

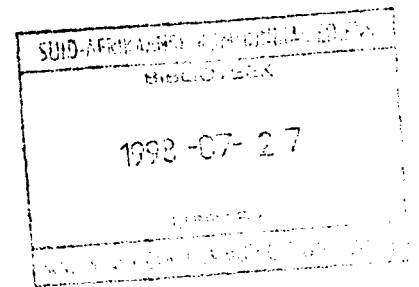
REPUBLIC OF SOUTH AFRICA

DOMESTIC VIOLENCE BILL

(As introduced in the National Assembly)

(MINISTER OF JUSTICE)

[B 75—98]



REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP GESINSGEWELD

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN JUSTISIE)

[W 75—98]

ISBN O 621284076

BILL

To provide for the granting of protection orders with regard to domestic violence; for an obligation to report cases of suspected ill-treatment of children; that a husband can be convicted of the rape of his wife; and 'for matters connected therewith.

PREAMBLE

RECOGNIZING that domestic violence is a serious crime against society; that many persons are regularly beaten, tortured, and in some cases even killed by their partners or cohabitants; that many victims are unable to leave abusive situations due to social and financial factors; that victims come from all social, economic, cultural, ethnic and religious backgrounds; that children suffer deep and lasting emotional effects from exposure to domestic violence, even when they are not assaulted themselves; that the health and welfare of the elderly and disabled are at risk because of incidents of domestic "violence and neglect; that many people are subject to abuse based on their actual or perceived race, colour, religion, sex, gender, sexual orientation, disability or age;

RECOGNIZING FURTHER that the majority of victims of domestic violence are women; that many pregnant women are assaulted; that the home is often the most violent place for women; that many women caught in the cycle of violence are most at risk of being killed by their partners when they attempt to leave the abusive relationship; that domestic violence is an obstacle to achieving gender equality; that the training of all police and judicial personnel in the procedures and enforcement of this Act is expected;

AND HAVING REGARD to the Constitution of South Africa and the international commitments and obligations of the State towards ending violence against women and children, it is the intent of this Act to afford the victims of domestic violence the maximum protection from abuse the law can provide and that the official response to domestic violence shall communicate the attitude that violent behaviour will not be excused or tolerated.

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—

- (i) "applicant" means any person, including any child, who is or has been in a domestic relationship with the respondent and who makes an application in terms of section 4; (ii)
- (ii) "arm" means any arm as defined in section 1(1) or any armament as defined in section 32(1) of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969); (xxiv)
- (iii) "clerk of the court" means a clerk of the court appointed in terms of section 13 of the Magistrate's Courts Act, 1944 (Act No. 32 of 1944), and includes an assistant clerk of the court so appointed; (xv)

- (iv) "court" means any court contemplated in the Magistrate's Courts Act, 1994 (Act No. 32 of 1944); (xiii)
- (v) "dangerous weapon" means any weapon as defined in section 1 of the Dangerous Weapons Act, 1968 (Act No. 71 of 1968); (xii)
- (vi) "domestic relationship" means a relationship between the applicant and respondent in any of the following ways:
 - (a) they are or were married to, each other, including marriage according to any law, custom or religion;
 - (b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
 - (c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
 - (d) they are family members related by consanguinity, affinity or adoption;
 - (e) they would be family members related by affinity if the persons referred to in paragraph (b) were, or were "able to be, married to each other;
 - (f) they are or were in an engagement, dating or customary relationship which includes but is not limited to an actual or perceived romantic, intimate or sexual relationship of any duration; or
 - (g) they share or shared the same household or residence;
- (vii) "domestic violence" means any controlling or abusive behaviour that harms the health, safety or wellbeing of the applicant or any child in the care of the applicant and includes but is not limited to—
 - (a) physical abuse or a threat of physical abuse;
 - (b) sexual abuse or a threat of sexual abuse;
 - (c) emotional, verbal and psychological abuse;
 - (d) economic abuse;
 - (e) intimidation;
 - (f) harassment;
 - (g) stalking;
 - (h) damage to or destruction of property; or
 - (i) entry into the applicant's residence without consent, where the parties do not share the same residence;
- (viii) "economic abuse" means but is not limited to—
 - (a) the deprivation or threatened deprivation of any or all economic or financial resources to which the applicant is entitled under law or which the applicant requires out of necessity, including household necessities for the applicant and any child, and mortgage bond repayments of the shared household; or
 - (b) the disposal or threatened disposal of household effects or other property in which the applicant has an interest;
- (ix) "emergency monetary relief" means compensation for monetary losses suffered by the applicant and any child at the time of the issue of the interim protection order as a result of the domestic violence and includes but is not limited to—
 - (a) loss of earnings;
 - (b) medical and dental expenses;
 - (c) moving and accommodation expenses; or
 - (d) interim expenses;
- (x) "emotional, verbal and psychological abuse" means degrading or humiliating conduct that includes but is not limited to—
 - (a) repeated insults, ridicule or name calling;
 - (b) repeated threats to cause emotional pain; or
 - (c) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the applicant's privacy, liberty, integrity or security;
- (xi) "harassment" means engaging in a pattern of conduct that induces the fear of harm and includes but is not limited to—
 - (a) watching, or loitering outside of or near the building or place where the applicant resides, works, carries on business, studies or happens to be;
 - (b) repeatedly making telephone calls or inducing another person to make telephone calls to the applicant, whether or not conversation ensues;

- (c.) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the **applicant's** home or work, (xxi)
- (xii) "intimidation" means uttering, **conveying** or causing **any** person to receive a threat which induces **fear**; (xiv) 5
- (xiii) "member of the South African Police Service" **means any** member as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995); (xvii)
- (xiv) "peace **officer**" means a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); (xxiii) 10
- (xv) "physical abuse" means any act of assault; (vii)
- (xvi) "prescribed" means prescribed by or in terms of this Act; (xxii)
- (xvii) "protection order" means an order granted in terms of sections 5 or 10; (iv)
- (xviii) "residence" includes but is not limited to institutions for children, the elderly and the disabled; (xxv) 15
- (xix) "respondent" means any person who is or has been in a domestic relationship with the applicant and against whom the applicant has obtained or is endeavoring to obtain a protection order in terms of sections 5 or 10; (xviii)
- (xx) "sexual abuse" means but is not limited to any sexual conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the applicant; (xix) 20
- (xxi) "shared household" means a household where the applicant and respondent live or lived together in a domestic relationship; (viii)
- (xxii) "sheriff" means a sheriff appointed in terms of section 2(1) of the Sheriffs Act, 1986 (Act No. 90 of 1986), or an acting sheriff appointed in terms of section 5(1) of the said Act; (iii) 25
- (xxiii) "stalking" means but is not limited to repeatedly following, pursuing, or accosting the applicant; (i)
- (xxiv) "victim" means any person who alleges to have been subjected to an act of domestic violence; (xx) and 30
- (xxv) "warrant of arrest" means a warrant contemplated in section 11. (xvi)

Duty to inform victim and applicant of rights

2. (1) Any member of the South African Police Service, at the scene of an incident of domestic violence, or when the incident of domestic violence is reported, **must—**

(a) inform the victim as follows: 35

"You have the right to request the assistance of a member of the South African Police Service in order to protect yourself and your children, and the member is obliged to provide you with information on how to obtain a protection order. You may also request the member's assistance in locating and taking you and your children to a place of safety, including a shelter, the home of a family member or friend, or any other place of safety. If you or your children are in need of medical treatment, you have the right to request the member to assist you in obtaining such medical treatment. 40

A protection order can be obtained from the Magistrate's Court at any time of the day or night and will be served on the abuser free of charge. You may request the court not to disclose your address to the abuser. The abuser can be ordered to pay emergency monetary relief and any or all contact with you or your children may be prohibited. You may also request the court to evict the abuser or to prohibit the abuser from preventing you to enter the shared **household**. This order is of a temporary nature, and if you wish it to be confirmed, you will be required to appear in court at a later date. If you or your children require any counseling or support, you should contact an organisation in your area which can offer these services to you and your children. You also have 55

the right to lodge a criminal complaint against the abuser, if a criminal offence has been committed against yourself or your children. You may do this **now, or** at any time in the future.

Should you obtain a protection order, or lodge a criminal complaint, in which false facts are knowingly alleged, you may be convicted of an offence. If you do not understand any of the above information, you may request more detail from myself or from any other member of the South African Police Service that you may be more comfortable with"; and

(b) hand a printed copy of the explanation to the victim in the official language of the victim's choice.

(2) Upon the report of a breach of a protection order to any member of the South African Police Service, the said member must inform the applicant of the right to lodge a concurrent criminal complaint against the respondent if a criminal offence has been committed against the applicant or any child.

(3) Upon the application for an interim protection order contemplated in section 5, the clerk of the court must inform the applicant of the right to lodge a concurrent criminal complaint against the respondent if a criminal offence has been committed against the applicant or any child.

Arrest by peace officer without warrant

3. A peace officer may without warrant arrest any person at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence.

Application for protection order

4. (1) An applicant may apply to the court for an interim protection order contemplated in section 5 in a form substantially corresponding to Form 1 of the Schedule.

(2) The clerk of the court must inform the applicant of the relief available in terms of this Act.

(3) The application referred to in subsection (1) must be made by way of an affidavit in which must be stated—

- (a) the facts on which the application is based;
- (b) the nature of the order applied for; and
- (c) the name of the Police Station at which the applicant is likely to report any breach of the protection order.

(4) Notwithstanding the provisions of any other law, the application may be brought on behalf of the applicant by any other person (including but not limited to a counselor, health service provider, member of the South African Police Service, social worker or teacher) who has a material interest in the wellbeing of the applicant: Provided that the application must be brought with the consent of the applicant, except in circumstances where the applicant is—

- (a) a minor;
- (b) mentally retarded;
- (c) unconscious; or
- (d) under the influence of intoxicating liquor or drugs.

(5) Notwithstanding the provisions of any other law, any child may apply to the court for a protection order without the assistance of a parent, guardian or any other person.

(6) The application referred to in subsection (1) may be brought outside ordinary court hours or on a day which is not an ordinary court day.

(7) Supporting affidavits by persons who have knowledge of the matter concerned may accompany the application.

(8) "The applicant may request that his or her physical address be omitted from the protection order, in which instance the court may not make an order as contemplated in section 6(1)(e).

(9) The application and affidavits must be lodged with the clerk of the court who must forthwith submit the application and affidavits to the court.

(10) In considering an application contemplated in subsection (1) the court—

- (a) may require further oral evidence or evidence by **affidavit**; and
- (b) must record any oral evidence referred to in paragraph (a).

Power to grant interim protection order

5. (1) If the court is satisfied that the respondent is committing, or has committed an act of domestic violence, the court must grant an interim protection order against the respondent, in a form substantially corresponding to Form 2 of the Schedule.

(2) In exercising its powers in terms of subsection (1), the court may not refuse to grant an interim protection order by reason of the fact that the respondent has not been given notice of the proceedings.

(3) An interim protection order granted in terms of subsection (1) must call upon the respondent to show cause on the return date specified in the order why the interim protection order should not be confirmed.

(4) The return date referred to in subsection (3) shall not be less than 10 days after service has been effected upon the respondent in terms of section 9(1).

(5) The return date referred to in subsection (3) maybe anticipated by the respondent upon 24 hours' notice to the **applicant** and the court concerned.

Terms of protection order

6. (1) In granting an interim protection order contemplated in section 5 or a final protection order contemplated in section 10, the court may prohibit the respondent from— 20

- (a) committing any act of domestic violence as contemplated in section 1;
- (b) enlisting the help of another person to commit any such act;
- (c) entering the shared household: Provided that the court may impose this prohibition only if it appears to be in the best interests of the applicant or any child; 25
- (d) entering a specified part of the shared household;
- (e) entering the applicant's residence;
- (f) entering the applicant's place of employment;
- (g) preventing the applicant or any child who ordinarily lives or lived in the shared household from entering or remaining in the shared household or a specified part of the shared household; or 30
- (h) committing any other act as specified in the protection order.

(2) The court *may* impose any **additional** conditions which it deems reasonably necessary to protect and provide for the safety of the applicant or any child, including but not limited to an order that a peace officer must accompany the applicant to a specified place to supervise the collection of personal property. 35

(3) The court may order that any or all of the prohibitions or conditions contained in the protection order must apply for the benefit of any child.

(4) In ordering a prohibition contemplated in subsection 1(c), the court may impose on the respondent obligations as to the discharge of rent or mortgage payments having regard to the financial needs and resources of the parties. 40

(5) The court may order the respondent to pay emergency monetary relief.

(6) The court may order the respondent to pay educational expenses where such expenses are incurred as a result of an act of domestic violence.

(7) The court **may**— 45

- (a) refuse the respondent contact with any child if it is shown that contact is not in the best interests of such child; or
- (b) order structured contact with such child.

(8) The court may not refuse to grant a protection order on the basis that a single act has been committed or a single threat has been made by the respondent, or on the basis that the acts or threats, when viewed in isolation, appear to be minor or trivial. 50

Seizure of arms and dangerous weapons

7.(1) The court may order a member of the South African Police Service to seize any

arm or dangerous weapon in the possession of the respondent, if the affidavit contemplated in section 4(3) contains information to the effect that—

- (a) the respondent has threatened or expressed the intention to kill or injure any person, including himself or herself. by means of the said arm or dangerous weapon; or
- (b) possession of the said armor dangerous weapon is not in the best interests of the respondent or any other person as a result of the respondent's—
 - (i) state of mind or mental condition;
 - (ii) inclination to violence (whether an arm was used in the violence or not); or
 - (iii) use of or dependence on intoxicating liquor or drugs.

(2) The court must direct the clerk of the court to refer a copy of the affidavit contemplated in section 4(3) to the Commissioner of the South African Police Service for consideration in terms of section 11 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969), if the court has ordered the seizure of any arm in terms of subsection(1).

Service of documents

8. (1) Service of any document in terms of this Act must forthwith be effected by—

- (a) the clerk of the court by delivering or presenting for delivery a certified copy of the document to the respondent and endorsing the original document to this effect;
- (b) the sheriff who must serve the document in terms of the provisions of the Magistrate's Courts Act, 1944 (Act No. 32 of 1944), and Rules published in terms of the said Act; or
- (c) a peace officer who must serve the document in terms of the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), relating to the service of subpoenas.

(2) Service of all documents are at the expense of the State.

Validity of interim protection order

9. (1) The interim protection order contemplated in section 5 has no force and effect until it has been served on the respondent in the manner prescribed in section 8.

(2) A copy of the affidavit contemplated in section 4(3) and the record of any oral evidence noted in terms of section 4(10)(b) must be served on the respondent with the interim protection order.

(3) Upon service or upon receipt of a return of service, the clerk of the court must forthwith serve a certified copy of the interim protection order and the original warrant of arrest contemplated in section 11(1)(a) on the applicant.

Power to grant final protection order

10. (1) If the respondent does not appear on the return date contemplated in section 5(3), the interim protection order shall be confirmed if the court is satisfied that proper service has been effected upon the respondent, and a final protection order must be issued in a form substantially corresponding to Form 4 of the Schedule.

(2) If the respondent appears on the return date in order to oppose the confirmation of the interim protection order, the matter must be adjourned to enable the clerk of the court to notify the applicant of the date of the hearing.

(3) The respondent must, not less than 10 days before the date of hearing, file with the clerk of the court an answering affidavit and any supporting affidavits, showing cause as to why the interim protection order should not be confirmed.

(4) A copy of the respondent's answering affidavit and any supporting affidavits must forthwith be served on the applicant.

(5) The applicant, upon receipt of the answering affidavit and any supporting affidavits, may, before the date of the hearing, file a replying affidavit together with any

supporting affidavits with the clerk of the court, in which must be stated the reasons why the interim protection order, should be confirmed.

(6) A copy of the applicant's replying affidavit and any supporting affidavits must forthwith be served on the respondent.

(7) On the date of the hearing, the clerk of the court must submit to the court the— 5

(a) application for the interim protection order;

(b) interim protection order granted;

(c) respondent's answering affidavit and any supporting affidavits; and

(d) applicant's replying affidavit and any supporting affidavits.

(8) At the hearing of the matter, the court may— 10

(a) decide the matter on the papers in the absence of either or both of the parties; or

(b) refer the matter for oral evidence.

(9) The clerk of the court must forthwith notify both parties if the matter has been referred for oral evidence and must arrange a date that is suitable to both parties. 15

(10) At the conclusion of the hearing in terms of subsection 8(a) or (b) the court—

(a) may confirm, amend, or set aside the interim protection order; and

(b) must issue an order in a form substantially corresponding to Form 4 of the Schedule.

(11) The clerk of the court must forthwith notify the parties of the result, and must— 20

(a) serve the original final order referred to in subsection (1) or (10)(b) on the respondent;

(b) serve a certified copy of the final order referred to in subsection (1) or (10)(b) on the applicant.

(12) If the interim protection order is confirmed or amended as contemplated in subsection (1) or (10)(a), the clerk of the court must forward certified copies of the final order and of the warrant of arrest contemplated in section 11(1)(a) to the police station of the applicant's choice. 25

(13) A final order issued in terms of this section remains in force unless it is set aside.

Warrant of arrest and procedure upon arrest of respondent 30

11. (1) In granting an interim protection order contemplated in section 5, the court must make an order—

(a) authorizing the issue of a warrant for the arrest of the respondent, in a form substantially corresponding to Form 3 of the Schedule; and

(b) suspending the execution of such warrant, subject to compliance with any prohibition, condition, obligation or order imposed in terms of section 6. 35

(2) The warrant referred to in subsection (1)(a) must remain in force unless the interim protection order is set aside.

(3) Any member of the South African Police Service must—

(a) execute a warrant of arrest upon its production and receipt of an affidavit by the applicant in a form substantially corresponding to Form 5 of the Schedule wherein it is stated that the respondent has breached any prohibition, condition, obligation or order imposed in terms of section 6; or 40

(b) arrest the respondent upon receipt of an affidavit by the applicant in a form substantially corresponding to Form 6 of the Schedule wherein it is stated that— 45

(i) an interim protection order has been issued in terms of section 5 or that a final protection order issued in terms of section 10;

(ii) a warrant of arrest for the respondent has been issued;

(iii) the warrant of arrest has been lost or destroyed; and 50

(iv) the respondent has breached any prohibition, condition, obligation or order imposed in terms of section 6.

(4) The clerk of the court must issue the applicant with a second or further warrant of arrest upon the applicant filing an affidavit in which it is stated that—

- (a) the respondent has been arrested; or
 - (b) the warrant of arrest issued has been lost or destroyed. .,
 - (5) Subject to the provisions of this Act, all the provisions of the Criminal Procedure Act, 1977, relating to the—
 - (a) form and manner of execution of warrants of arrest; 5
 - (b) arrest;
 - (c) detention;
 - (d) search;
 - (e) release from custody; and
 - (f) criminal prosecution of the respondent, 10
- are with the necessary changes applicable in respect of warrants of arrest issued in terms of subsection (1).
- (6) A respondent arrested in terms of subsection (3) shall—
 - (a) not be released—
 - (i) unless a court orders the release; and 15
 - (ii) the respondent, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release from detention in custody;
 - (b) be brought before a court as soon as reasonably possible, but not later than—
 - (i) 48 hours after the arrest; or 20
 - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day; and
 - (c) be criminally charged by the State with—
 - (i) an offence contemplated in section 20(a); and 25
 - (ii) any other offence resulting from a complaint lodged by the applicant against the respondent.

Amendment or setting aside of final protection order by applicant

- 12. (1) The applicant may, upon written notice to the respondent and the court concerned, apply for the amendment or setting aside of the final protection order in a form substantially corresponding to Form 6 of the Schedule: Provided that the court shall not grant such an application unless it is satisfied by affidavit or by oral evidence that the application is made freely and voluntarily. 30
- (2) The clerk of the court must thereupon forward a notice in a form substantially corresponding to Form 7 of the Schedule to the respondent if the final protection order is amended or set aside as contemplated in subsection (1). 35

Jurisdiction

- 13. (1) Any court has jurisdiction to grant a protection order as contemplated in this Act, within the area in which—
 - (a) the applicant permanently or temporarily resides, carries on business or is employed; 40
 - (b) the respondent resides, carries on business or is employed; or
 - (c) the cause of action arose.
- (2) No specific minimum period is required in relation to subsection (1)(a).
- (3) An interim protection order granted in terms of section 5 or a final protection order granted in terms of section 10 is enforceable throughout the Republic. 45

Obligation to report ill-treatment of children

- 14. (1) Notwithstanding the provisions of any other law every dentist, medical practitioner, nurse, psychologist, social worker or teacher, or any person employed by or managing a children's home, place of care or shelter, who examines, attends to or deals with any child in circumstances giving rise to the suspicion that such child has been subjected to acts of domestic violence or neglect as a result of which such child suffers from any injury, whether single or multiple, must immediately notify a peace officer of those circumstances. 50

(2) No person referred to in subsection (1) is liable in respect of any notification given in good faith in accordance with this section.

Rape of wife by her husband

15. A husband may be convicted of the rape of his wife irrespective of whether the parties are married according to civil, customary or religious law. 5

Proceedings in *camera*

16. (1) Proceedings in terms of this Act must be held *in camera*.
(2) Any party to the proceedings may request the presence of specified persons.

Legal representation

17. Any party to proceedings in terms of this Act has the right to legal representation. 10

costs

18. No order of costs shall be granted against any party to proceedings in terms of this Act.

Appeal and review

19. The provisions in respect of appeal and review contemplated in the Magistrate's 15 Courts Act, 1944, the Supreme Court Act, 1959 (Act No. 59 of 1959), and the Criminal Procedure Act, 1977, apply to any proceedings in terms of this Act.

Offences and penalties

20. Notwithstanding the provisions of any other law, any person who—
(a) contravenes any prohibition, condition, obligation or order imposed in terms 20 of section 6; or
(b) fails to comply with the provisions of sections 2,8, 11(3) or 14(1),
is guilty of an offence and liable on conviction in the case of an offence referred to in paragraph (a) to a fine or imprisonment for a period not exceeding five years or to both such fine and such imprisonment, and in the case of an offence contemplated in 25 paragraph (b) to a fine or imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Repeal of laws and savings

21. (1) The Prevention of Family Violence Act, 1993 (Act No. 133 of 1993). is hereby 30 repealed.
(2) Any application made, proceedings instituted or orders made in terms of the Act referred to in subsection (1) shall be deemed to have been made or instituted in terms of this Act.

Short title and commencement

22. This Act shall be called the Domestic Violence Act, 1998 and shall come into 35 operation on a date fixed by the President by notice in the *Gazette*.

SCHEDULE

FORM 1

APPLICATION FOR PROTECTION ORDER

DOMESTIC VIOLENCE ACT, 1998

(ACT _ OF 1998)

1. (a) I _____ (Full Names)
with Id. No./Date of Birth: _____ with the following particulars
Residential Address: _____

_____ (Tel. No. _____)

Business Address: _____

_____ (Tel. No. _____)

Occupation: _____

Nature of the Domestic Relationship with the Respondent _____
(Hereinafter referred to as the APPLICANT); or

- (b) I _____ (Full Names)
with Id. No./Date of Birth: _____ with the following particulars
Residential Address: _____

_____ (Tel. No. _____)

Business Address: _____

_____ (Tel. No. _____)

On behalf of: _____ (Full Names)
(Hereinafter referred to as the APPLICANT)with Id. No./Date of Birth: _____ with the following particulars
Residential Address: _____

_____ (Tel. No. _____)

Business Address: _____

_____ (Tel. No. _____)

Occupation: _____

Nature of the Domestic Relationship with the Respondent _____

On whose behalf the application is brought **due to** _____
(state relationship or concern)**and whose consent has been obtained** (except if the Applicant is a minor);2. HEREBY APPLY FOR A PROTECTION ORDER AGAINST:—

_____ (Full Names)
with Id. No./Date of Birth: _____ with the following particulars
Residential Address: _____

_____ (Tel. No. _____)

Business Address: _____

_____ (Tel. No. _____)

Occupation: _____

(Hereinafter referred to= the RESPONDENT)

3. The following children (if any) have been born from the domestic relationship:

4. **Since the Respondent** at or near _____, and on or about the d a y of _____ 1 9 _ committed the following act(s):
See Annexure(s) attached for the affidavit, together with any supporting affidavit(s);
5. **I request that the Respondent be ordered:**
 (a) *Not to commit any act of domestic violence;
 (b) *Not to enlist the help of another person to commit any act of domestic violence;
 (c) *Not to enter the shared household;
 (d) *Not to enter a specified part of the shared household;
 (e) *Not to enter the Applicant's residence;
 (f) *Not to enter the Applicant's place of employment;
 (g) *Not to prevent the Applicant or any child who ordinarily lives or lived in the shared household from entering or remaining in the shared household or any part thereof; or
 (h) *Not to commit any other act;
As requested and/or specified in the affidavit(s).
6. **I further request the Court to order that:**
 (a) *A member of the South African Police Service is to accompany the Applicant to the residence specified in the application to supervise the collection of the Applicant's personal property;
 (b) *A member of the South African Police Service is to seize the arm or dangerous weapon as specified in the affidavit;
 (c) *The Respondent is to pay the rent or mortgage payments specified in the affidavit;
 (d) *The Respondent is to pay emergency monetary relief as specified in the affidavit;
 (e) *The Respondent is to pay educational expenses as specified in the affidavit;
 (f) *The Respondent is refused any contact with the child or children as specified in the affidavit;
 (g) *The Respondent is granted structured contact with the child or children as specified in the affidavit; or
 (h) *The address of the Applicant's residence not be disclosed to the Respondent.
7. I am likely to report a breach of the Protection Order at the _____ Station of the South African Police Service.
8. Additional conditions requested as per the affidavit: _____

DEPONENT

DATE

9. I certify that before administering the *oath/taking the **affirmation** I asked the Deponent the following questions and noted *his/her answers in *his/her presence as indicated below:—
 (a) Do you know and understand the contents of the above declaration?
 Answer _____

(b) Do you have any objection to taking the prescribed oath?

Answer _____

(c) Do you consider the prescribed oath to be binding on your conscience?"

Answer _____

I certify that the Deponent has acknowledged that *he/she knows and understands the contents of this declaration which was *sworn to / affirmed before me, and that the Deponent's *signature/thumb print/mark was placed thereon in my presence.

Dated at _____ this _____ day of _____ 1 9 _

Justice of the Peace/Commissioner of Oaths

Full Names _____

Designation _____

Area for which appointed _____

Business Address _____

***Delete whichever is not applicable**

FORM 2

INTERIM PROTECTION ORDER**DOMESTIC VIOLENCE ACT, 1998****(ACT _ OF 1998)**

IN THE MAGISTRATE' S COURT FOR THE DISTRICT OF _____

HELD AT _____ APPLICATION NO. _____ I _

In the matter between:

APPLICANT _____
(*Id. No./Date of Birth: _____)**AND****RESPONDENT** _____
(*Id. No./Date of Birth: _____)**1. Respondent's Particulars:—**Residential Address: _____

(Tel. No. _____)Business Address: _____

(Tel. No. _____)

Occupation: _____

2. Whereas the Applicant (or _____ on behalf of the Applicant),
has applied for an Interim Protection Order against the Respondent, as per the
affidavit(s) and record of oral evidence (if any) attached, and after consideration of
the application;3. The Court orders that the application for an interim order **be—****3.1 *Dismissed; or****3.2 *Granted: and the Respondent is ordered:****3.2.1** *Not to commit the following act(s) of domestic violence _____

_____**3.2.2** *Not to enlist the help of another person to commit the acts of domestic
violence specified in paragraph 3.2.1;**3.2.3** *Not to enter the shared household at _____
_____**3.2.4** *Not to enter the following parts of the shared household _____

at _____
_____**3.2.5** *Not to enter the Applicant's residence at _____

3.2.6 *Not to enter the Applicant's place of employment at _____

3.2.7 *Not to prevent the Applicant or any child who ordinarily lives or lived in the shared household at _____
_____ from entering or remaining in the shared household, or any part thereof;

3.2.8 *Not to commit any other act, to wit _____

3.2.9 *To make rent or mortgage payments in the sum of R_____ per month/annum;

3.2.10 *To pay the sum of R_ to the Applicant as emergency monetary relief;

3.2.11 *To pay the sum of R_ to the Applicant as educational expenses.

4. It is further ordered **that—**

4.1 *A member of the South African Police Service accompanies the Applicant to the following residence in order to supervise the collection of personal property, i.e. _____

4.2 *A member of the South African Police Service at _____ seizes the following arm(s) or dangerous weapon(s) in the possession of the Respondent, i.e. _____

4.3 *The Applicant's address not be disclosed to the Repondent;

4.4 *The Respondent is refused any contact with the following children), i.e. _____

4.5 *The Respondent is allowed contact with the following children), i.e. _____
_____ on the following basis: _____

4.6 A warrant is authorised for the arrest of the Respondent, the execution of which is suspended subject to the Respondent's compliance with the provisions of the Protection Order as stated above; and

4.7 A copy of this order and the warrant of arrest be forwarded to the South African Police Service at _____
_____ once this interim order has been served on the Respondent.

5. **The Respondent** is furthermore hereby informed of his/her right to appear in the Magistrate's Court at _____ on the _ day of _____ 19_ at 08:30 in order to show cause as to why the interim protection order should not be confirmed and made final.

M A G I S T R A T E

DATE

*Delete whichever is not applicable

FORM 3

WARRANT OF ARREST

DOMESTIC VIOLENCE ACT, 1998

(ACT _ OF 1998)

IN THE MAGISTRATE' S COURT FOR THE DISTRICT OF _____

HELD AT _____ APPLICATION NO. _____/ _

In the matter between:

APPLICANT _____
 (*Id. No./Date of Birth: _____)

AND

RESPONDENT _____
 (*Id. No./Date of Birth: _____)

TO ALL PEACE OFFICERS:

Whereas *the attached Protection Order/a Protection Order as attested to by the Applicant in the attached affidavit, was granted against the Respondent by the Magistrate's Court for the district of _____ on the _ day of _____ 19_ ; and

Whereas the Applicant has stated in the affidavit attached that the Respondent has breached (a) condition(s) of the Protection Order;

Therefore you are hereby authorised and ordered to forthwith arrest the Respondent in terms of the Domestic Violence Act, 1998.

GIVEN UNDER MY HAND AT _____ **THIS** _ **DAY**
OF _____ **19** _ .

MAGISTRATE_____
DATE

*Delete whichever is not applicable

FORM 4

FINAL PROTECTION ORDER

DOMESTIC VIOLENCE ACT, 1998

(ACT _ OF 1998)

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF _____

HELD AT _____ APPLICATION NO. ____/____

In the matter between:

APPLICANT: _____
(*Id. No./Date of Birth: _____)**AND****RESPONDENT:** _____
(*Id. No./Date of Birth: _____)

Whereas the Applicant has applied for a protection order, and

After considering the facts of the matter;

The Court orders that the interim protection order be:

1.*Confirmed;

2.* Amended as follows: _____

_____ ; or

3.* Set aside.

Dated at _____ this _ day of _____ 19 _ .

MAGISTRATE_____
DATE

*Delete whichever is not applicable

FORM 5

BREACH OF PROTECTION ORDER**DOMESTIC VIOLENCE ACT, 1998****(ACT _ OF 1998)**

IN THE MAGISTRATE' S COURT FOR THE DISTRICT OF _____

HELD AT _____ APPLICATION NO. _____ I _

In the matter between:

APPLICANT _____
(*Id. No./Date of Birth: _____)

AND

RESPONDENT _____
(*Id. No./Date of Birth: _____)1. I _____ (Full Names)
(*Id. No./Date of Birth: _____)Residential Address: _____

(Tel. No. _____)Business Address: _____

(Tel. No. _____)Occupation: _____
(Hereinafter referred to as the APPLICANT)Hereby declare under oath/solemnly affirm that—A Protection Order was granted on the _ day of _____ 19 _ in the
Magistrate's Court at _____ against
_____ (Full Names)Residential Address: _____

(Tel. No. _____)Business Address: _____

(Tel. No. _____)Occupation: _____
(Hereinafter referred to as the RESPONDENT)

2. *A copy of the Protection Order (indicating what orders were made), and the original Warrant of Arrest are attached.
3. *A copy of the Protection Order and/or the original Warrant of Arrest cannot be attached for the following reasons:

In the said Protection Order the Respondent was ordered—

- (a) _____
 (b) _____
 (c) _____
 (d) _____
 (e) _____
 (f) _____
 (g) _____

4. The Respondent has breached the Protection Order (which has not been set aside), in that *he/she on the ____ day of _____ 1 9 _

 Signature of Deponent

 Date

5. I certify that before administering the *oath/taking the affirmation I asked the Deponent the following questions and noted *his/her answers in *his/her presence as indicated below:

- (a) Do you know and understand the contents of the above declaration'?

Answer _____

- (b) Do you have any objection to taking the prescribed oath?

Answer _____

- (c) Do you consider the prescribed oath to be binding on your conscience?

Answer _____

I certify that the Deponent has acknowledged that *he/she knows and understands the contents of this declaration which was *sworn to/affirmed before me, and that the Deponent's *signature/thumb print/mark was placed thereon in my presence.

Dated at _____ this _ day of _____ 1 9 _ .

 Justice of the Peace/Commissioner of Oaths

Full Names _____
Designation _____
Area for which appointed _____
Business Address _____

***Delete whichever is not applicable**

FORM 6

**AMENDMENT OR SETTING ASIDE OF FINAL PROTECTION
ORDER****DOMESTIC VIOLENCE ACT, 1998****(ACT _ OF 1998)**

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF _____

HELD AT _____ APPLICATION NO. _____ I _

In the matter between:

APPLICANT: _____
(*Id. No./Date of Birth: _____)**AND****RESPONDENT** _____
(*Id. No./Date of Birth: _____)**1. I** _____ (Full Names)
(*Id. No./Date of Birth: _____)Residential Address: _____

(Tel. No. _____)Business Address: _____

(Tel. No. _____)

Occupation: _____

(Hereinafter referred to as the APPLICANT)**Hereby declare under oath/solemnly affirm that—**A Protection Order was granted on the _ day of _____ 1 9 _ in the
Magistrate's Court at _____ against
_____ (Full Names)Residential Address: _____

(Tel. No. _____)Business Address: _____

(Tel. No. _____)

Occupation: _____

(Hereinafter referred to as the RESPONDENT)**2. I hereby wish to apply for:—**

- (a) The setting aside of the above Protection Order; or
- (b) The amendment of the Protection Order as follows:—

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

Answer _____

Dated at _____ this _ day of _____ 19_.

***Delete whichever is not applicable**

FORM 7

**NOTICE OF AMENDMENT OR SETTING ASIDE OF FINAL
PROTECTION ORDER****DOMESTIC VIOLENCE ACT, 1998****(ACT _ OF 1998)**

IN THE MAGISTRATE' S COURT FOR THE DISTRICT OF _____

HELD AT _____ APPLICATION NO. _____/ _____

In the matter between:

APPLICANT _____
(*Id. No./Date of Birth: _____)**AND****RESPONDENT** _____
(*Id. No./Date of Birth: _____)

1. **Whereas** a Protection order was granted against the Respondent on the _ day of _____ 19 _ in the Magistrate's Court for the district of _____ and

2. Whereas the Applicant has applied for the *amendment/setting aside of the said Protection Order:

3. Therefore the Court orders that—

3.1 *The Protection Order is set aside; or

3.2 *The Protection Order is amended as follows:

Dated at _____ this _ day of _____ 19 _ .

MAGISTRATE_____
DATE_____
*Delete whichever is not applicable

MEMORANDUM ON THE OBJECTS OF THE DOMESTIC VIOLENCE BILL, 1998

1. The South African Government has committed itself to the eradication of violence against women and has stated that it intends to comply with the provisions of the Beijing Platform and has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) during 1995. It has, in the final Constitution, entrenched the rights to gender equality and freedom from violence. The Department of Justice stated in Justice Vision 2000, a strategy document for transforming the administration of justice, that it aims to achieve a criminal justice policy that addresses the special needs of vulnerable groups such as women and children. On 25 November 1996, International Day of No Violence Against Women, the Minister and the Deputy Minister of Justice launched an ongoing public campaign on preventing violence against women. The campaign was developed as a result of deep concern for the endemic problem of violence against women in South Africa.

2. The limited scope of the existing Prevention of Family Violence Act, 1993 (Act No. 133 of 1993) (hereafter referred to as “the Act”), diminishes its effectiveness as a legal remedy for victims of domestic violence. The Bill is progressive and constitutes a substantial broadening of the limited scope of the Act. The Bill recognises that domestic violence is a serious crime against society and that women form the majority of victims of domestic violence. Domestic violence is an obstacle to achieving gender equality. The most important provisions in the Bill which will alleviate the plight of victims of domestic violence are the following:

2.1 The present Act which applies to “parties to a marriage” is too narrow in scope and many relations in which abuse often occurs do not fall within the ambit of the Act. The new Bill offers protection to any victim who is in a “domestic relationship” with the abuser. (Clause 1, sv “domestic relationship ”.)

2.2 The Act does not define “family violence”, and appears to be limited to physical violence. In the Bill “domestic violence” is broadly defined. (Clause 1, sv “domestic violence”.)

2.3 In practice, the role of the South African Police Service in implementing the Act has been problematic. The Bill places a duty on a member of the South African Police Service to inform a victim of his or her rights at the scene of an incident of domestic violence. (Clause 2.)

2.4 The offence of common assault is not a Schedule I offence (Criminal Procedure Act, 1977 (Act No. 51 of 1997)). Most domestic violence assaults are common assaults. This creates a situation that when the Police attend to a common assault resulting from domestic violence, the victim is still left to the mercy of the perpetrator of violence. The Bill remedies this situation by providing that a peace officer may without warrant arrest any person at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence. (Clause 3.)

2.5 Victims of domestic violence are disempowered persons. An application for a protection order may therefore be brought on behalf of the applicant by any other person (including a member of the South African Police Service) who has a material interest in the wellbeing of the applicant. (Clause 4.)

2.6 There has been strong criticism that the Act is an unjustified departure from the *audi alteram partem* principle — the court is required to grant a final interdict, with potentially serious repercussions against a respondent without having heard him or her. Provision is made in the Bill for the granting of an interim protection order upon application. Since the most dangerous time for any domestic violence victim is separation from the abuser, the Bill provides that the interim protection order must be issued *ex parte*. The respondent has the opportunity to appear on a return date. (Clause 5.) If the respondent does not appear on the return date, the interim order is confirmed. (Clause 10.)

2.7 The relief provided for in the Act is limited. The Bill clearly spells out the terms which may be contained in a protection order. In times of crisis, financial matters are often a cause of great concern to victims of domestic violence. The Bill provides that the

court may impose on the respondent certain obligations as to the discharge of rent or mortgage payments, order the respondent to pay emergency monetary relief, or order the respondent to pay educational expenses. Children should not become the contact point through which the respondent can regain control over the applicant. Contact with any child by the respondent may therefore be refused or structured contact with such child may be ordered. (Clause 6.)

2.8 The Bill contains provisions regarding seizure of arms and dangerous weapons in domestic violence situations. (Clause 7.)

2.9 The Act provides for service of the interdict by the sheriff only. The applicant is responsible for the payment of sheriffs fees for the service of the interdict. Many women, under the Act, experienced their economic disempowerment as the factor that stood between themselves and an interdict, as many women could not afford the costs of service. Whilst it may be possible to devise a means test to ensure that only indigent applicants can receive economic assistance from the State in having the order served, this places another hurdle for the judicial officer and the applicant to overcome. The Bill provides that a peace officer may also serve documents and that service of all documents shall be at the expense of the State. (Clause 8.)

2.10 Under the present Act, in granting an interdict, the court shall authorise the issue of a suspended warrant for the arrest of the respondent. The Bill provides that, in granting an interim protection order, the court shall issue a suspended warrant for the arrest of the respondent which remains in force unless the interim protection order is set aside. The applicant is furnished with the original warrant of arrest and provision is made for a second or further warrant of arrest. When the respondent has breached the protection order the Police must execute the warrant of arrest. 'Revision is also made for arrest upon receipt of an affidavit where the warrant of arrest has been lost or destroyed. An arrested respondent shall not be released unless a court orders the release, and the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release from detention in custody. The Bill provides that the respondent be criminally charged for breaching the protection order and also with any other offence resulting from a complaint lodged by the applicant against the respondent. (Clause 11.)

2.11 The Act does not allow for the applicant to apply for the amendment or setting aside of the interdict. Recognizing that allowing applicants to apply for the amendment or setting aside of protection orders might open the door for manipulation by respondents, the Bill provides that the court shall not grant such an application unless it is satisfied that the application is made freely and voluntarily. (Clause 12.)

2.12 There appears to be some confusion as to precisely how jurisdiction is conferred on any particular court in terms of the Act. The Bill affords the applicant a choice of jurisdictional factors as regards the conferment of jurisdiction in respect of the application for a protection order. (Clause 13.)

2.13 The Act contains a provision regarding an obligation to report ill-treatment of children. The Bill retains the provision and brings it in line with section 42 of the Child Care Act, 1983 (Act No. 74 of 1983). (Clause 14.)

2.14 The provision on marital rape in the Act is retained, but it is made clear that conviction may follow irrespective of whether the parties are married according to civil, customary or religious law. (Clause 15.)

2.15 With a view to protecting the interests of victims of domestic violence, the Bill provides that proceedings shall be held *in camera*, but that any party to the proceedings may request the presence of specified persons. (Clause 16.)

2.16 It appears that the courts have different attitudes to legal representation at the various stages of the interdict in terms of the Act. The Bill makes it clear that any party to proceedings shall have the right to legal representation. (Clause 17.)

2.17 The Act makes no provision for a costs order to be granted at any stage of the proceedings. Little cost is generally involved in applications of this nature. Making provision for costs orders may result in complicated applications making a simple and swift procedure once again expensive and time consuming. Moreover, financial abuse and the withholding of funds are a common feature of battering relationships. The Bill therefore provides that no order of costs shall be granted against any party to proceedings. (Clause 18.)

2.18 In terms of the Act a person who breaches the interdict is guilty of an **offence** and liable on conviction to a fine or imprisonment for a period not exceeding 12 months or to both such fine and imprisonment. By increasing the period of imprisonment to a period not exceeding five years, the Bill recognises the fact that domestic violence is a serious crime against society. Even though law enforcement agents have duties to serve the interdict and to arrest abusers in terms of the Act, in practice, many communities found that these duties were being carried out with no sense of urgency or sometimes not at all. Duties imposed, without a sanction for dereliction of those duties, have often resulted in careless attitudes by law enforcement agents in taking the issue of domestic violence seriously. Consequently, the Bill also makes the failure of law enforcement agents to carry out their duties in the crucial stages in the applicant's encounter with the legal system an **offence** punishable with a fine or imprisonment for a period not exceeding three months or both such fine and imprisonment. (Clause 20.)

INTERESTED PARTIES CONSULTED

3. Written submissions were received from all relevant role-players, including magistrates, the South African Police Service, the legal profession, and non-governmental organisations actively involved in the area of domestic violence. The official involved with the preparation of the Bill also participated in a number of workshops and briefing sessions during which public opinion was gleaned on and preliminary proposals for draft domestic violence legislation were prepared.

4. The Bill should, in the opinion of the State Law Advisers and the Department of Justice, be dealt within accordance with section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).