence clerk's office is, and tell the clerk you want to apply for a protection order.

WHEN CAN YOU APPLY FOR A PROTECTION ORDER?

You can apply for a protection order at the court:

- During ordinary court hours, which usually are from 09:00 – 15:30.
- Outside of ordinary court hours, or on weekends and public holidays.

Important to note:

- If you are applying for a domestic violence protection order on behalf of someone else, you must have the person's written permission, unless the person is younger than 18 years, is mentally disabled, unconscious, or the court is satisfied that the person cannot give their permission for some reason.



- Children below the age of 18 can also apply for a protection order.

Where is the protection order valid?

When you get a protection order it is valid in the whole of South Africa, no matter which court gives it to you.



You can apply outside of court hours if you can show:

1. That your case is very urgent or,
2. That you will suffer unnecessarily if your application is not dealt with immediately.



PROTECTION ORDER

A step-by-step guide to getting a protection order Step 1: The application form

The domestic violence clerk at the magistrate's court will ask you to fill in an application form. In this form there will be space for:



Your full details, like your name, ID number, address, phone number and place of work.



The details of the person that is abusing you – try to give as many details as possible, because this will help the court and the police.



All the reasons why your application may be urgent, and why you will suffer if you do not get a protection order urgently.



An explanation of what kind of abuse happened to you.



Asking the court for the kind of protection that you want.



The clerk will ask you to swear or promise that all the information you have put in the form is correct and true.

Important to note:



It is important that you have the address of where the person who abused you lives or works.

Important to note:



Pay close attention to the form, and make sure you answer all the questions. If there is anything in the form that you do not understand, you must ask the clerk. The clerk must explain your rights and the DVA process in a way that you understand.

Documents to bring with if applicable:



Photographs



Doctor's letter



Sworn affidavits by witnesses.

Important to note:



Lying on purpose in an application form is a serious offence, and you can go to jail for it, or be made to pay a big fine.

PROTECTION ORDER

A step-by-step guide to getting a protection order Step 2: An interim protection order

- When your application form is completed the domestic violence clerk will take it to the magistrate while you wait. The magistrate will look at the facts of your case, and will consider all your reasons for why your application is urgent, and how you will suffer if you do not get a protection order urgently.
- The magistrate will then make a decision about giving you temporary protection “in the meantime”, until the day that you and the person who abused you can both come to court to talk about your application.
- This temporary “in the meantime” protection is called an “interim protection order”. IT IS NOT A FINAL PROTECTION ORDER.
- Every interim protection order has a date on it when you must come back to the court and appear in front of the magistrate. This is called a “return date”. You must make very sure you do not miss that date. If you miss the return date, the interim protection order “lapses” and becomes useless, and you are not protected any more.

Important to note:

The magistrate may ask for more information in the form of affidavits, or may ask to speak to you or witnesses in order to decide whether or not to give you an interim protection order.



Important to note:

The interim protection order can only be used against the abuser legally after it has been served on him.



Important to note:

You can always open a criminal case against the abuser for the abuse.



Definition: AFFIDAVIT



A sworn statement or declaration.

PROTECTION ORDER

A step-by-step guide to getting a protection order

Step 3: Service of documents, and notice to the abuser

What happens if the magistrate decides to issue the interim protection order?

If the magistrate decides to give you an interim protection order, the following papers must be served on the person who is abusing you by the sheriff of the court, or a member of the police:



copy of your application documents.



a copy of the interim protection order.



copies or recordings of any documents or information that the magistrate used to make his or her decision.



a notice calling on the abuser to come to court on the return date.

What if the magistrate decides NOT to issue the interim protection order?

If the magistrate decides not to issue the interim protection order, the following papers must be served by the sheriff of the court or a member of the police:



copy of your application documents.



copy of witness affidavits.



a notice calling on the abuser to come to court on the return date.

Definition: SERVED



Delivered by hand.

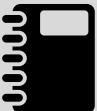
Important to note:

The person who is abusing you must have at least 10 days' notice that they have to come to court on the return date. This notice period gives the person time to prepare for the hearing.



Important to note:

You will have to take all the documents that have to be served to the office of the sheriff or the police yourself. You might be asked to pay a small service fee to the sheriff. If you cannot afford the sheriff's service fee, you should inform the clerk of the court. The police may serve the documents free of charge, or the court could arrange for payment.



PROTECTION ORDER

A step-by-step guide to getting a protection order Step 4: The return date

- On the return date, you will have a chance to tell the magistrate your whole story, and to give all the reasons why you should be given a FINAL protection order. On that day you must bring all your evidence with you, like photos and other papers showing the abuse, and witnesses.
- The person who abused you will also have a chance to tell their side of the story, and to give the magistrate any reasons why you should not be given a final protection order. The court could allow the person to ask you questions, and to challenge your evidence.
- The magistrate will then consider all the documents and witness statements, and may ask you and the person who abused you questions. These will help the magistrate to decide whether you should have a final protection order.
- This day in court is like a small trial and can be scary, especially if you've never been in a court before. But you must not allow this fear to stop you from getting your protection order. Tell the magistrate all the facts, and use your rights.

Important to note:



This process happens in civil court, not criminal court.

Important to note:



Both you and the person who abused you are allowed to bring lawyers to help you argue your case.

Important to note:



At court you can ask that the abuser not be allowed to question you directly, unless they have a legal representative.

What happens if the abuser does not come to court on the return date?

The magistrate may then:






1. Give you a final protection order, on condition the magistrate is satisfied that all the documents were served on the abuser.
2. Postpone the case, and send a new notice to the person who abused you to say he must come to court on another date. You must also be in court on that date!



PROTECTION ORDER







What can the court say in the interim or final protection order?

The court can order that the person who is abusing you must not:

-  Enter your home, if you and the abuser do not share a home.
-  Commit an act of domestic violence against you.
-  Enter the home you share with the person who abused you, or a certain part of the home like your room.
-  Arrange for other people to commit an act of domestic violence against you.
-  Enter your workplace.


What else can the court say in the interim or final protection order?


The court can make any other order that it believes is reasonably necessary to protect your health, safety and wellbeing including an order:

-  Stopping you from sharing a home with the abuser, or going into the abuser's home.
-  Asking the police to take away any dangerous weapon, like a gun, from the abuser.
-  For a police officer to go with you to the abuser's place, so that you can collect anything there that is your personal property.
-  Depending on your financial situation, asking the abuser to pay rental or the bond payments in respect of a home that you share.
-  Depending on your financial situation, asking the abuser to pay you emergency maintenance, or the expenses that you had to pay because of the domestic violence, like medical, hospital, dental, loss of income or temporary rent costs.
-  Stopping the abuser from seeing your children, or saying that the abuser may only see the children under certain conditions – the court will do whatever is in the best interest of the children.

CONTRAVENTION OF THE PROTECTION ORDER


If the abuser does anything that the protection order stops him from doing, then the abuser is “contravening” the terms of the protection order.

 If this happens, you must go immediately to the police station, or call the police, and report the contravention to them.

 The police will ask you to make an affidavit explaining how and when the abuser contravened the protection order.

The police will arrest the abuser if they believe that:

1. The contravention of the protection order was serious.
2. The abuser is going to abuse you more, and cause you serious harm if he is not arrested.
3. Not much time has passed between the contravention and when you report the contravention.

 If the police do not arrest the abuser, they must give him a notice to appear in court for contravening the terms of the protection order.

How can the court punish the abuser for violating the protection order?



Contravening the terms of a protection order is a criminal offence. The abuser will be required to appear in the criminal court before a magistrate, and might be sent to jail up to 5 years, or ordered to pay a fine, or both.

THE WARRANT OF ARREST

Every protection order comes with a “suspended” warrant of arrest. If the abuser disobeys the terms of the protection order, the police will use the warrant to arrest the abuser if they believe:

1. The contravention of the protection order was serious.
2. The abuser is going to abuse you more, and cause you serious harm if he is not arrested.
3. Not much time has passed between the contravention and you reporting the contravention.



If the police use the warrant of arrest that the court gave you with your protection order, that warrant is used up, and cannot be used again.



It is your responsibility to go back to court for another warrant, if your first warrant is used up. You will have to make an affidavit, stating that the first warrant has “terminated” and that you need another warrant to protect yourself from the abuser. You will have to do this every time you need a new warrant.

Warrants of arrest “terminate”, and cannot be used when they are:



- lost.
- destroyed.
- once it is used to have the abuser arrested when he contravenes the terms of the protection order.

DUTIES OF THE POLICE

The police have a big role to play when it comes to domestic violence. The DVA says they have certain duties, and there are other documents like the Service Charter for Victims that tell the police how to treat victims of domestic violence.

When it comes to domestic violence, this is what you can expect the police to do for you:



To respect you, and treat you with kindness and professionalism.



To give you their name and badge numbers if you ask for it.



To take your statement when you report domestic violence at the police station.



To come to the place where the abuse happened if you call them.



To help you get medical treatment, and to give you the details of places where you can get counselling and shelter.



To tell you about your rights in terms of the DVA in a way that you understand.



To tell you about your right to lay a criminal charge against the abuser, whether you are going to use the DVA or not – like a charge of rape, sexual assault, assault with intent to do grievous bodily harm, or intimidation.



To take away any firearm or dangerous weapon that the abuser might have with him, that is a threat to you.



To arrest the abuser when the abuse is serious, and if you are going to be physically harmed if the abuser is not arrested.



To arrest the abuser or to give the abuser a notice to appear in court if the abuser has contravened the terms of a protection order.



To serve, on the abuser, the interim protection order and final protection order and/or notice calling on the abuser to attend at court.



To record the domestic violence incident in the domestic violence register in the police station, and to keep a copy of your protection order on record.

WHAT TO DO IF THE POLICE TREAT YOU BADLY OR GIVE BAD SERVICE



You can make a complaint to the Station Commander of the police station where you got bad service.



The Station Commissioner must then take disciplinary steps against the officer that gave you bad service.



It helps to give the station commander the names and badge numbers of officers that gave you bad service.



You can lodge a complaint with the Independent Police Investigative Directorate, which has the power to investigate misconduct claims against police officers.

STOPPING OR CHANGING A PROTECTION ORDER



A protection order only stops when you go to court and “withdraw” or cancel it, or when the court sets it aside.



A protection order can be used on several occasions for several years without being terminated.



The abuser may also apply to court to ask for your protection order to be set aside, but the court will only listen to his application if the court is satisfied that you have been notified to come to court.



The abuser cannot interfere with your protection order without notice to you.



You can change the terms of your protection order, like maybe you moved to a new house, or your place of work has changed, by making an application to the domestic violence clerk of the magistrate’s court.

USEFUL CONTACTS

Stop Gender Violence Helpline		0800 150 150
Child Line		0800 055 555
Lifeline		082 231 0805
Flying Squad SAPS		1 0111
Rape Crisis		021 447 9762
SA Depression & Anxiety Group		011 262 6396
Alcoholics Anonymous SA	Johannesburg	011 436 0116
	Cape Town	021 592 5047
Narcotics Anonymous SA	Johannesburg	011 485 5248
	Cape Town	0881 30 03 27
Family and Marriage Association of SA		011 975 7106/7
Women's Legal Centre		021 424 5660
Independent Police Investigative Directorate		012 399 0000