**Domestic violence safety monitoring notice (February 2021)**

**Discussion**

(a) The proposed amendment is to ensure that the SAPS/peace officers are afforded powers to monitor the safety of a complainant who shares a joint residence with the respondent, in the following circumstances:

(i) Where there is an incident of domestic violence as contemplated in section 3(1)*(a)* or (2), where the respondent is not arrested for an offence.

(ii) Where the complainant applies for a protection order and where the court—

 (aa) issues an interim protection order; or

(bb) does not issue an interim protection order, but refer the matter for hearing (see section 5(4)).

(iii) Where the court issues a final protection order.

(b) The practical reality is, that a complainant must either leave the joint residence, if the respondent is not arrested for an incident of domestic violence that constitutes an offence contemplated in section 3, or endure domestic violence until a court issues an interim protection order. It must be taken into account that women with children cannot readily leave the joint residence, and in rural areas it is difficult for women to contact or even reach shelters. Where the complainant and respondent share a joint residence, the service of the interim protection order or the application and affidavits (which may be that of other persons of the household) on the respondent, where there is already a violent relationship, is a concern. The same concerns would apply where a final protection order is issued. Also, the respondent will be in possession of firearms or other dangerous weapons until the court issues an interim protection order. The proposed clause aims to provide for a mechanism to ensure that the safety of the complainant may be monitored.

(c) It must be pointed out that the personnel and cost implications that may result from the proposed clause must be considered and extensive consultation with the SAPS and other functionaries involved must take place.

"**Domestic violence safety monitoring notice**

 **3B.** (1) A domestic violence safety monitoring notice may be issued—

*(a)* in terms of subsection (2), by the court; or

*(b)* in terms of subsection (3), by a peace officer.

 (2) *(a)* A court may issue a domestic violence safety monitoring notice, in the prescribed form, if—

(i) a complainant, who applies to the court for a protection order in terms of section 4(1), simultaneously with the application or at any stage before the court issues a final protection order or discharge the matter in terms of section 6, apply for the issuing of a domestic violence safety monitoring notice; or

(ii) a complainant, any stage after the court has issued a final protection order in terms of section 6(4), applies to the court for the issuing of a domestic violence safety monitoring notice; and

(iii) it appears to the court, from information on oath or affirmation as set out in the application, that—

*(aa)* there are reasonable grounds for believing that the complainant and respondent occupies a joint residence; and

*(bb)* the complainant on reasonable grounds fears for his or her safety.

 *(b)* A court may in terms of a domestic violence safety monitoring notice order the station commander of a police station within the area of jurisdiction of the court to direct a member of the South African Police Service under his or her command for the period specified in the notice, and subject to any conditions specified in the notice—

(i) to contact the complainant at regular intervals by means of an electronic service at an electronic address as specified in the Annexure to the notice and to enquire about the complainants wellbeing;

(ii) at regular intervals, to visit the joint residence and to see and to communicate in private with the complainant; and

(iii) where a member is prevented from seeing the complainant, to—

*(aa)* enter the joint residence to see and to communicate in private with the complainant; and

*(bb)* overcome resistance against such entry by using as much force as is reasonably required by the circumstances, including breaking a door or window of the premises.

 *(c)* The notice must be served on the station commander and the respondent, in the prescribed manner: Provided that the Annexure referred to in paragraph *(b)*(i), may not be disclosed to the respondent.

 *(d)* For purposes of paragraph *(b)*(ii) and (iii), a member must execute the notice in the prescribed manner.

 *(e)* At the expiry of the notice, a report containing the prescribed information, must be filed with the clerk of the court.

 (3) *(a)* A peace officer may issue a domestic violence safety monitoring notice, in the prescribed form, if—

(i) an incident of domestic violence as contemplated in section 3(1)*(a)* or (2), took place outside ordinary court hours or on a day which is not an ordinary court day and a person, who is a respondent, has not been arrested for committing an offence as contemplated in that section;

(ii) a protection order has not been issued against the respondent;

(iii) the complainant completed an application for a domestic violence safety monitoring notice in which he or she states that he or she intends to apply for a protection order; and

(iv) it appears, from information on oath or affirmation as set out in the application, that—

*(aa)* there are reasonable grounds for believing that the complainant and respondent occupy a joint residence; and

*(bb)* the complainant on reasonable grounds fears for his or her safety.

 *(b)* The peace officer referred to in paragraph *(a)*, must serve the notice on the respondent in the prescribed manner: Provided that the Annexure referred to in paragraph *(d)*(i), may not be disclosed to the respondent.

 *(c)* The notice expires 12h00 on the first court day after the day upon which the notice is issued.

 *(d)* In terms of the notice, a peace officer, is authorised—

(i) to contact the complainant at regular intervals by means of an electronic service at an electronic address as specified in the Annexure to the notice and to enquire about the complainant wellbeing; and

(ii) at regular intervals, to visit the joint residence and to see and to communicate in private with the complainant.

 *(e)* A peace officer, who receives a report that a complainant who applied for a notice, has been harmed or threatened with harm, is authorised in terms of the notice—

(i) to visit the joint residence and to see and to communicate in private with the complainant; and

(ii) where the peace officer is prevented from seeing the complainant, to—

*(aa)* enter the joint residence to see and to communicate in private with the complainant; and

*(bb)* overcome resistance against such entry by using as much force as is reasonably required by the circumstances, including breaking a door or window of the premises.

*(f)* For purposes of paragraphs *(d)*(ii) and *(e)*, a peace officer must execute the notice in the prescribed manner.

*(g)* A copy of the notice and a report containing the prescribed information must be filed with the clerk of the court on the first court day after the day upon which the notice is issued.

 (4) Any person who—

*(a)* interferes with, or hinders or obstructs a member or a peace officer in the performance of his or her functions or exercise of his or her powers, in terms of subsections (2) or (3), respectively; or

*(b)* prevents a complainant to—

 (i) contact a member or a peace officer; or

(ii) present himself or herself to, or to communicate in private with, a member or a peace officer,

is guilty of an offence.".

**Insert the following paragraph in section 3 of the DVA:**

*"(....)* where a person, who is a respondent, has not been arrested for committing anoffence as contemplated in subsection (1)*(a)* or (2), hand an application for a domestic violence safety monitoring notice, in the prescribed form, to the complainant that must be completed by the complainant, and returned to the peace officer;".