



NEW CHANGES INTRODUCED BY LAW

To Protect Victims/Survivors of Domestic Violence

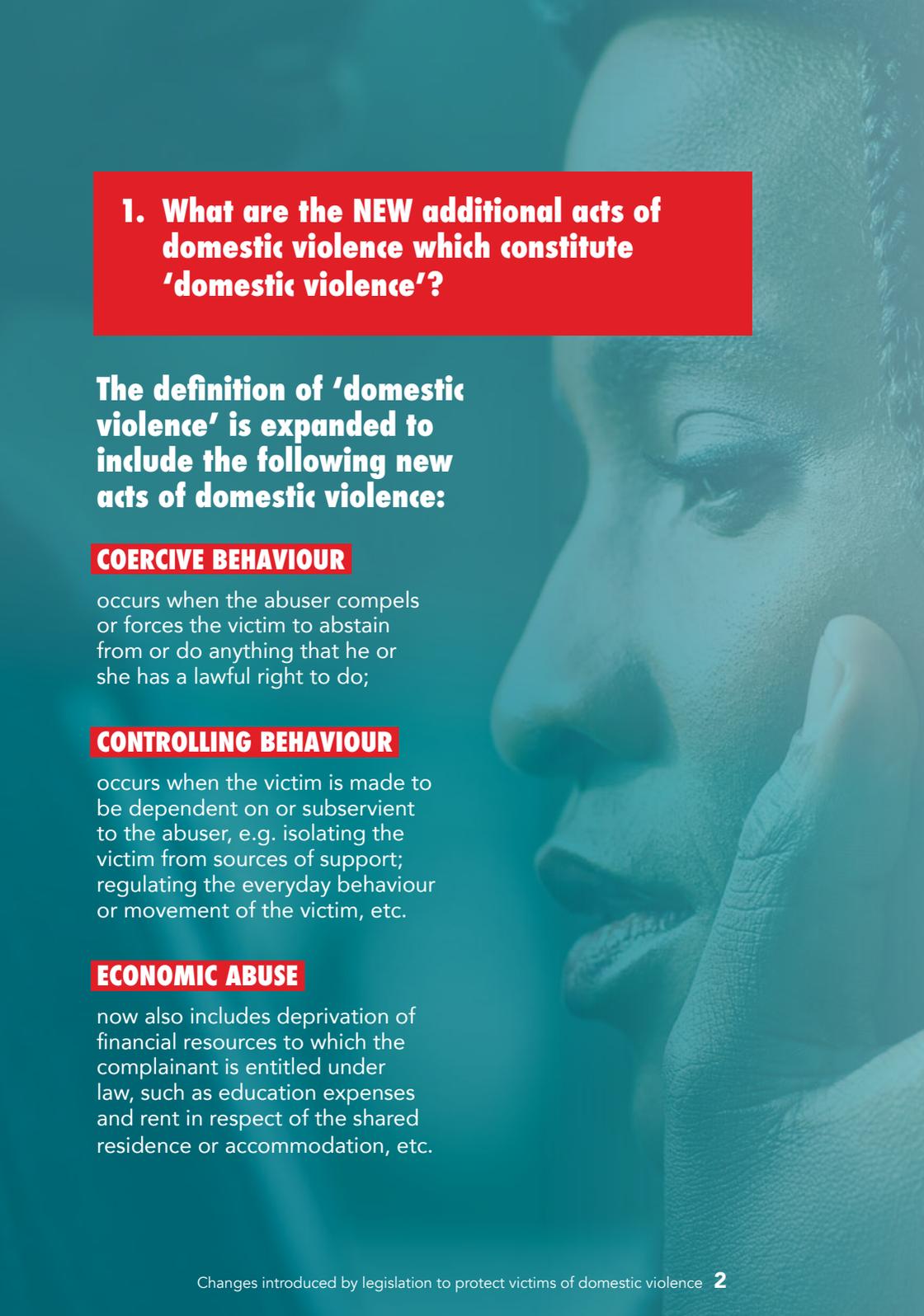
DOMESTIC VIOLENCE ACT, 1998(ACT NO 116 OF 1998)



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

365 DAYS **TO END GENDER-BASED VIOLENCE AND FEMICIDE**



1. What are the NEW additional acts of domestic violence which constitute 'domestic violence'?

The definition of 'domestic violence' is expanded to include the following new acts of domestic violence:

COERCIVE BEHAVIOUR

occurs when the abuser compels or forces the victim to abstain from or do anything that he or she has a lawful right to do;

CONTROLLING BEHAVIOUR

occurs when the victim is made to be dependent on or subservient to the abuser, e.g. isolating the victim from sources of support; regulating the everyday behaviour or movement of the victim, etc.

ECONOMIC ABUSE

now also includes deprivation of financial resources to which the complainant is entitled under law, such as education expenses and rent in respect of the shared residence or accommodation, etc.



EXPOSE A CHILD TO DOMESTIC VIOLENCE

occurs where the abuser intentionally causes a child to see or hear domestic violence, or experience the effects of domestic violence.



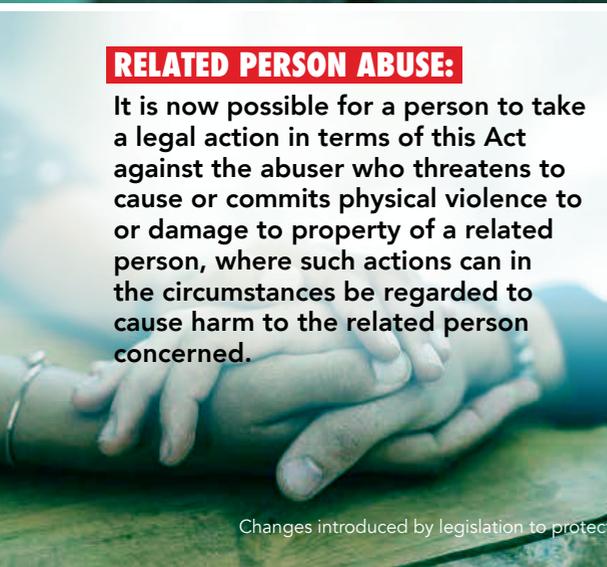
ELDER ABUSE

relates to an abuse of an older person within a domestic relationship as contemplated in the Older Persons Act, 2006 (Act No. 13 of 2006);



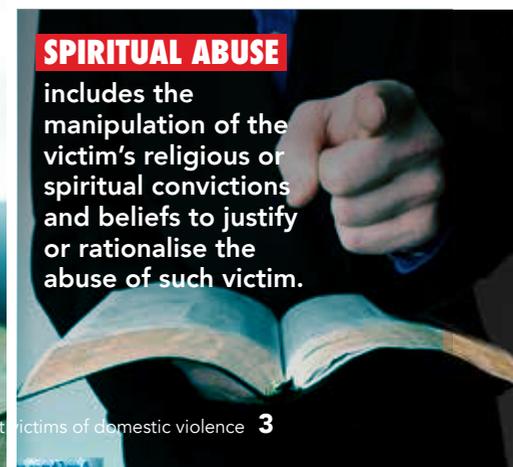
SEXUAL HARASSMENT

includes unwelcome sexual attention from the abuser who knows or ought reasonably to know that such attention is unwelcome.



RELATED PERSON ABUSE:

It is now possible for a person to take a legal action in terms of this Act against the abuser who threatens to cause or commits physical violence to or damage to property of a related person, where such actions can in the circumstances be regarded to cause harm to the related person concerned.



SPIRITUAL ABUSE

includes the manipulation of the victim's religious or spiritual convictions and beliefs to justify or rationalise the abuse of such victim.

2. Which Court should I approach?

Approach the Court nearest to where you live, work, or conduct your business. If you were forced to leave your place of residence as a result of the violence and are living elsewhere temporarily (even if it is for one night), you may approach the Court closest to your temporary residence.

3. Is a pattern of abuse a requirement before applying for protection order?

Not anymore. Victims must report any act of domestic violence the first time it occurs to permit early intervention.

4. What is the extended definition of 'domestic relationship'?

A person in a close relationship who shares or shared the same residence with the victim has a domestic relationship with such victim. A close relationship is determined by the degree of trust between the victim and abuser, the level of dependence, the length of time of the relationship, etc. The parties need not be related in any manner.



5. Who is required to act against domestic violence?

- **No bystanderism in domestic violence:** Any adult person has a legal obligation to report to a social worker or police knowledge, belief or suspicion of an act of domestic violence perpetrated against a child, person with disability, or an older person. A failure to do so amounts to a punishable offence.
- **A functionary or any person who has a material interest** who has a material interest in the wellbeing of the victim may apply for a protection order on behalf of the victim with a written consent of such victim, except where the victim is a child or the court is of the opinion that such victim is unable to provide the required consent.



6. Who is a functionary in terms of the Act, as amended?

- A medical practitioner
- A health care personnel or an official in the employ of a public health establishment
- A social worker
- An educator
- A care giver and
- Any person designated by the Minister of Justice and Correctional Services as a functionary.

7. What are the obligations of a functionary in domestic violence?

- When a functionary believes or reasonably suspects that a child, person with a disability or an older person may be a victim of domestic violence, he or she must without delay:
- Report the incident to a social worker or police using the prescribed form;
- Conduct a risk assessment; and
- Provide such victim with the necessary support services.

8. What are the legal consequences for failure to report an act of domestic violence against a child, a person with a disability or an older persons?

A person who fails to report such knowledge, reasonable belief or suspicion is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 3 months or to both a fine and such imprisonment.

9. Is there any legal protection afforded to a functionary?

- A functionary who, in good faith, reports knowledge, reasonable belief or suspicion about an act of domestic violence against a child, a disabled person or an older person, is not liable to any civil, criminal or disciplinary action, unless such disclosure was made contrary to any law.
- The identity of a functionary can be kept confidential, unless the interests of justice demand otherwise.



10. Is there any protection afforded to a whistle blower?

- No civil or criminal action can be instituted against the reporter or whistle blower if the report of the alleged or suspected abuse was made in good faith.
- The disclosure of the identity of the reporter is not permitted, unless the interests of justice require otherwise.



11. Who can apply for a Protection Order in terms of the Amendment Act?

- **Any person** who is a victim of an act of domestic violence in a domestic relationship.
- **Any child, i.e. any person under the age of 18 years**, who is in the care of the direct victim. This child may be referred to as an *indirect victim* of an act of domestic violence.
- **Any child, who is a direct victim** of an act of domestic violence may apply for protection order with or without assistance of parent, guardian or any other person. Intermediary services may be provided to such child.
- **A functionary or any person** who has a material interest in the wellbeing of the victim may apply for a protection on behalf of the victim with the written consent of the victim. This includes a relative, friend, employer, colleague, neighbour, etc.

12. What to do when you are the relative of the victim who is refusing to give you a written consent to apply for a protection order on his or her behalf?

- The Act permits a relative of the victim who is subjected to a *related person abuse* to apply for a protection order against the abuser.

A person is considered as subjected to a *related person abuse* when:

- the direct victim is threatened with causing physical violence to, or the damage of property of a related person;
- a related person is threatened with physical violence or the causing of damage to his or her own property;
- a related person is threatened with causing of physical violence to, or the damage of property of the direct victim; and
- the abuser commits an act of physical violence against or cause damage to the property of a related person.



13. Who is a related person in terms of the Amendment Act?

- Any member of the **family or household** of the victim of domestic violence, or a person in a **close relationship** with such victim.
- A victim includes a **child in the care of the person who is abused**.

14. Who is a person in a close relationship with the victim?

The court will use the following criteria to determine whether or not a person has a close relationship with the victim:

- The degree of **trust** between the persons
- The level of **dependence** between the persons
- The level of **commitment** to each other
- The length of **time** the relationship has existed'
- The **frequency of contact** between the persons and
- The **degree of intimacy**, i.e. emotional closeness, connection and support, between the persons.

15. What happens when the abuser uses a third party actor to commit an act of domestic violence against the victim?

- The victim may apply for protection order against an abuser who has used or allegedly used a third party actor to commit an act of domestic violence against him or her.
- The abuser who has used a third party actor is regarded as having personally committed the alleged act of domestic violence against the victim.

16. Who is a third party actor?

- Any person who is not and has not been in a domestic relation with the victim; and
- Any person who conspired and plotted with the abuser to commit an act of domestic violence against the victim; or
- Any person who was 'bought' or used by the abuser to commit an act of domestic violence against the victim; and
- Has committed the alleged act of domestic violence or aided the abuser to commit the alleged act of domestic violence.

17. What support services will be offered to a child who applies for a protection order?

- **The clerk of the court must explain the rights and remedies** that are available to a child in terms of the Act in the language of preference and in a manner understood by the child
- **The child may testify in a private room**, i.e. without the physical contact with the abuser, and with the assistance of an intermediary. The role of an intermediary is, among other things, to sit with a child in a private testifying- wearing earphones, to convey to a child witness questions from court in a language and manner that a child may understand.

18. What happens when the child is in need of care?

When an abused child is in need of care, the court considering an application for a protection order may order a social worker to conduct an investigation in terms of the Children's Act 2005 (Act No 38 of 2005).

A close-up photograph of a person's hands and forearms. The person is wearing a blue patterned shirt and dark blue trousers. They are wearing silver metal handcuffs on both wrists, which are clasped together in front of them. The background is a blurred outdoor setting with a light blue sky.

19. What should police officers do when responding to an incident of domestic violence?

- **Police must inform the victim** of the rights and available remedies in a language of the victim's choice.
- **Police officers may, without a warrant of arrest, arrest an abuser** where there is reasonable suspicion that the abuser has committed an act of domestic violence amounting to an offence.
- **Police officers must, without a warrant, arrest any abuser at the scene** of an incident of domestic violence when they have reasonable grounds to believe that such abuser has committed an act of domestic violence containing an element of violence against the victim.
- **When police receive a report of physical violence** in an incident of domestic violence, and entry to a relevant residence is denied, the police may, without a warrant, use reasonable force to gain entry into such residence, e.g. by breaking any door or window.
- Police must arrange for the victim to obtain **medical attention**, where necessary;
- Police must provide the victim with a **prescribed list of accessible shelters and public health establishments**, where necessary.

20. What are the changes to consider when applying for an interim protection order?

- **A victim must use the new prescribed form when applying for a protection order.** All prescribed forms are available in all magistrates' courts in the country or at www.justice.gov.za.
- **An application** for an interim protection order is made on an *ex parte* basis, i.e. in the absence of the abuser.
- **The victim may go to court** to apply for an interim protection order by submitting the application manually to the clerk of the court.
- **The application may be lodged electronically** by submitting it electronically to the clerk of the court. The online portal for application of domestic violence protection order is available at www.justice.gov.za.
- **The victims must indicate to court** that they are suffering or may suffer harm as a result of the alleged domestic violence; hence the need for an interim protection order
- **The application for an interim protection order** may be brought on behalf of the victim by a functionary or any person who has a material interest in the wellbeing of the victim with or without a written consent of the victim.



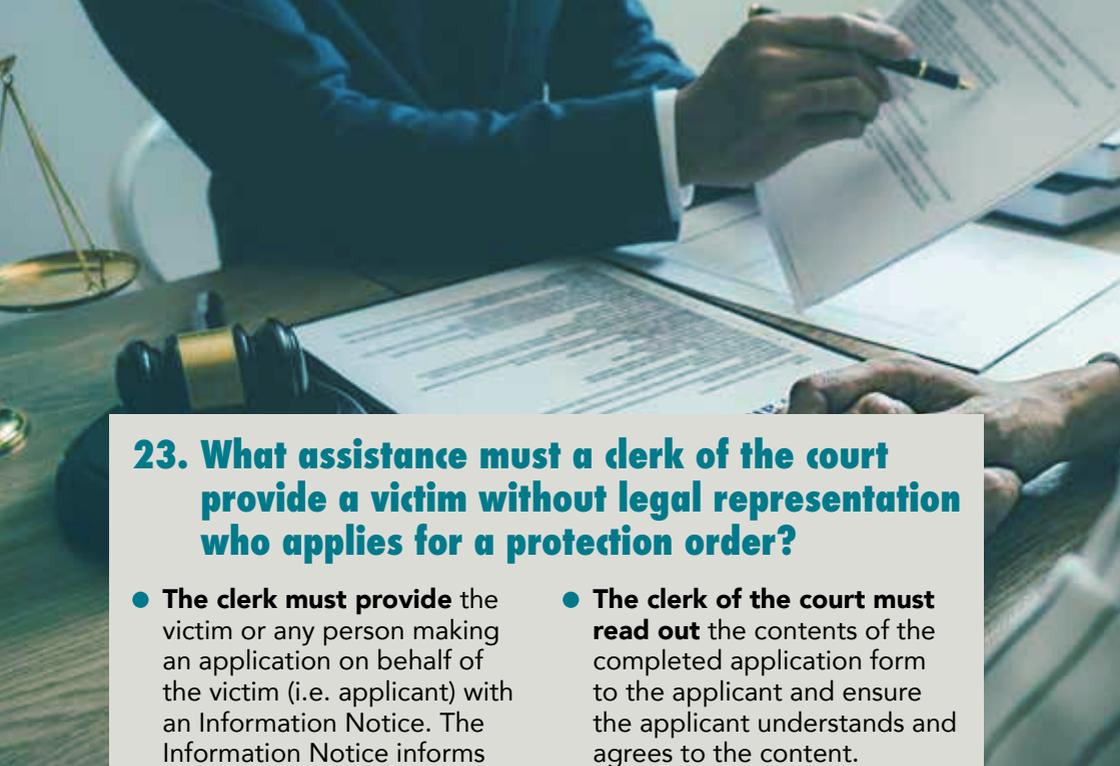
21. What are the instances where the victim's written consent may NOT be necessary?

- **When the victim is a child**, i.e. below the age of 18 years, and the court considers the application to be in the best interests of that child.
- When, in the opinion of the court, **the victim is unable to provide the required consent**, e.g. where the victim is unconscious, seriously sick, has a mental disability, etc.



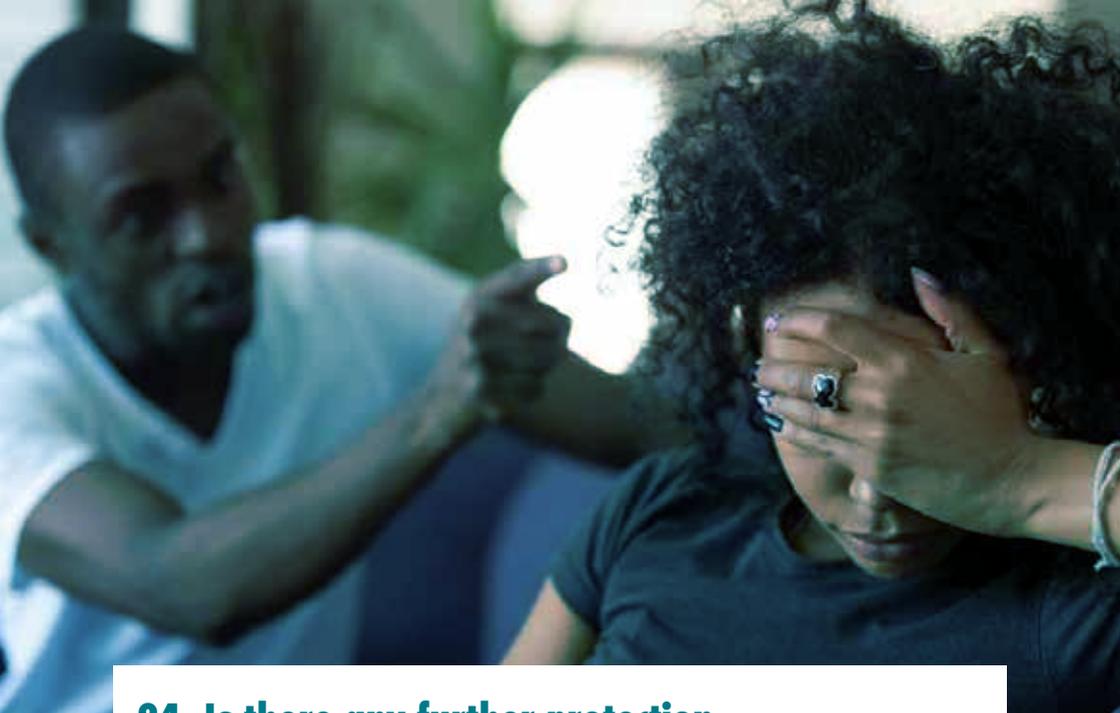
22. What information is required when bringing an application for protection order outside court hours or court days?

- **The application for a protection order** must be made on a prescribed form via the online portal for applications for protection order available at www.justice.gov.za.
- **The application form** must, among others, detail the alleged acts of domestic violence suffered by the victim.
- When completing the prescribed form, the victim/applicant must ensure that all **compulsory fields of information** are filled.
- **The victim must provide information** to show that a reasonable belief exists that he or she is suffering or may suffer harm if the protection order is not dealt with immediately, e.g. where the abuser has access to the shared residence or residence of the victim and has inflicted injuries on the victim.
- The application form may be **accompanied by supporting affidavits**, if any, e.g. a photograph, a school tuition invoice, medical report, etc.



23. What assistance must a clerk of the court provide a victim without legal representation who applies for a protection order?

- **The clerk must provide** the victim or any person making an application on behalf of the victim (i.e. applicant) with an Information Notice. The Information Notice informs the applicant of the rights and remedies available in terms of the Act. It is available in all magistrates' courts or at www.justice.gov.za. Please note that the word 'applicant' also refers to the victim;
- **The clerk of the court must explain** the contents of the Information Notice to the applicant in the language of choice of the applicant;
- **If the applicant is unable to read, write or complete the application form**, the clerk of the court must assist the applicant to complete the application form, whether made manually or electronically.
- **The clerk of the court must read out** the contents of the completed application form to the applicant and ensure the applicant understands and agrees to the content.
- **The applicant may provide supporting affidavits** to accompany the application, e.g. medical report, a photograph, a conspiracy note/ letter, affidavit by witness who has certain knowledge about the alleged domestic violence, etc.
- **The clerk of the court must thereafter submit the application** and supporting affidavits to the court.



24. Is there any further protection offered to a victim who shares a joint residence with the abuser?

- **The victim who shares a joint residence** with the abuser may apply for a *Domestic Violence Safety Monitoring Notice*:
 - Simultaneously with the application for protection order,
 - Before the interim or final order is issued, or
 - While the interim or final order is in force.
- **The victim may provide** supporting affidavits to show that the abuser poses threat to his or her personal safety, e.g. affidavits of persons who have relevant knowledge of the allegation concerned, proof of weapons available to the abuser, etc.
- **The court may issue** the *Domestic Violence Safety Monitoring Notice* to police ordering police to have private electronic contacts or physical visits with the victim to ensure the safety of the victim from the abuser.
- **The police must serve the abuser** with a copy of the *Domestic Violence Safety Monitoring Notice* within 24 hours of being assigned. However, information which may expose the victim to harm must not be disclosed to the abuser.

25. What happens when it is uncertain whether or not it was the abuser who published abusive content on social media to commit an act of domestic violence against the victim?

- The court may order the electronic communication service provider concerned to:
 - Furnish the particulars of the person from which the abusive communication or content originated;
 - Immediately remove the abusive communication or content;
 - Immediately disable access to this abusive content or a link to such abusive communication.
- A failure by the electronic communication service provider to comply with the court order amounts to a punishable offence.

26. What can be done to prevent the issuing of conflicting or dual protection orders?

- The court must, before issuing a protection order,;
 - Establish if there is no other application for protection order pending between the parties;
 - Ensure that the protection order does not conflict with any existing order;
- If there is a pending application between the parties, the court may order that both applications be dealt with together.



27. What happens when the abuser fails to appear before court on the return date?

- The court issues the final order in the absence of the abuser, if it is satisfied that:
 - Proper service was effected on the abuser.
 - There is sufficient evidence that the abuser has committed or is committing an act of domestic violence against the victim.

28. What happens when both the victim and abuser do not appear before court on the return date?

- The court must extend the interim protection order and the return date.
- The clerk of the court must notify both parties in a prescribed form of the extended date.

29. During proceedings, what protection is afforded to a victim when the abuser appears without legal representation?

- **Victims are often traumatised** by the tone used by the abuser when perpetrating or about to perpetrate an act of domestic violence.
- **The court may prevent** the unrepresented abuser from cross-examining the victim directly.
- **In this instance, the unrepresented abuser** will put his questions to the victim or any witness in a domestic relationship **via the magistrate**. The magistrate will repeat the question to the victim or the witness concerned.
- **A victim who is a child**, a person with mental disability or an older person may testify in a private testifying room via a CCTV system with an assistance of an intermediary.
- **A victim may attend any court proceedings** held in terms of this Act with no more than 3 persons for the purpose of receiving support.

30. When is the interim protection order in force?

- As soon as it is served upon the abuser.
- The interim protection order remains in force until it is set aside by court or substituted by a final order.

31. When must the final protection order be served on the parties?

The court must direct that:

- The original final order be served on the abuser as soon as reasonably possible.
- A certified copy of the final order and the original suspended warrant of arrest must be served on the victim. The victim will use the warrant should the abuser breach the terms of the order.

32. Will the abuser be arrested at the time of service with the protection order?

No, the abuser will only be arrested when he or she breaches the terms of the protection order after being served with such order.

33. What if the protection order is breached?

- **If the abuser breaches** the protection order by repeating the abuse, the victim may lay a criminal charge at the nearest police station.
- **The victim must complete** an affidavit and hand over the original warrant of arrest and a copy protection order to the police.
- **Depending on the circumstances** of the case, the police may then arrest the abuser.
- **Once arrested, the abuser** will face a criminal charge(s) and be tried in a criminal court for breaching the protection order.





34. Can I set aside the Order?

The protection order is valid for life. However, the victim may, at any time, make an application to have the order set aside. The court has a discretion as to whether or not the order must be set aside. Depending on the circumstances of the case, it is therefore possible for the court to refuse to cancel this order.

35. Can the criminal charge be withdrawn?

- **Once the victim has laid a criminal charge** against the abuser for breaching protection order, the matter is in the hands of the State.
- **Only a designated Senior Public Prosecutor** may withdraw such charge, provided that there are no risks of harm that the victim may be exposed to in the future.

36. Can the court grant bail for an accused person in the Domestic violence matter?

No victim of gender-based violence must die or suffer further violence from an accused person who was released on bail. The following measures were introduced to minimise or eliminate such risks and strengthen the victim-centric approach in court proceedings:

- **Police are not permitted** to release persons from police custody before the first appearance in court if they are accused of committing certain domestic violence offences. This includes persons charged for violating a domestic violence protection order.
- **Police are also not permitted** to grant police bail to persons in police custody accused of committing murder or attempted murder, including instances where such murder or attempted murder was the result of an act of domestic violence. There will be NO police bail in cases of femicide or any domestic murder.
- **No police bail is permitted** in cases of rape or compelled rape involving, among others, a child victim, a victim with a disability or a victim who is/ was in a domestic relationship with the accused.
- **No police bail is permitted** in cases of assault with intent to do grievous bodily harm against a child under the age of 16 years or a child who is 16 or 17 years old and the accused is 4 years older, and where the victim is or was in a domestic relationship with the accused.
- **During a bail application,** the accused must now inform the court not only of his/ her previous convictions, but also of any existing interim or final orders or pending charges of violation of domestic violence or harassment protection orders, and whether he/ she was a sentenced offender on correctional supervision or on parole at the time of the commission of the alleged offence.

- **When considering the interests of justice** before granting bail, a court must take the safety of the victim into consideration. This includes factors such as threats of violence or resentment by the accused against the victim, as well as the disposition of the accused to commit an offence against any person that the accused person is in a domestic relationship with, etc.
- **When granting bail** to an accused who is in a domestic relationship with the victim, the court must issue a protection order against such accused should there not be one in place.
- **In the event of an accused failing to observe any of the bail conditions**, the court will cancel the bail and order the bail money forfeited to the state. The accused will remain in jail until the case is finalised.
- **A court may also cancel the bail** if the accused, during the bail application, failed to disclose any existing interim or final domestic violence or harassment protection order or that he/she was a sentenced offender on correctional supervision or on parole at the time of the commission of the alleged offence.

37. Changes to sentencing in cases of domestic violence and femicide

- Courts will impose tougher sentences in cases involving the murder of children, as well as femicide, domestic murder and attempted murder.
- Rape or compelled rape cases perpetrated in domestic relationships will attract life imprisonment, as well as the rape or compelled rape of a child under the age of 18 years.
- Gang and serial rape will attract a sentence of life imprisonment.
- Tougher sentences will be imposed in cases of attempted murder and assault with the intention to cause grievous bodily harm against a victim in a domestic relationship with the accused.
- An abuser who is convicted of violation of protection order for a second or subsequent conviction, will be sentenced to a fine or imprisonment for a period not exceeding 10 years.

38. Under which circumstance can the court cancel the bail?

The court can cancel bail if the accused contravenes a condition in the protection order or fails to disclose, during bail proceedings, that there is a protection order against him or her.

39. What is the lifespan of the Protection Order?

- The protection order remains in force for life until:
 - It is set aside by court, or
 - Any of the parties dies

GBV Helpline Directory

Thuthuzela Care Centres

Thuthuzela Care Centres are one-stop facilities where a rape survivor receives medical, psychosocial and legal support. They have been introduced as a critical part of South Africa’s anti-rape strategy, aiming to reduce secondary victimisation, improve conviction rates and reduce the cycle time for finalisation of cases.

THUTHUZELA CARE CENTRES		CONTACT NUMBER	THUTHUZELA CARE CENTRES		CONTACT NUMBER
GAUTENG	Baragwanath/ Nthabiseng TCC George TCC Chris Hani Bara Hospital, Chris Hani Road, Diepkloof	0119331206	WESTERN CAPE	George TCC Chris Hani Bara Hospital, Chris Hani Road, Diepkloof George Provincial Hospital, Davidson Road, Glen Barrie, George	0448734858
	Kopanong TCC Kopanong Hospital, Duncanville, Vereeniging	0164285959		Heideveld TCC Kopanong Hospital, Duncanville, Vereeniging Heideveld Community Health Clinic, Heideveld, Cape Town	0216990474
	Laudium TCC Laudium Hospital & Community Health Centre	0123743710		Karl Bremer TCC Laudium Hospital & Community Health Centre Karl Bremer Hospital Cnr Mike Pienaar Boulevard & Frans Conradie Avenue, Belville	0219480861
	Lenasia TCC Lenasia Hospital, Lenasia South, Johannesburg	0112110632		Khayelitsha TCC Mamelodi TCC Khayelitsha Hospital, Lwandle Road, Site B, Khayelitsha	0213604570
	Mamelodi TCC Mamelodi Day Hospital	0128418413		Worcester TCC Masakhane TCC Worcester Hospital, Murray Street, Worcester	0233481294
	Masakhane TCC Tembisa Hospital, Tembisa	0119232180		Wesfleur TCC Sinakekelwe TCC Wesfleur Hospital, Wesfleur Circle, Atlantis	0215718043
	Sinakekelwe TCC Natalspruit Hospital	0119095832			

National Helpline Numbers

National GBV Helpline	0800150150
National Counselling Line	0861322322
Childline South Africa	0800055555
South African Police Service	10 111
Legal Aid	0800110110
People Opposing Women Abuse	011 642 4345
Rape Crisis	021 447 9762
Suicide Help	0800567567
The South African Depression and Anxiety Group	0800212223
AIDS Helpline	0800012322



The Department of Justice and Constitutional Development
Momentum Centre , 329 Pretorius street, (Corner Pretorius and Sisulu street)

Tel: 012 315 1111 www.justice.gov.za

