

- (b) appear at the place and on the date and at the time to which the proceedings in question may be adjourned; [or]
  - (c) remain in attendance at those proceedings as so adjourned[.]; or
  - (d) produce any book, document or object specified in the subpoena.
- is guilty of an offence referred to in section [15]18(3).

**Circumstances in which proceedings may not take place in open court and publication of information**

[5]8. (1) The court may, of its own accord or at the request of the complainant or related person, if it is of the opinion that it would be in the interests of the administration of justice that the proceedings in question be held behind closed doors, direct that—

- (a) the public or any class thereof may not be present at those proceedings or any part thereof;
- (b) the identity or address of any person may not be revealed; or
- (c) no information relating to the proceedings be published in any manner whatsoever.

(2) Where a witness in proceedings under this Act is a child, the court may direct that no person, other than the witness and his or her parent or guardian or a person *in loco parentis*, may be present at the proceedings, unless that person's presence is necessary in connection with the proceedings or is authorised by the court to be present.

(3) Nothing in this section limits any other power of the court to hear proceedings *in camera* or to exclude any person from attending those proceedings.

(4) Before the court acts in terms of subsections (1), (2) or (3), it may give any person who has an interest in the matter the opportunity to apply to the court—

(a) to be present at the proceedings; or

(b) to publish—

(i) the identity of any person involved in such proceedings; or

(ii) any information relating to such proceedings.

### **Issuing of protection order**

[6]9. (1) If the respondent does not appear on a return date referred to in section 3(3) or (4), and if the court is satisfied that—

(a) proper service has been effected on the respondent; and

(b) the application contains *prima facie* evidence that the respondent has engaged or is engaging in harassment,

the court must issue a protection order in the prescribed form.

(2) If the respondent appears on the return date and opposes the issuing of a protection order, the court must proceed to hear the matter and—

(a) consider any evidence previously received in terms of section 3(1); and

(b) consider any further affidavits or oral evidence as it may direct, which must form part of the record of proceedings.

(3) The court may, of its own accord or at the request of the complainant or related person, order that in the examination of those witnesses, including the complainant or related person, a respondent who is not represented by a legal representative—

- (a) is not entitled to directly cross-examine [~~directly~~] a person whom he or she is alleged to have harassed; and
- (b) must put any question to the person by stating the question to the court, and the court is to repeat the question accurately to the person.

(4) The court must, after a hearing as provided for in subsection (2), issue a protection order in the prescribed form if it finds, on a balance of probabilities, that the respondent has engaged or is engaging in harassment.

#### Option

(4) Subject to subsection (4A), [The] the court must, after a hearing as provided for in subsection (2), issue a protection order in the prescribed form if it finds, on a balance of probabilities, that the respondent has engaged or is engaging in harassment.

(4A) The court may, in its discretion, refuse to issue a protection order in terms of subsection (4) if the court is of the opinion that the conduct in question, on a balance of probabilities, was engaged in / took place—

- (a) for the purpose of detecting or preventing an offence;
- (b) to reveal a threat to public safety or the environment;
- (c) to reveal that an undue advantage is being or was given to a person in a competitive bidding process; or
- (d) to comply with a legal duty.

#### Alternative option to (4A)

(4A) For the purpose of deciding whether the conduct of a respondent is unreasonable for the purposes of/as provided for/ as referred to in paragraph (a) of the definition of "harassment", the court must, in addition to any other factor, take into account/consider whether the conduct, in the particular

circumstances in question, was engaged in —

- (a) for the purpose of detecting or preventing an offence;
- (b) to reveal a threat to public safety or the environment;
- (c) to reveal that an undue advantage is being or was given to a person in a competitive bidding process; or
- (d) to comply with a legal duty.

(5) On issuing a final protection order the court must direct that—

- (a) the original of that order must be served on the respondent; and
- (b) a certified copy of that order, and the original warrant of arrest referred to in section [8]11(1)(a), must be served on the complainant,

in the prescribed manner, by the clerk of the court, sheriff or peace officer identified by the court.

(6) The clerk of the court must immediately, in the prescribed manner, forward certified copies of any protection order and of the warrant of arrest referred to in section [8]11(1)(a) to the police station of the complainant's choice.

(7) Subject to section [7]10(4), a protection order issued in terms of this section remains in force for a period of five years or such further period as the court may determine on good cause shown [until] unless it is set aside, and the execution of that order is not automatically suspended upon the noting of an appeal against the order.

### **Court's powers in respect of protection order**

[7]10. (1) The court may, by means of a protection order, including an interim protection order, prohibit the respondent from—

- (a) engaging in or attempting to engage in harassment;
- (b) enlisting the help of another person to engage in harassment; or
- (c) committing any other act as specified in the protection order.

(2) The court may impose any additional conditions on the respondent which it deems reasonably necessary to protect and provide for the safety or well-being of the complainant or related person[, **including an order—**].

(3) The court may order—

(a) a member of the South African Police Service to—

**[(a)](i) [to] seize any [arm or dangerous] weapon in the possession or under the control of the respondent as provided for in section [9]12;**

**[(b) that a peace officer must] (ii) accompany the complainant or related person to a specified place to assist with arrangements regarding the collection of personal property identified in the application for a protection order; or**

**[c] (b)[directed to] the station [commissioner] commander of the relevant police station [that the matter be investigated] to investigate the matter with the view to the possible institution of a criminal prosecution against the respondent.**

**[3](4) (a)** The physical, home and work address of the complainant or related person must be omitted from the protection order, unless the nature of the terms of the order necessitates the inclusion of the address.

(b) The court may issue any directions to ensure that the complainant's or related person's physical address is not disclosed in any manner which may endanger the safety or well-being of the complainant or related person.

**[4](5) (a)** Provided that the complainant is not in possession of or

not in the process of applying for a protection order against harassment or stalking as provided for in the Domestic Violence Act, 1998 (Act No. 116 of 1998), the court may not refuse —

- (i) to issue a protection order; or
- (ii) to impose any condition or make any order,

which it is competent to impose or make under this section, merely on the grounds that other legal remedies are available to the complainant.

(b) If the court is of the opinion that any provision of a protection order deals with a matter that should, in the interests of justice, be dealt with further in terms of any other relevant law, the court must order that that provision remains in force for the limited period as the court determines, in order to afford the party concerned the opportunity to seek appropriate relief in terms of that law.

#### **Warrant of arrest upon issuing of protection order**

[8]11. (1) Whenever a court issues a protection order, including an interim protection order, the court must make an order—

- (a) authorising the issue of a warrant for the arrest of the respondent, in the prescribed form; and
- (b) suspending the execution of that warrant subject to compliance with any prohibition, condition, obligation or order imposed in terms of section [7]10.

(2) The warrant referred to in subsection (1)(a) remains in force unless the protection order expires in terms of section 9(7), is set aside or is cancelled after execution.

(3) The court may issue the complainant with a second or further warrant of arrest, if the complainant files an affidavit in the prescribed form in which it is stated that the warrant is required for his or her protection and that the existing warrant of arrest has been—

- (a) executed and cancelled; or
- (b) lost or destroyed.

(4) (a) A complainant may hand the warrant of arrest, together with an affidavit in the prescribed form, wherein it is stated that the respondent has contravened any specified prohibition, condition, obligation or order contained in a protection order, to any member of the South African Police Service.

(b) If it appears to the member of the South African Police Service concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant or related person is suffering harm or may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the member must immediately arrest the respondent for allegedly committing the offence referred to in section [15]18(1)(a).

(c) If the member of the South African Police Service concerned is of the opinion that there are insufficient grounds for arresting the respondent in terms of paragraph (b), he or she must immediately hand to the respondent a written notice in the prescribed form, which—

- (i) specifies the name, the residential and work address and the occupation or status of the respondent;
- (ii) calls upon the respondent to appear before a court on the date and at the time specified in the notice, on a charge of committing the offence referred to in section [15]18(1)(a); and

(iii) contains a certificate signed by the member of the South African Police Service concerned to the effect that he or she handed the original notice to the respondent and that he or she explained its import to the respondent.

(d) The member of the South African Police Service must immediately forward a duplicate original of a notice referred to in paragraph (c) to the clerk of the court concerned, and the mere production in the court of such a duplicate original is *prima facie* proof that the original was handed to the respondent specified therein.

(5) In considering whether or not the complainant or related person is suffering harm or may suffer imminent harm, as provided for in subsection (4)(b), the member of the South African Police Service must take into account the—

- (a) risk to the safety or well-being of the complainant or related person;
- (b) seriousness of the conduct comprising an alleged breach of the protection order;
- (c) length of time since the alleged breach occurred; and
- (d) nature and extent of the harm previously suffered by the complainant or related person.

(6) Whenever a warrant of arrest is handed to a member of the South African Police Service in terms of subsection (4)(a), the member of the South African Police Service must inform the complainant of his or her right simultaneously to lay a criminal charge against the respondent, if applicable, and explain to the complainant how to lay such a charge.

#### **Seizure of [arms and dangerous] weapons**



[9]12. The court may order a member of the South African Police Service to seize any [arm or dangerous] weapon in the possession of or under the control of a respondent and direct the clerk of the court to refer a copy of the record of the evidence concerned to the National Commissioner of the South African Police Service for consideration in terms of the Firearms Control Act, 2000 (Act No. 60 of 2000).

### **Variation or setting aside of protection order**

[10]13.(1) A complainant or a respondent may, upon notice to the other party and the court concerned, apply for the variation or setting aside of a protection order referred to in section [6]9 in the prescribed manner.

(2) If the court is satisfied that circumstances have materially changed since the granting of the original protection order and that good cause has been shown for the variation or setting aside of the protection order, it may issue an order to this effect: Provided that the court may not grant such an application to the complainant unless it is satisfied that the application is made freely and voluntarily.

(3) The clerk of the court must forward a notice as prescribed to the complainant and the respondent if the protection order is varied or set aside as provided for in subsection (1).

### **Jurisdiction**

[11]14.(1) Any court within the area in which—

(a) the complainant permanently or temporarily resides, carries on business or is

employed;

(b) the respondent permanently or temporarily resides, carries on business or is employed; or

(c) the cause of action arose,

has jurisdiction to issue a protection order as provided for in this Act.

(2) No specific minimum period is required in relation to subsection (1)(a) or (b).

(3) A protection order is enforceable throughout the Republic.

### **Service of documents**

[12]15. Service of any document in terms of this Act must be effected immediately in the prescribed manner by the clerk of the court, the sheriff or a peace officer—

(a) as directed by the court in terms of section 3(3)(a) or (4), section 4(2), 5(2) or section [6]9(5); or

(b) as decided by the clerk of the court in terms of section 3(7).

### **Costs**

[13]16. The court may only make an order as to costs against any party if it is satisfied that the party in question has acted frivolously, vexatiously or unreasonably.

### **Appeal and review**

[14]17. The provisions in respect of appeal and review as provided for in the Magistrate's Courts Act, 1944 (Act No. 32 of 1944), and the Supreme Court Act, 1959 (Act No. 59 of 1959), apply to any proceedings in terms of this Act.

## Offences

[15]18.(1) Notwithstanding the provisions of any other law, any person who—

- (a) contravenes any prohibition, condition, obligation or order imposed in terms of section [7]10(1) or (2); or
- (b) in an affidavit referred to in section [8]11(4)(a), [willfully] makes a false statement in a material respect,

is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

(2) Any person who reveals the identity or address of any person in contravention of section [5]8(1)(b) or who publishes any information in contravention of section [5]8(1)(c), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(3) Any person who contravenes or fails to comply with section [4]7(3) is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding three months.

(4) (a) Any electronic communications service provider or employee of an electronic communications service provider who—

- (i) fails to furnish the required information within five ordinary court days from the time that the directive is served on such electronic communications service

provider to a court in terms of section 4(3)(a) or such extended period allowed by the court in terms of section 4(3)(b);

(ii) makes a false statement in an affidavit referred to in section 4(1)(b), (3)(b) or (4)(b) in a material respect; or

(iii) fails to comply with section 4(6).

is guilty of an offence.

(b) Any electronic communications service provider or employee of an electronic communications service provider who is convicted of an offence referred to in paragraph (a), is liable, in the case of—

(i) an electronic communications service provider, to a fine not exceeding R10 000; or

(ii) an employee of an electronic communications service provider to a fine or to imprisonment for a period not exceeding six months.

(5) Any person who in terms of section 6(2) is requested to furnish his or her name and address or any other information to a member of the South African Police Service and who fails to do so or who furnishes a false or incorrect name and address or other information, is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding six months.

## Regulations

[16]19. (1) The Minister may make regulations regarding—

(a) any form required to be prescribed in terms of this Act;

(b) financial assistance to be provided by the State—

(i) to a complainant who does not have the means to pay the fees of any service in terms of this Act; or

(ii) to a witness who attends any proceedings in terms of this Act;

[b](c) any matter required to be prescribed in terms of this Act; and

[c](d) any other matter which the Minister deems necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) Any regulation made under subsection (1)—

- (a) must be submitted to Parliament prior to publication thereof in the *Gazette*;
- (b) which may result in expenditure for the State, must be made in consultation with the Cabinet member responsible for finance; and
- (c) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding one year.

### **Policy Directives**

[17]20. (1) (a) The National Director of Public Prosecutions referred to in section 10 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), in consultation with the Minister and after consultation with the Directors of Public Prosecutions referred to in section 13 of that Act, must issue directives regarding the institution of prosecutions in respect of any offence arising out of this Act.

(b) The Minister must submit any directives issued in terms of paragraph (a) to Parliament before those directives take effect.

(2) (a) The National Commissioner of the South African Police Service referred to in section 6 of the South African Police Service Act, 1995 (Act No. 68 of 1995), must issue national instructions as provided for in section 25 of

that Act, with which its members must comply in the execution of their functions in terms of this Act, and any instructions so issued must be published in the *Gazette*.

(b) The Cabinet member responsible for policing must submit any national instructions issued in terms of paragraph (a) to Parliament before those instructions take effect.

(3) (a) The Director-General: Justice and Constitutional Development, must issue directives which clerks of the court must comply with in the execution of their functions in terms of this Act, and any directives so issued must be published in the *Gazette*.

(b) The [Director-General: Justice and Constitutional Development] Minister must submit any directives issued in terms of paragraph (a) to Parliament before those directives take effect.

(4) The directives and instructions referred to in this section must provide that adequate disciplinary steps will be taken against a prosecutor, clerk of the court or police official who fails to comply with any directive or instruction, as the case may be.

(5) Any directive or instruction issued under this section may be amended or withdrawn in like manner.

### **Repeal and amendment of laws**

[18]21. The laws specified in the Schedule are hereby amended to the extent set out in the third column of the Schedule.

### **Short title and commencement**

[19]22. This Act is called the Protection from Harassment Act, [2010] 2011, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

## SCHEDULE

(Section [18]21)

No. and year of law	Short title	Extent of amendment
Act No. 56 of 1955	Criminal Procedure Act, 1955	<p>1. Amendment of section 384 by—</p> <p>(a) the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 2em;">“(1) Whenever a complaint on oath is made to a magistrate that any person is conducting himself or herself violently towards, or is threatening injury to the person or property of another or that he or she has used language or behaved in a manner towards another likely to provoke a breach of the peace or assault, then, whether such conduct occurred or such language was used or such threat was made in a public or private place, the magistrate [may] must order such person to appear before him or her and, if necessary, may cause him or her to be arrested and brought before him or her, and thereupon the magistrate shall enquire into and determine upon such complaint and may place the parties or any witnesses thereat on oath and [in his discretion may] must, if he or she finds, on a balance of probabilities, that the person against whom the complaint is made did act as is alleged in the complaint, order [the] that person [against whom the complaint is made] to give recognisances with or without sureties in an amount not exceeding [R2 000] the amount determined by the Cabinet member responsible for the administration of justice from time to time by notice in the Gazette for a period not exceeding six months to keep the peace towards the complainant and refrain from doing or threatening injury to his or her person or property.”;</p> <p>(b) the substitution for subsection (2) of the following subsection:</p> <p style="padding-left: 2em;">“(2) The magistrate may, upon such enquiry, make an order [the person against whom the complaint is made or the complainant to pay the costs of and incidental to the enquiry] as to costs against any party if he or she is satisfied that the party in question has acted frivolously, vexatiously or unreasonably.”; and</p> <p>(c) the addition of the following subsections:</p> <p style="padding-left: 2em;">“(5) (a) The magistrate may, in the prescribed manner and at any stage of proceedings under this section, cause to be subpoenaed any person as a witness at those proceedings, if the evidence of that person appears to the magistrate essential for the proceedings.</p> <p style="padding-left: 4em;">(b) A witness who is subpoenaed as provided for in paragraph (a), must attend the proceedings and remain in attendance at the proceedings, and a person who is in attendance at any proceedings under this section, though not subpoenaed as a witness, and who is warned by the magistrate to remain in attendance at the proceedings, must remain in attendance at the proceedings, unless he or she is excused by the magistrate.</p> <p style="padding-left: 4em;">(c) Any person who is subpoenaed to attend proceedings as provided for in paragraph (a) and who fails to attend or to remain in attendance and any person who is warned by the magistrate to remain in attendance at those proceedings and who fails to remain in attendance, and any</p>



No. and year of law	Short title	Extent of amendment
		<p>person so subpoenaed or so warned who fails to appear at the place and on the date and at the time to which the proceedings in question may be adjourned or who fails to remain in attendance at those proceedings as so adjourned, is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding three months</p> <p>(6) The Cabinet member responsible for the administration of justice may make regulations regarding financial assistance to be provided by the State to a witness who attends any proceedings in terms of this section."</p>
Act No. 51 of 1977	Criminal Procedure Act, 1977	<p>1. Amendment of section 60 by--</p> <p>(a) the insertion after paragraph (f) of subsection (7) of the following paragraph:  <u>"(fA) the view of any person against whom an offence was allegedly committed regarding his or her safety;"</u></p> <p>(b) the substitution for subsection (10) of the following subsection:  <u>"(10) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty, contemplated in subsection (9), to weigh up the personal interests of the accused against the interests of justice: Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence has allegedly been committed;"</u>; and</p> <p>(c) the substitution for subsection (12) of the following subsection:  <u>"(12) The court may make the release of an accused on bail subject to conditions which, in the court's opinion, are in the interests of justice: Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence has allegedly been committed."</u></p>
Act No. 116 of 1998	Domestic Violence Act, 1998	<p>1. Insertion of the following section after section 4:</p> <p><b><u>"Attendance of witnesses</u></b></p> <p><b><u>4A. (1) The court may, in the prescribed manner and at any stage of proceedings under this Act, cause to be subpoenaed any person as a witness at those proceedings or to produce any book, document or object, if the evidence of that person appears to the court essential to the just decision of the case.</u></b></p> <p><b><u>(2) A witness who is subpoenaed as provided for in subsection (1), must attend the proceedings and remain in attendance at the proceedings, and a person who is in attendance at any proceedings under this Act, though not subpoenaed as a witness, and who is warned by the court to remain in attendance at the proceedings, must remain in attendance at the proceedings, unless he or she is excused by the court.</u></b></p> <p><b><u>(3) [Any person who is subpoenaed to attend proceedings as provided for in subsection (1) and who fails to attend or to remain in attendance and any person who is warned by the court to remain in attendance at those proceedings and who fails to remain in attendance, and any person so subpoenaed or so warned who fails to appear at the place and on the date and at the time to which the</u></b></p>

No. and year of law	Short title	Extent of amendment
		<p>proceedings in question may be adjourned or who fails to remain in attendance at those proceedings as so adjourned, is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding three months.]</p> <p><u>Any person who is subpoenaed in terms of subsection (1) or warned in terms of subsection (2) to attend proceedings and who fails to—</u></p> <p>(a) <u>attend or to remain in attendance;</u>  (b) <u>appear at the place and on the date and at the time to which the proceedings in question may be adjourned;</u>  (c) <u>remain in attendance at those proceedings as so adjourned; or</u>  (d) <u>fails to produce any book, document or object specified in the subpoena.</u></p> <p>is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding three months."</p> <p>2. <u>The insertion after paragraph (a) of section 19(1) of the following paragraph:</u>  "(aA) <u>any financial assistance to be provided by the State to a witness who attends any proceedings in terms of this Act."</u></p>
Act No. 60 of 2000	Firearms Control Act, 2000	<p>1. Amendment of section 102 by the insertion after paragraph (a) of subsection (1) of the following paragraph:  *(aA) <u>a final protection order has been issued against such person in terms of the Protection from Harassment Act, 20[09]11 [(Act No. X of 2009)];</u>".</p> <p>2. Amendment of Schedule 2 by the insertion after paragraph (d) of item 7 of the following paragraph:  *(e) <u>in terms of section 18(1)(a) of the Protection from Harassment Act, 20[09]11 [(Act No. X of 2009)];</u>".</p>