

In terms of the Domestic Violence Act, 1998, if you feel that you're a victim of any act of domestic violence, you can approach your local Magistrate Court and request assistance in bringing an application for a protection order.

WHAT IS DOMESTIC VIOLENCE?

In general, domestic violence may:

- Be an on-going pattern of coercive control
- Increase in severity over time

Be complicated due to the fact that a victim and perpetrator often share financial, social and familial ties.

Forms of abuse in terms of the Domestic Violence Act

Physical Abuse may include:

- Shoving, slapping, punching, kicking, throttling, biting
- Assault with objects, guns, knives or any other dangerous weapon

Sexual Abuse may include:

- Rape, attempted rape, indecent assault
- On-going verbal abuse with sexual slurs such as bitch, whore, slut, etc.

How to obtain a protection order

What is a protection order?

A protection order is a legal document that specifies the conditions that an abuser must adhere to, as specified by the courts. For example, the abuser:

- a. should not commit any act of domestic abuse,
- b. should pay you rent, mortgage, or other monies, such as child support, and
- c. should hand over firearms or dangerous weapons to the police.

Before obtaining a protection order, you need to apply for an interim protection order first.

The interim order specifies the date at which the final order will be considered. Only once the final order is made, it will be permanent and can only be changed by applying to the courts.

Requesting a protection order doesn't mean that you're laying a charge against your abuser. You don't need to lay a criminal charge in order to obtain a protection order. However, if you're a victim of a type of domestic abuse that's also a crime, then you can apply for a protection order, lay a criminal charge, or both.

If your abuser breaches, or breaks the conditions of the protective order, they will be charged with the crime of contempt of court. This applies even if the breach is not an actual crime, such as controlling behaviour. If the breach itself involves a crime, such as assault, then the abuser can be charged with both contempt of court and assault.

1. The first step in getting a protection order is for you to complete a form known as Form 2: Application for a Protection Order.

Where should I go?

Form 2 is available at police stations and courts, and the Justice and Constitutional Development website, although police may send you to the courts for help with filling out the form. The police should also give you Form 1, which is a document explaining your rights. If you're hurt or need a different place to stay because of the abuse, the police must help you to get medical treatment and help you with finding a place of safety. It's also within your rights to request a police escort when collecting personal property.

Any court that covers the area in which you live or work, or in which your abuser lives or works, or which covers the area in which any incidents of abuse took place can grant you a protection order. Ordinarily, you should go to the courts during the court hours (weekdays from 8am - 4pm). After-hours applications will normally be taken only if you can show you will suffer undue hardship if the matter is not dealt with immediately.

Some courts have a room set aside to deal with domestic violence cases. Volunteers are sometimes available to help you with filling out Form 2, and the clerk of the court may also be able to help. The clerk will also give you Form 3, which explains how the protection order works and warns you against lying when you complete Form 2, as this is a criminal offence. Form 3 is available at the court.

Please remember if you go to a court house or justice service point, you must -

(a) at all times wear a cloth face mask or a home-made item that covers the nose and mouth or another appropriate item to cover the nose and mouth, and

(b) observe the social distancing requirement of 1,5 metres in any queue or seating arrangement and must adhere to any demarcations at such court room, court house or justice service point.

Do I have to apply myself? Can someone else apply on my behalf?

Yes, someone else can make the application on behalf of you. All they need is your written permission to do so. If you're a minor (under 18 years of age), mentally impaired, unconscious, or unable to give permission for any other reason, someone else can apply for you without your permission. Minors under the age of 18 years old may also apply for a protection order without the assistance of parents, guardian, or anyone else. If you're applying for a protection order on behalf of a minor, there must be material interest in the wellbeing of the minor. This means a minor's parents, guardian, sibling, family member, social worker or teacher can apply for a protection order on behalf of a minor.

What information do I need?

Form 2 is made up of 9 sections.

Part 1: The applicant

This is information about the applicant, also called the complainant. If you're applying for a protection order for yourself, you're the applicant unless you are applying for someone else, in which case this is information about the person on whose behalf you are applying - the person who is the victim of abuse. You'll need to give the applicant's ID number, home and work address, telephone numbers, job, and relationship of the victim (for example, wife, friend, or relative) to the abuser (the respondent).

Part 2: If you're not the applicant

You don't need to complete this section if you're applying for yourself. However, if you're applying on someone else's behalf, this is information about you. This includes your ID number, home and work address, job, relationship to that person (for example, friend, counsellor, or relative), reason for making the application, and whether you have permission from the person for whom you're applying.

Part 3: The respondent

Information about the abuser (the respondent) including their ID number, home and work address, telephone numbers and job should be provided. Residential and work addresses in particular are very important. If you don't know the addresses then you should give any information about where they can be found, such as public places or friends they might visit often. This is so the Sheriff or police can find them.

Part 4: Others affected

Details of anyone else also affected by the domestic violence, how they're affected and whether any of them are disabled.

Part 5: Statement of abuses

An affidavit (statement) detailing the acts of domestic violence by the abuser, including whether weapons or firearms were used, what injuries you had and whether you needed medical treatment.

Part 6: Any information on how urgent the application is

For example, it may be urgent if you have reason to fear the abuser may act violently again - maybe they've obtained a weapon or recently threatened you or something has happened that you know will provoke them.

Part 7: What conditions you need in the protection order

These conditions should match up with the types of abuse you've noted. For example, if you've described economic abuse, you should ask that a condition of the protection order be that your abuser not abuse you economically. The form has a list of conditions and you need only tick the correct boxes. Don't tick all of them as some contradict each other, so decide carefully what protection you need.

Part 8: Any additional conditions

You can also ask for conditions that are not on the first list. Some of these are listed and you need only tick the correct boxes and fill in details. There's also a block to fill in for any other conditions that may not be listed.

Part 9: Personal property

A list of property that you consider to be personal. This is important if you have asked for assistance from the police in collecting your personal property.

What will happen after completing the application form?

Once Form 2 has been completed, it has to be certified. This means that you have to make an oath in front of a commissioner of oaths saying that you know and understand everything you've written. This means you don't object to taking a sworn oath and that you consider the oath to be binding on your conscience. This can be done at a police station, at the courts by a Justice of the Peace, or by a magistrate.

Once Form 2 has been completed and certified, you need to take it to the clerk of the court, who will fill out another form called Form 4: Interim Protection Order and set a return date (the date on which your final protection order will be considered) for the case. The clerk will hand both Form 2 and Form 4 to the magistrate, who may sign the forms granting an interim protection order. Form 4 cannot be downloaded online but is available at the court.

When will the interim protection order be granted?

In some courts, the magistrate might meet with you briefly before granting the order to ask any questions they might have about your request for immediate protection. At some courts, you may have to return a day or two later to find out whether the interim order has been granted, while in other courts the forms can be signed the same day; generally, this depends on how busy the court is and how urgent your application is.

What happens once the interim order is granted?

Once the interim order has been granted you'll be given a copy and it will also be "served on" (handed to) your abuser by the police, or if you can afford Sheriff's charges, by the Sheriff (in South Africa the Sheriff is an officer of the court responsible for serving documents that need to be served in civil cases). The interim protection order doesn't come into effect until it has been served. Serving of the interim order by the police is free. If you can afford the service charges, it is better to ask for the Sheriff as the police have many cases and are likely to take longer than the Sheriff. The clerk of the court can also arrange for service by registered mail, but

this involves a cost and will not work if your abuser does not go and collect and sign for the documents at the post office.

Whoever serves the order must give the clerk of the court a "return of service" document to confirm that they have served the interim order and state when they served it. Once the clerk has received the return of service, they must ensure that a certified copy of the interim order, as well as a warrant for the arrest of the abuser (Form 8) is served on (given to) you. This warrant only comes into effect if your abuser breaks the conditions of the interim protection order.

If you don't receive the warrant you should go to the court to collect it. Having the warrant means, that should your abuser break the conditions of the interim order, you can have him arrested or charged by going to the police and giving them the warrant and an affidavit (Form 10). The police must then arrest him if it appears you might suffer harm.

The interim protection order will have a date called a "return date" listed on it. On this date you (the applicant) and your abuser (the respondent) will have the opportunity of giving the court further information about the abuse, and the conditions in the interim order will either be confirmed, changed or set aside by the magistrate, in a final protection order. The return date may not be sooner than 10 days after serving of the order.

What happens if the interim order is not granted?

In some cases, the magistrate may decide not to grant an interim protection order. Instead, a notice (Form 5) will be served on your abuser, which will also have a return date. It will warn your abuser to appear in court on that day and give reasons why a protection order should not be made against him. In this case, no warrant of arrest is issued.

What happens on the return date?

On the return date, your final protection order can be granted. This is a permanent order and will remain in force until an application for setting it aside is granted by a magistrate. On the return day, your case will be considered in the magistrate's chambers (office), not in open court. No one except officers of the court and people directly involved in the matter may be present. However, you may bring along up to 3

people to support you. You or the respondent can have lawyers representing you at any stage of these proceedings. No one is allowed to publish or reveal the identity of any party in these proceedings. Your physical address may also not be revealed in any documents and proceedings related to the protection order if you ask for that on Form 2 (unless it's necessary for describing the conditions of the protection order).

Under what conditions will a final protection order be granted?

If your abuser doesn't oppose the order, or if your abuser isn't present but there's proof the interim order or notice was served on your abuser, or if neither of you are present but there's proof the interim order was served, then it's likely the final protection order will be granted.

Under what conditions will the protection order be set aside (not granted)?

If neither of you appear, and there's no proof of service, then it's likely the interim order will be set aside. If only you appear but there is no proof of service, then it's likely the interim order will be extended to another return date. If only you appear or both of you appear and request that the interim order be set aside, then it will be set aside.

Under what conditions will the case go to trial instead?

If your abuser is present and contests the granting of a final protection order, the case will go to trial. This means the magistrate will hear all the evidence given by you or any other witness and make a decision. At trial, the magistrate can direct that any cross-examination of you or any other witness by the abuser (where a lawyer isn't doing the questioning for him) be done by putting the question to the court and then having it relayed to you by the magistrate, so that the abuser doesn't question you directly. You should ask for that if you think you will feel intimidated under cross-examination.

What happens once a final protection order is granted?

A warrant of arrest is issued immediately on the granting of the final protection order, but it's suspended as long as your abuser does not break the conditions of the protection order. You must make sure you take the warrant of arrest with you. Having the warrant means that, should your abuser break any of those conditions, all you need to do is complete a sworn affidavit (Form 10) stating how the conditions of the protection order have been broken and hand your affidavit together with the warrant of arrest to the police. The police must arrest your abuser immediately if it appears you might suffer harm. If it doesn't appear you might suffer harm, then the

police may instead give your abuser a notice to appear in court on a criminal charge of breaching the protection order.

If you use up the warrant (it can only be used once and becomes "executed and cancelled") and you need a second one, or the first warrant is lost or destroyed, you can apply for another one (Form 9).

If your abuser is found guilty of breaking the conditions of a protection order in a criminal case, he can be fined or sentenced to prison for not more than 5 years.