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SECOND SCHEDULE

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No. 20 of 1999

Fourth Session Fifth Parliament Republic of Trinidad and Tobago

SENATE

BILL

AN ACT to provide greater protection for victims of domestic violence

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REPUBLIC OF TRINIDAD AND TOBAGO—1999

THE DOMESTIC VIOLENCE BILL, 1999

Explanatory Note

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

The object of the Bill is to offer victims of domestic violence greater protection by—

—increasing the power and jurisdiction of the Court;

—enlarging the scope and ambit of the Protection Order;

—providing harsher penalties; and

—giving the police greater powers in respect of their ability to intervene in domestic violence situations.

The Bill would repeal the Domestic Violence Act, 1991, and would seek to introduce comprehensive domestic violence legislation in Trinidad and Tobago on par with international standards on the sanctioning of domestic violence, as specified by the United Nations Commission on Human Rights.

The Bill proposes to create a wider range of speedy and flexible remedies aimed at discouraging the increasing incidents of domestic violence.

The Parts of the Bill are explained hereunder:

Part I includes the short title and the definition of terms used in the Bill. At Clause 2, the reader is informed that the Bill, though inconsistent with sections 4 and 5 of the Constitution, shall have effect.

Part II would provide for the granting of a Protection Order to more categories of persons than presently obtains. Also, the power of the Court, in granting a Protection Order, has been increased and it may now prohibit and direct the respondent's actions in relation to the applicant in an increased number of ways. In particular this clause gives to the Court the power to ensure that a victim is not financially disadvantaged as a result of the making of a Protection Order. The Court would have broad powers to direct the payment of compensation and other forms of interim monetary relief. The Court would also be empowered to direct the seizure of firearms and other weapons. Furthermore the duration of a Protection Order shall be for a period not exceeding three years. The intention is to reduce the number of times a victim may be forced to return to the Court in order to seek protection. Additionally the Court, may on an application for a Protection

Order, make an Interim Order, pending the hearing and determination of the proceedings and such Order shall be for a period not exceeding twenty-one days, although it may be extended for an additional twenty-one days at the Court's discretion.

Part III sets out the proceedings in respect of an application for a Protection Order. It provides, *inter alia*, for service of notice of proceedings and procedures to be followed in the absence of the respondent and applicant. By clause 16, the Court shall be responsible for the service of Orders on the respondent, the police and any other person to whom the Order may apply. Clause 17 would empower the Court to make an Order for substituted service.

Part IV would provide for the variation, duration and revocation of Orders.

Part V would provide for the penalties to be incurred for breach of an Order. It should be noted that the penalties would be increased both in terms of sentences and fines. The Courts would also be empowered to impose a fine where the respondent has unreasonably failed to attend Court sanctioned counselling sessions.

Part VI would provide for the duties and powers of police officers in dealing with domestic violence situations. In particular, clause 23 would give the police clear powers of entry and arrest without a warrant only in those cases where the violent conduct engaged in, in a situation amounting to domestic violence, poses a serious threat to the safety and well being of a person in that situation. The clause also attempts to provide certain safeguards against any abuse of this power by making it compulsory for a police officer to submit a written report, which report is to be submitted to the Commissioner of Police.

In a situation where a Protection Order is in force, the police may enter premises with or without a warrant for the purpose of detaining and arresting the person engaging in conduct amounting to domestic violence.

Additionally, the Bill proposes under this Part to deal with the very common problem of the unwillingness of a complainant to give evidence in Court. Under the proposed system, the Court would be able to consider the evidence of the police record as a statement made to the police would be deemed to be a statutory declaration under the Statutory Declarations Act.

In Part VII, provision is made for conditions of bail and for the lodging of appeals against any Order or Judgement of the Court. Clause 27(2) will provide that an appeal to the Court of Appeal will not operate as a stay of proceedings unless the Court of Appeal orders otherwise. This would ensure that a victim of domestic violence is not denied the Court's protection pending the hearing of an appeal.

The Bill is to be enacted under section 13 of the Constitution, which requires a special majority in each House.

BILL

AN ACT to provide greater protection for victims of domestic violence

[, 1999]

WHEREAS incidents of domestic violence continue to occur with alarming frequency and deadly consequences: Preamble

And Whereas it has become necessary to reflect the community's repugnance to domestic violence in

whatever form it may take and further influence the community's attitude and support social change in respect of this social ill:

And Whereas the Government is of the view that one way to achieve these goals is to strengthen legislation to ensure a prompt and equitable legal remedy for victims of domestic violence:

And Whereas it is provided by subsection (1) of section 13 of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And Whereas it is provided by subsection (2) of the said section 13 that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And Whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Domestic Violence Act, 1999.

Act inconsistent with Constitution

2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation

3. In this Act—

"applicant" means a person described in section 4 who applies or on whose behalf an application is made for a Protection Order;

"attorney-at-law" means a person whose name is entered on the Roll in accordance with the Legal Profession Act, 1986; Act No. 21 of 1986

"child" means a person under the age of eighteen years who ordinarily or periodically resides with the applicant, whether or not the child is a child of the applicant and the respondent or either of them, and includes an adopted child, stepchild, or a child who is treated as a child of the family but not a person who is or has been married;

"Clerk" means the Clerk or Deputy Clerk of the Court;

"cohabitant" means a person who has lived with or is living with a person of the opposite sex as a husband or wife although not legally married to that person;

"Court" means a Court of Summary Jurisdiction;

"dependant" means a person over the age of eighteen years who by reason of physical or mental disability, age or infirmity is reliant on either the applicant or respondent for his welfare;

"domestic violence" includes physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, child, any other person who is a member of the household or dependant;

"emotional or psychological abuse" means a pattern of behaviour of any kind, the purpose of which is to undermine the emotional or mental well-being of a person including:

(*a*) persistent intimidation by the use of abusive or threatening language;

(*b*) persistent following of the person from place to place;

(*c*) depriving that person of the use of his property;

(*d*) the watching or besetting of the place where the person resides, works, carries on business or happens to be;

(*e*) interfering with or damaging the property of the person;

(*f*) the forced confinement of the person;

"financial abuse" means a pattern of behaviour of a kind, the purpose of which is to exercise coercive control over, or exploit or limit a person's access to financial resources so as to ensure financial dependance;

"guardian" in relation to a child includes a person who has custody of that child within the meaning of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act;

Chap. 46:08

"Interim Order" means an Order made under section 8;

"member of the household" means a person who habitually resides in the same dwelling house as the applicant or the respondent and is related to the applicant or respondent by blood, marriage or adoption;

"Minister" means the Minister to whom responsibility for Social Development and Family Services is assigned;

"Order" includes an Interim Order and Protection Order;

"parent" means a person who is a parent or grandparent in relation to a child, dependent, spouse or respondent as the case may be—

(*a*) by blood;

(*b*) by marriage;

(*c*) by adoption; or

(*d*) within the meaning of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act; Chap. 46:08

"physical abuse" means any act or omission which causes physical injury and includes the commission of or an attempt to commit any of the offences listed in the First Schedule; First Schedule

"Protection Order" means an Order made pursuant to section 5;

"respondent" means a person against whom an application for a Protection Order is made;

"sexual abuse" includes sexual contact of any kind that is coerced by force or threat of force and the commission of or an attempt to commit any of the offences listed in the First Schedule; First Schedule

"spouse" includes a former spouse, a cohabitant or former cohabitant.

PART II

PROTECTION ORDERS

Persons entitled to apply

4. (1) A person referred to in subsection (2) may apply to the Court for a Protection Order on the ground that the respondent engaged in domestic violence.

(2) An application for a Protection Order may be made by—

(a) the spouse of the respondent;

(b) a member of the household of the spouse or respondent, either on his own behalf or on behalf of any other member of the household;

(c) a child—

(i) by consanguinity or affinity of either the spouse or respondent;

(ii) of whom either the spouse or respondent is a guardian; or

(iii) who is or has been a member of the household of the spouse or the respondent;

(d) a dependant;

(e) a parent or sibling by consanguinity or affinity of either the spouse or respondent not being a member of the household;

(f) a person who has a child in common with the respondent.

(3) A child or dependant may apply for a Protection Order through—

(a) a person with whom the child or dependant normally resides or resides with on a regular basis or any adult member of his household; or

(b) a parent or guardian or, a person who is in *loco parentis* to the child.

(4) A police officer, probation officer or approved social worker may apply for a Protection Order on behalf of—

(a) any person referred to in subsection (2); or

(b) a person or child who is in a residential institution.

(5) For the purposes of this Act "an approved social worker" is a person experienced or qualified in social welfare being a public officer and approved by the Minister in writing.

Power to make a Protection Order

5. (1) Where, on an application made by a person described in section 4, the Court determines, on a balance of probabilities, that domestic violence has occurred, it may issue a Protection Order containing any or all of the prohibitions or directions referred to in section 6.

(2) The Court shall grant a Protection Order where it is satisfied that the respondent—

(a) is engaging in or has engaged in domestic violence against the applicant; or

(b) is likely to engage in conduct that would constitute domestic violence,

and in either case, having regard to all the circumstances, the Order is necessary for the protection of the applicant.

Terms of Protection Order

6. (1) A Protection Order may—

(a) prohibit the respondent from—

(i) engaging or threatening to engage in conduct which would constitute domestic violence towards the applicant;

(ii) being on premises specified in the Order, that are premises frequented by the applicant including any residence, property, business, school or place of employment;

(iii) being in a locality specified in the Order;

(iv) engaging in direct or indirect communication with the applicant;

(v) taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in, or is reasonably used by the applicant, as the case may be;

(vi) approaching the applicant within a specified distance;

(vii) causing or encouraging another person to engage in conduct referred to in paragraphs (i) to (vi); and

(b) direct that the Order be applied for the benefit of a child or dependant of the applicant or respondent; and

(c) direct that the respondent—

(i) return to the applicant specified property that is in his possession or under his control;

(ii) pay compensation for monetary loss incurred by an applicant as a direct result of conduct that amounted to domestic violence;

(iii) pay interim monetary relief to the applicant for the benefit of the applicant and any child, where there is no existing order relating to maintenance until such time as an obligation for support is determined, pursuant to any other written law;

(iv) immediately vacate any place or residence for a specified period, 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;

(v) relinquish to the police any firearm licence, firearm or other weapon which he may have in his possession or control and which may or may not have been used;

(vi) make or continue to make payments in respect of rent or mortgage payments for premises occupied by the applicant;

(vii) ensure that reasonable care is provided in respect of a child or dependant person;

(viii) or applicant or both, receive professional counselling or therapy from any person or agency or from a programme approved by the Minister in writing.

(2) A Protection Order may contain such other prohibitions and directions as consented to by the applicant or respondent or both.

(3) Where the Court makes an Order which, *inter alia*, directs counselling under subsection (1)*(b)*(viii), the Order shall specify—

(a) that the Court receive written notification from the counselor or therapist of sessions missed without reasonable excuse; and

(b) the date by which the counselor or therapist shall submit a report to the Court in respect of the counselling or therapy, such report to include a prognosis for recovery.

(4) Where the Court makes an Order which, *inter alia*, directs the payment of compensation under

subsection (1)*(c)*(ii), such compensation shall include, but not limited to—

(a) loss of earnings;

(b) medical and dental expenses;

(c) moving and accommodation expenses;

(d) reasonable legal costs, including the cost of an application pursuant to this Act.

(5) The payment of compensation under subsection (4) shall be received by the Court on behalf of the applicant.

(6) Where the Court makes an Order which *inter alia*—

(a) directs that the respondent vacate any place or residence; or

(b) directs the respondent to return to the applicant specified property that is in his possession or control,

the Court may, in that same Order, if it thinks necessary and notwithstanding any other law, in the same Order, direct the police to remove the respondent either immediately or within a specified time from the said place or residence, or to accompany the applicant, as the case may be, either immediately or within a specified time, to specified premises in order to supervise the removal of property belonging to the applicant and to ensure the protection of that person.

(7) The Court, when making a Protection Order, may also make an Order under section 25 of the Family Law (Guardianship of Minors Domicile and Maintenance) Act for the duration of the Protection Order where no order under that Act is already in force and an Order so made under this Act shall be deemed to be an Order made in accordance with an application under section 25 of that Act.

Chap. 46:08

(8) A breach of an Order made under subsection (8) shall be deemed to be a breach of an Order made under the Family Law (Guardianship of Minors Domicile and Maintenance) Act and shall be dealt with in accordance with that Act.

(9) A Protection Order may be made for such period as the Court considers necessary but shall not exceed three years.

(10) Where the Order contains any prohibitions or directions, the Court may specify different periods, none of which shall exceed three years as the period for which each prohibition or direction shall remain in force.

Matters to be considered

7. In determining whether or not to impose one or more of the prohibitions or directions specified under section 6, the Court shall have regard to the following:

(a) the nature, history or pattern of the violence that has occurred and whether a previous Protection Order or Interim Order has been issued;

(b) the need to protect the applicant and any other person for whose benefit the Protection Order has been granted from further domestic violence;

(c) the welfare of any child;

(d) the accommodation needs of the applicant and any other person;

(e) the hardship that may be caused as a result of making of the Order;

(f) the income, assets and financial obligations of the respondent, the applicant and any other person affected by the Order;

(g) the need to preserve and protect the institution of marriage and other relationships whilst affording protection and assistance to the family as a unit;

(h) any other matter, that in the circumstances of the case, the Court considers relevant.

Interim Orders

8. (1) On an application for a Protection Order, the Court may make an Interim Order, pending the hearing and determination of the proceedings, if it appears necessary or appropriate to do so in order to ensure the safety and protection of the applicant.

(2) An Interim Order may be made by the Court at any time either before or during the hearing of the application whether or not—

(a) the respondent is present at the proceedings; or

(b) the respondent has been given notice of the proceedings.

(3) An Interim Order may be made for such period of time as the Court considers necessary but shall not exceed a period of twenty-one days.

(4) An Interim Order may contain any or all of the prohibitions or directions specified in section 6.

(5) Where an Interim Order is made by the Court, it shall summon the respondent to appear at a further hearing of the matter as soon as possible after the making of the Interim Order, and at such further hearing the Court may—

(a) extend the period of the Interim Order for such further period or until the date fixed for the hearing of the application, such period not to exceed forty-two days from the date of the application;

(b) revoke the Interim Order; or

(c) hear the application and make a Protection Order under section 5 in substitution for the Interim Order,

whether or not the respondent appears at the proceedings.

9. (1) In proceedings under this Act the Court may at any time before the taking of evidence, accept an Undertaking from the respondent given under oath, that the respondent shall not engage in conduct specified in the application or any other conduct that constitutes domestic violence. Undertakings

(2) Where an Undertaking is given under subsection (1) the Court shall make a Protection Order or Interim Order, as it deems fit, in respect of the Undertaking.

(3) An Undertaking may deal with all matters that may be dealt with under a Protection Order or Interim Order as the Court sees fit, having regard to the matters referred to in section 7.

(4) An Undertaking remains in force for the period stated in the Undertaking, but shall not exceed three years.

(5) Sections 15, 16, 17 and 18, Part IV and Part V apply in relation to an Undertaking as they do to a Protection Order and Interim Order.

PART III

Proceedings in Respect of an Application for a Protection Order

10. (1) An application for a Protection Order shall be made on the prescribed form, being "Form 1" in the Second Schedule, and shall be filed with the Clerk. Application

(2) Except as otherwise provided for by this Act, the Summary Courts Act shall apply *mutatis mutandis* in respect of proceedings under this Act. Chap. 4:20

(3) Proceedings in respect of an application for a Protection Order shall be held *in camera* unless the Court directs otherwise.

(4) Where an application is made on behalf of a child or dependant, the parent or guardian of that child or dependant or the person with whom the child or

dependant normally resides or resides with on a regular basis is entitled to be a party to the proceedings.

(5) Nothing in subsection (4) shall prevent a child or dependant, on whose behalf an application for an Order is made, from being heard in the proceedings and where the child or dependant expresses views, the Court shall take account of those views having regard to the age and maturity of the child or dependant and ability of the child or dependant to express such views.

Date of hearing of application

11. The Clerk shall fix a date for the hearing of the application which shall be no more than seven days after the date on which the application is filed.

Notice of proceedings

12. (1) A copy of the 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, shall be served on the respondent.

(2) A notice of proceedings shall be issued on the form described as "Form 2" in the Second Schedule.

(3) Where an application is filed in respect of a child or dependant, a copy of the application, together with notice of the date on which, and the time and place at which, the application is to be heard, shall as soon as practicable, be served on the parent or guardian or other person with whom the child or dependant normally resides or resides with on a regular basis.

(4) A notice of proceedings which is issued and served under this section is deemed to be a summons that is duly issued and served under the Summary Courts Act and compels the respondent to appear in Court to answer the application as if it were a complaint to which that Act applies.

Chap. 4:20

(5) A notice of proceedings issued under this section may be served by the applicant or his agent and

the Court shall receive proof of such service by affidavit in accordance with the prescribed form, described as "Form 3" in the Second Schedule.

(6) Where the hearing of an application is adjourned because the application and the notice of proceedings have not been served on the respondent, the time and place fixed by the Court for the adjourned hearing, shall be the date, time and place stated in the new notice of proceedings.

Absence of respondent

13. Where notice of the proceedings has been served on the respondent in accordance with section 12 and the respondent fails to appear in person at the time fixed for the hearing the Court may—

(a) proceed to hear and determine the matter in the respondent's absence; or

(b) where the Court is satisfied, having regard to the materials 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.

Absence of applicant

14. If, on the date of the hearing of an application for a Protection Order, the respondent appears in Court, but neither the applicant nor the person on whose behalf the application is made appears either in person or represented by his attorney-at-law, the Court may:

(a) dismiss the application; or

(b) having received a reasonable excuse for the non-appearance of the applicant or other person, adjourn the hearing upon such terms as it deems just; or

(c) where it is satisfied, having regard to the submissions 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.

Explanation of Orders

15. Where the Court proposes to make a Protection Order or an Interim Order, and the respondent is before the Court, the Court shall explain to the respondent—

(a) the purpose, terms and effect of the Order;

(b) the consequences of failing to comply with the Order; and

(c) the means by which the Order may be varied or revoked.

Service of Orders

16. Where a Protection Order or Interim Order is made or varied by the Court—

(a) the clerk shall arrange for the Order to be drawn up on the prescribed form, described as "Form 4" in the Second Schedule and filed in the Court; and

(b) the Court shall cause a copy of the Order to be served on—

(i) the respondent;

(ii) any other person to whom the Order is to apply whether or not the person is a party to the proceedings; and

(iii) the police officer in charge of the station located nearest to the area where the respondent or applicant resides.

Service other than personal service

17. (1) Where, the Court has not been able to serve notice of proceedings or the Order, as the case may be, upon the respondent personally, it may make an Order for substituted service of the notice of proceedings or Order, as the case may be.

(2) For the purpose of subsection (1)*(b)* "substituted service" means—

(a) registered post to the last known address of the respondent;

(b) leaving the document at the last known address of the respondent;

(c) service by advertisement in two daily newspapers which service is deemed to have been effected at midnight on the date of the later advertisement, the cost to be borne by the applicant; or

(d) such other manner as the Court may direct.

Respondent to have notice

18. A respondent shall not be bound by a Protection Order or Interim Order—

(a) where he was not present at the time of the making of the Order; or

(b) where the Order has not been served on him personally or in accordance with section 17.

PART IV

Variation, Duration and Revocation of Orders

Variation and revocation of Orders

19. (1) Where an Order is in force, a party to the proceedings in respect of whom the Order was made may apply to Court on the Form described as "Form 5" in the Second Schedule, for an Order varying or revoking the original Order.

(2) On an application under subsection (1), the Court may, by Order, vary or revoke the Order.

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

(4) In determining whether to vary or revoke an Order the Court shall have regard to the matters specified in section 7.

PART V

ENFORCEMENT OF ORDERS

Breach of Orders

20. (1) Subject to subsection (2) a person against whom an Order has been made and who—

(a) has had notice of the Order; and

(b) contravenes any provision of the Order or fails to comply with any direction of the Court,

commits an offence and is liable—

(i) on a first conviction to a fine not exceeding nine thousand dollars or imprisonment for a period not exceeding three months;

(ii) on a second conviction to a fine not exceeding fifteen thousand dollars or imprisonment for a period not exceeding twenty-four months or both;

(iii) on any subsequent conviction to a period of imprisonment not exceeding five years.

(2) Where an Order contains a direction of the Court pursuant to subsection (1)*(b)*(viii) that the respondent seek counselling or therapy and it is brought to the attention of the Court that the respondent has refused or neglected to comply with such a direction and the Court finds that such refusal or neglect was unreasonable, the respondent commits an offence and is liable to a fine not exceeding three thousand dollars.

PART VI

POLICE POWERS OF ENTRY AND ARREST

Duties of police officers

21. (1) A police officer shall respond to every complaint or report alleging domestic violence whether or not the person making the complaint or the report is the victim.

(2) It shall be the duty of a police officer responding to a domestic violence complaint to complete a domestic violence report which shall form part of a National Domestic Violence Register to be maintained by the Commissioner of Police.

(3) A domestic violence report shall be in the form prescribed as "Form 7" of the Schedule and shall include but not be limited to—

(a) the name of the parties;

(b) the relationship and sex of the parties;

(c) information relating to the history of domestic violence between the parties;

(d) the date and time the complaint was received;

(e) the type of the abuse and the weapon used, if any.

Issue of warrant

22. 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 in a situation amounting to domestic violence and needs assistance to deal with or prevent 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 in paragraph *(a)*,

the Magistrate may issue a warrant in writing authorising a police officer to enter the premises specified in the warrant at any time within twenty-four hours 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.

Police powers of entry and arrest without warrant

23. (1) Where a police officer has been invited onto premises by a person apparently resident in those premises for the purpose of giving assistance to that person or another who has suffered or is in imminent danger of suffering physical injury at the hands of another person in a situation amounting to domestic violence the police officer may, without a warrant, enter the premises for the purpose of giving assistance and shall take such action as is reasonable to prevent the commission or repetition of the violence complained of.

(2) Where a police officer has been refused entry on to premises and has reasonable cause to believe that a person is engaging in or threatening to engage in conduct which amounts to domestic violence and failure to act immediately may result in physical injury or death, the police officer may enter those premises without a warrant, for the purpose of—

(a) arresting the person whom he suspects of engaging in conduct amounting to domestic violence;

(b) giving assistance to a person who has suffered injury;

(c) ensuring the welfare and safety of a child who may be on the premises; and

(d) preventing any further breach of the law.

(3) Nothing in this section authorises the entry onto premises by a policeman, for the purpose of any search or the arrest of any person, otherwise than in connection with the conduct referred to in subsection (2).

(4) Where a police officer exercises a power of entry under subsection (2) he shall immediately submit a written report to the Commissioner of Police, through the Head of the Division where the incident occurred, such report to contain the following information:

(a) the reasons for entering the premises without a warrant;

(b) the offence being committed or about to be committed; and

(c) the manner in which the investigation was conducted and the measures taken to ensure the protection and safety of the person at risk.

Powers of arrest where a Protection Order is in force

24. Where an Order is in force and a police officer—

(a) is satisfied, by the way of complaint, that a breach of the Order has occurred; or

(b) believes on reasonable grounds that a person has committed or is committing a breach of the Order,

he may detain and arrest that person with or without a warrant.

Existing criminal law to apply

25. (1) Subject to subsection (2), where a person is arrested under section 22 or 23, the person shall be charged in accordance with the relevant provisions of the criminal law for committing or threatening to commit any of the offences listed in the First Schedule and shall be dealt with accordingly.

(2) Where an application for a Protection Order has been made or where a person has been arrested

and charged under section 22 or 23 and after hearing all the evidence the Court is satisfied that—

(a) the incident was an isolated one;

(b) there are circumstances which make it desirable to preserve the family unit; and

(c) the conduct complained of is not sufficiently grave to warrant the imposition of either the Order or the penalty, as the case may be,

it may, with the consent of the applicant or complainant, as the case may be, withhold the granting of a Protection Order or the imposition of any penalty as prescribed by law and require the respondent or defendant to enter into a bond of good behaviour for a period not exceeding six months.

(3) Where a bond of good behaviour has been entered into under subsection (2) the Court may prescribe such additional conditions as follows:

(a) that the parties receive professional counselling, including family counselling;

(b) that the parties report to a probation officer at certain fixed intervals;

(c) that the matter be reviewed by the Court within three months.

(4) A bond of good behaviour entered into under subsection (2) shall be forfeited where the Court is satisfied that—

(a) the respondent or defendant has continued to engage in conduct amounting to domestic violence against the complainant;

(b) based on a report from a probation officer, social worker, police officer or such other person, domestic violence is likely to be perpetrated against the applicant or complainant; or

(c) the applicant or complainant has become fearful of the respondent or defendant to the extent that he is no longer willing to continue the relationship.

Refractory witnesses

26. (1) Where direct oral evidence of a fact would be admissible in any proceedings under this Act, a document containing a statement made by the complainant which forms part of the record compiled by the police and tending to establish that fact, shall be admissible in circumstances where—

(a) the complainant refuses to be sworn as a witness; or

(b) having been sworn as a witness, gives oral evidence which is inconsistent or contradictory to the statement forming part of the police record.

(2) A statement admitted as evidence by virtue of subsection (1), shall be treated by the Court as a statutory declaration made under the Statutory Declarations Act and the Court may draw any reasonable inference from the form or content of that statement and determine the weight, if any, to be attached to the evidence of any fact stated therein.

Chap. 7:04

PART VII

MISCELLANEOUS

Bail Act, No. 18 of 1994

27. (1) Notwithstanding the Bail Act, where the Court is required to determine whether to grant bail in respect of an offence under this Act, the Court shall consider—

(a) the need to protect the applicant from domestic violence;

(b) the welfare of a child where the defendant or victim of the alleged offence has custody of that child;

(c) the welfare of any child being a member of the household; and

(d) any hardship that may be caused to the defendant or other members of the family if bail is not granted.

(2) Notwithstanding the Bail Act, the Court in granting bail, may order that the recognisance be subject to such of the following conditions as the Court considers appropriate:

(a) that the defendant not harass or molest or cause another person to harass or molest the victim of the alleged offence;

(b) that the defendant not be on the premises in which the victim resides or works;

(c) that the defendant not be in a locality in which are situated the premises in which the victim resides or works; and

(d) where the defendant continues to reside with the victim that the defendant not enter or remain in the place or residence while under the influence of alcohol or a drug.

(3) Where a police officer believes on reasonable grounds that a person, who has been admitted to bail subject to one or more conditions, has failed to comply with a condition of the recognisance, the police officer may arrest the person without a warrant.

Appeals

28. (1) An appeal shall lie to the Court of Appeal from any Order or Judgement of the Court and the procedure in respect of such an appeal shall be as is laid down in the Summary Courts Act.

Chap. 4:20

(2) Notwithstanding subsection (1) a notice of appeal from an Order or Judgement under this Act shall not operate as a stay of proceedings unless the Court of Appeal orders otherwise.

Jurisdiction

29. Nothing in this Act shall be regarded as removing any jurisdiction which the High Court may have in respect of the matters referred to under this Act.

Repealed and savings Act No. 10 of 1991

30. (1) The Domestic Violence Act, 1991 is repealed.

(2) Nothing in this Act affects any proceedings instituted prior to the coming into force of this Act and existing Orders made under the Domestic Violence Act, 1991.

FIRST SCHEDULE

[Section 3]

SUMMARY OFFENCES ACT, CHAP. 11:02

Assault and Battery, Section 4
Assault upon children, women and old, infirmed, sickly persons, Section 5
Aggravated assaults causing wound or harm, Section 5
Violent or obscene language or disturbance of the peace, Section 49
Possession of weapons intended for crime, Section 62
Throwing stones or other missiles, Section 69
Inciting animals to attack, Section 75
Misuse of telephone facilities and false telegrams, Section 106.

MALICIOUS DAMAGE ACT, CHAP. 11:06

Setting fire to a dwelling house, any person being therein, Section 4
Conspiracy to set fire, Section 10
Destroying or damaging a house with gunpowder, any person being therein, Section 11
Attempting to destroy buildings with gunpowder, Section 12

OFFENCES AGAINST THE PERSON ACT, CHAP. 11:08

Conspiring or soliciting to commit murder, Section 5
Attempted murder, Section 9
Sending letters threatening to murder, Section 10
Shooting or wounding with intent to do grievous bodily harm, Section 12
Inflicting injury with or without weapon, Section 14
Attempting to choke, etc., in order to commit any indictable offence, Section 15
Using drugs, etc., with intent to commit offence, Section 16
Administering poison, etc., so as to endanger life or inflict grievous bodily harm, Section 17

Administering poison, etc., with intent to injure or annoy, Section 18
Exposing children so that life endangered, Section 21
Causing bodily injury by explosive substance, Section 22
Use of explosive substance or other noxious thing with intent to do grievous bodily harm, Section 23
Attempting to blow up buildings, Section 26
Drivers of vehicles injuring person by furious driving, Section 26
Procuring abortion, Section 56
Procuring drugs to cause abortion, Section 57

CHILDREN ACT, CHAP. 46:01

Punishment for cruelty to children and young persons, Section 3
Suffocation of infants, Section 4
Begging, Section 5
Exposing children to risk of burning, Section 6
Allowing children or young persons to be in brothels, Section 7
Causing, encouraging or favoring seduction or prostitution of young girls, Sections 3, 4, 5, 6, 7 and 8

SEXUAL OFFENCES ACT, 1986

Rape, Section 4
Sexual assault by a husband in certain circumstances, Section 5
Sexual intercourse with a female under fourteen, Section 6
Sexual intercourse with a female between fourteen and sixteen, Section 7
Sexual intercourse with a male under sixteen, Section 8
Incest, Section 9
Sexual intercourse with adopted minor, Section 10
Sexual intercourse with mentally subnormal person, Section 12
Buggery, Section 13
Serious indecency, Section 16
Procuration, Section 17
Procuring defilement of a person, Section 18
Detention of a person, Section 19
Abduction of a female, Section 20

SECOND SCHEDULE

FORMS

FORM 1

Domestic Violence Act, 1999

Section 4

APPLICATION FOR PROTECTION ORDER /INTERIM PROTECTION ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of .....

I, ...
(Name of Applicant)

of .....
(Address)

hereby apply under Section 4 of the Domestic Violence Act, 1999 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 named Respondent)

and who resides at .....
(Specify address of Respondent)

in respect of the following conduct:

SPECIFY DATES, TIMES, PLACE AND DETAILS OF CONDUCT COMPLAINED OF.

.....
Applicant

Dated this ..... day of .....,

FORM 2

Domestic Violence Act, 1999

Section 12(2)

NOTICE OF PROCEEDINGS

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of .....

BETWEEN

.....Applicant

v

.....Respondent

TO THE RESPONDENT

An application under Section 4 of the Domestic Violence Act, 1999 for a 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 the..... day of ..... , at ..... A.M./P.M. at .....
(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.

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

Dated this ..... day of .....,

FORM 3

Domestic Violence Act, 1999

Section 12(5)

AFFIDAVIT FOR USE IN PROVING SERVICE OF PROCESS

REPUBLIC OF TRINIDAD AND TOBAGO

No. .....

Return of service of process in respect of Domestic Violence Offence(s) for the ..... Court.

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

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

.....
(Deponent)

Sworn to by me ..... the above-named Deponent
[Name and rank (where applicable) of Deponent]

this ..... day of .....,

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

FORM 4

Domestic Violence Act, 1999

Section 16

PROTECTION ORDER OR INTERIM ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of.....

The Court having heard an application made by .....in
(Name of Applicant)

respect of the conduct or threatened conduct of.....
(Name of Respondent)

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

NOW THIS COURT ORDERS, that for the period from the .....

day of ....., to the.....day of .....,

YOU .....
(Name of Respondent)

THE WITHIN NAMED RESPONDENT SHALL NOT ENGAGE IN THE FOLLOWING CONDUCT, AND YOU THE WITHIN NAMED RESPONDENT SHALL COMPLY WITH THE FOLLOWING PROHIBITIONS AND CONDITIONS:

SPECIFY PROHIBITIONS AND CONDITIONS IMPOSED AND ANY PERIOD OR PERIODS FOR WHICH THEY MAY BE IMPOSED (IF DIFFERENT FROM THE PERIOD OF THE PROTECTION/INTERIM PROTECTION ORDER).

AND THIS COURT FURTHER ORDERS that you .....shall not
(Name of Respondent)

engage in any conduct that constitutes an offence under this Act.

If you the said ..... fail to comply with any of the terms of this Order you shall be liable to imprisonment and/or a fine pursuant to Section 19 of the Act.

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

Dated this ..... day of .....,

FORM 5

Domestic Violence Act, 1999

Section 19(1)

APPLICATION FOR VARIATION OR REVOCATION OF PROTECTION ORDER OR INTERIM ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of .....

BETWEEN

.....Applicant

v

.....Respondent

I, ...hereby apply for a variation Revocation of
(Name of Applicant)

the Order made against.....on the
(Name of person against whom the order was made)

day of....., 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 an Order)

I ask for a revocation/variation of the Order in the following terms:
SPECIFY DETAILS OF VARIATION

.....
Applicant

.

Dated this ..... day of .....,

FORM 6

Domestic Violence Act, 1999

Section 19(2)

ORDER VARYING PROTECTION ORDER OR INTERIM ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of .....

The Court, having heard an application made under section 4 of the Act by .....in respect of the conduct or threatened
(Name of Applicant)

conduct of.....towards .....and
(Name of Respondent) *(Name of person protected by the Order)*

the Court having on the.....day of....., made an Order, a copy of which is attached, prohibiting the Respondent from engaging in the conduct specified therein.

NOW the Court on the application of.....does this day Order that the Protection Order or Interim Protection Order be either:

1. REVOKED

.....
(Specify effective date of revocation)

2. VARIED AS FOLLOWS

Specify details of variation

.....

.....

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

.

Dated this ..... day of.....,

FORM 7

Domestic Violence Act, 1999

Section 21(3)

DOMESTIC VIOLENCE POLICE REPORT

STATION ..... DIVISION .....Reference No. .....

Complaint made by .....
Surname *First name*

Address.....

Relationship to Victim/Offender .....Telephone No. .....

Mode of Report .....

Telephone	*Personal*	*Referred (by whom)*	*Etc.*

Date .....Time .....Diary Reference.....

Recorded by: *(Number/Rank/Name)* .....

Name of Victim .....
Surname *First Name*

Ethnic Origin .....Religion.....

East Indian	*African*	*Caucasian*	*Mixed*	*Etc.*

Address.....

Telephone No. .....Marital Status .....Relationship to Offender .....

Sex .....Age .....Occupation .....

Address of Employment .....

Name of Offender .....
Surname *First Name*

Ethnic Origin .....Religion .....

East Indian	*African*	*Caucasian*	*Mixed*	*Etc.*

Address.....

Sex ..... Age ..... Marital Status .....Telephone No. .....

Occupation ..... Address of Employment .....

Name of Witness ..... Name of Witness .....

Address.....

Relationship to Victim/Offender.....Relationship to

Victim/Offender.....

BRIEF FACTS AS REPORTED

.....
.....
.....
.....
.....
.....
.....
.....

Extent of Inquiry .....

Medical Report Form Attached *(tick)* Yes ❒ No ❒

Instrument used to inflict Injury.....

Whereabouts of Children at time of incident.....

.....

State whether previous complaints were made *(tick)* Yes ❒ No ❒

Date .....Time .....Diary Reference .....

Investigator: *(Number/Rank/Name)* .....

Action taken .....

.....

Other previous complaints made

Date .....Time .....Diary Reference .....

Investigator: (Number/Rank/Name) .....

Action taken .....

.....

Is Protected Order (P.O.) in existence? *(tick)* Yes ❒ No ❒

Date of Issue .....

Comments .....

.....

.....

Duration (P.O.) .....Court of Issue .....

ACTION TAKEN WITH RESPECT TO PRESENT REPORT:

Date/Time Action taken, by whom

....

....

....

....

....

ARREST MADE:

Date of Arrest .....Mode of Arrest .....

Present status of report .....

CHARGES PREFERRED:

(1) .....

(2) .....

(3) .....

(4) .....

STATE REASON(S) IF NO CHARGES PREFERRED:

.....

.....

.....

.....

AGENCY TO WHICH REPORT REFERRED/FOLLOW UP ACTION:

.....

.....

.....

....

Investigator *Supervising Officer (Inspector and above)*

....

Date *Date*

Passed in the Senate this day of , 1999.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all members of the Senate that is to say by the votes of Senators.

Clerk of the Senate

Passed in the House of Representatives this day of , 1999.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House that is to say by the votes of members of the House.

Clerk of the House

No. 20 of 1999

FOURTH SESSION

FIFTH PARLIAMENT

REPUBLIC OF

TRINIDAD AND TOBAGO

BILL

AN ACT to provide greater protection for victims of domestic violence

Received and read the

First time.....

Second time.....

Third time.....

Passed in the House of Representatives this day of , 1999.

Clerk of the House.

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House that is to say by the votes of members of the House.

Clerk of the House

Passed in the Senate this day of , 1999.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all members of the Senate that is to say by the votes of Senators.

Clerk of the Senate

Passed in the Senate this day of , 1999.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day of 1999.

Clerk of the House

I confirm the above.

Speaker