



WOMEN'S LEGAL CENTRE

A GUIDE TO DOMESTIC VIOLENCE PROTECTION ORDERS



Key Terms To Know:

- **Functionary:** (a) a medical practitioner, health care personnel, a social worker, an official in the employ of a public health establishment, an educator or a care giver; and (b) any other person designated in terms of section 2A(1);
- **Complainant:** 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, including any child in the care of the complainant;
- **Respondent:** The person the protection order is made against, the alleged abuser or harasser.
- **Jurisdiction:** The area or location that a specific Magistrate's Court has authority over. You must apply at a court that covers the area where you or the respondent live, work, study, or where the abuse took place.
- **Written Affidavit:** A sworn written statement made by the complainant or a witness, describing the abuse or harassment. It must be signed in front of a Commissioner of Oaths (e.g. a police officer or court official). The Commissioner of Oaths must also stamp and sign this written statement.
- **Prima Facie:** A legal term meaning "based on the first impression" or "on the face of it". If there is prima facie evidence, it means there is enough initial evidence for the court to take the matter seriously, for example, to grant an Interim Protection Order.

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). It helps to protect a person's:

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

There are two types of protection orders:

- **Interim Protection Order (IPO)** – A temporary order issued urgently by the Magistrate, without the respondent being present. The IPO is in force until the court hearing to decide on whether a Final Protection Order must be issued.
- **Final Protection Order** – Issued after a court hearing where both parties are present.

2. Who can apply for a protection order?

If an adult knows or reasonably believes that a child, an older person, or a person with a disability is experiencing domestic violence, they must report it as soon as possible to a social worker or the South African Police Service.

- *This is governed by Section 4(3)(a) & (b)*

3. Legal Duty to Report Abuse

Under the Domestic Violence Amendment Act, some people have a legal duty to report domestic violence to a social worker or the police if they believe or suspect that a child, person with a disability or an older person may be victim of domestic violence.

1. Functionaries (Section 2A)

People in certain professions (e.g. teachers, nurses, doctors, police, social workers) have a legal duty to:

- Complete a report setting out the reasons for their belief or suspicion
- Submit a report to a social worker or the police
- Provide support, guidance, and referrals to victims
- Assist with the protection order application, where possible

2. All Adults (Section 2B)

If an adult knows or reasonably believes that a child, an older person, or a person with a disability is experiencing domestic violence, they must report it as soon as possible to a social worker or the South African Police Service.

4. When Can You Apply?

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

Forms of abuse include:

- Physical abuse
- Sexual abuse
- Emotional, verbal or psychological abuse
- Economic abuse
- Intimidation
- Harassment
- Sexual harassment
- Related person abuse
- Spiritual abuse
- Damage to property
- Elder abuse
- Coercive behaviour
- Controlling behaviour
- To expose a child to domestic violence;
- Entry into the complainant's:
 - Permanent or temporary residence without their consent, where the parties do not share the same residence; or
 - Workplace or place of study, without their consent, where the parties do not share the same workplace or place of study; or
 - Any other behaviour of an intimidating, threatening, abusive, degrading, offensive or humiliating nature towards a complainant, where such conduct harms, or inspires the reasonable belief that harm may be caused to the complainant

5. Where to Apply

You may apply at the Magistrate's Court in the area/jurisdiction where:

- You or the respondent 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: [DV Form 06 - J480](#)

6. What You Need to Apply

- Your ID and personal information
- Details of the respondent (name, address, workplace)
- A written affidavit (commissioned statement) describing the history of the violence and harmful behaviour
- 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 threatened
- Reasons why urgent protection is needed

7. The Application Process

1. Submit your application

Submit your application to the Clerk of the Magistrate's Court within the correct jurisdiction.

Be sure to include all supporting documents, such as your affidavit and any evidence (e.g. photos, witness statements, medical reports).

2. Court assessment

The Magistrate will review the application and may:

- Issue an Interim Protection Order (Form 12) if there is prima facie (sufficient) evidence of domestic violence; or
- Issue a Notice to Show Cause, requiring the respondent to appear in court and explain why a Final Protection Order should not be granted. The complainant must also come to 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 prove 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.

3. Service of the order

For Domestic Violence Interim Protection Orders: SAPS must serve the order within 24 hours.

4. Return to court

- On the return date, both parties appear before the Magistrate, who will consider whether a final protection order will be granted.

5. Final Protection Order issued

- For Domestic Violence Final Protection Orders: SAPS must serve the order within 48 hours.
- Domestic Violence Protection Orders remain valid indefinitely, unless varied or set aside by the court.

6. Enforcement: Suspended Warrant of Arrest

- A suspended Warrant of Arrest is issued together with an Interim Protection Order under the Domestic Violence Act.
- This warrant allows for the respondent's arrest if the interim protection order is violated.
- The warrant remains valid until the protection order is set aside or after it has been executed.

8. What the Court Can Order

The court can issue a wide range of conditions to protect the complainant.

These may include, but is not limited to:

- Prohibiting the respondent from committing any further acts of abuse, violence, or threats.
- Preventing the respondent from contacting, approaching, or communicating with the complainant in any way.
- Restrict the respondent from accessing the applicant's 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.
- Ordering the respondent to move out of a shared residence to protect the complainant's safety.

9. Criminal Charges and Protection Orders: What You Need to Know

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 need to lay a criminal charge in order to apply for a protection order.

You apply for both - these two processes can run at the same time and do not depend on each other.

10. If the Respondent Cannot Be Found

- The court can allow electronic service of documents such as via email or WhatsApp
- It can order telecom or social media platforms to help trace anonymous abusers

11. Safety Monitoring Notice (Form 10)

This is a separate court order for when:

- You share a residence with the respondent
- You fear further harm

When can you apply for this?

- At the same time as your protection order.
- Before the court issues a final protection order.
- Any time after the interim protection order or final protection order has been granted.
- You can apply for Safety Monitoring Notice at the court.

The notice allows SAPS to:

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

12. Weapons and Firearms

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

13. 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

14. Variations of a Protection Order

A protection order can be extended, amended, or cancelled by applying to the 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
- If the other party wants to oppose the variation or cancellation, 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 will the court 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 vary or set aside the order
 - Proper service of notice has been given to the respondent
 - In the case of a complainant requesting cancellation, the application was made freely and voluntarily
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- 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.

15. 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:

What the complainant should do:

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

What the police must do:

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

a) If there are reasonable grounds to believe the complainant is suffering or may suffer harm as a result of the contravention:

→ The police **must arrest** the respondent for allegedly committing an offence.

b) 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) and explain its importance.

→ 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

Important Forms You May Encounter

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