

Summary of *The Domestic Violence Act*, from the Laws of Jamaica

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PART I. Preliminary (Sections 1-2)

- **Short title (Section 1)**
 - o This section establishes the official title of the Act as the “Domestic Violence Act.”
- **Interpretation (Section 2)**
 - o This section provides definitions for key terms used throughout the Act.
 - o “Applicant” refers to any person who applies or on whose behalf an application is made for an order under the Act.
 - o “Child” is defined as:
 - A person under the age of eighteen who has never been married and resides or recently resided in the household of both spouses.
 - A child of either spouse who resides or recently resided in the household as a child of the family.
 - A child who is or has been a member of the household, resides there regularly, or is under the guardianship of a household member.
 - o “Court” refers to the Parish Court or the Family Court.
 - o “Dependant” includes:
 - A family member of the respondent who is eighteen or older and resides with the respondent.
 - A person reliant on the respondent due to physical or mental disability, age, or infirmity.
 - o “Ex parte application” is an application made without notice to the respondent.
 - o “Member of the household” is a person who resides regularly with the respondent.
 - o “Occupation order” is an order made under section 7, including interim orders under section 8.
 - o “Prescribed person” includes the spouse, parent, child, or dependant of the respondent, or any household member or person in a visiting relationship with the respondent.

- o “Protection order” is an order made under section 4, including interim orders under that section.
- o “Respondent” is the person named in an application made under the Act.
- o “Spouse” includes:
 - A woman cohabiting with a man as if legally married.
 - A man cohabiting with a woman as if legally married.
 - A former spouse.
- o “Visiting relationship” is a close personal relationship between a man and a woman who do not share a common residence, considering factors such as time spent together, location, manner, duration, and the existence of a child.

PART II. Application for Orders (Sections 3-12)

- **Power of Court to grant protection order or occupation order (Section 3)**
 - o The Court is authorized to grant protection or occupation orders, or any other order it deems just in the circumstances.
 - o Applications for these orders can be made by:
 - A spouse or parent who is a prescribed person affected by the respondent’s conduct.
 - A person with whom a child or dependant resides, a parent or guardian, a non-disabled dependant, a person approved for social welfare work, a constable, or any other person with the Court’s leave.
 - The Children’s Advocate, where the alleged conduct is threatened against a child.
 - A member of the respondent’s household or someone in a visiting relationship with the respondent.
 - o The Court may consider the best interests of the child or dependant and any potential conflicts of interest when granting leave for applications.
- **Application for protection order (Section 4)**
 - o Protection orders can be sought to prohibit the respondent from actions such as entering a household or an area in which the household is located, harassing a prescribed person, damaging or converting property in a manner that constitutes abuse and may require the respondent to relinquish any firearm or prohibited weapon to the police.
 - o The Court may issue a protection order if it is satisfied that the respondent has used or threatened violence, or if the order is necessary for the protection of a prescribed person.
 - o Protection orders can be made *ex parte* if there is an immediate risk, and such orders are interim.
 - o The Court may also issue maintenance orders in line with the Maintenance Act when granting protection or occupation orders.
- **Breach of protection order (Section 5)**
 - o Breaching a protection order constitutes an offence, punishable by a fine not exceeding one million dollars or imprisonment for up to one year, or both.
 - o A constable may arrest without a warrant if there is reasonable cause to suspect a breach, taking into account factors such as the seriousness of the act and the time elapsed since the breach.
 - o The arrested individual is entitled to make a phone call and must be brought before the Court within 48 hours.

- **Duration and discharge of protection order (Section 6)**
 - o Parties involved may apply for the discharge of a protection order.
 - o The Court considers factors outlined in Section 4(2) when deciding on the discharge.
 - o Applications for discharge must be served personally on all parties involved in the original proceedings.
- **Application for a grant of occupation order (Section 7)**
 - o Applications can be made by or on behalf of a prescribed person for an occupation order granting the right to live in or occupy the household residence.
 - o The Court may issue an order to occupy the household residence if it is necessary for the protection of the prescribed person or in the best interest of a child.
- **Ex parte application for occupation order (Section 8)**
 - o Occupation orders can be made *ex parte* if the respondent has used violence and delay could expose the prescribed person to physical injury.
 - o Such orders are interim and require personal service on the respondent.
 - o When granting an *ex parte* occupation order, the Court must also issue an interim protection order unless there are special reasons not to.
- **Effect of occupation order (Section 9)**
 - o The prescribed person is entitled to occupy the household residence to the exclusion of the respondent.
- **Variation or discharge of occupation order (Section 10)**
 - o The Court may vary or discharge the terms and conditions of an occupation order upon application by either party.
 - o The Court can extend or reduce the period specified in the order.
- **Procedure relating to occupation orders (Section 11)**
 - o Before making an occupation order, notice must be given to any person with an interest in the affected property, who may appear and be heard as a party.
- **Power of Court to make ancillary order (Section 12)**
 - o The Court may grant the applicant use of household furniture, appliances, and effects for a specified period, subject to terms and conditions.
 - o Such ancillary orders continue for three months unless the Court directs otherwise, but they expire if the occupation order expires or is discharged.

PART III. General (Sections 13-22)

- **Interim orders (Section 13)**
 - o Interim orders made on an *ex parte* application must specify a date for a hearing to determine if a substitute order should be made.
 - o The respondent must be notified of the hearing date and the potential for the interim order to be discharged or substituted should the respondent not attend Court on the date specified.
 - o At the hearing, the Court may discharge the interim order, substitute it, or adjourn the hearing for good cause.

- **Conduct of proceedings (Section 14)**
 - o Only specific individuals may be present during proceedings, including officers of the Court, parties to the proceedings, attorneys, witnesses, or others permitted by the Judge.
 - o Witnesses may be asked to leave the courtroom by the Judge.
 - o The Court retains the power to conduct proceedings in camera or to exclude individuals.
- **Standard of proof (Section 15)**
 - o Questions of fact in non-criminal proceedings under this Act are decided on a balance of probabilities.
- **Restriction of publication of proceedings (Section 16)**
 - o Publication of reports on proceedings is prohibited without the Court's leave.
 - o Violations are punishable by a fine not exceeding twenty-five thousand dollars.
 - o Nothing in this section limits any other laws regulating the publication of reports on proceedings; or the Court's authority to punish any contempt of Court.
 - o Exceptions exist for *bona fide* professional or technical publications and those intended for specific professional groups.
- **Orders by consent (Section 17)**
 - o The Court may make orders by the consent of all parties involved in the proceedings.
- **Counselling (Section 18)**

The Court may recommend counselling for either or both parties when making an order under this Act.
- **Appeals (Section 19)**
 - o Aggrieved parties may appeal the making or refusal of an order to the Court of Appeal.
 - o Orders remain enforceable during the appeal process unless directed otherwise by the Court.
- **Protection of mortgagee (Section 20)**
 - o Rights conferred by orders under this Act are subject to pre-existing rights of mortgagees or other secured parties.
 - o Orders do not trigger the calling up of money under such securities.
- **Matrimonial Causes Act (Section 21)**
 - o The Act does not affect the Supreme Court's power to make orders under section 10 of the Matrimonial Causes Act.
- **Rules of Court (Section 22)**
 - o Rules of Court may be established to regulate proceedings under this Act, ensuring full effect and due administration.