

WOMEN'S LEGAL CENTRE

A Guide TO DOMESTIC VIOLENCE PROTECTION ORDERS IN *South Africa*

UNDERSTANDING YOUR RIGHTS
HOW TO ACCESS PROTECTION
WHAT THE LAW PROVIDES

INTRODUCTION

This guide provides an overview of domestic violence protection orders in South Africa. It is designed to help victims of domestic violence understand their rights, the legal process, and the protections available under the law.

It outlines the different types of domestic relationships and forms of abuse, helping individuals to better understand their circumstances. The law recognises these realities and provides mechanisms to protect individuals from harm.

This guide explains what protection orders are, who can apply, how the process works, and what happens after an order is granted. It also serves as a practical resource for paralegals and community-based support workers assisting individuals experiencing domestic violence.

SECTION 1: WHAT IS A PROTECTION ORDER

A protection order is a legal document issued by the court to stop a specific person (abuser/respondent) from engaging in harmful, threatening, or abusive behaviour toward another person (victim/complainant) within a domestic relationship.

It helps to protect a person's:

- Physical safety
- Emotional well-being
- Privacy and security
- Property and livelihood

TYPES OF PROTECTION ORDERS

THERE ARE TWO STEPS IN GETTING PROTECTION ORDERS:

First, the Interim Protection Order (IPO)
A temporary order issued urgently by the Magistrate, without the respondent being present.
The IPO remains in force until it is set aside by a court.

Second, the Final Protection Order
Issued if a court finds that the respondent has on a balance of probabilities committed or is committing an act of domestic violence as set out in the Domestic Violence Act.

SECTION 2: DOMESTIC RELATIONSHIPS RECOGNISED BY THE DOMESTIC VIOLENCE ACT

Marriage:
Including marriage according to any law, custom or religion, and whether they are of the same sex or of the opposite sex

Cohabiting:
The abused person lives or lived together in a relationship with the abuser

Dating/Intimate relationship:
Including an engagement or customary relationship

Parental responsibility:
The parents of a child or have or had parental responsibility for a child

Family members:
Related by *consanguinity, *affinity or adoption

Close relationship:
Where you share or have shared the same residence

Consanguinity:
A blood relationship with another person like a brother and sister, father and son, grandfather and granddaughter, niece and aunt etc.

Affinity:
A relationship between two people because of marriage. Examples are brother-in-law, mother-in-law, husband and wife etc.

SECTION 3: WHO CAN APPLY

Any person in a domestic relationship who has experienced domestic violence may apply.
This includes:

- Spouses or partners
- Family members
- People in intimate or dating relationships
- People who live together
- Parents of a child

Applications by Others
A person with a material interest in the wellbeing of the victim/ complainant, such as a family member or another adult with a concern for the victim's well-being, may apply:

- With the victim's written consent
- Without consent if the victim is a minor or unable to consent

Children can apply on their own without parental assistance.

Legal Duty to Report Abuse
Under the Domestic Violence Amendment Act, some people have a legal duty to report domestic violence, especially in cases involving vulnerable persons.

Functionaries (Section 2A of the DVA)
People in certain professions, for example:

- Teachers
- Nurses
- Doctors
- Police
- Social workers

Have a mandatory legal obligation to report domestic violence, when they **believe or suspect that a child,** a person with a disability or an older person may be a victim.

They must:
- Complete a report and,
- Submit the report to a social worker or member of the South African Police Service

All Adults (Section 2B of the DVA)
Every adult has a legal obligation to report domestic violence if they know, or believe or suspect on reasonable grounds that an act of domestic violence has been committed against a child, older person, or a person with a disability, must report that information to a social worker or the South African Police Service

Failure to report in such cases is a criminal offence.

SECTION 4: WHEN AND WHERE TO APPLY

You can apply for a protection order under the Domestic Violence Act 116 of 1998 if the abuse takes place within a domestic relationship, such as with a spouse, partner, family member, cohabitant, or someone you are or were in an intimate relationship with.

Forms of Abuse Include:

- Physical and sexual abuse
- Emotional, verbal and psychological abuse
- Economic abuse
- Intimidation and controlling behaviour
- Harassment or sexual harassment
- Spiritual abuse
- Elder abuse
- Exposing a child to domestic violence

Where to Apply:
You may apply at the Magistrate's Court in the area or jurisdiction where:

- You or the respondent/abuser lives, works, studies, or conducts business
- The abuse took place

Court hours:
Weekdays from 09:00 to 15:30

Outside court hours:
Visit your local police station for urgent applications

Online:
Protection orders can be accessed and downloaded here

What You Need
The Magistrates Court has all the official forms you need to fill in.
To fill in the forms, you need to take certain documents and information with you:

- Your ID and personal information
- Details of the respondent (name, address, workplace)
- Information describing the history of the abuse and harmful behaviour to fill in the affidavit (statement), which are part of the forms
- Supporting evidence: photos, messages, medical reports, witness statements
- What you're asking the court to order (e.g. stop the abuse, stop contact, seize weapons)
- Details of any weapons involved or used to threaten you
- Reasons why urgent protection is needed

SECTION 5:

THE APPLICATION PROCESS

STEP 1: SUBMIT YOUR APPLICATION

- Go to the Clerk of the Magistrate's Court within the right jurisdiction
- Once you have filled out all the application forms at court, the Clerk of the court will take the forms, including all supporting documents, such as your affidavit (statement) and any evidence such as photos, witness statements, medical reports, to the magistrate to make a decision
- At the same time as applying for a protection order, you can also lodge a criminal complaint with the police if a criminal offence has been committed by the abuser/respondent

STEP 2: COURT ASSESSMENT

The Magistrate will review the application and will either:

- Issue an ***Interim Protection Order** (Form 12) if there is prima facie (sufficient evidence) evidence that domestic violence has occurred and that the complainant may suffer harm; and that an interim protection order is immediately necessary to protect the complainant against that harm; **OR,**
- Issue a ***Notice to Show Cause.** This happens when the magistrate decides there is not enough evidence in the written application of domestic violence and that the complainant may suffer harm and an interim protection order is therefore not immediately necessary. This Notice requires the respondent to appear in court and explain why a Final Protection Order should not be granted. The complainant must also appear in court on that day. This is called **the return date.**

*A **Notice to Show Cause** is not a court order, it is a legal notice requiring the respondent to return to court on the stipulated date and show why a protection order should not be granted.

*An **Interim Protection Order** is a court order and provides legal protection to the complainant from the date of issue until the date of the court appearance.

STEP 3: WHAT HAPPENS NEXT

Service of the order
South African Police Services must serve the order on the respondent as soon as possible and no later than 24 hours, if served in person.

Return to court
Both parties must appear before the Magistrate on the return date where the magistrate will consider if a final protection order will be granted.

Final Protection Order issued
If granted, it will only come into effect once served on the respondent. SAPS must serve the order within 48 hours or as soon as reasonably possible.

Final Protection Orders remain valid indefinitely, unless varied or set aside by the court.

Enforcement
A suspended Warrant of Arrest is issued together with an Interim Protection Order and a Final Protection Order under the Domestic Violence Act. If the order is broken by the respondent, the police may arrest the respondent. The warrant remains valid until the protection order is set aside or after it has been executed.

SECTION 6: WHAT THE COURT CAN ORDER

The court can issue a wide range of orders to protect you.
These may include:

- Prohibiting the respondent from committing any further acts of abuse, violence, or making threats
- Preventing the respondent from contacting, approaching, or communicating with the complainant in any way
- Restrict the respondent from accessing your home, workplace, or school
- Ordering the respondent to surrender any weapons or authorising the police to seize them
- Prohibiting the respondent from sharing private or explicit content online, any social media, or any other person/group of people
- Ordering the respondent to move out of a shared residence to protect the complainant's safety

PROTECTION ORDERS AND CRIMINAL CHARGES

If the abuse involves a criminal offence such as physical assault or sexual violence, you can report it to your nearest police station and proceed with both a criminal case as well as a protection order against the perpetrator.

⚠ You do not have to lay a criminal charge in order to apply for a protection order. You can do both - these two processes can run at the same time and do not depend on each other.

IF THE RESPONDENT CANNOT BE FOUND

- The court can allow documents to be served electronically, including email, facsimile, SMS, or social media.
- The court can also order telecom or social media platforms to help trace anonymous abusers.

SAFETY MONITORING NOTICE

This is a separate court order when:

- You share a residence with the respondent and
- There are reasonable grounds for the court to suspect that the respondent poses a threat to your personal safety

When can you apply for this?

- You can apply for Safety Monitoring Notice at the court at the same time as you apply for your protection order
- You can apply for this Notice whether the court issues an Interim Protection Order or a Notice to Show Cause
- At any stage before the court issues a final protection order.
- Any time after the interim protection order or final protection order has been granted.

The notice allows SAPS to:

- Check in with you regularly (in person or via WhatsApp/SMS)
- Intervene if your safety is at risk

WEAPONS AND FIREARMS

- SAPS may seize weapons at the scene of domestic violence or by court order
- It is important to inform the court if the respondent owns or has access to firearms

ENFORCEMENT: WARRANT OF ARREST

- A suspended warrant of arrest is issued with every final protection order
- If the respondent contravenes the order, the police must arrest them if there are reasonable grounds to suspect that the complainant is suffering or may suffer harm as a result of contravention of the protection order
- If there are insufficient grounds to arrest the respondent, the police must hand a notice to the respondent to appear in court on a charge of committing an offence of contravening the protection order

SECTION 7:

VARIATIONS & CONTRAVENTIONS OF PROTECTION ORDERS

VARIATIONS OF A PROTECTION ORDER

A protection order can be amended or cancelled by applying to court. Either the complainant or the respondent may apply for these changes.

You may apply to:

- Amend specific conditions in the protection order
- Cancel the protection order entirely

How to apply:

The party (complainant or respondent) must give written notice to both:

- The court, and
- The other party involved in the protection order

The forms to give written notice are available at court

If the application is opposed by the other party, they must:

- File a written response within 10 days of receiving notice to both the court and the other party
- Provide written reasons and facts supporting their opposition

WHEN THE COURT WILL GRANT A VARIATION OR CANCELLATION

The court must be satisfied that:

- Circumstances have changed materially since the original order was granted
- There is good cause to change or set aside the order
- Proper service of notice has been given to the respondent

If a complainant requests a cancellation, the court must satisfied that the decision was made freely and voluntarily.

A final protection order remains in force until it is changed or cancelled by the court.
If a court sets aside a protection order, it is cancelled and no longer enforceable.

CONTRAVENTION OF PROTECTION ORDERS

Violating or contravening a protection order is a criminal offence.

If the respondent breaks any of the conditions set out in the protection order, the following steps can be taken:

The complainant should

- Hand over the warrant of arrest (issued with the protection order) to the police
- Provide an affidavit/statement stating how the respondent has violated the order

What the police must do:

Depending on the circumstances, the police must act as follows:

- If it appears to the police that there are reasonable grounds to believe the complainant is suffering or may suffer harm as a result of the contravention, they must arrest the respondent for allegedly committing an offence.

- If there are not enough grounds to justify an arrest:

The police must issue the respondent with a written notice to appear in court (Form 36) on a charge of committing an offence of contravening any part of the protection order
A copy of the notice must immediately be sent to the clerk of the court.

Additional responsibilities of SAPS:

- In both scenarios, the police must:

Inform the complainant of their right to lay criminal charges against the respondent
Explain how to lay those charges

SECTION 8:

VARIATIONS & CONTRAVENTIONS OF PROTECTION ORDERS

Form Name	Form Number
Interim Protection Order (IPO)	Form 12
Domestic Violence Safety Monitoring	Form 10
Notice of Next Court Date	Form 32
Notice to Show Cause	Form 13
Final Protection Order	Form 29 or 30
Notice of Variation or Setting Aside	Form 29

These forms are usually provided by the Clerk of the Court or can be downloaded from the Department of Justice website.

GETTING HELP

The Women's Legal Centre provides free legal advice to women facing domestic violence.

Tel: 021 424 5660
WhatsApp: 079 421 8197
Email: info@wlce.co.za

SUPPORT THIS WORK

We provide free legal support to women navigating domestic violence and the law.

This work is made possible through the support of donors.

Support our work: Donate here

CLOSING SECTION

Domestic violence is often experienced in silence, but the law provides clear protections and pathways to safety.

Protection orders are a powerful legal tool. When understood and used effectively, they can help prevent further harm and hold perpetrators accountable.

By sharing information, strengthening awareness, and supporting those affected, we can ensure that more people are able to exercise their rights and access protection.