

THE DOMESTIC VIOLENCE (AMENDMENT) BILL, 2020

EXPLANATORY NOTES

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of this Bill is to amend the Domestic Violence Act, Chap, 45:56 to provide for emergency protection orders and for related matters.

The Bill contains 31 clauses.

Clause 1 would provide the short title of the proposed Act.

Clause 2 would provide for the word “Act” to mean the Domestic Violence Act.

Clause 3 would provide for the amendment to section 3 of the Act to allow for the insertion of certain words and phrases and the amendment of the definition of certain words and phrases.

Clause 4 would provide for repeal and substitute section 4 of the Act to expand the category of persons able to apply for a Protection Order.

Clause 5 would provide for the amendment to section 5 of the Act to allow the Court to take into consideration conduct amounting to domestic violence before making a determination on the grant of a Protection Order. The provision would also empower the Court to grant an Interim Order or a Protection Order on the basis of a single act or omission or where a single threat has been made by the respondent.

Clause 6 would provide for the amendment to section 6 of the Act to allow for the expansion of the terms of a Protection Order.

Clause 7 would provide for the insertion of a new section 6A in the Act to allow for a Protection Order granted to an applicant to also apply to a child of the applicant or the respondent.

Clause 8 would provide for the amendment to section 7 of the Act to remove the need to preserve the institution of marriage from the Court’s consideration in determining the terms of a Protection Order and to empower the Court to request a risk assessment before determining the scope of a Protection Order.

Clause 9 would provide for the amendment to section 8 of the Act to allow for an Interim Order to remain in force until it is revoked, until the application for a Protection Order is withdrawn or dismissed, or until the Protection Order is made.

Clause 10 would provide for the amendment to section 9 of the Act to allow for the Court to accept an Undertaking from the respondent that they shall not engaged in the conduct specified in the application, after the taking of evidence.

Clause 11 would provide for the amendment to section 10 of the Act to allow for the Summary Courts Act to apply *mutatis mutandis* in respect of proceedings in a Court of

Summary Jurisdiction under the Act. The provision would also allow for a specified category of persons to be a party to the proceedings, where an application is made on behalf of a child or a dependant and to empower the Court to direct a person to serve a Protection Order and the notice of the proceedings on the respondent.

Clause 12 would provide for the amendment to section 11 of the Act to specify that the hearing of an application shall be no more than seven calendar days after the date on which the application is filed.

Clause 13 would provide for the amendment to section 12 of the Act to specify the persons on which an application filed in respect of a child is to be served.

Clause 14 would provide for the amendment to section 14 of the Act to allow for an application for a Protection Order not to be dismissed where the application was accompanied by evidence on affidavit.

Clause 15 would provide for the amendment to section 16 of the Act to empower the Court to direct a person or to otherwise cause hard copies or electronic copies of a Protection Order or an Interim Order on the police.

Clause 16 would provide for the amendment to section 17 of the Act to allow for clarification of the references to Protection Orders and Interim Orders.

Clause 17 would provide for the amendment to section 19 of the Act to make reference to Form 6.

Clause 18 would provide for the insertion of a new Part IVA to address emergency Protection Orders.

Clause 19 would provide for the insertion of a new section 19A in the Act to detail the process for making an emergency application to the Court for a Protection Order.

Clause 20 would provide for the insertion of a new section 20A in the Act to empower the Court to make a Protection Order against a person convicted of a serious criminal where the convicted person is in a domestic relationship with the victim of the offence.

Clause 21 would provide for the deletion and substitution of the heading to Part VI to make reference to the National Domestic Violence Register for domestic violence complaints and the duty of police officers to respond to domestic violence complaints.

Clause 22 would provide for the amendment to section 21 of the Act to empower the Commissioner of Police to establish and maintain a National Domestic Violence Register

Clause 23 would provide for the insertion of a new section 21A in the Act to empower a police officer to respond to every complaint or report alleging domestic violence.

Clause 24 would provide for the amendment to section 25 of the Act to allow the removal of the requirement for an applicant to receive professional counselling and to report to a probation officer at certain fixed intervals. The provision would also allow for a bond of good behaviour which was entered into by a respondent or defendant to be forfeited where the

Court is satisfied that the respondent or defendant has continued to engage in conduct amounting to domestic violence against the complainant or against a child who is the subject of an application for a Protection Order.

Clause 25 would provide for the repeal of section 26 of the Act.

Clause 26 would provide for the insertion of a new section 26A to allow for the mandatory reporting on domestic violence against a child or a person who by reason of physical or mental disability, age or infirmity is dependent on another person by a specific class of persons.

Clause 27 would provide for the amendment to section 27 of the Act to add specific stipulations for the Court to consider before making a determination on the grant of bail in respect of an offence under the Act.

Clause 28 would provide for the insertion of new sections 31, 32 and 33 in the Act, to empower the Minister to make Regulations, the Rules Committee to make Rules of Court, the Chief Justice to amend Forms 1 to 6 and the Minister to whom responsibility for national security assigned to amend Form 7 by Order.

Clause 29 would provide for the amendment of the First Schedule of the Act to harmonise the offences listed in that Schedule with offences under Summary Courts Act, Chap. 4:20 and the Children Act, Chap. 46:01.

Clause 30 would provide for the amendment of the Second Schedule of the Act to insert a new Form 1A for an Affidavit in support of an application and a new Form 1B for the Notice of failure to effect service or process, and to make reference to Districts instead of Counties.

Clause 31 would provide for the insertion of a new Third Schedule to specify the offences that will be serious criminal offences under the Act.

DOMESTIC VIOLENCE (AMENDMENT) BILL, 2020

Arrangement of Clauses

Clauses

1. Short Title
2. Interpretation
3. Section 3 amended
4. Section 4 repealed and substituted
5. Section 5 amended
6. Section 6 amended
7. Section 6A inserted
8. Section 7 amended
9. Section 8 amended
10. Section 9 amended
11. Section 10 amended
12. Section 11 amended
13. Section 12 amended
14. Section 14 amended
15. Section 16 amended
16. Section 17 amended
17. Section 19 amended
18. Part IVA inserted
19. Section 19A inserted
20. Section 20A inserted
21. Part VI heading deleted and substituted
22. Section 21 amended
23. Section 21A inserted
24. Section 25 amended
25. Section 26 repealed
26. Section 26A inserted
27. Section 27 amended
28. Section 31 inserted
29. First Schedule amended
30. Second Schedule amended
31. Third Schedule inserted

BILL

An Act to amend the Domestic Violence Act, Chap. 45:56 to provide for emergency protection orders and for related matters.

Short Title

1. This Act may be cited as the Domestic Violence (Amendment) Act, 2020.

Interpretation
Chap. 45:56

2. In this Act, “the Act” means the Domestic Violence Act.

Section 3
amended

3. Section 3 of the Act is amended –

(a) by renumbering the section as subsection (1);

(b) by inserting the following definitions in the appropriate alphabetical sequence:

““adoption order” has the meaning assigned to it under section 2 of the Adoption of Children Act;

“adult” means a person who is eighteen years of age and over;

“Care Order” means an order made under section 25C of the Children’s Authority Act;

“Children Court” has the meaning assigned to it under section 3(1) of the Family and Children Division Act, 2016 (Act No. 6 of 2016);

“Children’s Attorney” has the meaning assigned to it under section 3 of the Children Act;

“Children’s Home” has the meaning assigned to it under section 2 of the Children’s Community Residences, Foster Care and Nurseries Act;

“dating relationship” means a relationship where the parties do not live together in the same household, but may be engaged in romantic, intimate or sexual relations;

“domestic relationship” means the relationship between a respondent and a person, where the person –

(a) is, in relation to the respondent –

(i) a spouse or former spouse;

- (ii) a cohabitant or former cohabitant;
- (iii) a child;
- (iv) a dependant;
- (v) a relative;
- (vi) a person who has agreed to marry the respondent whether or not that agreement has been terminated;
- (b) is or was, in relation to the respondent—
 - (i) a person in a visiting relationship; or
 - (ii) a person in a dating relationship;
- (c) would be a relative of the respondent, related by marriage, if the respondent and a person referred to in paragraph (a)(ii) were married to each other;
- (d) is a member of the same household as the respondent or the applicant;
- (e) has a child in common with the respondent; or
- (f) is an adult in a residential institution and the respondent is –
 - (i) an owner or, a manager or employee of the institution; or
 - (ii) a volunteer or a person engaged in employment at the institution;

“Family Court” has the meaning assigned to it by section 3(1) of the Family and Children Division Act, 2016;

“Register” means the National Domestic Violence Register established under section 21(1);

“relative”, in relation to a person, means any of the following who is related to the person by consanguinity, affinity or adoption:

- (a) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law;
- (b) a son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law;
- (c) a brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law;
- (d) an uncle, aunt, uncle-in-law or aunt-in-law;

- (e) a nephew or niece; or
- (f) cousin;

“representative”, in relation to a dependant or an adult in a residential institution, means –

- (a) an Attorney-at-law; or
- (b) a person appointed by the Court;

“residential institution” means premises, other than a hospital or other medical institution, used for the purpose of caring for and housing of adults, including persons with mental or physical disabilities and elderly persons;

“responsibility” has the meaning assigned to it under section 3 of the Children Act;

“social worker” means a public officer experienced or qualified in social work or a person experienced or qualified in social work and employed on contract by the State;

“Wardship Order” means an order made under section 35 of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act”;

(c) by deleting the definition “applicant” and substituting the following definition:

““applicant” means a person –

- (a) who applies on his own behalf;
 - (b) on whose behalf an application is made; or
 - (c) who applies through another person,
- for a Protection Order under section 4;”;

(d) by deleting the definition “child” and substituting the following definition:

““child” means a person under the age of eighteen years who is not or has not been married and –

- (a) who is in a relationship of consanguinity or affinity with –
 - (i) the applicant;
 - (ii) the respondent;
 - (iii) a spouse or former spouse of the respondent;

- (iv) a cohabitant or former cohabitant of the respondent; or
 - (v) a relative of the respondent;
- (b) who is in relation to a person referred to in paragraph (a)(i) to (iv) –
- (i) an adopted child;
 - (ii) the subject of an adoption order and who is in the care and control of the person seeking the adoption order;
 - (iii) a foster child or has been a foster child;
 - (iv) the subject of a Fit Person Order; or
 - (v) treated as a child of the family;
- (c) in relation to whom a person referred to in paragraph (a)(i) to (iv) is his guardian;
- (d) for whom a person referred to in paragraph (a)(i) to (iv) has responsibility;
- (e) who ordinarily or periodically resides or resided with a person referred to in paragraph (a)(i) to (iv);
- (f) who would be in a relationship of affinity with the respondent if the respondent and a person referred to in paragraph (a)(iii) were able to be married;
- (g) in respect of whom a Care Order or a Wardship Order has been made; or
- (h) who resides in a Children’s Home, where the respondent is a Manager or employee of, engaged in employment at, or a volunteer at, the Children’s Home;”;
- (e) in the definition “Clerk”, by deleting after the word “means”, the words “the Clerk or Deputy Clerk of the Court” and substituting the words “the Registrar of the Supreme Court, Deputy Registrar of the Supreme Court, Assistant Registrar of the Supreme Court, Senior Magistracy Registrar and Clerk of the Court or Magistracy Registrar and Clerk of the Court;”;

(f) in the definition “cohabitant” –

- (i) by deleting after the words “a person who”, the words “has lived with or”; and
- (ii) by inserting after the words “that person”, the words “and “former cohabitant” shall be construed accordingly;”;

(g) in the definition “Court”, by inserting after the word “means”, the words “the High Court or”;

(h) by deleting the definition “dependant” and substituting the following definition:

““dependant”, in relation to a respondent, means an adult –

- (a) who, by reason of physical or mental disability, age or infirmity; or
- (b) under the age of twenty-five years who is receiving education at an educational institution or undergoing training for a trade, profession or vocation and who,

is reliant for his welfare on either the respondent or a person with whom the respondent is in a domestic relationship;

(i) in the definition “domestic violence”, by deleting all the words after the words “committed by” and substituting the words “a respondent against a person who is in a domestic relationship with the respondent;”;

(j) by deleting the definition “emotional or psychological abuse” and substituting the following definition:

““emotional or psychological abuse” means –

- (a) any act, omission or a pattern of behaviour of any kind, the purpose of which is to undermine the emotional or mental well-being of a person who is in a domestic relationship with the respondent including

–

- (i) intimidation by the use of abusive or threatening language;
- (ii) giving offensive material to that person or leaving it where it will be found by, or

- brought to the attention of the person;
- (iii) following the person from place to place;
 - (iv) depriving that person of the use of his property;
 - (v) the watching or besetting of the place where the person resides, works, carries on business or happens to be;
 - (vi) interfering with or damaging the property of the person;
 - (vii) the forced confinement of the person;
 - (viii) making unwelcome or intimidatory contact with the person by any means, including in person, verbally or by gesture, letter, telephone or electronic means;
 - (ix) disseminating intimate images of the applicant or a child of the applicant electronically or by any other means;
 - (x) making unwelcome or intimidatory contact with or acting in any manner described in subparagraphs (i) to (v) towards –
 - (A) a child or dependant of the person;
 - (B) a spouse or former spouse of the person;
 - (C) a cohabitant or former cohabitant of the person;
 - (D) a relative of the person;
 - (E) a person who is in a visiting or dating

- relationship with the person; or
- (F) a person who is in a close relationship with the person, by any means, including in person, verbally or by gesture, letter, telephone or electronic means;
- (xi) preventing a person from making or keeping connection with his family or friends;
- (xii) any other controlling, threatening or coercive behavior towards the person or his child or dependant; and
- (xiii) behaviour referred to in subsection (2); or

(b) any act or omission or threatened act or omission that causes the person to fear for his safety or the safety of a child or dependant;”;

(k) by deleting the definition “guardian” and substituting the following definition:

““guardian”, in relation to a child, includes –

- (a) a person appointed to be his guardian by deed or will, or by order of a court of competent jurisdiction;
- (b) a person who has custody of that child within the meaning of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act; and
- (c) any person who, in the opinion of a Court, has responsibility for the child;”;

(l) by deleting the definition “member of household” and substituting the following definition:

““member of the same household”, in relation to an applicant or a respondent, means a person who ordinarily or periodically resides in the same dwelling house as the applicant or respondent and –

- (a) is related to the applicant or respondent by consanguinity, affinity or adoption;
 - (b) is or has been the subject of –
 - (i) an order under section 9 or 13 of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act; or
 - (ii) a Fit Person Order or a Foster Care Order under section 25 of the Children’s Authority Act; or
 - (c) is or has been treated like a child of the family;”;
- (m) in the definition “Minister”, by deleting after the words “responsibility for”, the words “Social Development and Family Services” and substituting the words “gender affairs”;
- (n) in the definition “parent”, by deleting after the words “child,”, the word “dependent” and substituting the word “dependant”;
- (o) in the definition “sexual abuse” –
- (a) by deleting after the words “includes sexual”, the word “contact” and substituting the word “conduct”; and
 - (b) by inserting after the words “Sexual Offences Act”, the words “or the Children Act”;
- (p) by deleting the definition “spouse” and substituting the following definition:
- ““spouse” means a party to a marriage and “former spouse” shall be construed accordingly;” and
- (q) by inserting after subsection (1) as inserted, the following subsections:
- “(2) Subject to subsection (3), a person emotionally or psychologically abuses a child if that person –
- (a) causes or allows the child to see or hear, or experience the effects of; or

- (b) puts the child, or allows the child to be put, at real risk of seeing, hearing or experiencing the effects of,

the physical or sexual abuse of, or any behaviour described in sub paragraphs (i) to (xi) of the definition of “emotional or psychological abuse” in subsection (1) in relation to, a person with whom the child has a domestic relationship.

(3) The person who suffers that abuse shall not be regarded, for the purposes of this subsection, as having caused or allowed the child to see, hear or experience the effects of the abuse, or, as the case may be, as having put the child, or allowed the child to be put, at risk of seeing, hearing or experiencing the effects of the abuse.”.

Section 4
repealed and
substituted

4. Section 4 of the Act is repealed and substituted as follows:

“4. (1) An application for a Protection Order may be made by a person in a domestic relationship with the respondent, on the ground that the respondent engaged in domestic violence against that person.

(2) A child who is under the age of sixteen years shall apply for a Protection Order through –

- (a) a parent, a guardian, a person with responsibility for the child or a person who is in *loco parentis* to the child;
- (b) an adult member of his household; or
- (c) the Children’s Authority.

(3) A child who is sixteen years of age or over may apply for a Protection Order on his own behalf or through a person referred to in subsection (2).

(4) Notwithstanding subsection (3), the Court may, on the application of a child on his own behalf under subsection (3), make an order requiring the child to conduct proceedings through a person referred to in subsection (2)(a) or (b).

(5) An adult in a residential institution, or a dependant may apply for a Protection Order on his own behalf.

(6) Notwithstanding subsection (5) –

- (a) a spouse or former spouse;
- (b) a cohabitant or former cohabitant;
- (c) an adult member of his household;
- (d) a relative; or

(e) a representative,

may apply for a Protection Order on behalf of an adult in a residential institution or a dependant.

(7) Notwithstanding subsections (2), (3) and (6) –

- (a) a police officer;
- (b) a probation officer;
- (c) a social worker;
- (d) the Children’s Authority; or
- (e) a person who, in the opinion of the Court, is acting in the interest of the child,

may apply for a Protection Order on behalf of any person referred to in subsection (1).

(8) Notwithstanding subsection (7), where a police officer, probation officer or social worker has reason to believe that a child has suffered or is in imminent danger of physical injury at the hands of another person in a situation amounting to domestic violence, he shall forthwith apply for a Protection Order on behalf of the child.

(9) Where, during any proceedings, the Court becomes aware that a child has suffered, is suffering or is likely to suffer from domestic violence, the Court may issue a Protection Order in respect of that child.”.

Section 5
amended

5. Section 5 of the Act is amended –

(a) in subsection (1) –

- (i) by deleting after the words “the Court”, the word “determines” and substituting the words “is satisfied”;
- (ii) by inserting after the words “probabilities, that”, the words “a person has engaged, is engaging or is likely to engage, in conduct that constitutes”; and
- (iii) by deleting after the words “domestic violence”, the words “has occurred, it” and substituting the words “, the Court”; and

(b) by inserting after subsection (2), the following subsection:

“(3) A Court shall not refuse to grant an Interim Order or Protection Order on the basis only that a single

act or omission or a single threat has been made by the respondent.”.

Section 6
amended

6. Section 6 of the Act is amended –

(a) in subsection (1) –

- (i) in paragraph (a), by deleting subparagraph (vii) and substituting the following subparagraphs:

“(vii) approaching a named person who is in a domestic relationship with the applicant or the respondent;
(viii) causing or encouraging another person to engage in conduct referred to in paragraphs (i) to (vii); or
(ix) any other prohibition that the Court thinks fit; and”;

- (ii) by repealing paragraph (b);

- (iii) by renumbering paragraph (c) as paragraph (b);

- (iv) in paragraph (b), as renumbered –

(A) in subparagraph (vi), by deleting after the words “in respect of”, the words “rent or mortgage payment” and substituting the words “rent, mortgage or utilities”;

(B) in subparagraph (vii), by inserting after the words “person;”, the word “or”; and

(C) in subparagraph (viii) –

- a. by deleting before the word “receive”, the words “or applicant or both,”; and

- b. by deleting the full stop after the word “writing”, and substituting the words “; and”;

- (v) by inserting after paragraph (b), as renumbered, the following paragraph:

“(c) direct that the applicant immediately occupy any place or residence, whether or not the residence is jointly owned or leased by the respondent and the

applicant, or solely owned or leased by the respondent or the applicant.”;

(b) by inserting after subsection (1), the following subsection:

“(1A) The Court may –

- (a) refuse the respondent contact with any child, if it is shown that such contact is not in the best interest of the child; or
- (b) order structured contact between the respondent and a child.”;

(c) in subsection (3), by deleting after the word “subsection”, the words “(1)(c)(viii)” and substituting the words “(1)(b)(viii)”;

(d) in subsection (4), by deleting after the word “subsection”, the words “(1)(c)(ii)” and substituting the words “(1)(b)(ii)”;

(e) (5), by deleting after the word “award”, the words “compensation not exceeding fifteen thousand dollars” and substituting the words “such compensation as the Court thinks fit”.

Section 6A
inserted

7. The Act is amended by inserting after section 6, the following section:

“Protection Order to apply to child 6A. A Protection Order granted to an applicant shall apply to a child of the applicant or the respondent, unless the Court orders otherwise.”.

Section 7
amended

8. The Act is amended in section 7 –

(a) by renumbering the section as subsection (1);

(b) in subsection (1)(g) as renumbered, by deleting all the words from the word “the” inclusive and substituting the words “where applicable, any risk assessment ordered under subsection (2);”;

and

(c) by inserting after subsection (1), as renumbered, the following subsection:

“(2) Without prejudice to the power of the Court to grant an Interim Order or a Protection Order on the basis only that a single act or omission or a single threat has been made by the respondent, the Court may, for the purposes of determining whether or not to grant a

Protection Order or to impose one or more of the prohibitions or directions specified under section 6, order a police or social worker to submit such risk assessment as may be prescribed by regulations.”.

Section 8 amended

9. Section 8 of the Act is amended –

(a) in subsection (1), by deleting all the words after the words “proceedings,” and substituting the following:

“ –

- (a) if it appears necessary or appropriate to do so in order to ensure the safety and protection of the applicant; or
- (b) where, at the second hearing of the application, an adjournment is required –
 - (i) by the Court; or
 - (ii) on account of –
 - (A) the failure to effect service on the respondent or any other party; or
 - (B) any act or omission by the respondent.”;

(c) subsection (3) by deleting all the words after the word “Order” and substituting the following:

“shall remain in force until –

- (a) it is revoked;
- (b) the application for a Protection Order is withdrawn or dismissed; or
- (c) a Protection Order is made.”; and

(d) in subsection (5) –

(i) in the chapeau, by deleting before the words “an Interim Order”, the word “Where” and substituting the words “Subject to section 19A, where”; and

(ii) by repealing paragraph (a).

Section 9 amended

10. Section 9(1) of the Act is amended by deleting after the words “at any time”, the word “before” and substituting the word “after”.

Section 10 amended

11. Section 10 of the Act is amended –

(a) in subsection (1), by deleting after the words “shall be”, the words “made on the prescribed form, being “Form 1”” and substituting the words “in the form set out as “Form 1””;

(b) by inserting after subsection (1), the following subsections:

“(1A) An application referred to in subsection (1) may be accompanied by evidence given on affidavit in the form set out as “Form 1A” in the Second Schedule.”;

in subsection (2), by inserting after the word “proceedings”, the words “in a Court of Summary Jurisdiction”; and

(c) by deleting subsection (4) and substituting the following subsection:

“(4) Where an application is made on behalf of a child –
(a) a parent of the child;
(b) a guardian of the child;
(c) a person with responsibility for the child; or
(d) a person who is in *loco parentis* to the child,
is entitled to be a party to the proceedings.

(4A) Where an application is made on behalf of a dependant –
(a) a parent of the dependant;
(b) a guardian of the dependant;
(c) a person with whom the dependant normally resides; or
(d) a person with whom the dependant resides on a regular basis,

is entitled to be a party to the proceedings.”.

Section 11
amended

12. Section 11 of the Act is amended –

(a) by renumbering the section as subsection (1);

(b) in subsection (1), as renumbered, by deleting before the word “Clerk”, the word “The” and substituting the words “Subject to subsection (2), the”; and

(c) by inserting after subsection (1), as renumbered, the following subsection (2):

“(2) Where the Court makes an order for substituted service under section 12(1C), the Clerk shall fix a date for the hearing of the application which shall be no more than twenty-one days after the date on which the application is filed.”.

Section 12
amended

13. Section 12 of the Act is amended –

(a) by repealing subsection (1) and substituting the following subsections:

“(1) The Court shall cause a copy of an application for a Protection Order, together with the notice of the date on which, and the time and place at which, the application is to be heard, to be served personally on the respondent.

(1A) The Court shall not require an application for a Protection Order or notice of the date on which, and the time and place at which, an application for a Protection Order is to be heard, to be served on the respondent by the applicant or through an agent of the applicant.

(1B) Where the Court directs or otherwise causes a person to serve documents referred to in subsection (1), the Court shall –

(a) where the person is not a police officer, provide the person with copies of the documents; or

(b) where the person is a police officer, provide the officer in charge of the police station to which the police officer is assigned, with copies of the documents,

and direct the person to serve the documents within five days of his receipt of the documents.

(1C) Where a person who is required to serve documents pursuant to subsection (1B) is unable or otherwise fails to effect service on the respondent, within five days after his receipt of those documents –

(a) he shall, within two days, file a notice in the form set out as “Form 1B” in the Second Schedule informing the Clerk of his failure to effect service;

(b) the Clerk shall immediately bring the notice to the attention of a Judge or Magistrate; and

(c) the Judge or Magistrate shall make an order for substituted service.”;

(b) in subsection (2), by deleting after the word “proceedings”, the words “shall be issued on the form described” and substituting the words “under subsections (1) or (3), shall be in the form set out”;

(c) in subsection (3), by deleting all the words after the words “served on –” and substituting the following:

“(a) a parent or guardian of, a person with responsibility for, or a person who is in *loco parentis* to, the child; or

(b) a parent or guardian of the dependant, or a person with whom the dependant normally resides or resides with on a regular basis,

and subject to subsection (1A), the Court may cause service to be effected by the applicant or through an agent of the applicant, or by such other person as the Court may direct.”;

(d) in subsection (4) –

(i) by deleting after the word “served”, the words “under the Summary Courts Act”; and

(ii) by deleting all the words after the word “application”; and

(e) in subsection (5) –

(i) by deleting before the words “notice of proceedings”, the word “A” and substituting the words “Subject to subsection (1A), a”; and

(ii) by deleting after the words “affidavit in”, the words “in accordance with the prescribed form, described” and substituting the words “the form set out”.

Section amended

14. Section 14 of the Act is amended in paragraph (a), by deleting after the word “application”, the words “; or” and substituting the words “,

unless the application is accompanied by evidence on affidavit in accordance with section 10(1A);”.

Section 16
amended

15. Section 16 of the Act is amended –

(a) by renumbering the section as subsection (1);

(b) in paragraph (a) –

(i) by deleting before the words “shall arrange”, the word “clerk” and substituting the word “Clerk”; and

(ii) by deleting after the words “drawn up”, the words “on the prescribed form, described” and substituting the words “in the form set out”;

(c) in paragraph (b) –

(i) in the chapeau, by deleting after the word “shall”, the words “cause a copy of the Order to be served on” and substituting the words “, subject to subsection (2), direct or otherwise cause a person to serve a copy of the Order on”;

(ii) in subparagraph (ii), by deleting after the word “proceedings;”, the word “and”;

(iii) in subparagraph (iii), by deleting after the word “respondent”, the words “or applicant resides.” and substituting the words “resides;”; and

(iv) by inserting after subparagraph (iii), the following subparagraphs:

“(iv) on the police officer in charge of the station in the area where the applicant resides, if the applicant does not reside in the area referred to in subparagraph (iii);

(v) the police officer in charge of the station in the area nearest to where the applicant works, if different from where he lives; and

(vi) the police officer in charge of the station in the area where any child is attending school.”;

(d) in repealing paragraph (c);

(e) by inserting after subsection (1), as renumbered, the following subsections:

“(2) The Court shall not require an Order to be served on the respondent by the applicant or through an agent of the applicant.

(3) Where the Court directs or otherwise causes a person to serve an Order pursuant to subsection (1), the Court shall direct the person to serve the Order within three days.

(4) Where a person who is required to serve an Order pursuant to subsection (1) is unable or otherwise fails to effect service on the respondent within the period specified in subsection (3) –

- (a) he shall, within two days, file a notice in the form set out as “Form 1B” in the Second Schedule, informing the Clerk of his failure to effect service;
- (b) the Clerk shall immediately bring the notice to the attention of a Judge or Magistrate; and
- (c) the Judge or Magistrate shall make an order for substituted service.”.

Section 17
amended

16. The Act is amended in section 17(1) –

- (a) by deleting after the words “to serve notice of proceedings or”, the word “the” and substituting the words “of the Protection Order or the Interim”;
- (b) by deleting after the words “may make an”, the word “Order” and substituting the word “order”; and
- (c) by inserting after the words “service of the notice of proceedings or”, the words “of the Protection Order or the Interim”.

Section 19
amended

17. Section 19 of the Act is amended –

- (a) in subsection (1), by deleting after the word “Court”, the words “on the form described” and substituting the words “in the form set out”; and

(b) in subsection (2), by inserting after the words “Order,” the words “in the form set out as “Form 6” in the Second Schedule,”.

Part IVA
inserted

18. The Act is amended by inserting after section 19, the following Part:
“Part IVA Emergency Protection Orders”.

Section 19A
inserted

19. The Act is amended by inserting after the new Part IVA, as inserted, the following section:

“Emergency
application

19A. (1) Notwithstanding section 10(1), where a Court is not sitting or it is not practicable for the applicant to access the Court under section 8,

(a) a police officer of or above the rank of Assistant Superintendent; or

(b) where the application relates to a child, the Children’s Authority,

may, on behalf of the applicant, make an emergency application to a Master or Judge of the Family Court or Children Court for a Protection Order where the applicant is in a domestic relationship with the respondent and has suffered, or is in imminent danger of, serious physical injury at the hands of the respondent.

(2) An emergency application under subsection (1) may be made by telephone, video conference or other appropriate electronic means.

(3) Where a Judge or Master of the Family Court or Children Court is satisfied that the urgency of the circumstances referred to in subsection (1) so requires, he may—

- (a) dispense with the requirement for an application for a Protection Order under section 10(1) and proceed to hear the emergency application; and
(b) grant an Interim Order in accordance with section 8.

(4) Where a Judge or Master grants an Interim Order under subsection (3), he shall order the police officer to cause –

- (a) the application for the Protection Order to be filed in such Court as the Judge or Master may direct, in a period of within forty-eight hours of the making of the Interim Order or on the date of the next sitting of the Court after the expiration of that period; and
- (b) the Interim Order be served on the respondent, forthwith.

(5) The Court referred to in subsection (4) shall summon the applicant and the respondent to appear for the hearing of the matter as soon as possible after the filing of the application for the Protection Order.”.

Section 20A
inserted

20. The Act is amended by inserting after section 20, the following section:

“Court may
make
Protection
Order when
victim is in
serious
physical
harm

20A. (1) Notwithstanding sections 4 and 10, where a Court convicts a person of a serious criminal offence, the Court may, where the victim is in a domestic relationship with the convicted person and with the consent of the victim –

- (a) make a Protection Order against the convicted person for the protection of the victim; or
- (b) where a Protection Order is, at the time of the proceedings, already in force against the convicted person in relation to the victim, extend the duration of the Protection Order.

(2) Notwithstanding section 6(9), a Protection Order referred to in subsection (1) may

be made or extended for a period exceeding three years, taking into consideration the need to protect the victim, following any period of imprisonment imposed by the Court.

(3) A “serious criminal offence” means any offence listed in the Third Schedule.”.

Part VI
heading
deleted and
substituted

21. The Act is amended by deleting after section 20A, as inserted, the heading “Part VI Police Powers of Entry and Arrest” and substituting the following heading:

“Part VI National Domestic Violence Register for Domestic Violence Complaints and Duty of Police Officers to Respond”.

Section 21
amended

22. Section 21 of the Act is amended –

- (a) by deleting the marginal note and substituting the following marginal note:

“National Domestic Violence Register”;

- (b) repealing subsection (1) and substituting the following subsection:

“(1) The Commissioner of Police shall establish and maintain, in electronic form, a National Domestic Violence Register.”;

- (c) in subsection (2), by deleting all the words after the words “part of” and substituting the words “the Register”;

- (d) by inserting after subsection (2), the following subsection:

“(2A) The Commissioner of Police shall ensure that all domestic violence reports are entered in the Register.”;

- (e) in subsection (3) –

(i) in the chapeau, by deleting after the word “form”, the word “prescribed” and substituting the words “set out”; and

(ii) in paragraph (a), by deleting after the word “the”, the word “name” and substituting the word “names”; and

(f) by inserting after subsection (3), as renumbered, the following subsection:

“(4) The Register shall be accessible to police officers in each police station but shall not be accessible to the public.”.

Section 21A
inserted

23. The Act is amended by inserting after section 21, the following section:

“Duty of
police
officer

21A. A police officer shall respond to every complaint or report alleging domestic violence.”.

Section 25
amended

24. The Act is amended in section 25 –

(a) in subsection (2), by deleting after the word “Court” all the words from the word “is” to the word “it”, inclusive;

(b) in subsection (3), in paragraph (b), by deleting after the words “that the”, the word “parties” and substituting the word “respondent”; and

(c) in subsection (4) –

(i) paragraph (a), by inserting after the word “complainant”, the words “or a child who is the subject of an application for a Protection Order”; and

(ii) in paragraph (b), by inserting after the word “complainant”, the words “or a child who is the subject of an application for a Protection Order.”.

Section 26
repealed

25. The Act is amended by repealing section 26.

Section 26A
inserted

26. The Act is amended by inserting after section 26, the following section:

“Mandatory reporting of suspected domestic violence

26A. (1) Subsection (2) applies to a person –

(a) who –

(i) has actual custody, charge or control of;

(ii) has, for a special purpose, as his attendant, employer, teacher or caregiver, or in any other capacity, temporary custody, care, charge or control of;

(iii) resides with; or

(iv) is a medical practitioner, registered nurse or midwife, and has performed a medical examination in respect of,

an adult who by reason of physical or mental disability, age or infirmity is dependent on another person or a child; or

(b) who is a social worker.

(2) A person to whom this subsection applies, who has reasonable grounds to believe that a person has engaged, is engaging or is likely to engage, in conduct that constitutes domestic violence against an adult who by reason of physical or mental disability, age or infirmity is dependent on another person or a child, shall report the grounds for his belief to a police officer as soon as reasonably practicable.

(3) Any person who, without reasonable excuse, fails to comply with the requirements of subsection (2), commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for seven years.”.

Section 27 amended

27. Section 27 of the Act is amended –

(a) in subsection (1) –

(i) in paragraph (b), by deleting after the word “child”, the words “where the defendant or victim of the alleged offence has custody of that child”; and

(ii) in paragraph (c), by deleting all the words from the word “the” inclusive and substituting the words “where applicable, any risk assessment ordered under subsection (1A); and”;

(b) by inserting after subsection (1), the following subsection:

“(1A) Without prejudice to the power of the Court to grant bail, the Court may, for the purposes of determining whether or not to grant bail, order a police to submit such risk assessment as may be prescribed by regulations.”; and

(c) in subsection (2) –

(i) in paragraph (b), by deleting after the word “victim”, the words “resides or works” and substituting the words “resides, works or attends school”; and

(ii) in paragraph (c), by deleting after the word “victim”, the words “resides or works” and substituting the words “resides, works or attends school.”

Section 31
inserted

28. The Act is amended by inserting after section 30, the following sections:

“Regulations

31. (1) The Minister may make regulations to give effect to the provisions of this Act.

(2) Regulations made under this Act shall be subject to negative resolution of Parliament.

Rules of
Court

32. The Rules Committee established under section 77 of the Supreme Court Act may make Rules of Court for carrying this Act into effect.

Amendment
of Forms

33. (1) The Chief Justice may, by order, amend Forms 1 to 6 in the Second Schedule.

(2) The Minister to whom responsibility for national security is assigned may, after consultation with the Minister, amend Form 7 in the Second Schedule, by Order.”.

First
Schedule
amended

29. The Act is amended in the First Schedule –

(a) in the heading “Summary Offences Act, (Ch. 11:02) –

(i) by deleting after the words “Section 5”, the words “Violent or obscene language or disturbance of the peace, Section 49”; and

(ii) by deleting after the words “Section 75”, the words “Misuse of telephone facilities and false telegrams, Section 106”; and

(b) in the heading “Children Act, (Ch. 46:01), by deleting all of the words from the word “Punishment” to the words “and 8” and substituting the following words:

“Prevention of cruelty to children, Section 4
Exposing children to risk of burning, Section 6
Injury or death by firearm or ammunition, Section 7
Causing, encouraging or favouring seduction or prostitution of young girls, Sections 3, 4, 5, 6, 7 and 8
Offence of female mutilation, Section 9
Offence of aiding, abetting, counselling or procuring a girl to engage in female mutilation, Section 10
Sexual penetration of a child, Section 18
Sexual touching of a child, Section 19
Causing or inciting a child to engage in sexual activity, Section 21
Causing or inciting a child to engage in sexual activity with an animal, Section 22
Giving a child a dangerous drug, Section 36
Using a child to sell, buy or deliver a dangerous drug, Section 38.”.

Second
Schedule
amended

30. The Act is amended in the Second Schedule –

(a) by inserting after Form 1, the following forms:

FORM 1A
DOMESTIC VIOLENCE ACT (CH. 45:56)

AFFIDAVIT IN SUPPORT OF APPLICATION

REPUBLIC OF TRINIDAD AND TOBAGO

In the District of

I,
(Name of Applicant)

of
(Address)

make oath and say as follows:

1. I am the Applicant herein.
2. The facts and matters deposed to in this Affidavit are made of my own knowledge and I certify that I believe that the facts stated in this Affidavit are true.
3. My relationship with the Respondent is
4. The circumstances which gave rise to this application are that:
.....
.....
5. I made a complaint/A complaint was made on my behalf by

..... at Police Station.
(Name of Complainant) (Name of Police Station)

A copy of a report dated is annexed hereto and marked
(Date of Report)

Sworn to be the Deponent
(Name of Deponent)

at on the day of

Before me

.....
Justice or Clerk of the Peace of the
Magistrate's Court for the District.; and

FORM 1B
DOMESTIC VIOLENCE ACT (Chap. 45:56)

NOTICE OF FAILURE TO EFFECT SERVICE OF PROCESS

REPUBLIC OF TRINIDAD AND TOBAGO

In the District of

I,
(Name of Applicant)

of
(Address)

hereby give notice that the document described below has not been served on the
respondent
(Name of Respondent)

for the reasons outlined below.

Sworn to by me the above-named
(Name of Deponent)

Deponent this day of, 20.....

.....
*Justice or Clerk of the Peace of the
Magistrate's Court for the District*"; and

(b) by deleting the word "County", wherever it appears and substituting the word "District".

Third
Schedule
inserted

31. The Act is amended by inserting after the Second Schedule, the following Schedule:

**"THIRD SCHEDULE
OFFENCES AGAINST THE PERSON ACT, CHAP. 11:08**

- Conspiring or soliciting to commit murder, Section 5
- Attempted murder, Section 9
- Shooting or wounding with intent to do grievous bodily harm, Section 12
- Inflicting injury with or without a weapon, Section 14
- Attempting to choke, etc., in order to commit an indictable offence, Section 15
- Administering poison, etc., so as to endanger life or inflict grievous bodily harm, Section 17
- Exposing children so that life endangered, Section 21

SEXUAL OFFENCES ACT, CHAP. 11:28

- Rape, Section 4
- Grievous sexual assault, Section 4A
- Incest, Section 9
- Sexual intercourse with a mentally subnormal person, Section 12

CHILDREN ACT, CHAP. 46:01

- Causing or encouraging the seduction, prostitution or sexual penetration of a child, Section 12
- Sexual penetration of a child, Section 18
- Sexual touching of a child, Section 19
- Causing or inciting a child to engage in sexual activity, Section 21
- Luring a child, Section 25
- Sexual communication with a child, Section 25A
- Sexual grooming of a child, Section 25B”.

Passed in the House of Representatives this day of, 2020.

Clerk of the House

Passed in the Senate this day..... of, 2020.

Clerk of the Senate