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## (EXTRAORDINARY)

## OF GUYANA

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# THE OFFICIAL GAZETTE 8TH JULY, 2024
## LEGAL SUPPLEMENT — C

**BILL No. 11 of 2024** *Monday 8th July, 2024*

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

8th July, 2024.


The following Bill which will be introduced in the National Assembly is published for general information.

*S.E. Isaacs,*
Clerk of the National Assembly.

**GUYANA**

# BILL No. 11 of 2024

# FAMILY VIOLENCE BILL 2024

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SCHEDULE

**A Bill**

**Intituled**

**AN ACT** to provide increased protection for victims of family violence, to make provision for the granting of family violence orders and for matters connected thereto.

A.D. 2024 Enacted by the Parliament of Guyana:-

## PART I
## PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Family Violence Act 2023, and shall come into operation on the date the Minister may, by order, appoint.

Interpretation.

2. (1) In this Act—

"applicant" means a person who applies or on whose behalf an application is made for an order under this Act;

"child" means a person under the age of eighteen years;

"clerk" means the clerk of the court;

"cohabitants" are persons who, although not married to each other, are living together as a couple and "former cohabitants" shall be construed accordingly, but does not include cohabitants who have subsequently married each other;

"court" means a court of summary jurisdiction;

"economic abuse" means the deliberate withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the applicant or dependant children of the relationship or household, in circumstances where the applicant or dependant children are entirely or predominantly dependent on the respondent for financial support to meet those living expenses;

"emotional or psychological abuse" means behaviour that torments, intimidates, harasses or is offensive to the applicant;

"ex parte application" means an application made without notice to the respondent;

"family member" in relation to a respondent means—

(a) a spouse or former spouse;
(b) a cohabitant or former cohabitant;
(c) a relative or former relative;
(d) a child who regularly resides or has previously resided with the respondent;
(e) a person with whom the respondent has or had a visiting or intimate personal relationship, whether or not it is sexual in nature;
(f) a person who shares or has shared the same household or residence;
(g) a person over whom the respondent has or had guardianship or caregiving responsibilities;
(h) a person who is or was considered a relative of the respondent in accordance with any tradition or contemporary social practice; or
(i) any other person whom the respondent reasonably regards or regarded as being like a family member

having regard to the nature and circumstances of the relationship;

"family violence" has the meaning ascribed in section 3;

"guardian" means—

(a) in relation to a child, a person who has actual custody of the child either by virtue of an agreement with the Child Protection Agency or informally; or

(b) in relation to a person with a disability, a person on whom the person with a disability is reliant for his or her welfare and who exercises caregiving responsibilities over the person with a disability;

"harassment" includes—

(a) the intimidation of a person by—

(i) persistent verbal abuse;
(ii) threats of physical violence;
(iii) the malicious damage to the property of a person;
(iv) inducing fear of physical or psychological violence; or
(v) any other means;

(b) the persistent following of a person from place to place;

(c) the hiding of any clothing or other property owned by or used by a person or the depriving of a person of the

use thereof or the hindering of a person in the use thereof;

(d) the watching or besetting of the house or other places where a person resides, works, carries on business or happens to be or the watching or besetting of the premises that are the place of education of a person, or the watching or besetting of the approach to the house, other place or place of education;

(e) the making of persistent unwelcome communications to a person;

(f) using abusive language to or behaving towards a person in any other manner which is of such a nature and degree as to cause annoyance to, or result in ill-treatment of that person;

"health" means a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity; and includes physical or emotional health;

"household residence" means the dwelling house that is or was used habitually by the respondent and the person named in order, or either of them;

"intimidation" means any act, expression or gesture which, when used repeatedly, has the effect of exerting undue pressure on a person who, for fear of suffering emotional or physical injury to himself or herself or her property, is forced to perform an act against his or her will;

"occupation order" means an order made under section 17 and includes an interim order, made under that section;

"parent" means a person's mother or father or stepmother or stepfather and includes an adoptive parent as well as a person who has treated a child as a child of the family;

"person with a disability" means a person who is physically or mentally incapacitated by unsoundness of mind or a disability;

"police officer" means any member of the Guyana Police Force;

"protection order" means an order made under section 10 and includes an interim order made under section 9;

"relevant child" means—

(a) any child who is living with or might reasonably be expected to live with either party to the proceedings; and

(b) any other child whose interests the court considers relevant;

"respondent" means a person against whom an application is made for an order under this Act;

"sexual abuse" means any sexual conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of a person and includes the dissemination or publication of pornographic media of a person;

"tenancy order" means an order made under section 20 and includes an

interim order made under that section;

"tenant" in relation to any dwelling house, includes any person—

(a) whose tenancy has expired or has been determined; and

(b) who is for the time being deemed under or by virture of any enactment or rule of law to continue to be the tenant of the dwelling house;

"victim" means any person who alleges to have been subjected to an act of family violence;

Meaning of family violence.

3. (1) For the purposes of this Act, family violence includes—

(a) behaviour by a person towards a family member of that person which is—

(i) physically or sexually abusive;
(ii) emotionally or psychologically abusive;
(iii) economically abusive;
(iv) threatening;
(v) coercive;
(vi) controlling or dominating and causes that family member to fear for his or her safety or wellbeing; or

(b) behaviour by a person that causes a child of the family to be exposed to the behaviour under paragraph (a).

(2) Without limiting subsection (1), family violence includes the following behaviour—

(a) assaulting or causing personal injury to a family member or threatening to do so;

(b) sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour;

(c) intentionally damaging a family member's property, or threatening to do so;

(d) unlawfully depriving a family member of the family member's liberty, or threatening to do so; and

(e) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.

(3) For the avoidance of doubt, behaviour referred to under this section may constitute family violence even if the behaviour would not constitute a criminal offence.

Objects of Act.

4. The objects of this Act are to—

(a) ensure the safety and protection of victims of family violence, including children;

(b) prevent and reduce the incidences of family violence in Guyana; and

(c) ensure that perpetrators of family violence are held accountable for their actions.

Application of Juvenile Justice Act.

5. Where the respondent in an application for an order under this is a child, the provisions of the Juvenile Justice Act shall apply and the matter referred to the Children's Court.

## PART II
## FAMILY VIOLENCE ORDERS

*Protection Orders*

Persons who may apply for a protection order.

6. (1) An application for a protection order may be made by—

(a) an affected family member;

(b) where the affected family member is a child under the age of sixteen or a person with a disability, a parent or guardian of the affected family member;

(c) where the affected family member is a child sixteen years of age or more, the affected family member with the leave of the court;

(d) a police officer;

(e) a qualified social worker approved by the Minister by notice published in the Gazette; or

(f) any other person, with the leave of the court.

(2) An application for a protection order for an affected family member who is a child may be included in an application for the protection of the child's parent or guardian if the applications arise out of the same or similar circumstances.

(3) Where the applicant is a person other than the affected family member on whose behalf the application is made, the affected family member shall be a party to the proceedings.

(4) Notwithstanding subsection (3), where the affected family member is a child under the age of sixteen or a person with a disability, the parent or guardian of the affected family member shall be party to the proceedings as long as such parent or guardian is not the respondent.

Form of application.

7. A person referred to in section 6 may apply to the court for a protection order on the grounds that the respondent committed family violence, by filing with the clerk the form set out as Form 1 in the Schedule.

Leave to make application.

8. Where a person under section 6 requires the leave of the court before making an application for an order under this Act, the court may grant that person leave if it is satisfied that—

(a) it is in the best interests of the affected family member to do so; and

(b) where the applicant is a child sixteen years of age or more, the child understands the nature and consequences of a protection order.

Power of court to issue interim protection order.

9. The court may issue an interim protection order if—

(a) a person has applied to the court for a protection order and the court is satisfied, on the balance of probabilities, that an interim order is necessary pending a final decision about the application—

(i) to ensure the safety of the affected family member;

(ii) to preserve any property of the affected family member; or

(iii) to protect an affected family member who is a child who has been subjected to family violence committed by the respondent; or

(b) a person has applied to the court for a protection order and the parties to the proceeding have consented to, or do not oppose, the making of an interim order for the application.

Power of court to issue final protection order.

10. (1) The court may issue a final protection order if satisfied, on a balance of probabilities, that the respondent—

(a) has committed family violence against the affected family member; and

(b) is likely to do so again.

(2) A final protection order may be issued in respect of more than one affected family member if the court is satisfied of the matters set out in subsection (1) in relation to each of the affected family members.

Terms of protection order.

11. (1) A protection order issued by the court may prohibit the respondent from—

(a) committing any act of family violence against a person named in the order;

(b) being on or within a specified distance of premises that are the place of residence, employment or education of a person named in the order;

(c) being in a locality specified in the order;

(d) approaching, speaking or sending unwelcome messages to a person named in the order;

(e) taking possession of, damaging, converting or otherwise dealing with personal property that is reasonably used by a person named in the order;

(f) causing another person to engage in the conduct referred to in paragraphs (a), (d) or (e); or

(g) doing any other act which the court in the circumstances of the case considers relevant.

(2) In addition to the prohibitions referred to in subsection (1), the court may—

(a) direct the respondent to make such contribution to the welfare and maintenance of a person named in the order as the court thinks fit;

(b) provide for custody, visitation and maintenance of children;

(c) direct the respondent to return specified personal property that is in his or her possession or under his or her control whether it belongs to a person named in the order or not;

(d) specify conditions subject to which the respondent may be on premises or in a locality specified in the order;

(e) provide that the respondent seek appropriate counselling or therapy from a person or agency approved by the Minister, by notice published in the *Gazette* or be ordered to participate in a Batterer Prevention Programme or other similar programme as approved by the Minister.

(3) The court may make an order under this section that includes a prohibition of the kind referred to in subsection (1)(b) or (e) notwithstanding any legal or equitable interests the respondent might have in the property comprising the premises or in the property to which the prohibition relates.

Matters to be considered by the court.

12. In determining whether to impose a prohibition or direction specified under section 11, the court shall have regard to the following—

(a) the need to secure the health, safety and well-being of the person for whose benefit the order is made;

(b) the need to secure the health, safety and well-being of any relevant child;

(c) the accommodation needs of the person for whose benefit the order is made;

(d) the hardship that may be caused to the respondent or to any other person as a result of the making of the order;

(e) the income, assets and financial obligations of the respondent, the person for whose benefit the order is made and any other person affected by the order;

(f) the nature, history, or pattern of the family violence that has occurred, and whether a previous protection order has been issued; and

(g) any other matter that, in the circumstances of the case, the court considers relevant.

Duration of protection order.

13. (1) A final protection order may be for such period as the court in the circumstances of the case thinks fit but shall not exceed—

(a) [three years], where the respondent is an adult; and

(b) [one year], where the respondent is a child.

(2) Where a final protection order contains any prohibitions or directions, the court may specify different periods, none of which shall exceed [three years], as the period for which each prohibition or direction shall remain in force.

(3) An interim protection order may be for such period as the court in the circumstances of the case thinks fit but shall not exceed [twenty-eight days].

(4) An interim protection order ceases to be in force—

(a) when a final protection order is made on that application and the respondent is present at the time the protection order is made;

(b) when a final protection order is made on that application but the respondent is not present at the time the final protection order is made, when the final protection order is served on the respondent; or

(c) when the application is dismissed.

Power to vary or revoke protection order.

14. (1) The court may order the variation or revocation of an order under this Act on an application made by a party to the proceedings in respect of which the order was made.

(2) An application under subsection (1) may be made in the form set out as Form 4 in the Second Schedule.

(3) A copy of an application made under this section, must be served on each person who was a party to the proceedings, in respect of which the original order was made.

(4) In determining whether to vary or revoke an order the court shall have regard to the applicant's reasons for seeking the variation or revocation and the matters specified in section 12.

Power to extend protection order.

15. (1) The court may order the extension of an order under this Act on—

(a) an application made by a party to the proceedings in respect of which the order was made; or

(b) its own initiative,

if the court is satisfied on a balance of probabilities, that if the order is not extended the respondent is likely to commit family violence against the protected person.

(2) An application under subsection (1)(a) may be made in the form set out as Form 4 in the Second Schedule.

(3) A copy of an application made under this section, must be served on each person who was a party to the proceedings, in respect of which the original order was made.

(4) Where the court adjourns the hearing of an application for a protection order and an interim protection order is in force, the court may extend the period for which an interim order is to remain in force until the date fixed for the further hearing of the application.

Contravention of protection order.

16. (1) A person against whom an order under this Act has been made commits an offence if that person has notice of the order and contravenes or fails to comply with any provision of the order.

(2) A person who commits an offence under subsection (1) is liable—

(a) on a first summary conviction, to a fine not exceeding [one hundred thousand dollars] and to imprisonment for a term not exceeding [one year];

(b) on a second summary conviction, to a fine not exceeding [two hundred thousand dollars] and to imprisonment for a term not exceeding [two years]; and

(c) on any subsequent summary conviction, to imprisonment for a term not exceeding [five years].

*Occupation Orders*

Occupation order.

17. (1) The court when making a protection order or an interim protection order may also make an occupation order or an interim occupation order, as the case may be, granting the person named in the order for such period or periods and on such terms and subject to such conditions as the court thinks fit, the right to live in the household residence or any other premises forming part of the household residence.

(2) The court may make an order under subsection (1) only if the court is satisfied that such an order—

(a) is necessary for the protection of the applicant or the person for whose benefit the order is made;

(b) is necessary to meet the accommodation needs of the applicant or the person for whose benefit the application is made; or

(c) is in the best interests of a relevant child.

(3) An interim occupation order made while the person for whose benefit the order is made and the respondent are living together in the same household residence shall expire—

(a) on the revocation of this order by the court; or

(b) on the revocation of an interim protection order.

(4) Where an interim occupation order is made the respondent may apply immediately for variation or revocation of that order.

(5) In determining whether to make an order under this section, the court must have regard to the reasonable accommodation needs of the respondent and any other person who may be affected by the order.

Effect of occupation order.

18. (1) Where an occupation order or interim occupation order is made, the applicant shall be entitled, to the exclusion of the respondent, to occupy the household residence in accordance with that order which may stipulate the aspects to which the respondent shall contribute to maintain the home.

(2) Every occupation order shall have effect and may be enforced as if it were an order of the court for possession of the household residence in favour of the person to whom it relates.

(3) An occupation order issued under section 17 shall not affect the rights that the applicant, respondent or any other person may have in relation to the ownership of the household residence or any other premises forming part of the household residence.

Power to vary or revoke occupation order.

19. The court may if it thinks fit, on the application of either party, make an order—

(a) extending or reducing the period specified by the court pursuant to section 17(1); or

(b) varying or revoking any terms and conditions imposed by the court pursuant to that subsection.

*Tenancy Orders*

Tenancy order.

20.(1) The court when making a protection order or an interim protection order may also make a tenancy order or an interim tenancy order, as the case may be, vesting in the person named in the order, the

tenancy of any dwelling-house which, at the time of the making of the order—

(a) the respondent is either the sole tenant of or a tenant holding jointly with the person named in the order; and

(b) is the household residence of the people named in the order or the respondent.

(2) The court may make an order under subsection (1) only if the court is satisfied that such an order—

(a) is necessary for the protection of the applicant or the person for whose benefit the application is made;

(b) is necessary to meet the accommodation needs of the applicant or the person for whose benefit the application is made;

(c) is in the best interests of a relevant child.

(3) An interim tenancy order made while the person concerned and the respondent are living together in the same household residence shall expire—

(a) on the revocation of the order by the court; or

(b) on the revocation of an interim protection order.

(4) Where an interim tenancy order is made the respondent may apply immediately for variation or revocation of that order.

(5) In determining whether to make an order under this section, the court must have regard to the reasonable accommodation needs of the respondent and any other person who may be affected by the order.

Effect of tenancy order.

21. (1) Where a tenancy order or interim tenancy order is made, the person to whom it relates shall, unless the tenancy is sooner determined, become the tenant of the dwelling-house upon and subject to the terms of the tenancy in force at the time of the making of the order, and the respondent shall cease to be the tenant.

(2) Notwithstanding subsection (1), the court may order that the respondent contribute to the payment of rent, such amount as the court thinks fit.

(3) Every tenancy order shall have effect and may be enforced as if it were an order of the court for possession of the dwelling house in favour of the person to whom it relates.

(4) Nothing in this Act or in any tenancy order—

(a) limits the operation of any enactment or rule of law for time being applicable to any tenancy to which a tenancy order applied, or to the dwelling-house held under the tenancy;

(b) authorizes the court to vary, except by vesting the tenancy pursuant to this section or revesting the tenancy pursuant to section 22, any express or implied term or condition of the tenancy.

(c) [(c) affects the rights that the applicant, respondent or any other person may have in

relation to the ownership of the dwelling-house.]

Power to revoke tenancy order and revest tenancy.

22. (1) The court may, if it thinks fit on the application of either party or the personal representatives of either party, make an order revoking the tenancy order and revesting the tenancy accordingly.

(2) Where an order is made under subsection (1), the person in whose favour it is made shall, unless the tenancy is sooner lawfully determined, become the tenant of the dwelling-house upon and subject to the terms and conditions of the tenancy in force immediately before the date on which the order was made.

*Ancillary Orders*

Power of court to issue ancillary order.

23. (1) On or after making an occupation order or a tenancy order the court may, subject to subsection (2), make an order granting to the person named in the order the use, for such period and on such terms and subject to such conditions as the court thinks fit, of all or any of the—

(a) furniture;

(b) household appliances; and

(c) household effects, in the household residence or other premises to which the order relates.

(2) Notwithstanding subsection (1), an order made under that subsection shall expire if the occupation order made in relation to the household residence or other premises or the tenancy order made in relation to the dwelling-house expires or is revoked.

*Procedure*

Procedure in respect of protection orders.

24. (1) Proceedings in respect of an application for a protection order shall be heard *in camera*.

(2) Except as otherwise provided by this Act, the Summary Jurisdiction (Procedure) Act shall apply *mutatis mutandis* in respect of proceedings on an application.

Procedure in respect of occupation and tenancy orders.

25. (1) Before making a final occupation order or a final tenancy order under, the court shall direct that notice be given to any person having an interest in the property which could be affected by the order, and that person shall be entitled to appear and to be heard.

(2) Where an agreement, including a mortgage or lease of premises or residence provides that if the respondent ceases to reside in his place of residence, a person may take action that would be prejudicial to that interest of the respondent or a member of the respondent's family, the person is not entitled to take action if the respondent ceases to reside in the place of residence in compliance with an order made under this Act.

(3) Where the court is satisfied on evidence before it that an agreement referred to in subsection (1) exists in relation to the respondent, the court shall, at the time of making an order, direct that a copy of the order be served on the person referred to in subsection (1), by the clerk of the court.

(4) The Court on making an occupation or tenancy order shall order that it be served on a social worker who is assigned to the district of the court in which the order was made.

*Ex parte* applications.

26. (1) An order under this Act may be made on an *ex parte* application if the Court is satisfied that the delay that would be caused by proceeding on summons may result in—

(a) risk to the personal safety of a specified person; or

(b) serious or undue hardship,

and any order made on an *ex parte* application shall be an interim order.

(2) Where an order is granted on an *ex parte* application, it shall be served personally on the respondent who may apply immediately for it to be varied or revoked.

Restrictions on publication.

27. (1) Subject to subsection (4), a person shall not publish or cause to be published any report of proceedings under this Act, except with the permission of the court which heard the proceedings.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five hundred thousand dollars.

(3) Nothing in this section limits—

(a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(b) the power of the court to punish any contempt of court.

(4) This section shall not apply to the publication of any report in any publication that—

(a) is of a *bona fide* professional or technical nature; or

(b) is intended for circulation among members of the legal or medical profession, officers of the public service, psychologists, marriage counsellors or social workers.

Date for hearing.

28. The clerk shall fix a date for the hearing of an application for a protection order which date shall be no more than [seven days] after the date on which the application is filed.

Service.

29. (1) Where an application has been filed with the clerk, a copy of the application together with notice of proceedings in Form 2 in the Schedule shall, as soon as practicable, be served personally on the respondent and not later than forty-eight hours before the hearing.

(2) Where an application filed is in respect of a child under the age of sixteen or a person with a disability a copy of the application together with notice of the date on which and time and place at which the application is to be heard shall, as soon as practicable, be served personally on the parent or guardian with whom the child under the age of sixteen or a person with a disability normally resides or resides on a regular basis.

(3) A notice of the proceedings which is issued and served under this Part is deemed to be a summons that is duly issued and served under the Summary Jurisdiction (Procedure) Act and the respondent shall appear in court to answer the application as if it were a complaint to which that Act applies.

(4) Any notice of proceedings issued under this Part may be served by the applicant or his agent and the court may, at its discretion, received proof of such service by affidavit in Form 3 in the Schedule.

Service other than personal service.

30. Where it appears to the court that it is not reasonably practicable to serve a copy of an application or an order personally the court may—

(a) order that the copy of the application for the protection order or the copy of the protection order itself, be served by such other means as the court thinks just including by electronic means; or

(b) make an order for substituted service.

Affidavit evidence.

31. (1) If the court so directs, an application for a protection order shall be supported by evidence on affidavit.

(2) A party to the proceeding may, with the leave of the court, require a person giving evidence by affidavit to attend the hearing of the proceeding to be called as a witness and to be cross-examined.

Adjournment.

32. Where the hearing of an application is adjourned by reason of the fact that the application and the notice of proceedings have not been served on the respondent, the date, time and place fixed by the court for the adjourned hearing shall be the date, time and place stated in the notice of adjourned proceedings.

Procedure in the absence of respondent.

33. Where notice of the proceedings has been served on the respondent in accordance with section 29 and the respondent fails to appear in person at the court at the time fixed for the hearing of the application for the protection order, the court may—

(a) proceed to hear and determine the matter in the respondent's absence; or

(b) where the court is satisfied having regard to the material before it that it is appropriate to do so, adjourn the matter

and issue a warrant for the respondent to be apprehended and brought before the court.

Procedure in the absence of applicant.

34. Where, on the date of the hearing of the application, the respondent appears in court, but neither the applicant nor the person on whose behalf the application is made appear either in person or by his or her attorney-at-law, the court may—

(a) dismiss the application; or

(b)having received a reasonable excuse for the non-appearance of either party adjourn the hearing of the application upon such terms as the court may think just.

When affected family member to be heard separately.

35. (1) If an application for a protection order is made by a person other than the affected family member and the affected family member objects to the application, the views of the affected family member must be heard separately from the views of the applicant at the hearing of the application.

(2) Without limiting subsection (1), the views of the affected family member may be heard through an independent legal representative acting on his or her behalf.

Provisions relating to interim orders.

36. (1) Every interim order made under this Act shall specify a date (which shall be as soon as reasonably practicable thereafter) for a hearing on whether an order should be made in substitution for the interim order.

(2) The copy of any interim order which is served on the respondent shall notify the respondent that unless the respondent attends on the specified date to show cause why an order should not be made in

substitution for the interim order, the court may revoke the interim order and make an order in substitution therefor.

(3) At the hearing referred to in subsection (1) the court may—

(a) revoke the interim order;

(b) revoke the interim order and make an order in substitution therefor; or

(c) on good cause being shown, adjourn the hearing to such date and place as the court may specify.

Explanation of order.

37. (1) Where the court proposes to make an order under this Act and the respondent is before the court, the court shall explain to the respondent—

(a) the purpose, terms and effect of the order;
(b) the consequences and penalties of failing to comply with the order; and
(c) the means by which the order may be varied or revoked.

(2) An explanation under subsection (1) must be a clear oral explanation.

(3) A failure by the court to explain an order in accordance with this section does not affect the validity of the order.

Form and service of protection order.

38. (1) Where a protection order or an interim protection order is made or varied by the court, the clerk shall arrange for an order in the prescribed form to be formally drawn up and filed in the court.

(2) A copy of an order made under subsection (1) shall be served by the applicant or his or her agent—

(a) personally on the respondent;

(b) on any other person who was a party to the proceedings;

(c) on a police officer who is the officer in charge of a police station in the district of the court in which the order was made; and

(d) on a social worker assigned to the district of the court in which the order was made.

(3) In subsection (1), a reference to an order in the prescribed form means—

(a) in the case of the making of a protection order or an interim protection order, an order in Form 5 in the Schedule;

(b) in the case of the varying of a protection order or an interim protection order, an order in Form 6 in the Schedule.

## PART III

## POLICE DUTIES AND POWERS

*Police Duties*

Duty to assist victims.

39. Whenever a police officer intervenes in a case of family violence the police officer shall as soon as possible take all reasonable measures within his or her power to prevent the victim of family violence from being abused again and shall also take the following steps—

(a) where a victim indicates that he or her has suffered injuries which require medical assistance, the police officer shall assist the victim to obtain medical treatment as soon as possible;

(b) where a victim of expresses concern for his safety, the police officer shall assist the victim in getting to a place of safety;

(c) where a victim requests it, a police officer shall protect a victim by accompanying the victim when he or she takes his or her personal belongings from a place where the respondent may reside;

(d) advise the victim of the option of applying for a protection, occupation and tenancy order under this Act and that the police or social worker can assist in this regard;

(e) advise the victim of on the importance of preserving the evidence; and

(f) inform the victim as to his or her rights and the government and private services which may be available to assist him or her.

Duty to prepare reports.

40. (1) A police officer who responds to a family violence complaint shall prepare a written report which sets out in detail—

(a) the allegations of the persons involved;

(b) the names and addresses of any witnesses;

(c) the type of investigation conducted; and

(d) the manner in which the incident was resolved.

(2) A report prepared under subsection (1) shall be submitted to [an officer of senior rank/the head of the police division] who shall, within forty-eight hours of receiving the report, make a determination as to whether—

(a) a formal criminal investigation should be conducted in respect of the complaint; and

(b) a criminal charge should be laid against the accused.

(3) The police officer in charge shall, on receipt of a report prepared under subsection (1), notify a social worker who is assigned to the district where the court is located.

(4) The police officer in charge of every police station shall ensure that all records of family violence cases are properly compiled so as to facilitate easy reference to data.

(5) The police officer in charge of every police station in Guyana shall ensure that confidentiality is maintained with respect to the identity of person involved in all cases of family violence and that interviews are carried out in an area of the police station which provides the utmost privacy.

*Police Powers*

Power to enter premises.

41. (1) A police officer may without warrant enter any premises for the purpose of giving assistance to anyone present thereon—

(a) if he or she has reasonable grounds to suspect that a protection order is being violated; or

(b) if upon the invitation of a person resident at the premises, he or she has reasonable grounds to suspect that a person therein has suffered physical injury at the hands of some other person on the premises.

(2) A police officer referred to in subsection (1) may without warrant enter premises for the purpose of giving assistance to a person on those premises whom that officer has reasonable grounds to suspect is in imminent danger of suffering physical injury or has suffered physical injury at the hands of another person.

Power of arrest.

42. (1) Where a police officer believes on reasonable grounds that a person—

(a) has committed, is about to, or is committing an offence under section 16; or

(b) who has been admitted to bail subject to one or more of the conditions set out in section 44(1) has failed to comply with a condition of the recognizance,

the police officer may arrest that person without a warrant.

(2) Where a police officer believes on reasonable grounds that a person has committed an act of family violence which constitutes bodily injury or harm, the police officer shall arrest that person without a warrant unless the victim requests otherwise.

(3) Where a police officer believes on reasonable grounds that a person has committed an act of family violence which constitutes a wound or grievous bodily harm, the police officer shall arrest that person without a warrant.

(4) Where an arrest is made pursuant to subsection (2) or (3), the arresting police officer shall not attempt to mediate or reconcile the parties.

## PART IV

## BAIL AND ISSUE OF WARRANT

*Bail*

Bail.

43. (1) Where the court is required to determine whether to grant bail in respect of an offence under section 16, the court shall take into account—

(a) the need to secure the health, safety and well-being of the person named in the protection order;

(b) the need to secure the health, safety and well-being of any relevant child;

(c) any hardship that may be caused to the defendant or to member of the family if bail is not granted;

(d) the defendant's record with regard to the commission of violent acts and whether there is evidence in the record of physical or psychological abuse to children; and

(e) any other matters which the court considers relevant.

(2) Where bail has been granted to a defendant, the court may direct that the defendant report to a specified police station at specified times.

Conditions of bail.

44. (1) Where the defendant is charged with an offence under section 16, the court in granting bail may also order that the recognizance be subject to such of the following further conditions as the court considers appropriate—

(a) that the defendant not harass or molest, or cause another person to harass or molest, a specified person including the person named in the protection order or any relevant child;

(b) that the defendant not be on the premises in which a specified person including the person named in the protection order or any relevant child resides or works;

(c) that the defendant not be in a locality in which are situated the premises in which are situated the premises in which a specified person including the person named in the protection order or any relevant child reside or works;

(d) that the defendant not be on premises which are or in a locality in which is situated the place of education of a specified person including the person named in the protection order or any relevant child;

(e) where the defendant continues to reside, work or attend the place of education with a specified person

including the person named in the protection order or any relevant child, that the defendant do not enter or remain in the place of residence, employment, or education while under the influence of alcohol or a drug.

(2) Where—

(a) bail has been granted to a person upon a condition imposed under subsection (1); and

(b) the person contravenes or fails to comply with the condition,

the bail is thereupon forfeited and the accused is liable to be re-arrested.

*Issue of Warrant*

Issue of warrant.

45. Where a Magistrate is satisfied by information on oath that—

(a) there are reasonable grounds to suspect that a person on premises has suffered, or is in imminent danger of physical injury at the hands of another person and needs assistance to prevent or deal with the injury; and

(b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person,

the Magistrate may issue a warrant in writing authorizing a police officer to enter the premises specified in the warrant at any time after the issue of the warrant and subject to any conditions specified in the warrant, to

take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace or to protect life or property.

## PART V
## CONDUCT OF PROCEEDINGS

Criminal proceedings may be concurrent.

46. Where a person has been charged with a criminal offence and an application for a protection order is before the court, the court may exercise its power to grant the order, notwithstanding that the offence for which the person has been charged and the application for the protection order arise out of the same conduct.

Curtailment of vexatious litigant.

47. The court may deem a person to be a vexatious litigant and prohibit that person from making further applications under this Act without first obtaining the leave of the court on—

(a) an application made by the respondent; or

(b) its own initiative,

if the court has determined that the person has become a persistent and habitual applicant for protection orders.

Special measures.

48. (1) The court may direct the use of any of the following special measures in respect of family violence proceedings under this Act—

(a) permitting the proceeding to be conducted virtually or remotely from a place other than the courtroom by means of electronic or other facilities that enable communication between that place and the courtroom;

(b) using screens to remove the respondent from the direct line of vision of another party or a witness;

(c) permitting a person to be beside a party or witness for the purpose of providing emotional support while the party or witness is giving evidence;

(d) requiring attorneys-at-law to be seated during the proceeding; or

(e) any other special measures the court considers appropriate.

(2) Any place outside the courtroom where a party or witness is permitted to give evidence under this section is taken to be part of the courtroom while the party or witness is there for the purpose of giving evidence.

(3) The court may, at any time in the course of the proceeding, vary or revoke a direction made under subsection (1) on its own initiative or on the application of a party to the proceeding.

## PART VI
## MISCELLANEOUS

Jurisdiction.

49. (1) Nothing in this Act shall be construed as removing any jurisdiction which the Supreme Court may have in respect of the matters referred to under this Act.

(2) The Supreme Court may, in the course of any proceedings, exercise any of the powers referred to in this Act.

Appeals.

50. (1) An appeal from any order or judgement of the court made or given under this Act shall lie to the Full Court and the appeal shall be regulated in all respects by the Summary Jurisdiction (Appeals) Act.

(2) Except where the court which makes an order under this Act otherwise directs, the operation of such order shall not be suspended by virtue of an appeal under this section, and every such order may be enforced in the same manner and in all respects as if no appeal were pending.

Rules of court.

51. Rules of court may be made for the purpose of regulating the practice and procedure of the court in proceedings under this Act providing for such matters as are necessary for giving full effect to the provisions of this Act and for the due administration thereof.

Civil cause of action.

52. (1) Except as otherwise provided by law, any person claiming to be injured by a person who commits an act of family violence shall have a cause of action against such person in any court of competent jurisdiction for any or all of the following relief—

(a) compensatory and punitive damages;

(b) injunctive and declaratory relief;

(c) attorneys' fees and costs; and

(d) such other relief as a court may deem appropriate.

(2) A civil action under this section must be commenced—

(a) within six years after the alleged act of family violence occurred; or

(b) if, due to injury or disability resulting from an act giving rise to a cause of action under this section a person entitled to commence an action is unable to do so at the time such cause of action accrues, then within six years after the inability to commence the action ceases.

(3) Nothing in this section requires a prior criminal complaint, prosecution or conviction to establish the elements of a cause of action under this section.

Responsibilities of the Director of Social Services.

53. (1) The Director of Social Services in the Ministry of Human Services and Social Security shall be responsible for—

(a) promoting and developing educational programmes for the prevention of family violence;

(b) studying, investigating and publishing reports on the family violence problem in Guyana, its manifestations and scope, the consequences and the options for confronting and eradicating it in conjunction with the Police Force and other agencies and organisations;

(c) identifying groups and sectors in society in which abuse is manifested and educating these groups and sectors making them aware of the skills required to combat family violence;

(d) creating awareness among society with regard to the needs of victims of family violence and their families;

(e) developing strategies to encourage changes in the policies and procedures in government agencies in order to improve their response to the needs of the victims of family violence;

(f) establishing and encouraging the establishment of programmes on information, support and counselling services for victims of family violence;

(g) encouraging programmes of services for children who come from homes where there is abuse and violence;

(h) providing training and orientation services for police officers and persons who assist in the treatment and counselling of victims of family violence and abuse;

(i) analysing and carrying out studies on the need for education and retraining for a person who engages in conduct that constitutes family violence and abuse and for their rehabilitation; and

(j) establishing multidisciplinary therapy programmes for the rehabilitation of persons who engage in conduct that constitutes family violence and abuse.

(2) In carrying out the responsibilities under subsection (1), the Director of Social Services may collaborate with such governmental, non-governmental and inter-governmental organisations and may, acting in accordance with directions issued by the Minister, establish such task force as he or she thinks fit.

Rights relating to property.

54. (1) Nothing in this Act shall be deemed to have altered any right to ownership of property.

(2) Where an agreement, including a mortgage or lease of premises or residence provides that if the respondent ceases to reside in his place of residence, a person may take action that would be prejudicial to that interest of the respondent or a member of the respondent's family, the person is not entitled to take action if the respondent ceases to reside in the place of residence in compliance with an order made under this Act.

(3) The rights conferred on any person in respect of any property by an order made under this Act shall be subject to the rights of any other person entitled to the benefit of any mortgage, security, charge or encumbrance affecting the property if such mortgage, security, charge or encumbrance was registered before the order was registered or if the rights of that other person entitled to the benefit arise under an instrument executed before the date of the making of the order.

(4) Notwithstanding anything in any enactment or in any instrument, no money payable under any such mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of an order under this Act.

Regulations.

55. The Minister may make regulations for carrying out the provisions of this Act and for prescribing anything that needs to be prescribed.

Amendment of forms.

56. The Minister may by order amend any of the forms in the Schedule.

Repeal.

57. The Domestic Violence Act Cap 11:09 is hereby repealed.

Savings and transitional provisions.

58. (1) Any act, decision or other matter carried out or any application made, proceedings instituted, or order made under the Domestic Violence

Act shall be deemed to have been carried out, made or instituted under this Act, and this Act shall apply accordingly.

(2) At the date of commencement of this Act—

(a) Every application made for an order under the Domestic Violence Act that is wholly or partly dealt with shall continue and be dealt with in all respects as if this Act had not come into force.

(b) Every application made for an order under the Domestic Violence Act that has not been wholly or partly dealt with shall be deemed to be an application made under this Act, and this Act shall apply accordingly.

**SCHEDULE**

**FORM 1**

**APPLICATION FOR PROTECTION ORDER/INTERIM PROTECTION ORDER**

*(section 7)*

**IN THE ..... MAGISTERIAL DISTRICT MAGISTRATE'S COURT**

I ..... (name of applicant) of ..... (address) hereby apply under section 7 of the Family Violence Act, for a Protection Order/Interim Protection Order to be made by the Magistrate of the district against the ..... (name of respondent) who is ..... (specify relationship to the named respondent) and who resides at ..... (specify address of respondent) in respect of the following conduct..... (specify details of alleged conduct)

.....

Applicant

Dated the .....day of ..... 20

**FORM 2**

**NOTICE OF PROCEEDINGS**

*(section 29(1))*

**IN THE .... MAGISTERIAL DISTRICT MAGISTRATE'S COURT**

Between

Applicant

VS

Respondent

To the Respondent

An application under section 7 of the Family Violence Act for a Protection Order/ Interim Protection Order has been made by ..... (name of applicant) against you.

A copy of the application is attached. The application has been set down for hearing on ..... (date) 20 ..... at ..... (time) at ..... (time) at ..... (place).

If you do not appear in person at the hearing of the application, the Court may-

(a) Deal with the application in your absence; or

(b) Issue a warrant for your arrest to be brought before the Court.

.....

Clerk of the court of the District

Dated the ..... day of .....20

**FORM 3**

**AFFIDAVIT FOR USE IN PROVING SERVICE OF PROCESS**

*(section 29(4))*

No. .....

Return of service of process under the Family Violence Act, for the ..... Court.

| Name of Applicant | Name of Respondent | Document Served | Date of Service | Place of Service | Mode of Service |
|---|---|---|---|---|---|
| | | | | | |

I do swear that the above Return of Service is true and in accordance with the facts of such Service.

.....
(Deponent)

Sworn before me at )
this day of 20 )

.....
Commissioner of Oaths

**FORM 4**

**APPLICATION FOR VARIATION OR REVOCATION/ EXTENSION OF PROTECTION ORDER OR INTERIM PROETCTION ORDER**

*(sections 14(2) and 15(2))*

**IN THE .... MAGISTERIAL DISTRICT MAGISTRATE'S COURT**

Between

Applicant

VS

Respondent

I ..... (name of applicant) hereby apply for a variation or revocation/extension of the Order made against ..... (name of person against whom the Order was made) on ..... by the ..... Court (a copy of which is attached to the said application) in respect of certain conduct or threatened conduct towards ..... (name of person who is protected by the Order). There have been no previous proceedings in any court in respect of the said order and I now ask for a variation or revocation/extension of that order to be made..... (specify details of variation or revocation/extension)

.....
Applicant

Dated the .....day of ..... 20

**FORM 5**

**PROTECTION ORDER /INTERIM PROTECTION ORDER**

*(section 38(3))*

**IN THE .... MAGISTERIAL DISTRICT MAGISTRATE'S COURT**

Between

Applicant

VS

Respondent

The Court having heard an application by ..... (name of applicant) under the Family Violence Act in respect of the conduct (or threatened conduct) of ..... (name of respondent) towards ..... (name of person to be protected) Now this court order that for ..... (period):

1. ..... (name of respondent) not engage in the following conduct-

2. ..... (name of respondent) comply with the following prohibitions and directions-

.....

(specify the prohibitions and directions and any other period or periods for which they are imposed).

Signed this ..... day of .....20.....

..... Magistrate .....Magisterial District.

**FORM 6**

**ORDER VARYING PROTECTION ORDER/ INTERIM PROETCTION ORDER**

*(section 38(3))*

**IN THE .... MAGISTERIAL DISTRICT MAGISTRATE'S COURT**

Between

Applicant

VS

Respondent

The Court having heard an application by ..... (name of applicant) under the Family Violence Act in respect of the conduct (or threatened conduct) of ..... (name of respondent) towards ..... (name of person to be protected) and having on ..... (date of original order) ordered that for ..... (period):

1. ..... (name of respondent) not engage in the following conduct-

.....(specify conduct).

2. ..... (name of respondent) comply with the following prohibitions and directions-

.....

(specify the prohibitions and directions and any other period or periods for which they are imposed).

Now the court on the application of .....(name of applicant) this day orders that the Protection Order (or Interim Protection Order) be varied as follows-

.....

(specify details of variation).

Signed this ..... day of .....20.....

..... Magistrate .....Magisterial District.

## EXPLANATORY MEMORANDUM

This Bill seeks to provide increased protection for victims of family violence, to make provision for the granting of family violence orders and for matters connected thereto.

This Bill seeks to make significant practical and philosophical changes to the entire landscape related to domestic violence laws and policies and it is the reason why it proposes a repeal of the current 'Domestic Violence Act Cap. 11:09' even it retains several of the provisions of that Act.

The first significant change which this Bill seeks to achieve is an expansion of the kinds of violence it addresses and the categories of persons who are entitled to seek and obtain protection from the courts.

'Domestic Violence' has always been recognised as violence which occurs between current and former partners in intimate settings. This is very limited definition and does not address the kinds of violence being perpetuated on a daily basis and does not provide protection to persons from violence arising out of familial relationships.

'Family Violence' is that expansive term which relates to all forms of violence between 'family' members. This will include violence between persons involved in intimate relationships as well as other family members – extended family members, whether formally recognized or not.

This, therefore, is the 'Family Violence Bill'. It seeks to expands protection to more categories of persons. It is expected to reshape the landscape of laws providing protection. persons who were never before able to seek protection would now be able to approach the courts and receive protection from any or all forms of violence perpetuated by persons who fall to be considered 'family' members.

The Bill also seeks simplify and clarify the powers of the court to grant an interim and final protection order.

Further, the Bill brings a substantial change to the powers and duties of the police in treating with 'family violence' complaint. One of the main changes here is the mandatory obligations imposed on police officer (when, for instance called out to investigate a family violence report) to arrest a person when there is reasonable grounds to believe that that person has committed some harm to the victim.

Another substantial change contained in the new Bill is a mandatory requirement imposed on the senior officer at each station, upon the receipt of a report of any family violence, to expeditiously consider whether a criminal investigation should be launched or whether criminal charges should be laid.

Yet further, another change being proposed is the creation of new civil cause of action which will allow a victim of family violence to claim damages and compensation against a perpetrator of family violence.

The Bill recognizes the changes brought to the legal landscape in relation to bail for breach of protection order and criminal charges related to family violence.

This Bill draws and comes out of several significant studies and researches, two of which were driven by the Spotlight Initiative – which is aimed as eradicating violence against women and girls.

The first of these is a "Legislative Analysis of [the] Domestic Violence Act and Sexual Offences Act and Policies in Guyana". This particular study examined a number of laws, including-

- Domestic Violence Act, 1996
- Sexual Offences Act, 2010 (and amendment)
- Protection of Children Act, 2009
- Childcare and Development Act, 2011

- Cybercrime Act'
- Violence Against Women Act 2019 – USA
- Family Violence Act 2018 – New Zealand
- Domestic Violence (Amendment) Bill 2020 of Trinidad and Tobago

A number of International Conventions, including the Convention on the Rights of the Child were also examined.

The Second study which was considered relevant to the shaping of this Act, is the Report on "New and Emerging Forms of Family Violence in Guyana" of October 2021.

The Bill has been many months in drafting and consultations.

**The Draft Bill**

This Bill is divided into six (6) Parts and contains fifty-eight (58) clauses and one (1) Schedule.

**Part I**

**Part I** of the Bill provides for the preliminary provisions and contains **clauses 1** to **5. Clause 1** of the Bill provides for the short title of the Bill.

**Clause 2** provides for the interpretation of certain terms used in the Bill.

This section defines a number of critical terms including 'cohabitants' and 'family members' (to include persons inn same sex relationships).

It also defines what is meant by various forms of abuse. Note in particular, the definitions given to 'economic abuse', 'emotional and psychological abuse'.

Note also the expanded definition given to who is considered a 'family member', as well as what are some of the things which would constitute 'harassment'.

**Clause 3** of the Bill provides the meaning of 'family violence' and identifies behaviours that constitute family violence.

[As mentioned above, this is one of the significant changes from the old Domestic Violence Act. Even the court is given a power to deem 'any other conduct' to constitute 'family violence'.]

It is to be noted that the relevant behaviour does not have to constitute a criminal offence to amount to 'family violence'.]

**Clause 4** of the Bill sets out the objects of the Act and by **clause 5** of the Bill, the Juvenile Justice Act applies to all matters under the Bill where the respondent is a child.

[This was a recommendation made by the Legislative Analysis commissioned by the Spotlight Initiative.]

**Part II**

**Part II** of the Bill makes provision for the issuance of family violence orders and the procedure to be followed in respect of family violence orders and contains **clauses 6** to **37**.

**Clause 6** of the Bill provides the categories of persons who may apply for a protection order under the Act. (This is another significant change from the DV Act.)

The Bill will also afford protection to persons who are of the same sex in a relationship. This is a significant expansion in the scope of the protection to be offered.

Protection will also be given to 'any other person' with the leave of the court.

This is quite consonant with the recently delivered judgment by the Caribbean Court of Justice in the case of OO v BK [2023] CCJ 10 (AJ) BB – where recognition was given to the current need to change laws to protect persons who suffer from domestic violence and to expand the categories of persons entitled to orders of protection. This new draft Bill surpasses that trend.

**Clause 7** of the Bill provides the form of an application for a protection order and **clause 8** of the Bill sets out the factors that the court must consider when granting a person leave to make an application for a protection order. As is usual, the court must be satisfied that 'it is in the best interests of the affected family member to do so'.

**Clause 9** of the Bill empowers the court to issue an interim protection order and sets out the basis upon which the court may grant such an order.

[An examination of the relevant provisions of the DV Act and these provisions show that the Bill clarifies and simplifies the Court's approach to granting an interim and final protection order.]

**Clause 10** empowers the court to issue a final protection order and sets out the basis upon which such a final order would be made.

**Clause 11** sets out the scope of a Protection Order. In particular, this section sets out the prohibitions and directions that the court may include as terms of a protection order.

[This provision also retains the power and discretion to provide for custody, visitation and maintenance of children' within the context of the grant of a protection order.]

**Clause 12** of the Bill provides for the matters which the court must consider when determining whether to impose a prohibition or direction specified under clause 11. These are listed at (a) to (f) with provision being made for "(g) any other matter that, in the circumstances of the case, the court considers relevant".

**Clause 13** of the Bill provides for the duration of protection orders issued under the Act. (This is keeping with a High Court decision by Chief Justice Ian Chang who declared that such orders must be a finite life span.) [Minister, please note that some timelines have to be agreed upon]

**Clause 14** of the Bill empowers the court to vary or revoke a protection order issued under the Act. The relevant Form 4 is on the Second Schedule.

**Clause 15** of the Bill empowers the court to extend the duration of a protection order issued under the Act either on an application or on the court's own initiative.
**Clause 16** of the Bill makes it offence for a person against whom a protection order is made to contravene the terms the order. Penalties are set out on summary conviction for the first offence and for subsequent offences.

[Please note that the suggested penalties are yet to be approved.]

**Clauses 17 18** and **19 speaks to 'Occupation Orders'.**

**Clause 17** of the Bill empowers the court to issue an occupation order which gives the person named in the order the right to live in the household residence.

**Clause 18** provides the effect of an occupation order and **clause 19** of the Bill empowers the court to vary or revoke an occupation order issued under the Act.

[The Spotlight's Legislative Analysis had opined that *"Guyana's DVA currently has exclusion orders in the form of Occupation and Tenancy Orders but interviewees' responses to their effectiveness were mixed, with many responses demonstrating uncertainty on the fairness of such orders, and furthermore the practicality and workability of them. It is recognized that the court has to consider factors which are inhibiting e.g. alternative accommodation for the perpetrator. This is an area of practicality that may merit a rethink in legislation and application of the provision.'*

This criticism is noted but this cannot be a reason why a court should not always consider a relevant factor. For one, judicial attention to this issue might ensure that the attending social

worker be alerted that the Respondent might need a place to stay and other forms of support after being evicted.

In any event, the primary consideration for the court when making such order is the court being satisfied that such an order is necessary for the protection of the applicant or the person for whose benefit the order is made'. These considerations equally apply to the Tenancy Orders.

The provisions of the current DV Act have been retained under this Part.]

**Clauses 20, 21 and 22 speaks to Tenancy Orders.**

**Clause 20** of the Bill empowers the court to issue a tenancy order which vests tenancy of a dwelling house in the person named in the order.

**Clause 21** provides the effect of a tenancy order and **clause 22** of the Bill empowers the court to revoke a tenancy order issued under the Act and revest the tenancy.

**Clause 23** of the Bill empowers the court to issue ancillary orders when making an occupation order or a tenancy order under the Act. These may relate to household furniture, appliances and household effects and is to be tied to the lifespan of the occupation or tenancy order.

**Clause 24** sets out the procedure in respect of proceedings on an application for a protection order.

**Clause 25** sets out the procedure in respect of occupation orders and tenancy orders issued under the Act.

**Clause 26** speaks to the grant of an interim order on an *ex parte* application.

**Clause 27** restricts the publication of any report of proceedings under the Act, except with the permission of the court.

**Clause 28** requires the clerk to fix a short date for the hearing of applications for protection orders. **Clause 29** provides for the manner of service of documents on respondents to an

application for a protection order and **clause 30** empowers the court to order service other than personal service.

**Clause 31** of the Bill provides for an application for a protection order to be supported by evidence on affidavit and **clause 32** provides for the adjournment of proceedings.

[This provision proposes to correct an existing drafting error in the DV Act. Section 28(c) is redirected to fall under this provision.]

**Clause 33** of the Bill sets out the procedure of hearings in the absence of the respondent and **clause 34** sets out the procedure of hearings in the absence of the applicant.

**Clause 35** of the Bill provides for an affected family member to be heard separately where that affected family member objects to the application for a protection order. **Clause 36** of the Bill sets out provisions relating to interim orders made under the Act and **clause 37** of the Bill requires the court to provide a respondent to an application with an explanation of the order issued.

**Clause 38** of the Bill provides the form of a protection order issued under the Act and specifies the parties on whom it must be served.

**Part III**

**Part III** of the Bill sets out the duties and powers of police officers as it relates to family violence and contains **clauses 39** to **42**.

[One of the significant concerns related to domestic violence laws in Guyana and the entire Caribbean is the fact that there is a cultural notion that law enforcement is slow to interfere in domestic relationships and oftentimes would downplay a report made where the victim has suffered some form of domestic violence.

Where the crime is obvious and serious, experience has shown that the police will investigate and charge, but where it is initially appears not to be serious, police oftentimes have been traditionally reluctant to intervene and instead seek to mediate and resolve. The result has on

occasion been disastrous for the victim who may later suffer greater harm and even fatal injury, having returned to the abuser, having been turned away by law enforcement.

In Guyana, there has been considerable training given to the police force in this area and it is hoped that the response of law enforcement is changing. Notwithstanding, this Bill seeks to address this in a visible and tangible way.

The Bill seeks to give law enforcement mandatory obligation to arrest anyone who has committed serious harm against a family member. The police officer who is called to answer a report of family violence **must arrest** the perpetrator once he has reasonable grounds to believe that serious violence has been committed.

The Bill also compels the police to arrest any perpetrator of any physical violence which is regarded as family violence. In these instances, the police may avoid an arrest if the respondent tells the officer that she does not wish the offender to be arrested. **BUT** the police officer is barred from telling the respondent of this possibility and the police officer is also expressly barred from seeking mediate a resolution between the parties.

Once approved, these provisions will ensure that police officers arrest perpetrators of family violence where the violence is physical. It is hoped that this will operate to offer greater protection by the active prosecution of offenders.

It is expected that the police officer will ensure that a written report is taken from the victim. Where such a report is not given, eyewitness accounts can be taken very early in the process and the victim can be taken to the hospital and a medical obtained. Photographs of injuries would be a crucial part of the investigation process to support these new provisions. All these methods are already available in the law enforcement process and some training may be necessary.

The Bill also imposes several other important obligations on law enforcement.]

**Clause 39** of the Bill imposes a duty on police officers to assist victims of family violence.

[This is equivalent to the old DV Act, section 42.]

**Clause 40** of the Bill imposes a duty on police officers who respond to family violence complaints to prepare written reports of the incident. Action is to be taken on that report by a senior officer or head of the station.

[Clause 40 requires a decision to be made as to whether the duty shall fall to a senior officer or the head of the police station.]

[A significant addition to the law is made here. This provision seeks to impose a duty on a senior rank or the head of the police station, after receiving the report to make a determination as to whether (a) a formal criminal investigation should be conducted in respect of the complaint, and (b) a criminal charge should be laid'.

This seeks to ensure that there is an early police intervention in the process.]

**Clause 41** of the Bill empowers police officers to enter premises without a warrant to provide assistance to a person on the premises.

**Clause 42** of the Bill empowers police officers to arrest a person whom they reasonably believe has contravened is about to contravene the terms of a protection order.

[This clause contains some significant changes to the Law. It imposes a mandatory obligation on a police officer to arrest a respondent where that officer believes on reasonable grounds that the respondent has committed an act of family violence.]

**Part IV**

**Part IV** of the Bill make provision for the granting of bail and the issuance of warrants as it relates to family violence and contains **clauses 43** to **45**.

**Clause 43** of the Bill sets out the factors that the court must take into account when determining whether to grant bail in respect of an offence under section 16 of the Act and **clause 44** of the Bill sets out the conditions that the court may impose when granting bail to a defendant.

[Note these bail provisions relate in particular to when a person breaches a Protection Order. Where the person commits a criminal offence in a 'Family' setting, then the normal provisions relating to Bail shall apply. These are now found in the new Bail Act passed in 2022.

Under that Act, where the person is charged with a serious offence (any offence which the term of imprisonment exceeds five year), the Bail cannot be granted by a police officer, and a judicial officer (magistrate would have to consider whether it would be proper to grant bail.

Note that under the new Bail Act, a refusal of bail does not require that the Court must **believe or be satisfied** that the defendant charged with a crime will, for instance, (a) fail to turn up for his trial, or (b) commit other offences, (c) interfere with witnesses. It is sufficient that the court be satisfied that there are sufficient grounds for believing that if the defendant is released on bail, he or she is likely to do one of those things; it has nothing to do with whether the Court believes or thinks that the defendant would commit an offending act. R. (on the application of F) v Southampton Crown Court [2009] EWHC 2206 (Admin)]

**Clause 45** of the Bill provides the circumstances relating to family violence under which a Magistrate may issue a warrant authorizing a police officer to enter premises.

## Part V

**Part V** of the Bill make provision for the manner in which proceedings under the Act are to be conducted and contains **clauses 46** to **48**.

**Clause 46** of the Bill provides that criminal proceedings may be concurrent with an application for a protection order under the Act.

[This is a significant discretion as it emphasizes that the Court has a power to grant protection even before criminal conduct is proven.]

**Clause 47** of the Bill empowers the court the deem a person a vexatious litigant and prohibit that person from making further applications under the Act.

**Clause 48** of the Bill empowers the court to direct the use of special measures in respect of family violence proceedings under the Act.

[This is significant addition to the scope of protection which is offered to victims. Provisions are made to protect victims and other vulnerable persons during the court process – providing safe and accessible courts for the parties.]

**Part VI**

**Part VI** of the Bill makes certain miscellaneous provisions and contains **clauses 49** to **57**.

**Clause 49** of the Bill establishes the jurisdiction of the Supreme Court in respect of the matters under the Act and **clause 50** of the Bill provides for the appeal of any order or judgement made or given under the Act.

**Clause 51** of the Bill provides for the making of rules of court.

**Clause 52** of the Bill sets creates a civil cause of action for family violence which occurs.

[This is a significant addition to the law. Under current law, a person can sue in a civil court for assault and battery. This new provision expands on this by creating a civil cause of action for damages which is consequent of an act of 'family violence'.]

**Clause 53** sets out the responsibilities of the Director of Social Services in the Ministry of Human Services as it relates to family violence and gives him or her the power, acting in accordance with directions issued by the Minister, to establish such task force as he or she thinks fit.

**Clause 54** of the Bill sets out certain rights relating to property affected by an order issued under the Act.

**Clause 55** of the Bill empowers the Minister to make regulations and **clause 56** of the Bill empowers the Minister to amend any of the forms in the Schedule by order.

**Clause 57** of the Bill repeals the Domestic Violence Act Cap 11:09 and **clause 58** of the Bill sets out the relevant savings and transitional provisions which are intended to take effect upon the repeal of the Domestic Violence Act.

The Schedule to the Bill provides the respective forms which are to be used in respect of applications made and orders issued under the Act.

Vindhya V. Persaud

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**Minister of Human Services & Social Security**