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# BILLS DIGEST

Digest No. 1655

## Domestic Violence (Enhancing Safety) Bill 2008

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<b>Portfolio:</b>	Justice
<b>Select Committee:</b>	Justice and Electoral
<b>Published: 17 December 2008</b>  Prepared by <b>John McSoriley</b> BA LL.B, Barrister  Legislative Analyst  P: (04) 471-9626 (Ext. 9626)  F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.  Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

### Purpose

The aim of this Bill is to amend the Domestic Violence Act 1995, the Sentencing Act 2002 and the Bail Act 2000 to improve and strengthen the domestic violence legislative regime.

### Background

"For a significant number of victims of violence, the most dangerous place they can be is in their home. In 2007/08 family violence accounted for approximately 39% of homicides, 42% of kidnappings and abductions, 44% of grievous assaults, and 64% of serious assaults"<sup>1</sup>.

### Main changes to existing law

"The Bill amends the Domestic Violence Act 1995, the Sentencing Act 2002, and the Bail Act 2000"<sup>2</sup>.

<sup>1</sup> Domestic Violence (Enhancing Safety) Bill, 2008 No 9-1, Explanatory note, General policy statement, p. 1.

<sup>2</sup> Ibid., p.

## Amendments to Domestic Violence Act 1995 regarding enforcement

"The Bill's provisions strengthen Police enforcement of the Domestic Violence Act 1995 in a number of ways. The current prescribed criteria for arresting respondents who breach protection orders are repealed. The provisions of the Crimes Act 1961 will apply so that a person whom a Police employee has good cause to suspect has committed a breach of a protection order may be arrested without a warrant, and without consideration of any other criteria.

"The Bill also reforms the structure of, and penalties to, the offence provisions.

"The key enforcement initiative is the introduction of an "on the spot" order issued by the Police for the purpose of protecting victims of domestic violence. These Police orders are most likely to be made when the Police have been called to a domestic violence incident in the home. The purpose of the Police order is to ensure the immediate safety of the victims by removing the alleged violent person from the home for a period of up to five days. The order will provide a period of safety in which victims can consider their future options. The victims' consent to the order will not be required.

"The Police order may be made by Police in situations where there is insufficient evidence of an offence to arrest, but where the Police believe there is a likelihood of domestic violence occurring and a Police order is necessary to protect the safety of the victim. Safeguards against the inappropriate issue of Police orders are provided. A process, as well as penalties, have been provided for dealing with breaches of the Police order"<sup>3</sup>.

## Amendments to Sentencing Act 2002

"The Bill proposes that when the criminal courts are sentencing a person convicted of a domestic violence offence the courts must consider making a protection order on behalf of the victim (if such an order is not currently in force) if it is satisfied that the making of the order is necessary for the protection of the victim, and the victim does not object to the making of the order.

"If the protection order is made, the defendant will be required to attend the compulsory stopping violence programme. The protection order may be made in addition to imposing a sentence or making any other order. The criminal courts' role will, however, be restricted to making the protection order. Conditions, variations to the protection order, and matters relating to children will be dealt with by the Family Court"<sup>4</sup>.

## Amendments to Bail Act 2000

"The Bill will amend the Bail Act 2000 to ensure that when the Police have arrested a person for alleged domestic violence offending the Police may impose bail conditions that will provide more explicit protection for children"<sup>5</sup>.

## Main Provisions

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### Domestic Violence Act 1995

#### Offence to contravene protection order

The Bill provides that every person commits an offence and is liable on conviction on indictment to imprisonment for up to 2 years who, without reasonable excuse, does any act in contravention of a

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<sup>3</sup> Ibid., p. 2.

<sup>4</sup> Ibid., p. 2 and 3.

<sup>5</sup> Ibid., p. 3.

protection order or who fails to comply with any conditions of a protection order (*Part 1, Clause 5, substituted Section 49 of the Domestic Violence Act 1995*).

#### Comment

Except in the case of certain repeat offenders, the existing Section 49 provides for maximum penalties of imprisonment up to 6 months or a fine of \$5,000.

#### Offence to fail to comply with direction

Section 32 of the Domestic Violence Act 1995 is headed "Power to direct respondent or associated respondent to attend programme". Section 32(1) provides that on making a protection order, the Court must direct the respondent to attend a specified programme, unless the Court considers that there is good reason for not making such a direction. Section 32(2) provides that where the Court makes a direction pursuant to Section 17 of the Act (headed "Protection from respondent's associates") that a protection order apply against an associated respondent, the Court may, if it considers it appropriate in all the circumstances to do so, direct the associated respondent to attend a specified programme.

The Bill provides that every person commits an offence and is liable on summary conviction to imprisonment for a term up to 6 months or to a fine of up to \$5,000 who, without reasonable excuse, fails on any occasion to comply with a direction made under Section 32(1) or (2) to attend specified programme (*Part 1, Clause 5, inserting New Section 49A into the Domestic Violence Act 1995*).

#### Power to arrest for breach of protection order

Section 50(1) of the Domestic Violence Act 1995 at present in general provides that where a protection order is in force, any member of the Police may arrest, without warrant, any person whom the member of the Police has good cause to suspect has committed a breach of the order. However Section 50(2) provides that in considering whether or not to arrest a person, he or she must take the following matters into account:

- the risk to the safety of any protected person if the arrest is not made;
- the seriousness of the alleged breach of the protection order;
- the length of time since the alleged breach occurred; and
- the restraining effect on the person liable to be arrested of other persons or circumstances.

The Bill amends Section 50 to provide that an arrest may be made where the member of the Police has good cause to suspect the person has committed a breach of the protection order and the member of the Police is no longer required to also consider the matters set out in the existing Section 50(2) (*Part 1, Clause 5, substituting Section 50 of the Domestic Violence Act 1995 (by, inter alia, removing the present subsection (2))*).

#### Police orders

The Bill creates a new legal instrument. This is called a "Police order". A "qualified constable" (i.e. a constable who is of or above the level of position of sergeant) or a non-qualified constable who is authorised by a qualified constable may issue a Police order against a person (person A) who is in a domestic relationship with another person (person B) if the constable:

- does not arrest person A for an offence; but
- has reasonable grounds to believe, having regard to matters specified below "that the issue of a Police order is necessary to ensure the immediate safety of person B".

When considering whether to issue a Police order against person A, the constable must have regard to the following matters:

- whether, in the circumstances, he or she considers it is likely that person A has used, or is using domestic violence against person B or person A has used, or is using, domestic violence against any other person with whom he or she has a domestic relationship;
- whether there is a serious likelihood that person A will use, or again use, domestic violence against person B;
- the welfare of any children residing with person B;
- the hardship that may be caused if the order is issued;
- any other matters the constable considers relevant.

Police orders come into effect as soon as they are served on the person affected. They must state the period during which they are effective, which period may not exceed 5 days. If a person fails to comply with a Police order, a constable "using such force as is reasonably necessary", may take the person into custody. The person must be brought before the District Court as soon as possible. The District Court may issue a further Police order or extend an existing one or issue a temporary protection order under Section 14 of the Domestic Violence Act (*Part 1, Clause 7, inserting New Part 6A into the Domestic Violence Act 1995, New Section 124B; New Section 124H; New Section 124I*).

#### *Comment*

No specific power is given to the District Court to order the release of the person.

#### Effect of Police order

The Bill provides that a person against whom a Police order is issued must immediately:

- surrender to a constable any firearm or other weapon in his or her possession or control;
- vacate any land or building occupied by a person at risk, whether or not he or she has a legal or equitable interest in the land or building.

The Bill also provides that it is a condition of every Police order that the person against whom the order is issued must not:

- physically or sexually abuse a person at risk; or
- threaten to physically or sexually abuse a person at risk; or
- damage, or threaten to damage, property of a person at risk; or
- engage, or threaten to engage, in other behaviour, including intimidation or harassment, that amounts to psychological abuse of a person at risk; or
- encourage any person to engage in behaviour against a person at risk, where the behaviour, if engaged in by the person against whom the order is issued, would be prohibited by the order; or
- watch, loiter near, or prevent or hinder access to or from the place of residence, business, or employment of a person at risk, or an educational institution attended by a person at risk, or any other place that a person at risk visits often; or
- follow a person at risk about or stop or accost a person at risk in any place; or

- where a person at risk is present on any land or building, enter or remain on that land or building in circumstances that constitute a trespass; or
- make any other contact with a person at risk (whether by telephone, correspondence, or otherwise) except such contact as is reasonably necessary in any emergency.

The term "person at risk" means the person named in the Police order for whose safety the order is issued and any child residing with that person (*Part 1, Clause 7, inserting New Part 6A into the Domestic Violence Act 1995, New Clause 124E*).

## Sentencing Act 2002

### Protection orders

The Bill provides a power for criminal courts to issue a protection order. In sentencing a person convicted of a domestic violence offence, the criminal Court must consider making a protection order on behalf of the victim if it is satisfied that the making of the order is necessary for the protection of the victim and the victim does not object to the making of the order. A protection order may be made in addition to imposing a sentence or making any other order. A copy of the order must be sent to the Family Court and as soon as it is entered into the records of the Family Court, the order is to be treated as a final protection order made by that Court under the Domestic Violence Act 1995 and is subject to specified provisions of that Act (*Part 2, Clause 9, inserting New Sections 123A-123G into the Sentencing Act 2002*).

### Bail Act 2000

The Bill provides for the Police to impose more explicit bail provisions to protect children where the person affected has been arrested for an alleged domestic violence offence (*Part 3, Clause 11, amending Section 21 of the Bail Act 2000 by inserting new subsections (4A) and (4B)*).

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