

South Africa

## Prevention of Family Violence Act, 1993

Act 133 of 1993

Legislation as at 6 October 1993

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## Prevention of Family Violence Act, 1993

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# South Africa

## Prevention of Family Violence Act, 1993

### Act 133 of 1993

Published in Government Gazette 15161 on 6 October 1993

**Assented to on 24 September 1993**

**Commenced on 1 December 1993 by Prevention of Family Violence Act, 1993: Commencement**

*[This is the version of this document as it was from 6 October 1993 to 14 December 1999.]*

(English text signed by the Acting State President.)

## ACT

**To provide for the granting of interdicts with regard to family violence, for an obligation to report cases of suspected ill-treatment of children, that a husband can be convicted of the rape of his wife, and for matters connected therewith.**

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

### 1. Definitions

- (1) In this Act, unless the context indicates Otherwise—
  - "**magistrate**" includes a family magistrate appointed under section 9(l)(a)(v) of the Lower Courts Act, 1944 ([Act No. 32 of 1944](#)); (ii)
  - "**matrimonial home**" means the house, flat, room or other structure in which the parties to a marriage ordinarily live or lived together; (i)
  - "**prescribed**" means prescribed by or under this Act. (iii)
- (2) Any reference in this Act to the parties to a marriage shall be construed as including a man and a woman who are or were married to each other according to any law or custom and also a man and a woman who ordinarily live or lived together as husband and wife, although not married to each other.

### 2. Interdict with regard to family violence

- (1) A judge or magistrate in chambers may, on application in the prescribed manner by a party to a marriage (hereinafter called the applicant) or by any other person who has a material interest in the matter on behalf of the applicant, grant an interdict against the other party to the marriage (hereinafter called the respondent) enjoining the respondent—
  - (a) not to assault or threaten the applicant or a child living with the parties or with either of them;
  - (b) not to enter the matrimonial home or other place where the applicant is resident, or a specified part of such home or place or a specified area in which such home or place is situated;
  - (c) not to prevent the applicant or a child who ordinarily lives in the matrimonial home from entering and remaining in the matrimonial home or a specified part of the matrimonial home;
  - (d) or not to commit any other act specified in the interdict.

- (2) In granting an interdict contemplated in subsection (1) the judge or magistrate, as the case may be, shall make an order—
  - (a) authorizing the issue of a warrant for the arrest of the respondent;
  - (b) suspending the execution of such warrant subject to such conditions regarding compliance with the interdict as he may deem fit; and
  - (c) advising the respondent that he may, after 24 hours' notice to the applicant and the court concerned, apply for the amendment or setting aside of the interdict contemplated in subsection (1).
- (3) The interdict contemplated in subsection (1) and the order contemplated in subsection (2) shall have no force and effect until served on the respondent in the prescribed manner.

### 3. Execution of warrant of arrest

- (1) Subject to the provisions of [section 2\(3\)](#) a warrant of arrest issued and suspended in terms of [section 2\(2\)](#) may be executed by a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)), upon receipt of an affidavit in which it is stated that the respondent has breached any of the conditions contained in the order contemplated in [section 2\(2\)](#).
- (2) A respondent arrested in terms of subsection (1)—
  - (a) shall not be released unless a judge or magistrate orders his release; and
  - (b) shall as soon as possible but not later than 24 hours after his arrest be brought before a judge or magistrate by a peace officer contemplated in subsection (1).
- (3) Subject to the provisions of this section, all the provisions of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)), relating to the form and manner of execution of warrants of arrest, the arrest, detention, searching and other treatment necessary for the control of persons named in warrants of arrest, shall *mutatis mutandis* apply in respect of warrants of arrest issued under [section 2\(2\)](#).
- (4) The judge or magistrate before whom a respondent is brought in terms of subsection (2) shall enquire into the respondent's alleged breach of the conditions of the order made in terms of [section 2\(2\)](#) and may at the conclusion of such enquiry—
  - (a) order the release of the respondent from custody; or
  - (b) convict the respondent of the offence contemplated in [section 6](#).
- (5) The provisions of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)), relating to the procedure which shall be followed in respect of an enquiry referred to in section 170 of that Act, shall apply *mutatis mutandis* in respect of an enquiry under subsection (4).

### 4. Obligation to report ill-treatment of children

Any person who examines, treats, attends to, advises, instructs or cares for any child in circumstances which ought to give rise to the reasonable suspicion that such child has been ill-treated, or suffers from any injury the probable cause of which was deliberate, shall immediately report such circumstances—

- (a) to a police official; or
- (b) to a commissioner of child welfare or a social worker referred to in section 1 of the Child Care Act, 1983 ([Act No. 74 of 1983](#)).

### 5. Rape of wife by her husband

Notwithstanding anything to the contrary contained in any law or in the common law, a husband may be convicted of the rape of his wife.

## 6. Offences and penalties

A person who—

- (a) contravenes an interdict or other order granted by a judge or magistrate under [section 2](#)(1) or (2); or
- (b) fails to comply with the provisions of [section 4](#), shall be guilty of an offence and liable on conviction in the case of an offence referred to in paragraph (a) to a fine or imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment and in the case of an offence referred to in paragraph (b) to a fine or imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

## 7. Regulations

The Minister of Justice may make regulations—

- (a) prescribing the manner in which an application contemplated in [section 2](#) is to be made;
- (b) prescribing the manner in which the interdict and order shall be served on the respondent in terms of [section 2](#)(3); and
- (c) in general, as to any matter which he may consider necessary or expedient to prescribe or regulate in order to achieve the objects of this Act.

## 8. Repeal of section 1 of [Act 39 of 1989](#)

Section 1 of the Criminal Law and the Criminal Procedure Act Amendment Act, 1989 ([Act No. 39 of 1989](#)), is hereby repealed.

## 9. Short title and commencement

This Act shall be called the Prevention of Family Violence Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.