

HARASSMENT

HARASSMENT IS WHERE ONE PERSON ENGAGES IN ANY UNREASONABLE CONDUCT WHETHER ONLINE OR OTHERWISE WHICH CAUSES MENTAL, PSYCHOLOGICAL, PHYSICAL OR ECONOMIC HARM TO ANOTHER PERSON. HARASSMENT INCLUDES CYBER STALKING AND ONLINE BULLYING.

Harassment Ebook



STALKED ONLINE?
Know your rights

ABUSE

EBOOK

harassment

This booklet was made possible with funding from **Bertus Preller**.

Written by Bertus Preller

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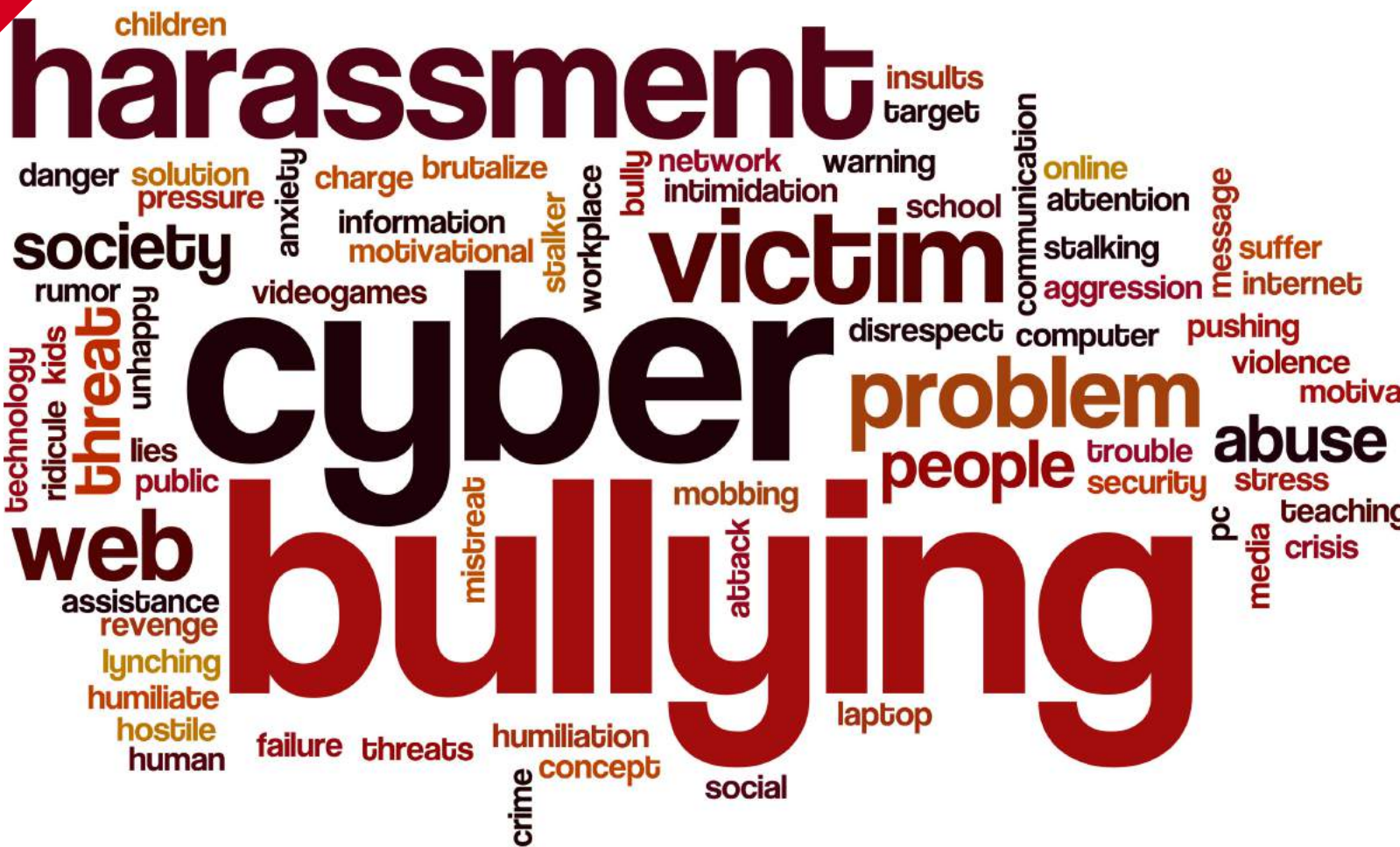
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THE PROTECTION FROM HARASSMENT ACT

COMPILED BY BERTUS PRELLER

Parliament has enacted the Protection from Harassment Act, 2011 (Act 17 of 2011), to protect persons against harassment. The Act aims to provide a remedy in the form of a protection which would prohibit a person from harassing another person. If the harasser breaches a protection order he or she commits an offence which is punishable with a fine or a period of imprisonment.

The Protection from Harassment Act offers a special process where an court order can be made without the immediate knowledge of the person who is harassing the complainant, based only on the complainant's side of the story, as long as the court is satisfied that there is real evidence that the complainant is being or may be harassed and that harm is or may be suffered if the protection order isn't granted immediately.

HARASSED,
BULLIED OR
ABUSED
ONLINE?
KNOW YOUR
RIGHTS.



WHAT FORMS OF HARASSMENT ARE PROTECTED?

- Following, watching, pursuing or accosting of the complainant or someone in a close relationship with the complainant such as a spouse or family member.
- Loitering outside or near the building or place where the complainant or related person lives, works, studies or happens to be.
- Contact through verbal communication aimed at the complainant. The Act also recognises electronic communication that causes harm or makes the complainant feel in danger of being harmed as harassment.
- Several forms of written communication as capable of being contact for the purposes of harassment, such as letters, packages and e-mails.
- Sexual harassment, which means “any unwelcome sexual attention from a person who knows or who reasonably knows that such attention is unwelcome”. Such sexual attention includes unwelcome behaviour, suggestions, messages or remarks of a sexual nature that have the effect of “offending, intimidating or humiliating” the complainant or a person who has a close relationship with the complainant.
- Sexual harassment also means promises of reward for fulfilling a sexual request or punishment for refusing a sexual request.
- Bullying and Cyber bullying.
- Downloading spyware on someone's mobile phone.



WHAT IS A PROTECTION ORDER?

If you are a victim of harassment, you may approach the magistrates' courts in terms of this Act to obtain a protection order against any person who is harassing you.

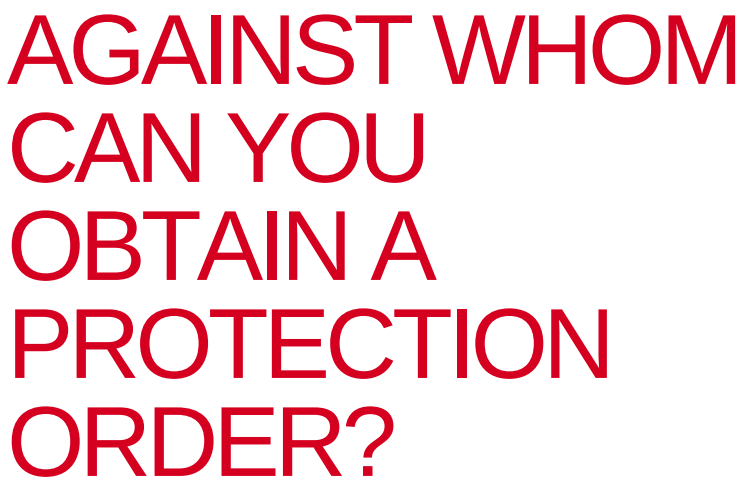
A person who breaches a protection order may be criminally charged and, if found guilty, held liable to a fine or imprisonment.

A protection order is a court order granted by the magistrates' court prohibiting the perpetrator from engaging in or attempting to engage in harassment or enlisting the help of another person to do so. A protection order may contain a list of specific acts which the perpetrator may not commit.

When granting a court order, the court may also order the South African police to seize any weapon in the possession of the perpetrator and/or to accompany you to collect any belongings which you may have identified in the application for the order.

If court is of the view that a criminal act has been committed, it may also require the South African police to investigate with a view to the possible institution of a criminal prosecution.

A protection order is a court order that sets out the things that the person who is harassing you may or may not do to stop that person from harassing you.



You can also obtain a protection order against someone who's identity is unknown.



WHO MAY APPLY FOR A PROTECTION ORDER?

Anyone who believes they are being harassed by another person can apply for a protection order under the Protection from Harassment Act.

A child under the age of 18, or a person on behalf of a child, may apply for a protection order. This can be done without the assistance of the child's parents.

If a person is not able to apply for a protection order for himself, another person who has a real interest in stopping the harassment and the well-being of the person experiencing the harassment can apply for a protection order on that person's behalf.

This is particularly important in the context of protecting people with certain disabilities.

Before the Protection from Harassment Act, protection orders were only available to people experiencing physical, sexual, emotional, verbal, psychological, economic and other forms of abuse from a person with whom they had a domestic relationship.

This meant that one could only get a protection order against someone they were married or engaged to; in a romantic, intimate or sexual relationship with; their parent, child or family member, or someone they were living with.

A person wishing to obtain a protection order under this new act does not have to prove the existence of a domestic relationship, which was often a hurdle to obtaining protection in certain situations, such as instances of abuse between an educator and a learner.

The Protection from Harassment Act does not prohibit a person from applying for a protection order under that Act if they may fall into the category of domestic relationship and apply for a protection order under the Domestic Violence Act.

If the person who is harassing you is doing so electronically over the internet or by email and as a result you don't know who they are, the Act allows the court to request details of this person from the electronic communications service provider or may order an investigation by the police into the name and address of the person who is harassing you.



What if I do not know who the harasser is?

If you do not know the identity of the person harassing you, you may still apply for a protection order. If the court is satisfied that you are being harassed it may issue a directive directing the South African police to investigate the matter and identify the perpetrator.

If you are being harassed by a person who is using electronic communications such as email, text or telephone or harmful content is being posted on a website, the court may direct the electronic communications service provider concerned to provide details of the perpetrator.

If you are being harassed through electronic communications and you do not know the identity of the person who is harassing you, you will need to provide the following information:

The name of the service provider of the service over which the electronic communication was sent.

The identity number that is linked with the service to which the communication was sent.

The identity number that is linked with the service from which the communication was received.

The date, time and duration of the communication.

When can you apply for a protection order?

You can apply for a protection order at the court during ordinary court hours, which are usually from 09:00AM – 15:30PM.

You can also apply for a protection order outside of ordinary court hours, or on weekends and public holidays, if you can show that your application is urgent and that you will suffer harm or that you may suffer harm if your application is not dealt with immediately. For example, if you are being harassed by someone and you are afraid that the person is going to hurt you if you do not obtain a protection order against the person as soon as possible, you can apply to court for a protection order outside of court hours.

Must I suffer harm before I can apply for a protection order?

No. You may apply for a protection order if you fear that you may be harmed (mentally, psychologically, physically or economically) in future. Your fear that you may suffer harm in future must be reasonable in order for the court to issue an order.

Do I need a lawyer to apply for a protection order?

No. The process for applying for a protection order is intended to be uncomplicated and inexpensive. The clerks of the court are obliged to explain the procedure to all applicants and are trained to assist applicants and guide them through the process.

Where can I apply for a protection order?

Any court within the area in which-

- the complainant permanently or temporarily resides, carries on business or is employed;
- the respondent permanently or temporarily resides, carries on business or is employed; or
- the cause of action arose,

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

WHAT IS THE PROCESS FOR OBTAINING A PROTECTION ORDER?

Step 1 – The Application Form

At the magistrate's court, you will be given a form by the clerk of the court to complete under oath. The clerk of the court will assist you and explain the process and remind you of your right to also lodge a criminal complaint against the respondent of crimen injuria, assault, trespass, extortion or any other offence which has a bearing on the persona or property of the complainant or related person.

The application may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court has a reasonable belief that the complainant or a related person is suffering or may suffer harm if the application is not dealt with immediately. Supporting affidavits by other persons who have knowledge of the matter concerned may accompany the application.

It is important to note that making a false statement when applying for a protection order is a criminal offence.

The application and affidavits must be lodged with the clerk of the court who must immediately submit the application and affidavits to the court.

The application form will require the following information:

You will need to provide your personal details including your name, ID number, home address, work address and your contact numbers.

If you are making the application on behalf of another person, you must have the written permission of that person. You will not need the person's written permission if the person that you are applying for is a child or if you can show that the person is not able to provide written permission.

Making a false statement when applying for a protection order is a criminal offence.

WHAT IS THE PROCESS FOR OBTAINING A PROTECTION ORDER?

Step 1 – continues...

If an application for a protection order is made and the court is satisfied that a protection order must be issued as a result of the harassment of the complainant or a related person by means of electronic communications or electronic mail over an electronic communications system of an electronic communications service provider and the identity or address of the respondent is not known, the court may:

1 adjourn the proceedings to any time and date on the terms and conditions which the court deems appropriate; and

2 issue a direction in the prescribed form directing an electronic communications service provider to furnish the court in the prescribed manner by means of an affidavit in the prescribed form with:

(a) the electronic communications identity number from where the harassing electronic communications or electronic mail originated;

(b) the name, surname, identity number and address of the respondent to whom the electronic communications has been assigned;

(c) any information which indicates that electronic communications or electronic mail were or were not sent from the electronic communications identity number of the respondent to the electronic communications identity number of the complainant;

(d) and any other information that is available to an electronic communications service provider which may be of assistance to the court to identify the respondent or the electronic communications service provider which provides a service to the respondent. The court may at this stage or at any stage of proceedings subpoena witnesses to come to court together with any documentation or objects that the court regards as being essential for its decision.

If you are harassed through electronic means, you will need to provide the following information:

Type of electronic communication	Name of the provider	ID Number linked with sender	ID number linked with receiver	Date, time, duration of communication
Phone Calls	Landline or cellular network provider (for example Telkom)	Your landline or cellular phone number	Harasser's phone number	For example: Phone call on 11 Feb 2017 at 12h00 which lasted for 12 minutes
Cellular phone text messages (for example SMS)	Cellular network provider (for example MTN)	Your cellular phone number	Harasser's phone number	For example: text received on 11 Feb 2017 at 12h00
Cellular phone messaging services (for example whatsapp or Facebook)	Cellular network provider (for example MTN)	Your cellular phone number	Harasser's phone number	For example: text received on 11 Feb 2017 at 12h00
Faxes	Landline network provider (for example Telkom)	Your fax number	Harasser's fax number	For example: fax received on 11 Feb 2017 at 12h00
Emails	Internet service provider (for example Gmail)	Your email address and co your computer Internet Protocol (IP) address	Harasser's email address and/or IP address if it accompanies the electronic communication	For example: email received on 11 Feb 2017 at 12h00
Social media (for example Facebook or Twitter)	Internet service provider (for example MWEB or Afrihost)	Your username on the social media website and your computer's Internet Protocol (IP) address	Harasser's username on the social media website and the web address which contains the harassing content	For example: message received on 11 Feb 2017 at 12h00

PHYSICALLY HARASSED BY SOMEONE

If you are being physically harassed by someone and you do not know the identity of the person who is harassing you, you will need to provide the following information:

Description of person who is harassing you.

Location where you think the person can probably be found.

Any other information that may help the police to trace the person who is harassing you.

You will also need to explain whether you made a written statement at a police station that which stated that you intended to apply for a protection order against harassment in respect of the person. If you did this, you need to provide details of when you did this and at which police station.

You will need to provide an explanation of the kind of harassment you have experienced. Make sure that you provide details regarding when the harassment started and give specific examples of what the person who is harassing you has said or done.



If you have photographs, doctors' letters, medical reports, affidavits by witnesses or any other evidence of the harassment, take the information with you when you apply for the protection order.

THE INTERIM PROTECTION ORDER

Step 2

The court must as soon as is reasonably possible consider an application submitted to it in terms of the Act and may, for that purpose, consider any additional evidence it deems fit, including oral evidence or evidence by affidavit, which must form part of the record of proceedings.

If the court is satisfied that there is prima facie evidence that-

- (a) the respondent is engaging or has engaged in harassment;
- (b) harm is being or may be suffered by the complainant or a related person as a result of that conduct if a protection order is not issued immediately; and
- (c) the protection to be accorded by the interim protection order is likely not to be achieved if prior notice of the application is given to the respondent,

the court must, notwithstanding the fact that the respondent has not been given notice of the proceedings an interim protection order may be granted against the respondent, in the prescribed manner.

Upon the issuing of an interim protection order the court must direct that the interim protection order be served on the respondent in the prescribed manner by the clerk of the court, sheriff or peace officer identified by the court.

A copy of the application and the record of any evidence noted must be served on the respondent together with the interim protection order.

An interim protection order must call on the respondent to show cause on the return date specified in the order why the interim protection order should not be made final.

If the court does not issue an interim protection order the court must direct that the certified copies of the application concerned and any supporting affidavits be served on the respondent in the prescribed manner by the clerk of the court, a sheriff or a peace officer identified by the court, together with a prescribed notice calling on the respondent to show cause on the return date specified in the notice why a protection order should not be issued.

WHAT HAPPENS IF THE MAGISTRATE ISSUES AN INTERIM PROTECTION ORDER?

Every interim protection order has a date on it when you must come back to the court and appear before the magistrate. This is called a “return date”. This is the date when the magistrate will make the decision about whether to give you a final protection order. You must make sure that you go to court on that date.

If you miss the return date at date, the interim protection order “lapses” and becomes useless, and you are not protected any more. Every interim protection order has a date on it when you must come back to the court and appear before the magistrate. This is called a “return date”. This is the date when the magistrate will make the decision about whether to give you a final protection order. You must make sure that you go to court on that date.

If you miss the return date at date, the interim protection order “lapses” and becomes useless, and you are not protected any more.



WHAT HAPPENS IF THE MAGISTRATE DOES NOT ISSUE AN INTERIM PROTECTION ORDER?

If the magistrate decides not to give you an interim protection order, this does not mean that the magistrate does not believe that you are being harassed. It just means that the magistrate does not think that you are in immediate danger as a result of the harassment. You will still be given a “return date” on which you must come back to the court to appear before the magistrate to show why you should be given a final protection order.



NOTICE TO THE HARASSER

Step 3

The return dates may not be less than 10 days after service has been effected on the respondent, but a return date may be anticipated by the respondent on not less than 24 hours' written notice to the complainant and the court. An interim protection order is of force and effect from the time it is issued by the court and the existence thereof has been brought to the attention of the respondent.

Upon service or upon receipt of a return of service of an interim protection order on a respondent, the clerk of the court must immediately cause a certified copy of the interim protection order; and the original warrant of arrest to be served on the complainant in the prescribed manner.

If the magistrate issues an interim protection order, the following papers must be served on the person who is harassing you by the sheriff of the court or a member of the police:

A copy of your application papers. This is the form that you would have filled out when you applied for the protection order.

A copy of the interim protection order. The interim protection order will be given to you by the magistrate or the clerk.

Copies of any evidence that the magistrate used to make the decision to issue a protection order. This would include, for example, any medical reports, photographs or affidavits that you gave the clerk or the magistrate when you applied for the protection order.

A notice calling the person who is harassing you to come to court on the return date. This is the notice that you received from the magistrate or the clerk which sets out the return date.

If the magistrate does not issue an interim protection order, the following papers must be served on the person who is harassing you by the sheriff of the court or a member of the police:

A copy of your application papers. This is the form that you would have filled out when you applied for the protection order.

Copies of any witness affidavits regarding the harassment that you gave to the clerk or the magistrate.

A notice calling the person who is harassing you to come to court on the return date. This is the notice that you received from the magistrate or the clerk which sets out the return date.

THE RETURN DATE

Step 4

On the return date, you will have a chance to explain to the magistrate how you have been harassed and show why you should be given a final protection order. On that day you must bring all your evidence which shows that you have been harassed including any photographs, doctor's letters, medical reports and affidavits by witnesses. If possible, you must also take any witnesses to court with you.

The person who harassed you will also have a chance to tell their side of the story, and to give the magistrate any reasons why you should not be given a final protection order.

The court could allow the person to ask you questions. At court you can ask that the person who is harassing you should not be allowed to question you directly, unless they have a legal representative. The person must then direct his questions to the magistrate, who will then ask you the questions.

Both you and the person who harassed you are allowed to either choose to represent your cases on your own or you can bring lawyers on the return day, to help you argue your case.

This day in court is like a small trial and can be scary, especially if you've never been in a court before. But you must not allow this fear to stop you from getting your protection order. Tell the magistrate all the facts and use your rights.

The magistrate will consider all the documents and witness statements, and may ask you and the person who harassed you questions. These will help the magistrate to decide whether you should have a final protection order.

If the magistrate issues a protection order, it must be served on the person who is harassing you. The clerk of the court must also send a copy of the protection order to a police station of your choice. This should be a police station that is close to where you are experiencing the harassment.

A final protection order becomes binding immediately upon it being issued even though it may not have been served on the person who is harassing you.

WHAT HAPPENS IF THE PERSON WHO IS HARASSING YOU DOES NOT COME TO COURT ON THE RETURN DATE?

If the magistrate is of the view that there is enough evidence to show that the person is engaging in harassment, the magistrate will give you a final protection order. The magistrate will only do this if the magistrate is satisfied that the documents were served on the person who is harassing you.

If the magistrate is of the view that there is not enough evidence to show that the person is engaging in harassment, the magistrate will postpone the case. This means that a new notice will have to be served on the person who harassed you to say he must come to court on another date. You must also be in court on that date.





THE PROTECTION ORDER

What can the court rule in a protection order?

The court can make any order that is reasonably necessary to protect your safety or wellbeing or the safety or wellbeing of someone close to you in an interim or final protection order.

The court can order the person who is harassing you to stop:

Engaging in harassment. For example, the protection order can state that the person who is harassing you must stop being physically abusive towards you.

Getting the help of anyone else to engage in harassment. This means that the person who is harassing you cannot continue to harass you through another person. For example, if someone is harassing you by phoning you and being verbally abusive, he cannot get another person to start doing the same thing to you.

Committing any other act the magistrate orders that he is not supposed to commit.

The court can also instruct the police to do the following:

To take away any dangerous weapon, like a gun, from the person who is harassing you.

To go with you to the place of the person who is harassing you to collect any of your personal property that might be there.

To investigate your matter to determine whether criminal charges should be brought against the person who is harassing you.

How long does the protection order last?

The protection order will remain in force for a period of five years unless the court specifies that it applies for a longer time.

If the court is of the view that any part of the protection order deals with a matter that should be dealt with further in terms of any other law, the court will order that that part of the protection order will only remain in force for a limited period in order to give you an opportunity to do what needs to be done in terms of the other law.

What should you do if the person who is harassing you goes against the protection order?

If the person who is harassing you does anything that he is not supposed to do in terms of the protection order, then the person is breaking the law.

If this happens, you must contact the police station immediately. You must tell the police that you have a protection order against the person who is harassing you and that the person has gone against the terms of the protection order.

The police will ask you to complete an affidavit to explain the details of what happened. This will help the police to determine what action needs to be taken against the person.



THE PROTECTION ORDER

What should you do if you are not happy with the service you receive from the police?

If you are not happy with the service that you received from the police, you can complain to the Station Commander of the police station where you received bad service.

You can also complain to the Independent Police Investigative Directorate which has the power to investigate misconduct claims against the police.

What must the police do when you report an act of harassment?

Every protection order comes with a suspended warrant of arrest. If the person who is harassing you goes against the protection order, the police will use the warrant to arrest the person if they believe that:

The contravention of the protection order is serious; your safety or wellbeing or the safety or wellbeing of someone close to you is at risk; and not much time has passed between the contravention and when you report the contravention.

The police will also take into account the nature of the harassment that you experienced previously.

If the police decide that they should not arrest the person who is harassing you, they must give him a written notice to appear in court for contravening the protection order.

How do you cancel or change a protection order?

If you want to cancel a protection order or if you want to change the terms of a protection order, you will have to apply to court to do so. You must apply to the same court where you made the application for the protection order.

If you want to cancel a protection order, that is, if you no longer want to have a protection order, you will need to apply to court to “set aside” the protection order.

If you want to change the terms of a protection order, that is, if you want the court to change what the protection order says that person who is harassing can and cannot do, you will need to apply to court to “vary” the protection order.



Usefull Contacts

Women's Legal Centre Cape Town 021 424 5660

Women's Legal Centre Johannesburg Office 011 339 1099

Independent Police Investigative Directorate 012 399 0000

South African Police Services Flying Squad 10111

Stop Gender Violence Helpline 0800 150 150

Rape Crisis 021 447 9762

Child Line 0800 055 555

Lifeline 082 231 0805

South African Depression and Anxiety Group 011 234 4837