

DISPUTES

# Proposed Amendments to the Domestic Violence Act – latest developments

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## Domestic Violence Act

As part of government's efforts to address the scourge of domestic violence in South Africa, a process to expedite the amendment of various provisions of the [Domestic Violence Act 116 of 1998](#) ("Act") has been under way over the past couple of years. A draft Domestic Violence Amendment Bill [B20-2020] was published for public comment in March 2020, after which a further revised Bill was published for comment in September 2020.

Following the previous versions of the Bill, the National Assembly considered the submitted written comments and heard oral submissions from various stakeholders and civil society organisations before making further revisions to the Bill. As a result of that process, a newly revised Domestic Violence Amendment Bill [B20B-2020] ("New Bill") was recently published for public comment by the National Council of Provinces, which is now tasked with considering the New Bill.

The most notable change between the previous version of the Bill and the New Bill is the removal of the controversial proposal to make it mandatory for adults who become aware that an act of domestic violence has been committed against another adult, to report such knowledge to the police or a social worker, failing which they would be guilty of a statutory criminal offence. This previous proposal was met with widespread criticism from various sectors (for some of these criticisms, see: <https://werksmans.com/legal-updates-and-opinions/proposed-amendments-to-the-domestic-violence-act/>). In the New Bill, this provision has been removed, meaning that the proposed obligation for adults to report instances of domestic violence will not apply. However, the proposed obligation to report instances of domestic violence still remains for certain categories of functionaries, such as: health-care and medical professionals, social workers, care-givers and educators.

## Domestic violence safety monitoring notice

A wholly new addition to the New Bill that did not appear in the previous versions of the Bill is a provision that introduces a proposed "domestic violence safety monitoring notice" ("Proposed Notice"). In terms of this provision, when a complainant who shares a joint residence with the respondent applies for a protection order, and has reasonable grounds to suspect that the respondent poses a threat to the complainant's personal safety, they may simultaneously apply for the issuing of the Proposed Notice.

In the Proposed Notice, the court may order the station commander of a police station to direct that a police officer either privately contact or visit a complainant at the joint residence at regular intervals (for a period to be determined by the court), with a view to ensuring the continued safety of a complainant. In terms of the provision, should the police officer be prevented (by the respondent or any other third party) from contacting or visiting the complainant, the police officer may use such reasonable force as may be necessary in the circumstances (including, for example, breaking a door or window of the residence) to enter the joint residence and communicate privately with the complainant. Should this provision be passed as law, it would be interesting to see how effectively it would be implemented by the South African Police Service.

Additional proposed amendments in the New Bill are mostly of a technical nature, as they seek to refine existing processes and definitions. The previously proposed expansion of the different types of domestic violence has been maintained. Some of the definitions of the new forms of domestic violence (such as "spiritual abuse", "coercive behaviour" and "controlling behaviour", among others) have been refined or re-worded to varying degrees following the previous round of written submissions and deliberations by the National Assembly.

However, despite a deluge of submissions from civil society organisations and various stakeholders in which objections are raised to the proposed deletion of "stalking" as a standalone definition (and its inexplicable incorporation into the revised definition of "harassment"), the New Bill disregards those many similar views and instead retains the deletion.

In terms of the call for comments, any interested parties or stakeholders are welcome to make written submissions on the New Bill by no later than 17:00 on 9 July 2021.

*by Dakalo Singo, Director*



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