

## **What is Domestic Violence?**

According to the Domestic Violence Act No. 116 of 1998 it is:

- any form of abuse which includes physical, sexual, emotional, psychological or economic harassment
- damage to property
- stalking
- entry into a person's property without their consent
- any other abusive or controlling behaviour where such a conduct causes harm or may cause harm to your health, safety, or well being

If these forms of abuse are happening to you or to anyone you know, you can apply for a protection order. A domestic violence protection order is a document issued by the court which prevents the abuser from:

- committing an 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
- 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 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.

## **Against whom may you seek protection? T**

1. the person to whom you are married, whether by civil or customary rites;
2. 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 is already married to someone else);
3. the other parent of your child or persons who share parental responsibility with you for a child;
4. persons who are related to you by blood ties, marriage or adoption;
5. 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;
6. a person with whom you share or have recently shared the same residence.

### **What must I do?**

If you feel that you are a victim of any act of domestic violence as listed above, approach the local Magistrate Court and request assistance in bringing an application 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.

Remember that in emergencies, this service is available 24 hours a day.

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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 an offence in a Court of Law to make a false statement.

### **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.
- The Respondent may be ordered not to physically or verbally abuse you or the children. In extreme cases, the Magistrate may consider it appropriate to prohibit the Respondent from entering the shared house or restrict him/her to certain areas of the shared residence.
- 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 particular abuse that you are experiencing, the Court relies on the Affidavit that you draft when making your application. 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. You may not claim Maintenance money from the Domestic Violence Court. This must be done through the Maintenance Court.

### **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 hand over 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/ Sheriff/Clerk of the Court.

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.

The return of service must be submitted to the Clerk of the Court soon after service. 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.

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

**What is the Return date?**

The return date is the date set to allow the Court an opportunity to hear the Respondent before the Interim Protection Order is made final.

**What happens on the Return date?** In the presence of the Complainant, the Respondent has the opportunity to present his side of the story to the Magistrate.

The Respondent may file an opposing Affidavit or request an opportunity to file an opposing Affidavit.

These papers will be served on you.

You will then be given an opportunity to file a reply.

**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 has failed to appear in Court after he has been properly served with the interim protection order notice.

**What is a breach of the Protection Order?**

This is when the Respondent fails to comply with the terms of the 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 court 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 or order that oral evidence be heard.

If the Respondent fails to appear at the Civil Hearing and you have the proof that the Protection Order was served on him (the Return of Service), the Magistrate will make the order final.

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 information pack, 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, when the circumstances so permit.

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. It is important to note that in a Court of Law, it is the Magistrate's final decision as to whether a Protection Order may be set aside. –