

DOMESTIC VIOLENCE ACT

WHAT IS DOMESTIC VIOLENCE?

Domestic Violence includes verbal, physical, sexual and psychological abuse between the members of a family or household. Abuse can be, for example, the malicious damaging of a person's property, placing fear into a person or sending someone unwanted messages. Domestic violence can take place between a man and a woman, a parent and a child, a sister and a brother etc.

If you are a victim of domestic violence, there is a law that was passed in November, 1996 which will try to protect women, children and men from being abused. The intention of the law is to lower the high rate of domestic violence. It includes protection, occupation and tenancy orders. This law allows the magistrate to protect members

of families from all forms of violence within the household and makes the abusers aware that there are ways to deal with their violent behaviour. This law is supposed to help police, social workers, government and non-governmental services to take cases of domestic violence seriously.

WHAT ARE THE ORDERS OF THE LAW?

There are three types of orders that can be used by a court to ensure the safety of a family member or members. These include a protection order, an occupation order and a tenancy order.

HOW DO THE ORDERS WORK?

Each of these orders may be made as **interim orders**. An interim order allows an order to be made without the accused having been served with a copy of the application. This can be done in cases where the magistrate is satisfied that an order should be made quickly because of danger to the safety of the victim. Interim orders will have effect for a short time, usually not more than two weeks, while the application for a full order is being dealt with.

WHAT IS A PROTECTION ORDER ?

A protection order is an order that the court makes to protect the victim and the victim's child/children from a violent person. The duration of the protection order is decided by the court [section 29 (1)].

WHAT IS AN OCCUPATION ORDER?

An occupation order is an order gives the right to the victim and the victim's child/children to live in the family home while an abuser must leave.

WHAT IS A TENANCY ORDER?

A tenancy order gives the right to the victim and the victim's child/children to live in a rented house while the abuser must leave.

WHERE AND HOW CAN I APPLY FOR AN ORDER?

Procedures for the Application for an Order

- all applications for protection orders have to be filed with the clerk of the magistrate's court. Application forms can be collected from the office of the magistrate...(example of Form 2 on page 24)
- the clerk will fix a date for the hearing. This hearing should take place no more than seven days after the application for an order has been filed.

- a copy of the application for an order and a notice of the proceedings must be given personally (or by any other means seen fit by the court) to the accused as soon as possible.
- if an application has been filed for a child under the age of sixteen or for a person suffering from a mental sickness, a copy of the application for an order and a notice of the proceeding must be personally served on the parent or guardian of that person.
- a notice must be served on the accused to appear in the court for a hearing [section 21(1)].

**WOULD I HAVE TO EXPLAIN THINGS
TO THE MAGISTRATE WITH
EVERYBODY LISTENING?**

- applications will be heard “in camera” . This means that everyone except the persons directly concerned with the hearing will leave the court room.
- no one is allowed to publish any part of the application proceedings.

If someone violates this rule, they may have to pay a fine of up to five thousand dollars [section 19(2)]. This rule does not apply to professional publications that may be used by legal or medical officials, psychologists or social workers [section 19(4)(a)-(b)].

SUPPOSING A CHILD IS TOO SHY TO TALK IN COURT OR AN ABUSED PERSON IS IN HOSPITAL ?

Evidence may be given in an affidavit, which is a sworn statement.

WHO CAN APPLY FOR AN ORDER ?

An order can be applied for by any of the following individuals:

- a person who is being abused by a family member or someone who lives with or close to her/him.
- the parent, guardian, approved social worker or police officer if the victim is a child under the age of sixteen or person suffering from a mental sickness
- a police officer
- an approved social worker (approved by the Minister by notice published in the *Gazette*)

**WHEN CAN I GET A PROTECTION ORDER ?
I MEAN WHAT KIND OF BEHAVIOUR WILL THE
MAGISTRATE CONSIDER VIOLENT ENOUGH
FOR AN ORDER?**

Protection Order

If the magistrate is satisfied that there has been or is likely to be domestic violence, a protection order can be made to restrain the abusive activities of a person towards another person. It can be made under the following circumstances [See section 5(1) (a), (b), (c), (d)]:

- The accused has committed a domestic violence offense and is likely to commit this offence again.
- The accused has threatened to commit a domestic violence offence and is likely to commit this offence.
- The accused has forcefully altered the mind of a person (through the use of drugs and/or alcoholic beverages)
- The accused has abused the physical or mental health, well-being or safety of a person.

[look at the list of actions the law names as domestic violence].

HOW WILL THE PROTECTION ORDER PREVENT THE ABUSE?

The protection order may [see section 6(1)(a)-(n)]:

- stop the abuser from being anywhere the victim lives, works, visits, or goes to school
- stop the abuser from harassing or mentally abusing the victim
- stop the abuser from speaking to or sending the victim any unwanted messages
- make the abuser give financial support for the welfare of the victim. The amount of support is determined by the court.
- provide for the guardianship and welfare of any involved child/children

- stop the abuser from taking away any personal property used by the victim
- make the abuser hand over any property that belongs to the victim.
- stop the abuser from getting another person to harass the victim (through sending unwanted messages or taking away property of victim)
- stop the abuser from committing any other acts of violence
- make the abuser get counseling

DOES THE MAGISTRATE EXAMINE ALL THE CIRCUMSTANCES OF MY SITUATION BEFORE MAKING AN ORDER ?

When making a protection order, the court will take into consideration the following [see section 7 (1) (a)-(f)]:

- the need to secure the health, safety and well-being of the victim
- the need to secure the health, safety and well-being of any involved child/children
- the need to secure the household and basic daily needs of the victim
- how the order may harm the abuser or any other person
- how the order may affect the financial situation of the abuser and the victim

WHEN THE MAGISTRATE MAKES AN ORDER, WILL HE/SHE WARN THE ABUSER?

Before an order is made by the court, the accused must be made aware of the following issues [section 28(a)-(c)]:

- the terms and conditions of the order
- what will happen if she/he does not follow these terms and conditions
- the ways in which the order may be changed or cancelled

SUPPOSE THE VIOLENT PERSON HONESTLY PROMISES THAT HE/SHE WILL NOT BE VIOLENT AGAIN?

The court may accept an undertaking (a signed promise), signed by the accused, stating that he/she will not do any acts that would be considered a domestic violence offence [section 5(4)] if no order was ever made against this person. (example of this form is on page 23).

IS IT POSSIBLE TO CHANGE ANYTHING IN AN ORDER AFTER IT IS MADE?

Any party involved in the protection order can apply for changes or cancellation of the order. If anyone applies for this, copies of the application must be given to all other affected parties including the victim and his/her lawyer and the accused. [Section 30](1)-(3).

Changes or variations to a protection or interim protection order must be applied for on form 5 at the office of the magistrate (example of this form is on page 27)

WHAT WILL HAPPEN IF THE ACCUSED BREAKS AN ORDER

If the accused does not follow the terms and conditions of the protection order or commits any other offence, he/she may be given a fine not more than ten thousand (G 10,000.00) and given a jail sentence of not more than twelve months[section 32 (b)].

WHAT IS INVOLVED IN OCCUPATION AND TENANCY ORDERS?

Occupation Order

When making a protection order, the court may also make an occupation order. As long as the occupation order is in force, the victim and all children involved will have the right to live in the household while the abuser must leave [section 9 (1) (2)].

Tenancy Order

When making a protection order, the court may also make a tenancy order. As long as the tenancy order is in force, the victim and any children involved will become the only tenants of a rented dwelling. Although the abuser must leave the dwelling, the court may order him/her to continue paying all of or some of the rent [section 12(1)].

Before the court make either an occupation or tenancy order, all people who own or who have an interest in the property affected by the order must be notified [section 14 (1)].

For the duration of the occupation or tenancy order, the court may also give the right to the victim to the use of all the property within the household, such as the furniture and the household appliances [section 15(a)-(c)].

IF AN INTERIM ORDER IS MADE, WHAT HAPPENS AFTER THAT?

When an interim order has been made, a hearing will take place to decide whether it should be dropped or replaced with a full order [section 27(1) (2)].

WILL THE ACCUSED HAVE TO ATTEND COURT BEFORE AN ORDER IS MADE?

The Hearing

- if the accused has been served with a summons and fails to show up for the hearing, the case may be heard without him/her or a new date may be set for the hearing and a warrant may be put out for the arrest of the accused [section 25(a),(b)].
- if the victim or the lawyer/representative of the victim fails to show up on the date of the hearing, the case may be dropped.
- if the court received a reasonable excuse from the victim or representative, a new date for hearing may be set. An affidavit may also be used in the absence of the victim and representative [section 26 (a)-(c)].

WHAT WILL BE THE ROLE OF THE POLICE?

Powers of Arrest

A police officer has the power to enter any household without a warrant, under the following circumstances [section 33 (1) (a),(b)]:

- if he/she suspects that the terms and conditions of a protection order have been broken
- if he/she has been invited into a home and suspects that a person (s) is in danger of being hurt, or has been hurt by someone else within that household
- if there are reasonable grounds to suspect that someone is in danger of suffering or is suffering from physical injury done by another person within the household.

An officer has the power to arrest someone without a warrant if the person is suspected of breaking a protection order [section 34].

CONSIDERATIONS FOR GRANTING BAIL

When the court is deciding whether or not given bail to the accused, the following things must be taken into consideration [section 35 (1) (a)-(e)]:

- the need to protect the health, safety and well-being of the victim
- the need to protect the health, safety, and well-being of any child/children involved
- what harm it would cause the accused or his/her family if the bail was not given
- the past criminal record of the accused

If bail is given to the accused:

Terms and Conditions Of Bail

- He/she may be asked by the court to report to a designated police station at a designated time [section 35 (2)].
- the accused may have to follow conditions that include not harassing or molesting the victim and /or children of the victim; not going to the place of education or workplace and household of the victim and/or the children of the victim; and if the accused continues to live, work or go to the same school as the victim and/or children of the victim, he/she must stay away while under the influence of drugs or alcohol [section 36 (1) (a)-(3)].

If the accused is suspected of breaking the terms and conditions of the bail, a police officer can re-arrest him/her without warrant [section 36(3)].

ISSUING A WARRANT

A warrant can be issued by the court if there is reason to suspect that someone is in danger of suffering or is suffering from physical injury by another person within the household.

A warrant can also be issued if a police officer has not been allowed to enter a household to give assistance to a victim of domestic violence. A warrant made by the court allows a police officer to enter the household and take any action needed to protect life and property within that household [section 37 (a), (b)].

POLICE PROTECTION AND ASSISTANCE FOR VICTIMS

In cases of domestic violence, police officers must take all necessary steps so that the victim will not be abused again.

These steps include [section 42 (a) – (e)]:

- making sure the victim receives all necessary medical attention
- making sure the victim gets to a safe place

- going with the victim to the home of the accused to collect any personal belongings
- letting the victim know the importance of keeping evidence of domestic violence
- Letting the victim know of his/her rights and of the services available for him/her.

As far as possible, a woman police officer should deal with female victims of domestic violence.

Detailed reports must be filed and recorded regarding all incidents of domestic violence. Police Officers are expected to organize suitable spaces in the stations to maintain the privacy of persons involved in domestic violence incidents.[section 43 (1)-(3)].

DOES THIS LAW MAKE ANY OTHER ARRANGEMENT TO STOP DOMESTIC VIOLENCE?

The director of Human Services in the Ministry of Labor, Human Services and Social Services is responsible for [section 44(1) (a)-(i)]:

- community education programs for the prevention of domestic violence
- putting together reports on domestic violence within the country raising public awareness of the needs of victims and families suffering domestic violence

- encouraging change within the policies of government in dealing with the needs of victims of domestic violence
- establishing support services for victims of domestic violence
- establishing support services for children living homes where there is domestic violence
- educating police officers to deal with cases of domestic violence, providing education and rehabilitation for abusers.

***Names/Agencies that can offer information/
advice/counseling***

Director of Human Services

Ministry of Labor, Human Services & Social Security

Cornhill & Water Streets, Stabroek,

Georgetown.

Tel: 225-6545; 225-6202

Legal Aid

Maraj Building

Charlotte & King Streets

Tel: 226-1257/59246/
59238

Women's Affairs Bureau

Ministry of labor, Human Services &
Social Security

Cornhill & Water Streets, Stabroek

Georgetown

Tel: 225-4362

Help & Shelter

Ministry of Labor, Human Services & Social Security

Homestretch Avenue, Durban Park

Georgetown

Tel: 225-4731/227-3454

Red Thread

72 Adelaide & Princess Street, Charlestown

Georgetown

223-6254

Telephone/Fax: 227-7010/

Kamal International

Albion, Corentyne, Berbice

Churches/Union /Probation & Welfare

Officers/ Women's Organizations/

Regional Authorities

SAMPLES OF FORMS TO BE USED WITHIN THIS LAW

SCHEDULE
FORM 1

(Section 5(4))

UNDERTAKING

IN THE MAGISTERIAL DISTRICT MAGISTRATE'S COURT

An application having been made by.....

(name of applicant)

under section 5the Domestic Violence Act, 1996 for a Protection Order/
Interim Protection Order to be made by the magistrate of the district
against me

.....of.....

(Name of respondent)

(address of respondent)

Now I hereby undertake to refrain from

(Specify details of conduct to be refrain from)

Dated theday of199.....

.....

Respondent

.....

.....

Magistrate

Magisterial District

FORM 2

(Section 17)

APPLICATION FOR PROTECTION ORDER/
INTERIM PROTECTION ORDER

IN THE MAGISTERIAL DISTRICT MAGISTRATE’S COURT

I.....

(Name of applicant)

of.....

(Address)

hereby apply under section 5 of the Domestic Violence Act, 1996 for a Protection Order/Interim Protection Order to be made by the Magistrate of the district against

.....who is

(name of respondent)

.....
(specify relationship to the named respondent)

who resides at

(specify address of respondent)

in respect of the following conduct:

(specify details of alleged conduct)

.....

Applicant

Dated the day of199.....

(Section 21(1))

FORM 3
NOTICE OF PROCEEDINGS

IN THE MAGISTERIAL DISTRICT MAGISTRATE'S COURT
BETWEEN

APPLICANT

Vs

RESPONDENT

To the respondent

An application under section 5 of the Domestic Violence Act, 1996 for a Protection Order/Interim Protection Order has been made by against you.

(Name of applicant)

A copy of the application is attached. The application has been set down for hearing on

.....19..... at at
(date) (Time)

.....
(Place)

If you do not appear in person at the hearing of the application, the Court may-

- (a) deal with the application in your absence; or
- (b) issue a warrant for your arrest to be brought before the court.

.....
Clerk of the Court of the district

Dated the day of of 199.....

FORM 4 (Section 21 (4))

AFFIDAVIT FOR USE IN PROVING SERVICE OF PROCESS

NO.....

Return of the service of process in respect of Domestic Violence offense for the Court.

Name of Applicant	Name of Respondent	Document Served	Date of Service	Place of Service	Mode of Service

I do swear that the above Return of services is true and in accordance with the facts of such Service.

.....
(Deponent)

Sworn before me at)
This day of 199)

.....
Commissioner of Oaths

FORM 5

(section 30)

APPLICATION FOR VARIATION OR REVOCATION OF PROTECTION ORDER OR INTERIM PROTECTION ORDER

IN THE MAGISTERIAL DISTRICT MAGISTRATE 'S COURT

Between

Applicant

Vs

Respondent

I

.....
(name of applicant)

hereby apply for a variation/revocation of Order made against

.....
(name of person against whom the Order was made)

Onby the
.....court.

(a copy of which is attached to the said application) in respect of certain
conduct or threatened conduct towards

.....
(name of person who is protected by the Order)

There have been no previous proceedings in any court in respect of the
said order and I now ask for a revocation or variation of that order to be
made.

(specify details of variation)

.....
Applicant

Dated theday of199.....

FORM 6

SECTION 31(3)(a)

PROTECTION ORDER OR
INTERIM PROTECTION ORDER

IN THE MAGISTERIAL DISTRICT MAGISTRATE'S COURT
Between

Applicant

VS

Respondent

The court having heard an application by
..... under the Domestic Violence Act, 1993 in respect of the
(name of applicant)
conduct (or threatened conduct) of
(name of respondent)
towards
(name of person to be protected)

Now this court orders that for
(period)

- 1. not engage in the following conduct:
(name of respondent)
(specify the conduct)
- 2.comply with the following prohibitions and conditions.
(name of respondent)

(specify the prohibitions and conditions and any other period or periods
for which they are imposed)

Signed this day of 199

.....
Magistrate Magisterial District

FORM 7

(SECTION 31(3)(b))

ORDER VARYING PROTECTION ORDER
or INTERIM PROTECTION ORDER

IN THE MAGISTERIAL DISTRICT MAGISTRATE'S COURT
BETWEEN

Applicant

VS

Respondent

The Court having heard an application by

.....
(Name of applicant)

under the domestic violence Act, 1993 in respect of the conduct (or
threatened conduct) ofTowards

(Name of respondent)

.....
(Name of person to be protected)

1. not engage in the following conduct:
(name of respondent)

2. Comply with the following Prohibitions and Conditions.
(name of respondent)

(specify the prohibitions and conditions and any other period or periods for which
they are imposed)

Now the court on the application of this
(Name of applicant)

day orders that the Protection Order (or Interim Protection Order) be
varied as follows:

(specify details of Variation)

Signed this Day of 199.....

.....

Magistrate

Magisterial District

