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The following Bill which will be introduced in the National Assembly is published for general information.

F.A. Narain,
Clerk of the National Assembly.



GUYANA

BILL No. 6 of 1996

DOMESTIC VIOLENCE BILL 1996

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A BILL
Entituled

AN ACT to afford protection in cases involving domestic violence by the granting of a protection order; to provide the police with powers of arrest where a domestic violence offence occurs and for matters connected therewith or incidental thereto.

Enacted by the Parliament of Guyana:-

A.D. 1996

PART I
PRELIMINARY

1. This Act may be cited as the Domestic Violence Act 1996,

Short title.

2. In this Act -

Interpretation.

- (a) "applicant" means any person who applies for an order pursuant to this Act;
- (b) "child" means a person under the age of eighteen years;
- (c) "clerk" means the clerk of the court;
- (d) "cohabitants" are a man and woman who, although not married to each other, are living together as husband and wife, and "former cohabitants" shall be construed accordingly, but does not include cohabitants who have subsequently married each other;
- (e) "court" means a court of summary jurisdiction;
- (f) "domestic violence offence" means a prescribed offence committed by a person against a person with whom he is associated or a relevant child;
- (g) "drug" means a substance or product for the time being specified in the First, Second or Third Schedule to the Narcotics Drugs and Psychotropic Substances (Control) Act 1988;
- (h) "harassment" includes -
 - (i) the intimidation of a person by -
 - (A) persistent verbal abuse;
 - (B) threats of physical violence;
 - (C) the malicious damage to the property of a person;
 - (D) inducing fear of physical or psychological violence; or

No. 2 of 1988

- (E) any other means;
- (ii) the persistent following of a person from place to place;
- (iii) the hiding of any clothing or other property owned by or used by a person or the depriving of a person of the use thereof or the hindering of a person in the use thereof;
- (iv) the watching or besetting of the house or other places where a person resides, works, carries on business or happens to be or the watching or besetting of the premises that are the place of education of a person, or the watching or besetting of the approach to the house, other place or place of education;
- (v) the making of persistent unwelcome telephone calls to a person;
- (vi) using abusive language to or behaving towards a person in any other manner which is of such a nature and degree as to cause annoyance to, or result in ill-treatment of that person;
- (i) "health" includes physical or emotional health;
- (j) "household residence" means the dwelling house that is or was used habitually by the respondent and the person named in the order, or either of them;
- (k) "intimidation" means any act or expression which, when used repeatedly, has the effect or exerting undue pressure on a person who, for fear of suffering emotional or physical injury to himself or property, is forced to perform an act against his will;
- (l) "occupation order" means an order made under section 8 and includes an interim order, made under that section;
- (m) "parent" means a person who is a parent or grandparent by -
- (i) blood;
- (ii) marriage; or
- (iii) adoption,

and includes a guardian or any person who has actual custody of a child, and "parental responsibility" shall be construed accordingly;

(n) "police officer", notwithstanding anything in the Police Act, means any member of the Police Force;

Cap. 16:01

(o) "prescribed offence" means -

- (i) murder or attempted murder;
- (ii) manslaughter;
- (iii) the use or threatened use of any other violence or physical or emotional injury;
- (iv) a rape offence within the meaning of the Criminal Law (Offences) Act;

(p) "protection order" means an order made under section 5 and includes an interim order made under that section;

Cap. 8:01

"psychological abuse" includes a repeated or habitual pattern of conduct which is performed to the dishonour, discredit or scorn of the personal worth of a person, unreasonable limitation to access and handing of common property, blackmail, repeated or habitual vigilance, isolation, deprivation of access to adequate food or rest, deprivation of custody of sons or daughters, threats of destruction of custody of sons or daughters or destruction of objects held in esteem by the person, except those that privately belong to the respondent;

(r) "relevant child" means -

- (i) any child who is living with or might reasonably be expected to live with either party to the proceedings; and
- (ii) any other child whose interests the court considers relevant;

(s) "respondent" means a person against whom an application is made;

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- (t) "tenancy order" means an order made under section 11 and includes an interim order made under that section;
 - (u) "tenant", in relation to any dwelling house, includes any person -
 - (i) whose tenancy has expired or has been determined; and
 - (ii) who is for the time being deemed under or by virtue of any enactment or rule of law to continue to be the tenant of the dwelling house,and the term "tenancy" has a corresponding meaning.

Associated persons.

3. (1) For the purposes of this Act a person is associated with another person if -
- (a) they are or have been married to each other;
 - (b) they are cohabitants or former cohabitants;
 - (c) they are or have engaged in a habitual relationship of a sexual nature;
 - (d) they live or have lived together in the same household, otherwise by reason of one of them being the other's employee, tenant, lodger or boarder,
 - (e) they are relatives;
 - (f) they have agreed to marry one another, (whether or not the agreement has been terminated); or
 - (g) in relation to any child, they are persons falling within subsection (2).
- (2) A person falls within this subsection in relation to a child if -
- (a) he is a parent of the child; or
 - (b) he has or has had parental responsibility
- (3) In the case where the child has been adopted, two persons are associated with each other for the purposes of this Act if -

- (a) one is a natural parent of the child or a parent of such a natural parent; and
 - (b) the other is the child or any person -
 - (i) who has become a parent of the child by virtue of an adoption order or who has applied for an adoption order; or
 - (ii) with whom the child has at any time been placed for adoption.
- (4) A body corporate and another person shall not by virtue of subsection (1) (g) be regarded for the purposes of this Act as associated with each other.

PART II

PROTECTION ORDERS, OCCUPATION ORDERS AND TENANCY ORDERS

An application for a protection order may be made by any of the following -

Parties who may apply for protection orders.

- (a) a person associated with the respondent;
- (b) where the alleged conduct involves a child under sixteen or a person suffering from a mental disability -
 - (i) a person with whom the child or person normally resides or resides on a regular basis;
 - (ii) a parent of the child or person;
 - (iii) a qualified social worker approved by the Minister

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by notice published in the
Gazette; or

(iv) a police officer;

(c) a police officer;

(d) a qualified social worker approved by
the Minister by notice published in the
Gazette.

(2) Where the applicant is a person other than
the person on whose behalf the application is made, the
person on whose behalf the application is made shall be a
party to the proceedings, save that if that person is a
child under sixteen or suffers from a mental disability,
the parent of that person shall be a party to the
proceedings, as long as such parent is not the respondent.

(3) A child under the age of sixteen may with
leave of the court apply for a protection order but such
leave shall not be given unless the court is satisfied
that the child has sufficient understanding to make the
proposed application.

(4) For the purposes of this section "conduct"
means conduct in respect of which a protection order may
be made under section 5.

5.(1) Where, on an application made in accordance
with this Act, the court is satisfied, on a balance of
probabilities, that -

(a) the respondent has engaged in
conduct that constitutes a domestic
violence offence and unless the

Protection
order of
under-
taking.

respondent is restrained, the respondent is likely to engage in further conduct that would constitute that or another domestic violence offence;

(b) the respondent has threatened to engage in conduct that would constitute a domestic violence offence and, unless the respondent is restrained, the respondent is likely to engage in conduct that would constitute that or another domestic violence offence;

(c) the respondent has induced or forced the applicant or the person for whose benefit the order would be made without that person's consent, to be drugged with a substance or any other means that alters the will of the person, or to become intoxicated with alcoholic beverages, or has reduced such person's capacity to resist, by means of hypnosis, depressants, stimulants or by similar means or substances; or

(d) the respondent has engaged in harassment or psychological abuse of the applicant or the person for whose benefit the order would be made which constitutes a threat to the health, safety and well-being of that person,

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the court shall, subject to this section, make a protection order restraining the respondent from engaging in such conduct or in any other conduct referred to in this section.

(2) The court, when making a protection order, may impose one or more of the prohibitions or conditions specified in section 6.

(3) Where the court is satisfied that it is necessary in order to ensure the safety of the applicant or the person for whose benefit the order would be made pending the hearing and determination of the application to make an interim protection order the court may make such an order whether or not the application has been served on the respondent.

(4) Where the court is satisfied that a previous protection order has not been made against and no undertaking has been given by the respondent the court may at any time before a protection order is made accept from the respondent a signed undertaking in Form 1 in the Schedule that he shall refrain from engaging in conduct of the nature specified in the application and in conduct that would constitute any domestic violence offence:

Form 1

Provided that no undertaking shall be accepted if an allegation is made against the respondent of conduct referred to in subsection 1(a).

(5) An undertaking given under this section may deal with such other matters that may be dealt with in a protection order as the court sees fit having regard to the matters referred to in section 7.

(6) An undertaking given under this section and any matters dealt with in that undertaking shall remain in force for the period stated in the undertaking.

(7) Sections 28, 30 and 32 apply, with such modifications as may be necessary, in relation to an undertaking as they do to a protection order.

(8) The court is not precluded from making a protection order by reason of an undertaking being in force under a previous application.

6.(1) Subject to this Act, a protection order may -

Provisions in protection order.

- (a) prohibit the respondent from being on premises in which a person named in the order resides or works;
- (b) prohibit the respondent from being on premises that are the place of education of a person named in the order;
- (c) prohibit the respondent from being on premises specified in the order, being premises frequented by a person named in the order;
- (d) prohibit the respondent from being in a locality specified in the order;
- (e) prohibit the respondent from engaging in harassment or psychological abuse of a person named in the order;

- (f) prohibit the respondent from speaking or sending unwelcome messages to a person named in the order;
- (g) direct the respondent to make such contribution to the welfare of a person named in the order as the court thinks fit;
- (h) provide for custody and maintenance of children;
- (i) prohibit the respondent from taking possession of specified personal property, being property that is reasonably used by a person named in the order;
- (j) direct the respondent to return specified personal property that is in his possession or under his control which belongs to a person named in the order;
- (k) prohibit the respondent from causing another person to engage in the conduct referred to in paragraph (e), (f) or (i);
- (l) specify conditions subject to which the respondent may be on premises or in a locality specified in the order;
- (m) direct the respondent to do or to refrain from doing any other act or acts which the court in the circumstances of the case considers relevant;

(n) provide that the respondent seek appropriate counselling or therapy from a person or agency approved by the Minister by notice published in the Gazette.

(2) The court may make an order that includes a prohibition of the kind referred to in subsection (1)(a) or (i) notwithstanding any legal or equitable interests the respondent might have in the property comprising the premises or in the property to which the prohibition of the kind referred to in subsection (1)(i) relates.

7.(1) In determining whether to impose one or more of the prohibitions or conditions specified under section 6, the court shall have regard to the following -

Matters to be taken into account.

- (a) the need to secure the health, safety and well-being of the applicant or the person for whose benefit the order is made;
- (b) the need to secure the health, safety and well-being of any relevant child;
- (c) the accommodation needs of the applicant or the person for whose benefit the order is made;
- (d) any hardship that may be caused to the respondent or to any other person as a result of the making of the order;
- (e) the income, assets and financial obligations of the respondent and

of the applicant or the person for whose benefit the order is made;

(f) any other matter that, in the circumstances of the case, the court considers relevant.

(2) In having regard to the matters referred to in subsection (1), the court shall consider the matters referred to in subsection (1)(a) and (b) as being of primary importance.

Occupation order.

8.(1) The court when making a protection order or an interim protection order may also make an occupation order or an interim occupation order, as the case may be, granting the person named in the order for such period or periods and on such terms and subject to such conditions as the court thinks fit, the right to live in the household residence or any other premises forming part of the household residence.

(2) The court may make an order under subsection (1) only if the court is satisfied that such an order -

(a) is necessary for the protection of the applicant or the person for whose benefit the order is made; or

(b) is in the best interests of a relevant child.

(3) An interim occupation order made while the person for whose benefit the order is made and the respondent are living together in the same household residence shall expire -

(a) on the discharge of the order by the court;

(b) on the discharge of an interim protection order.

(4) Where an interim occupation order is made the respondent may apply immediately for variation or discharge of that order.

9.(1) Where an occupation order or interim occupation order is made, the person to whom it relates shall be entitled, to the exclusion of the respondent, to occupy the household residence to which that order relates.

Effect of occupation order.

(2) Every occupation order shall have effect and may be enforced as if it were an order of the court for possession of the household residence in favour of the person to whom it relates.

10. The court may if it thinks fit on the application of either party, make an order -

Variation or discharge of occupation order.

(a) extending or reducing any period specified by the court pursuant to section 8(1); or

(b) varying or discharging any terms and conditions imposed by the court pursuant to that subsection.

11.(1) The court when making a protection order or an interim protection order may also make a tenancy order or an interim tenancy order, as the case may be, vesting in the person named in the order, the tenancy of

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any dwelling house which, at the time of the making of the order -

(a) the respondent is either the sole tenant of or a tenant holding jointly or in common with the person named in the order; and

(b) is the household residence of the person named in the order or the respondent.

(2) The court may make an order under subsection (1) only if the court is satisfied that such an order -

(a) is necessary for the protection of the applicant or the person for whose benefit the application is made; or

(b) is in the best interests of a relevant child.

(3) An interim tenancy order made while the person concerned and the respondent are living together in the same household residence shall expire -

(a) on the discharge of the order by the court;

(b) on the discharge of an interim protection order.

(4) Where an interim tenancy order is made the respondent may apply immediately for variation or discharge of that order.

Effect of
tenancy
order.

Where a tenancy order or interim tenancy order is made, the person to whom it relates shall, unless the tenancy is sooner determined, become the tenant of the dwelling house upon and subject to the terms of the tenancy in force at the time of the making of the order and the respondent shall cease to be the tenant:

Provided that the court may order that the respondent contribute to the payment of rent, such amount as the court thinks fit.

(2) Every tenancy order shall have effect, and may be enforced as if it were an order of the court for possession of the dwelling house in favour of the person to whom it relates.

(3) Nothing in this Act or in any tenancy order -

(a) limits or affects the operation of any enactment or rule of law for the time being applicable to any tenancy to which a tenancy order applies, or to the dwelling house held under the tenancy;

(b) authorises the court to vary, except by vesting the tenancy pursuant to this section or re-vesting the tenancy pursuant to section 13, any express or implied term or condition of the tenancy.

13. The court may, if it thinks fit on the application of either party or the personal representative of either party, make an order (in this section referred to as an order for discharge and re-vesting) -

Power to discharge tenancy order and re-vest tenancy.

provision
relating to
possession
order
tenancy
order

Power to
discharge
tenancy
order and
re-vest
tenancy.

to as a revesting order) revesting the tenancy accordingly.

Procedure relating to occupation and tenancy orders.

(2) Where a revesting order is made under subsection (1), the person in whose favour it is made shall, unless the tenancy is sooner lawfully determined, become the tenant of the dwelling house upon and subject to the terms and conditions of the tenancy in force immediately before the date on which the revesting order was made.

14.(1) Before making any occupation order (other than an interim occupation order) or any tenancy order (other than an interim tenancy order) the court shall direct that notice be given to any person having an interest in the property which would be affected by the order.

(2) The person referred to in subsection (1) shall, upon being notified pursuant to that subsection, be entitled to appear and to be heard.

Power of court to make ancillary orders.

15.(1) On or after making an occupation order or a tenancy order the court may, subject to subsection (2), make an order granting to the person named in the order the use, for such period and on such terms and subject to such conditions as the court thinks fit, of all or any of the

- (a) furniture;
- (b) household appliances; and
- (c) household effects, in the household residence or other premises to which the occupation order relates.

Power of court to make ancillary orders.

(2) Notwithstanding subsection (1), an order made under that subsection shall expire if the occupation order made in relation to the household residence or other premises or the tenancy order made in relation to the dwelling house expires or is discharged.

16.(1) Where an agreement, including a mortgage or a lease of premises, provides that if the respondent ceases to reside in his place of residence, a person may take action that would be prejudicial to the interest of the respondent or a member of the respondent's family, the person is not entitled to take that action if the respondent ceases to reside in the place of residence in compliance with an order made under this Act.

(2) Where the court is satisfied on evidence before it that an agreement referred to in subsection (1) exists in relation to the respondent, the court shall, at the time of making an order, direct that a copy of the order be sent to the person referred to in subsection (1), by the clerk of the court.

17. An application for a protection order shall be made in Form 2 in the Schedule and shall be filed with the clerk.

18.(1) Proceedings in respect of an application shall be heard in camera unless the court otherwise directs.

(2) Except as otherwise provided by this Act, the Summary Jurisdiction (Procedure) Act shall apply mutatis mutandis in respect of proceedings on an application.

Provisions relating to occupation and tenancy orders.

Form of application. Form 2

Procedure.

Cap. 10:02

10-1-1980
10:02:58

Restrictions on publication.

19.(1) Subject to subsection (4), no person shall publish any report of proceedings under this Act (other than criminal proceedings), except with the leave of the court which heard the proceedings.

(2) Every person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(3) Nothing in this section limits -

(a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(b) the power of the court to punish any contempt of court.

(4) This section shall not apply to the publication of any report in any publication that -

(a) is of a bona fide professional or technical nature; or

(b) is intended for circulation among members of the legal or medical profession, officers of the public service, psychologists, marriage counsellors or social workers.

Date for hearing.

20. The clerk shall fix a date for the hearing of an application for a protection order which date shall be no more than seven days after the date on which the application is filed.

21.(1) Where an application has been filed with the clerk, a copy of the application together with notice of proceedings in Form 3 in the Schedule shall, as soon as practicable, be served personally on the respondent.

Service.

Form 3

(2) Where an application filed is in respect of a child under sixteen or person suffering from a mental disability a copy of the application together with notice of the date on which and time and place at which the application is to be heard shall, as soon as practicable, be served personally on -

(a) the parent with whom the child under sixteen or person suffering from a mental disability normally resides or resides on a regular basis; or

(b) where the child under sixteen or person suffering from a mental disability does not normally reside or does not reside on a regular basis with the parent, on the person with whom the child under sixteen or person suffering from a mental disability normally

(3) A notice of the proceedings which is issued and served under this Part is deemed to be a summons that is duly issued and served under the Summary Jurisdiction (Procedure) Act and the respondent shall appear in court to answer the application as if it were a complaint to which that Act applies.

Cap. 10:02

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(4) Any notice of proceedings issued under this Part may be served by the applicant or his agent and the court may, at its discretion, receive proof of such service by affidavit in Form 4 in the Schedule.

Form 4

Service other than personal service.

22. Where it appears to the court that it is not reasonably practicable to serve a copy of an application or an order personally the court may -

(a) order that the copy of the application for the protection order or the copy of the protection order itself, be served by such other means as the court thinks just; or

(b) make an order for substituted service.

Affidavit evidence.

23.(1) Evidence on an application for a protection order may be given on affidavit.

(2) Unless a party to the proceedings or the court so requires, it is not necessary to call a person who made an affidavit pursuant to subsection (1) to give evidence.

Adjournment.

24. Where the hearing of an application is adjourned by reason of the fact that the application and the notice of proceedings have not been served on the respondent, the date, time and place fixed by the court for the adjourned hearing shall be the date, time and place stated in the notice of adjourned proceedings.

25. Where notice of the proceedings has been served on the respondent in accordance with section 21 and the respondent fails to appear in person at the court at the time fixed for the hearing of the application of the protection order, the court may -

Procedure in the absence of respondent.

- (a) proceed to hear and determine the matter in the respondent's absence; or
- (b) where the court is satisfied having regard to the material before it that it is appropriate to do so, adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the court.

26. Where, on the date of the hearing of the application, the respondent appears in court, but neither the applicant nor the person on whose behalf the application is made appears either in person or by his attorney-at-law, the court may -

Procedure in the absence of applicant.

- (a) ~~dismiss the application;~~
- (b) having received a reasonable ~~excuse for the non-appearance~~ of either party adjourn the hearing of the application upon such terms as the court may think just; or

(c) where the court is satisfied having regard to the material before it that it is appropriate for evidence to be given by affidavit, the court may so direct, but the court shall on the application of any other party order the attendance for cross examination of the person making any such affidavit.

Interim orders.

27.(1) Every interim order made under this Act

shall specify a date (which shall be as soon as reasonably practicable thereafter) for a hearing on whether an order should be made in substitution for the interim order.

(2) The copy of any such interim order which is served on the respondent shall notify the respondent that unless the respondent attends on the specified date to show cause why an order should not be made in substitution for the interim order, the court may discharge the interim order and make an order in substitution therefor.

(3) At the hearing referred to in subsection (1) the court may -

(a) discharge the interim order; or

(b) discharge the interim order and make an order in substitution therefor; or

(c) on good cause being shown, adjourn the hearing to such date and place as the court may specify.

(4) Where a hearing is adjourned under subsection (3)(c) the court shall, at the adjourned hearing, exercise either the power conferred by paragraph (a) or by paragraph (b) of that subsection.

(5) In this section -

(a) "interim order" means an interim protection order, an interim occupation order or an interim tenancy order, as the case may be;

(b) "order" means a protection order, an occupation order or a tenancy order, as the case may be, not being an interim order.

28. Where the court proposes to make an order or orders under this Act and the respondent is before the court, the court shall before making the order or orders explain to the respondent -

Explaining proposed order to respondent.

(a) the purpose, terms and effect of the proposed order or orders;

(b) the consequences that may follow if the respondent fails to comply with the terms of the proposed order or orders; and

(c) the means by which the proposed order or orders may be varied or revoked.

Duration
of pro-
tection
order.

29.(1) A protection order may be made for such period as may be specified by the court.

(2) Where a protection order contains a prohibition of the kind specified in section 6, the court may specify different periods, being periods none of which exceeds the period during which the order remains in force as the period for which each prohibition or condition is to remain in force.

(3) Subject to subsection (4) an interim protection order shall remain in force for such period not exceeding fourteen days as the court shall specify in the order.

(4) Where the court adjourns the hearing of an application for a protection order and an interim protection order is in force, the court may extend the period for which an interim order is to remain in force until the date fixed for the further hearing of the application.

(5) An interim protection order ceases to be in force -

(a) when a protection order is made on that application and the respondent is present at the time the protection order is made;

(b) when a protection order is made on that application but the respondent is not present at the time the protection order is made, when the when the application is dismissed.

30.(1) Where a protection order or an interim protection order is in force a party to the proceedings in which the order was made may apply to the court in Form 5 in the Schedule for an order varying or revoking the order.

Variation and revocation of protection order. Form 5

(2) On an application under subsection (1) the court may by order vary or revoke the protection order or interim protection order.

(3) A copy of an application under this section shall be served personally on each person who was a party to the proceedings in which the original order was made.

(4) In determining whether to vary or revoke a protection order the court shall have regard to the matters specified in section 7.

31.(1) Where a protection order or an interim protection order is made or varied by the court, the clerk shall arrange for an order in the prescribed form to be formally drawn up and filed in the court.

Form and service of protection order.

(2) A copy of an order made under subsection shall be served by the applicant or his agent -

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- (a) personally on the respondent;
- (b) on any other person who was a party to the proceedings; and
- (c) on a police officer who is the officer in charge of a police station in the district of the court in which the order was made.

(3) In subsection (1), a reference to an order in the prescribed form means -

Form 6

- (a) in the case of the making of a protection order or an interim protection order, an order in Form 6 in the Schedule;

Form 7

- (b) in the case of the varying of a protection order or an interim protection order, an order in Form 7 in the Schedule.

Breach of protection order.

32. Where -

- (a) a protection order or an interim protection order is made and -
 - (i) the respondent was present at the time the protection order or interim protection order was made; or

(ii) where the respondent was not present at the time the protection order or interim protection order was made but the order has been served personally on the respondent; and

(b) the respondent contravenes the order in any respect, the respondent commits an offence and is liable, on summary conviction, to a fine not exceeding ten thousand dollars and to imprisonment for a period not exceeding twelve months.

PART III
ARREST AND BAIL

33.(1) A police officer may without warrant enter any premises for the purpose of giving assistance to any one present thereon -

Power to enter premises.

(a) if he has reasonable grounds to suspect that a protection order is being violated; or

(b) if upon the invitation of a person resident at the premises he has reasonable grounds to suspect that a person therein has suffered, or is in imminent danger of suffering,

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physical injury at the hands of some other person therein.

(2) A police officer referred to in subsection (1) may without warrant enter premises for the purpose of giving assistance to a person on those premises whom that officer has reasonable grounds to suspect is in imminent danger of suffering physical injury or has suffered physical injury at the hands of another person.

Power of arrest.

34. Where a police officer believes on reasonable grounds that a person has committed or is committing an

Bail.

35.(1) Where the court is required to determine whether to grant bail in respect of an offence under section 32 the court shall take into account, inter alia -

- (a) the need to secure the health, safety and well-being of the person named in the protection order;
- (b) the need to secure the health, safety and well-being of any relevant child;
- (c) any hardship that may be caused to the defendant or to members of the family if bail is not granted;
- (d) the defendant's record with regard to the commission of violent acts and whether there is evidence in the

record of physical or psychological abuse to children; and

- (a) any other matters which may be relevant to the case in question.

(2) Where bail has been granted to a defendant, the court may direct that the defendant report at such times as are specified at a specified police station.

36.(1) Where the defendant is charged with an offence under section 32 the court, in granting bail, may also order that the recognisance be subject to such of the following further conditions as the court considers appropriate -

Conditions of bail.

- (a) that the defendant not harass or molest, or cause another person to harass or molest, a specified person including the person named in the protection order or any relevant child;
- (b) that the defendant not be on the premises in which a specified person including the person named in the protection order or any relevant child resides or works;
- (c) where a victim of domestic violence requests it, a police officer shall protect a victim by accompanying the victim when he takes his personal belongings from a place where the respondent may reside;

(d) that the defendant not be on premises which are or in a locality in which is situated the place of education of a specified person including the person named in the protection order or any relevant child;

(e) where the defendant continues to reside, work or attend a place of education with a specified person including the person named in the protection order or any relevant child, that the defendant do not enter or remain in the place of residence, employment or education while under the influence of alcohol or a drug.

(2) Where a police officer believes on reasonable section (1) has failed to comply with a condition of the recognisance, the police officer may apprehend the person without a warrant.

(3) Where -

(a) bail has been granted to a person upon a condition imposed under subsection (1); and

(b) the person contravenes or fails to comply with the condition,

the bail is thereupon forfeited and the accused is liable to be re-arrested.

Where a Magistrate is satisfied by information on oath that -

- (a) there are reasonable grounds to suspect that a person on premises has suffered, or is in imminent danger of physical injury at the hands of another person and needs assistance to prevent or deal with the injury; and
- (b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person,

the Magistrate may issue a warrant in writing authorising a police officer to enter the premises specified in the warrant at any time after the issue of the warrant and subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace, or to protect life or property.

38. Where a person has been charged with a domestic violence offence and an application for a protection order is before the court, the court may exercise its power to grant the order, notwithstanding that the offence for which the person has been charged and the application for the protection order arise out of the same conduct.

Criminal
pro-
ceedings
may be
concurrent.

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PART IV
MISCELLANEOUS

Jurisdiction.

39. Nothing in this Act shall be construed as removing any jurisdiction which the Supreme Court may have in respect of the matters referred to under this Act.

Appeals.

40.(1) An appeal from any order or judgment of the court made or given under this Act shall lie to the Full Court and the appeal shall be regulated in all respects by the Summary Jurisdiction (Appeals) Act.

Cap. 3:04

(2) Except where the court which makes an order under this Act otherwise directs, the operation of such order shall not be suspended by virtue of an appeal under this section, and every such order may be enforced in the same manner and in all respects as if no appeal were pending.

Rules of Court.

41. Rules of Court may be made for the purpose of regulating the practice and procedure of the court in proceedings under this Act providing for such matters as are necessary for giving full effect to the provisions of this Act and for the due administration thereof.

Assistance to
victims of
domestic violence.

42. Whenever a police officer intervenes in a case of domestic violence the police officer shall as soon as possible take all reasonable measures within his power to prevent the victim of domestic violence from being abused again and shall also take the following steps -

- (a) where a victim indicates that he has suffered injuries which requires medical assistance the police officer shall assist the victim to obtain medical treatment as soon as possible;
- (b) where a victim of domestic violence expresses concern for his safety, the police officer shall assist the victim in getting to a place of safety;

- (c) where a victim of domestic violence requests it, a police officer shall protect a victim by accompanying the victim when he takes his personal belongings from a place where the respondent may reside;
- (d) advise the victim of domestic violence on the importance of preserving the evidence; and
- (e) inform the victim as to his rights and services which may be available to assist him, be they government or private services.

43.(1) Where a police officer intervenes in an incident of domestic violence, he shall prepare a written report which shall contain the allegations of the persons involved, the witnesses, the type of investigation conducted and how the incident was resolved.

Preparation of reports.

(2) The police officer in charge of every police station in Guyana shall ensure that all records of domestic violence cases are properly compiled so as to facilitate easy reference to data.

(3) The police officer in charge of every police station in Guyana shall ensure that confidentiality is maintained with respect to the identity of person involved in all cases of domestic violence and that interviews are carried out in an area of the police station which provides the utmost privacy.

Role of the Director of Human Services in alleviating domestic violence and abuse.

44.(1)

The Director of Human Services in the Ministry of Labour, Human Services and Social Security shall be responsible for -

- (a) promoting and developing educational programmes for the prevention of domestic violence;
- (b) studying, investigating and publishing reports on the domestic violence problem in Guyana, its manifestations and scope; the consequences and the options for confronting and eradicating it in conjunction with the Police Force and other agencies and organisations;
- (c) identifying groups and sectors in society in which domestic abuse is manifested and educating these groups and sectors making them aware of the skills required to combat domestic violence;
- (d) creating an awareness among society with regard to the needs of victims of domestic violence and their families;

- (e) developing strategies to encourage changes in the policies and procedures in government agencies in order to improve their response to the needs of the victims of domestic violence;
- (f) establishing and encouraging the establishment of programmes on information, support and counselling services for victims of domestic violence;
- (g) encouraging programmes of services for boys and girls who come from homes where there is abuse and violence;
- (h) providing training, and orientation services for police officers and or persons who assist in the treatment and counselling of victims of domestic violence and abuse; and
- (i) analysing and carrying out studies on the need for education and retraining for persons who engage in conduct that constitutes domestic violence and abuse and for their rehabilitation.

(2) In carrying out his responsibilities the Director of Human Services may collaborate with such governmental, non-governmental and inter-governmental organisations as he thinks fit.

45. Nothing in this Act shall be deemed to have altered any right to ownership of property.

Ownership
of
property.

46.(1) The rights conferred on any person in respect of any property by an order made under this Act shall be subject to the rights of any other person entitled to the benefit of any mortgage, security, charge or encumbrance affecting the property if such mortgage, security, charge or

Protection
of
mortgages.

encumbrance was registered before the order was registered or if the rights of that other person entitled to that benefit arise under an instrument executed before the date of the making of the order.

(2) Notwithstanding anything in any enactment or in any instrument, no money payable under any such mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of an order under this Act.

Regulations.

47. The Minister may make regulations for carrying out the provisions of this Act and for prescribing anything that needs to be prescribed.

Amendment of Forms

48. The Minister may by order amend any of the Forms in the Schedule.

SCHEDULE

FORM 1

s.5(4)

UNDERTAKING

IN THE MAGISTERIAL DISTRICT MAGISTRATE'S COURT

An application having been made by
(name of applicant)

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 meof
(name of respondent) (address of respondent)

Now I hereby undertake to refrain from

(specify details of conduct to be refrained from)

Dated the..... day of.....199

.....
Respondent

.....
Magistrate

.....
Magisterial District

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
(name of respondent)

who is
(specify relationship to the named respondent)

and who resides at
(specify address of respondent)

in respect of the following conduct -

(specify details of alleged conduct)

.....
Applicant

Dated the.....day of199

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 199

AFFIDAVIT FOR USE IN PROVING SERVICE OF PROCESS

NO.....

Return of service of process under the Domestic Violence Act, 1996

for the.....Court.

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

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

.....
(Deponent)

Sworn before me at

this day of 1999

.....
Commissioner of Oaths

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8.30

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

IN THE

MAGISTRAL OR JUDICIAL MAGISTRATE'S COURT

Between

Applicant

VS

Respondent

I..... (name of applicant)

hereby apply for a variation/revocation of the Order made against..... (name of person against whom the Order was made)

On.....by 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 the.....day of199

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 1996 in respect of the conduct (or
threatened conduct) of

..... towards
(name of respondent) (name of person to be protected)

Now this court orders that for.....
(period)

I..... not engage in the following conduct -
(name of respondent)

.....
(specify the conduct)

2. comply with the following prohibitions
(name of respondent)

and conditions -

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

Signed this day of 199

.....
Magistrate Magisterial District

ORDER VARYING PROTECTION ORDER or INTERIM PROTECTION ORDER

IN THE

MAGISTERIAL DISTRICT/MAGISTRATE'S COURT

Between

Applicant

vs

Respondent

heard on The court having/application by

(name of applicant)

under the Domestic Violence Act 1996 in respect of the conduct (or threatened conduct) of

(name of respondent) towards (name of person to be protected)

and having on (date of original order) ordered that for (period)

1. (name of respondent) Not engage in the following conduct -

(specify the conduct)

2. (name of respondent) comply with the following prohibitions

and conditions -

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

Now the court on the application of (name of applicant)

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

(specify details of variation)

Signed this ...day of199

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EXPLANATORY MEMORANDUM

The Domestic Violence Bill 1996 was created in response to the feeling of the need for specific legislation dealing exclusively with domestic violence. The Bill seeks to protect members of families and households and ensure their safety from physical and psychological abuse, by empowering the court to make protection and other orders and by providing for the effective enforcement of these orders.

Clause 2 of the bill defines several important terms including "cohabitants", "domestic violence offence", "harassment", "prescribed offence", "psychological abuse" and "relevant child".

Clause 3 lists the persons that are deemed associated persons for the purposes of this bill and are the parties that may apply for a protection order, clause 4 lists the other parties..

Clause 5 deals with the making of a protection order. It sets out the grounds on which such an order can be made and empowers the court to impose one or more of the prohibitions or conditions set out in clause 6; it empowers the court to make an interim protection order and to accept an undertaking from the respondent as an alternative to making a protection order.

Clause 8 empowers the court when making a protection order to also make an occupation order or

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interim occupation order but only if necessary for the protection of the applicant or the person for whose benefit the order is made or is in the best interests of a relevant child.

Clause 10 empowers the court when making a protection order to also make a tenancy order in relation to a dwelling house of which the respondent is either the sole tenant or a tenant holding jointly or in common with the person in whose favour the order is made. And Clause 13 empowers the court to re-vest the tenancy on the application of either party.

Clause 15 empowers the court on or after making an occupation or tenancy order to also make an ancillary order in relation to the use of furniture and household appliances.

Clause 18 provides that proceedings under the Act are to be heard in camera unless the court otherwise directs and for the Summary Jurisdiction (Procedure) Act, Cap. 10:02, to apply thereto. And clause 19 makes it an offence to publish such proceedings (other than criminal proceedings) without leave of the court.

Clauses 20 to 28 details the legal procedure for applying for any of the aforementioned orders. Under clause 28 the court must explain any order made to the respondent.

Clause 29 deals with the duration of a protection order. The order may be made for such period as may be specified by the court, and different periods may be specified for different restrictions in the order. But an interim protection order shall not remain in force for more than fourteen days. Clause 30 empowers the court to vary or revoke a protection order on application by a party to the proceedings.

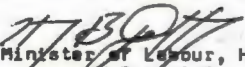
Clause 32 provides that breach of a protection order constitutes a criminal offence, the penalty for which is a fine of ten thousand dollars and imprisonment for twelve months.

Clause 33 empowers a police officer to enter without warrant premises where he has reasonable grounds for suspecting that a protection order is being breached or that domestic violence is taking place.

Clause 37 empowers a magistrate to issue a warrant authorising a police officer to enter premises to prevent the commission or repetition of a domestic violence offence or a breach of the peace or to protect life or property.

Clauses 39, 40 and 41 deal with jurisdiction, appeals and rules of court respectively.

Clause 44 sets out the role of the Director of Human Services in alleviating domestic violence and abuse.


Minister of Labour, Human Services
and Social Security.