



Application for a Protection Order

(Domestic Violence Act 116 of 1998, as amended by DV Amendment Act 14 of 2021)



“IT IS THE PURPOSE of this Act to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby to convey that the State is committed to the elimination of domestic violence” (The Domestic Violence Act 116 of 1998 as amended by the Domestic Violence Amendment Act 14 of 2021)

- Any complainant/victim of domestic violence *may apply for a protection order on their own, without a legal representative and – without notifying the defendant/perpetrator.*
- ❖ During the whole Court process of applying for a protection order, the perpetrator will be called “the defendant”. The victim of domestic violence will be called “the complainant”.
- ❖ In this blog the perpetrator shall be referred to as the “defendant/perpetrator”. The victim shall be referred to as the “complainant/victim”

When you may apply for a protection order as a complainant/victim of domestic violence:

When the *defendant/perpetrator* commits any of the following acts of domestic violence against you as the complainant/victim:

- (a) Physically abuses you;
- (b) Sexually abuses you;
- (c) Causes you emotional, verbal or psychological abuse;
- (d) Economically abuses you;
- (e) Intimidates you;
- (f) Harasses you;
- (g) Sexually harasses you;
- (h) Abuses a person related to you;
- (i) Spiritually abuses you;
- (j) Causes damage to property;
- (k) Causes or commits abuse against an older person;
- (l) Is involved in coercive behaviour;
- (m) Is involved in controlling behaviour;
- (n) Exposes a child to domestic violence;
- (o) Enters your permanent or temporary residence without your consent, where you and that person do not share the same residence; or your workplace or place of study, without your consent, where you and that person do not share the same workplace or place of study; or
- (p) Is involved in any other behaviour of an intimidating, threatening, abusive, degrading, offensive or humiliating nature towards you, where such conduct harms you or causes you to believe that harm may be caused to you.



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Other related questions and answers:

Can a victim of domestic violence lodge a criminal complaint against the respondent/perpetrator?

In addition to the application for a protection order, if the act of domestic violence also amounts to a criminal offence, the *complainant/victim* have the right to lodge a criminal complaint against the respondent, at a police station of the area where the *complainant/victim* stay, study, work, run a business or where the abuse took place.

- *It is, however, not necessary to lay a criminal charge in order to obtain a protection order.*

What if there are domestic relationships between the complainant/victim & respondent/perpetrator?

The victim/complainant of domestic violence may apply for a protection order against the respondent/perpetrator, where:

- i. The complainant/victim was married to the respondent/perpetrator previously or currently;
- ii. The complainant/victim was in a living together relationship with, but is not married to the respondent/perpetrator
- iii. A respondent/perpetrator was a parent of the complainant/victim's child;
- iv. A perpetrator/respondent was a relative or family member by blood (e.g. mother, father or sibling), affinity (e.g. step-mother or step-father) or adoption;
- v. The complainant/victim was engaged to be married to, or was in a dating or customary relationship with the respondent/perpetrator; or
- vi. The complainant/victim was in a close relationship with the respondent/perpetrator.

Can a third party apply for a protection order on behalf of the complainant/victim?

Regardless of the provisions of any other law, the application for a protection order may, is brought on behalf of the complainant/victim by a functionary or another person. This includes a *counsellor, health service provider, member of the South African Police Service, social worker or teacher*, who has a material interest - including an interest in the economic, financial, physical, psychological, medical or emotional wellbeing of the complainant/victim.

The complainant/victim must however provide written consent, except in circumstances where the complainant/victim is: (a) a minor; (b) mentally retarded; (c) unconscious; or d) where the complainant/victim, in the opinion of the court, is unable to give consent.

- ❖ The consent form is known as **Form 7**

- A child, or any person on behalf of a child, may apply to the court for a protection order without the consent or assistance of a parent, guardian or any other person

What happens if the complainant/victim has a minor or dependent child?

If the victim has a minor or dependent child that is affected by the process of this application for a protection order; the court may refer the matter to:



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- a) The Family Advocate in its jurisdiction, requesting an investigation regarding the welfare of the minor child, or
- b) A designated social worker, requesting an investigation regarding the welfare of the minor child

Application process for a protection order

A. Where must the complainant/victim go to apply for a protection order?

Any *complainant/victim* of domestic violence may apply to the clerk of the court at a Magistrate court for a protection order. Please note:

The Magistrate court where the application is made must be:

- a) In the area where the *complainant/victim* stays, studies, is employed or operates a business – whether temporarily or permanently
- b) In the area where the perpetrator/respondent stays, studies, is employed or operates a business – whether temporarily or permanently
- c) In the area where the act of domestic violence occurred

- ❖ The application form for a protection order is known as a **Form 6**. The clerk of the Court will provide the form, as well as assist you with completing the form

B. Can the complainant/victim apply for a protection order without a legal representative/lawyer?

- Any complainant/victim of domestic violence *may apply for a protection order on their own, without a legal representative and – without notifying the defendant/perpetrator.*
- If the complainant/victim is not represented by a legal representative, the clerk of the court must:
 - (a) Hand to and explain to the complainant/victim the contents of an information notice known as **Form 8**, as well as explain the complainant/victim's
 - (b) Right to lodge a criminal complaint (at a police station) against the respondent/perpetrator, if a criminal offence has been committed by the respondent/perpetrator.
- *The complainant/victim can be represented by a legal representative during the application process. Where a victim/complainant cannot afford a legal representative, the complainant/victim can apply for legal aid or contact any non-government organisation.*

Can the complainant/victim submit additional evidence during the application?

The *complainant/victim* may submit supporting affidavits from persons who have knowledge of the domestic violence.

The clerk of the court must immediately submit **the** application (Form 6) and any supporting affidavits to the court.



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How can a complainant/victim specify to the court the type(s) of assistance needed?

In your application, you may request the court to prohibit the respondent/perpetrator from:

- a. committing or attempting to commit any act of domestic violence;
- b. getting the help of another person to commit any act of domestic violence;
- c. entering your workplace, place of study, home or the shared residence or any part thereof;
- d. preventing you or any child who normally lives in the shared residence from entering or remaining in the residence or any part thereof;
- e. contacting you in person or through someone or by electronic means;
- f. making known or available to others any communication about you by electronic means; or
- g. Committing any other act as may be specified by the court.

How can the court protect me as the complainant/victim of domestic violence?

To protect you and to provide for your safety, health and wellbeing, the court can:

- a) order that the respondent pay rent, mortgage/home loan or other monetary relief (such as medical, grocery and education expenses and loss of income)
- b) order that the respondent pays temporary maintenance of any child, person with a disability or older person in your care, who the respondent has a legal duty to maintain;
- c) refuse the respondent contact with your children;
- d) order the respondent to not harm or threaten to harm a household pet or other animal, the welfare of which affects your well-being;
- e) order the seizure of any weapon in the possession or under the control of the respondent, even if it is for work purposes;
- f) order that a peace officer accompany you to assist you with the collection of your personal property; or
- g) Impose any other condition as is reasonably necessary.

What happens after the application has been lodged?

1. As soon as an application for a protection order has been lodged to the clerk of the court, the court must consider the application as soon as possible. To do this the court may consider any additional evidence, including oral evidence or evidence by means of an affidavit.

2. An interim protection order (Form 12) will be issued if the Court is satisfied that there is enough evidence before the Court that:

- a) The respondent/perpetrator, referred to in this application,
 - i. is committing, or has committed an act of domestic violence; and
 - ii. that **undue hardship may be suffered by the** complainant/victim, and is suffering or may suffer harm as a result of such domestic violence **if a protection order is not issued immediately**
- b) The issuing of a protection order is immediately necessary to protect the complainant/victim against the harm as a result of such domestic violence



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- c) Notwithstanding the fact that the respondent/perpetrator has not been given notice of the proceedings, **issue an interim protection order** in the prescribed form against the respondent.
 - d) Upon the issuing of an interim protection order (Form 12), the court must direct that
 - i. certified copies of the application for a protection order and any supporting affidavit that accompanied the application; together with
 - ii. the record of any evidence noted in terms of subsection (1); and
 - iii. The original interim protection order issued is served on the perpetrator/respondent.
 - iv. A copy of the application and the record of any evidence must be served on the respondent/perpetrator together with the interim protection order
 - v. The court must direct that the perpetrator/respondent **must produce evidence to the court on the return date specified in the interim order, on why a final protection order should not be issued.**
3. The clerk of the court must immediately, upon the issuing of an interim protection order,
- i. notify the complainant/victim thereof; and
 - ii. capture a copy of the interim protection order on the integrated electronic database for protection orders
4. Upon service or upon receipt of a return of service of the protection order application, the record of any evidence and the interim protection order on the respondent/perpetrator, the clerk of the court must:
- a) capture the return of service in the integrated electronic repository;
 - b) notify the complainant thereof; and
 - c) prepare:
 - i. a certified copy of the interim protection order (Form 12); and
 - ii. the original warrant of arrest
- To be served on the complainant/victim in the prescribed manner.
5. Upon service or upon receipt of a return of service of the documents on the victim/complainant, the clerk of the court must:
- a) capture the return of service in the integrated electronic repository; and in the prescribed manner,
 - b) Forward certified copies of the interim protection order and of the warrant of arrest to the police station of the complainant/victim's choice.
- *Whenever a court issues an interim or final protection order, a warrant for the arrest of the respondent/perpetrator will be issued, but the execution of the warrant will be suspended subject to compliance with any prohibition, condition, obligation or order which the court may impose to prohibit the acts of domestic violence on the complainant/victim.*



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How long does the interim protection order (Form 12) remain valid?

- *An interim protection order is of force and effect from the time that the existence and content of the order have been served on the respondent/perpetrator.*
- *An interim protection order issued remains in force until it is set aside by a competent court.*

What happens if the court does not issue an interim protection order (Form 12)?

If the court does not issue an interim protection order,

- a) The court must direct the clerk of the court, to prepare certified copies of the application concerned and any supporting affidavits to be served on the respondent/perpetrator in the prescribed manner, together with a prescribed notice (Form 13) calling on the perpetrator/respondent to show cause on the return date specified in the notice why a protection order should not be issued.
- b) The clerk of the court must either telephonically or in writing or electronically,
 - i. notify the complainant/victim that the court has not issued an interim protection order and
 - ii. Notify the complainant/victim of the date he/she must return to court, when the application for a protection order will be heard
- c) Upon service or upon receipt of a return of service of the documents on the respondent/perpetrator, the clerk of the court must capture the return of service in the integrated electronic repository.

What happens if the respondent/perpetrator disobeys/breach the protection order?

If the respondent/perpetrator disobey/breach any specified prohibition, condition, obligation or order contained in a protection order, the complainant/victim may:

Go to his/her local police station and hand in the the original warrant of arrest together with a certified copy of the protection order. If the protection order and warrant of arrest are in an electronic form, they need not be certified.

A SAPS member will take down a written statement/affidavit (**Form 35**), wherein it must be stated that:

- a) the respondent has contravened a prohibition, condition, an obligation or order contained in the protection order;
- b) Specify the specific prohibition, condition, obligation or order contravened by the respondent; and
- c) Describe the manner in which or the extent to which the respondent has contravened the prohibition, condition, obligation or order.

WARNING:

It is a criminal offence to make a false statement in:

- a) an application for a protection order;
- b) an application for safety monitoring notice; and
- c) An affidavit stating that the respondent/perpetrator has disobeyed a protection order.



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How and when is a final protection order (Form 29) issued by the court?

1. If an interim protection was issued and the respondent/perpetrator does not appear on a return date stated in the interim protection and if the court is satisfied that:

- a) Proper service of the interim protection order has been effected on the respondent/perpetrator; and
- b) The application contains *sufficient* evidence that the respondent/perpetrator has committed or is committing an act of domestic violence; the court must issue a final protection order in the prescribed form **(Form 29)**.

2. If an interim protection was not issued and the respondent/perpetrator does not appear on a return date stated in the notice known as **Form 13** and if the court is satisfied that proper service has been effected on the respondent/perpetrator, the court must proceed to hear the matter and if the court after considering:

- a) any evidence previously received in terms of the application for a protection order **(Form 6)**; and
- b) Such further affidavits or oral evidence as it may direct, that was adduced during the hearing, which must form part of the record of the proceedings, finds, on a balance of probabilities, that the respondent/perpetrator has committed or is committing an act of domestic violence, the court must issue a final protection order in the prescribed form **(Form 30)**.

3. What happens if an interim protection was issued the respondent/perpetrator appears on the return date to oppose the issuing of a protection order?

If an interim protection was issued and the respondent/perpetrator appears on the return date stated on the interim order to oppose the issuing of a protection order, the court must proceed to hear the matter and:

- a) consider any evidence previously received with the application for a protection order (Form 6);
- b) consider such further affidavits or oral evidence as it may direct, which must form part of the record of the proceedings; and
- c) if there is a dispute of fact, the court:
 - i. May on application of the complainant/victim or the respondent/perpetrator adjourn the proceedings to any time and date on the terms and conditions which the court deems appropriate in order to afford the party concerned the opportunity to adduce further evidence; and
 - ii. Must extend the interim protection order.
- d) The Court must issue a Notice of next date of hearing (Form 32) and
- e) A notice to extend the interim protection order (Form 31)



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- f) Form 31 and Form 32 must be served by the clerk of the Court on both the complainant/victim as well as the respondent/perpetrator, either by hand, telephonically or electronically.

4. What happens if an interim protection order was issued and the respondent/perpetrator appears but the complainant/victim does not appear, or where both the respondent/perpetrator and the complainant/victim do not appear, on the return date?

If the respondent/perpetrator appears but the complainant/victim does not appear, or where both the respondent and the complainant/victim do not appear, on the return date, the court must extend the interim protection order, by issuing a Notice to extend the interim protection order (Form 31) and notice of next date of hearing (Form 32), and the clerk of the court must notify:

- a) the complainant/victim; or
 - g) The complainant/victim and the respondent/perpetrator, where both did not appear, either by hand, telephonically or electronically.
- *The court may discharge the interim protection order (issue Form 31) if the complainant/victim does not appear on the extended date.*

5. If an interim protection was not issued and the respondent/perpetrator appears (for the hearing) but the complainant/victim does not appear, or where both the respondent and the complainant/victim do not appear (for the hearing), on the return date

The court may, after due consideration of any evidence previously received in terms of the application for a protection order:

- i. set a new return date (issue Form 32), for the hearing of oral evidence; or
- ii. Discharge the matter (issue Form 31).

The clerk of the court must, in the prescribed form and manner, notify the parties, either by hand, telephonically or electronically.

6. If the clerk of the court is not able to serve the complainant/victim or the respondent or both the complainant/victim and the respondent/perpetrator, the clerk of the court must complete:

- a) a Form 40: a return of non-service; and
- b) A Form 41: request for authorisation of alternative manner of service, and approach the court for authorisation of an alternative manner of service. After the service has been effected, the clerk of the court must capture the Form 40 and Form 41 on the ICMS.

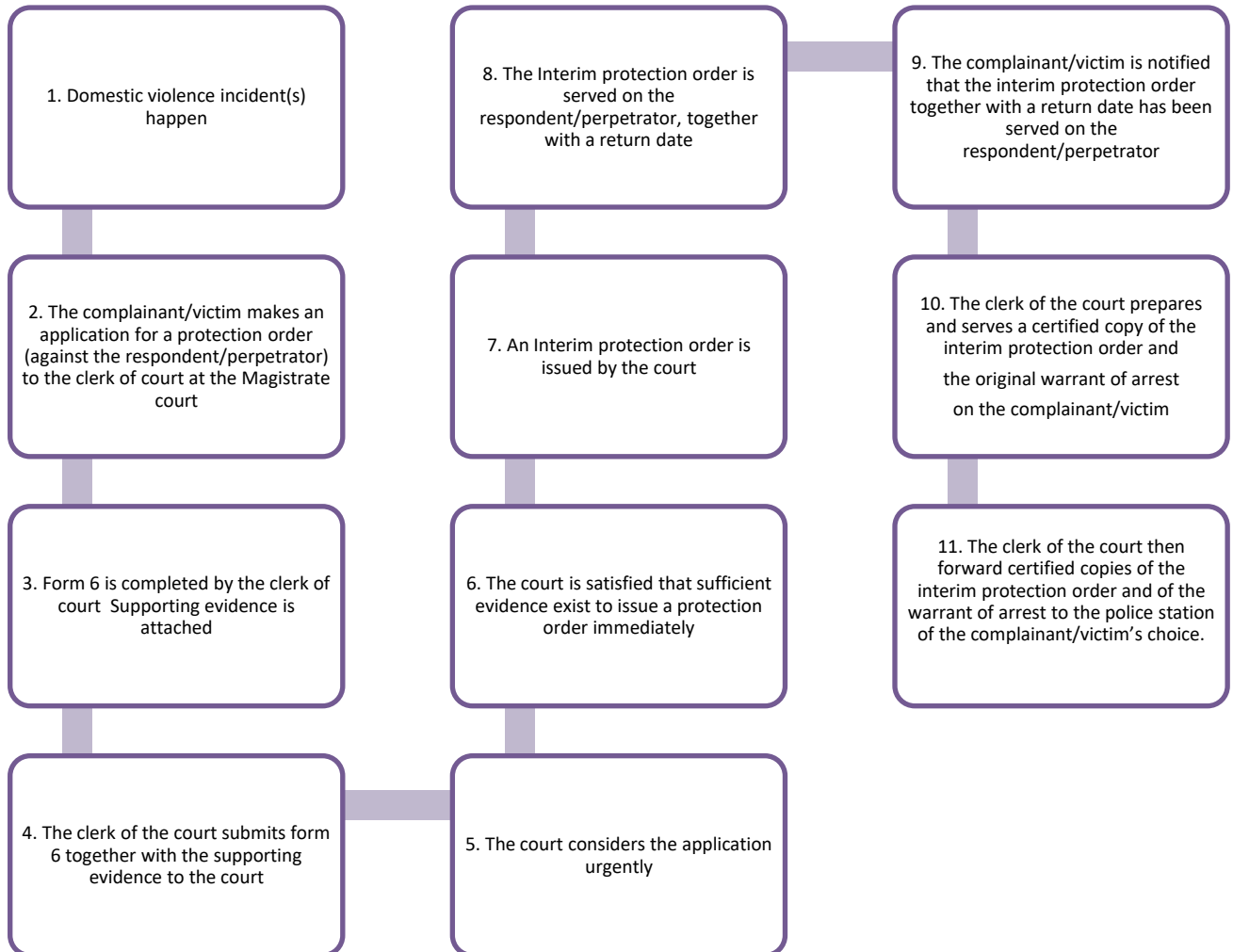


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Process flow: issuing of an interim protection order



Sources:

- Domestic Violence Act 116 of 1998
- Domestic Violence Amendment Act 14 of 2021
- Domestic Violence Regulations, 2022 (Gazette 3289: 2023)
- Domestic Violence Regulations, 2022: Amendment (Gazette 5966: 2025)