

# BILL NO. 79

(as passed, with amendments)



*2nd Session, 58th General Assembly  
Nova Scotia  
50 Elizabeth II, 2001*

Government Bill

## Domestic Violence Intervention Act

CHAPTER 29 OF THE ACTS OF 2001

The Honourable Michael G. Baker, Q.C.  
Minister of Justice

[First Reading](#): November 6, 2001 (LINK TO BILL AS INTRODUCED)

Second Reading: November 8, 2001

[Third Reading](#): November 22, 2001 (WITH COMMITTEE AMENDMENTS)

Royal Assent: November 22, 2001



**An Act to Prevent the Continuation  
of Domestic Violence**

Be it enacted by the Governor and Assembly as follows:

**1** This Act may be cited as the *Domestic Violence Intervention Act*.

**2** In this Act,

(a) "court" means the Supreme Court of Nova Scotia;

(b) "designated justice of the peace" means a justice of the peace who has been designated for the purpose of this Act;

(c) "domestic violence" means any of the acts or omissions described in subsection 5(1);

(d) "Minister" means the Minister of Justice;

(e) "residence" includes a residence that a victim shares with a respondent or has vacated due to domestic violence;

(f) "respondent" means any person against whom an emergency protection order is sought or made;

(g) "victim" means a person who is at least sixteen years of age and has been subjected to domestic violence by another person who

(i) has cohabited or is cohabiting with the victim in a conjugal relationship, or

(ii) is, with the victim, the parent of one or more children, regardless of their marital status with respect to each other or whether they have lived together at any time;

(h) "weapon" means a weapon as defined in the *Criminal Code* (Canada).

**3** The Minister has the general supervision and management of this Act.

**4** The Chief Judge of the Provincial Court of Nova Scotia shall designate justices of the peace for the purpose of this Act.

**5 (1)** For the purpose of this Act, domestic violence has occurred when any of the following acts or omissions has been committed against a victim:

(a) an assault that consists of the intentional application of force that causes the victim to fear for his or her safety, but does not include any act committed in self-defence;

(b) an act or omission or threatened act or omission that causes a reasonable fear of bodily harm or damage to property;

(c) forced physical confinement;

(d) sexual assault, sexual exploitation or sexual molestation, or the threat of sexual assault, sexual exploitation or sexual molestation;

(e) a series of acts that collectively causes the victim to fear for his or her safety, including following, contacting, communicating with, observing or recording any person.

**(2)** Domestic violence may be found to have occurred for the purpose of this Act whether or not, in respect of any act or omission described in subsection (1), a charge has been laid or dismissed or withdrawn or a conviction has been or could be obtained.

**6 (1)** Upon application to a designated justice of the peace, the justice of the peace may make an emergency protection order to ensure the immediate protection of a victim of domestic violence if the justice of the peace determines that

- (a) domestic violence has occurred; and
- (b) the order should be made forthwith.

**(2)** In determining whether to make an order pursuant to this Section, the justice of the peace shall consider, but is not limited to considering,

- (a) the nature of the domestic violence;
- (b) the history of domestic violence by the respondent towards the victim;
- (c) the existence of immediate danger to persons or property; and
- (d) the best interests of the victim and any child of, or in the care and custody of, the victim.

**(3)** In determining whether to make an order pursuant to this Section, the standard of proof is to be on a balance of probabilities.

**7 (1)** An application for an emergency protection order may be made by

- (a) a victim;
- (b) a member of a class of persons designated in the regulations on behalf of the victim and with the victim's consent; or
- (c) any other person on behalf of the victim and with leave of the designated justice of the peace.

**(2)** An application for an emergency protection order is to be in the form and to be made in the manner prescribed by the regulations.

**8 (1)** An emergency protection order may do any or all of the following:

- (a) grant the victim or other family members exclusive occupation of the victim's residence for a defined period regardless of any legal rights of possession or ownership;
- (b) direct a peace officer to remove the respondent from the victim's residence immediately or within a specified time;
- (c) direct a peace officer to accompany a specified person, within a specified time, to the victim's residence to supervise the removal of personal belongings;
- (d) restrain the respondent from directly or indirectly communicating with the victim or any other specified person;
- (e) require the respondent to stay away from any place identified specifically or generally in the order;
- (f) grant temporary possession of or control over specified personal property, including an automobile, cheque book, bank card, health services card or supplementary medical insurance cards, identification documents, keys, utility or household accounts or other personal effects;
- (g) restrain the respondent from taking, converting, damaging or otherwise dealing with property;
- (h) restrain the respondent from committing any further acts of domestic violence against the victim;
- (i) prohibit the publication of the name and address of the victim or any other information that may identify the victim;
- (j) require a peace officer to seize
  - (i) any weapons, and

(ii) any documents that authorize the respondent to own, possess or control a weapon referred to in subclause (i);

(k) award temporary care and custody of a child of the victim to the victim or to another person;

(l) do any other thing that the designated justice of the peace considers necessary to ensure the immediate protection of the victim or any child.

(2) A designated justice of the peace may make an emergency protection order for a period not exceeding thirty days.

(3) A provision of an emergency protection order made pursuant to clause (1)(j) ceases to be in force upon an order or final determination with respect to the respondent's ownership, possession or control of weapons being made under the *Criminal Code* (Canada) or the *Firearms Act* (Canada).

(4) An emergency protection order prevails over any order respecting custody of or access to a child including an order made under the *Divorce Act* (Canada) or the *Maintenance and Custody Order Act* but does not prevail over any order made under the *Children and Family Services Act* respecting custody of or access to a child.

9 An emergency protection order is effective upon being made but does not bind a respondent until the respondent has notice of the order.

10 (1) Notice of an emergency protection order shall be given in the prescribed form and manner.

(2) Where, on application to a designated justice of the peace, it appears that

(a) attempts at service or substituted service of the notice on the respondent have failed; and

(b) the respondent is evading service,

the justice of the peace may by order dispense with service of the notice and the respondent is thereby deemed to have notice of the emergency protection order.

11 (1) As soon as practicable after making an emergency protection order and in any event within two working days, the designated justice of the peace shall forward a copy of the order and all supporting documentation, including a transcript or tape recording of the proceedings, to the court in the prescribed manner.

(2) Within such period of time, as the regulations prescribe, of the receipt of the emergency protection order and all supporting documentation by the court, a judge shall review the order and, where the judge is satisfied that there was sufficient evidence before the justice of the peace to support the making of the order, the judge shall

(a) confirm the order; or

(b) vary the order

and the order as confirmed or varied shall be deemed to be an order of the court.

(3) Where, on reviewing the emergency protection order, the judge is not satisfied that there was sufficient evidence before the justice of the peace to support the making of the order, the judge shall direct a hearing of the matter in whole or in part before a judge.

(4) Where a judge directs that a matter be heard,

(a) the clerk of the court shall issue a summons in the prescribed form requiring the respondent to appear before the court;

(b) the clerk of the court shall give notice of the hearing to the victim and the victim is entitled to attend and may fully participate in the hearing personally or by counsel; and

(c) where a child is identified in the emergency protection order, the clerk of the court shall give notice of the hearing to a peace officer and the peace officer is entitled to attend the hearing.

(5) The evidence that was before the justice of the peace shall be considered as evidence at the hearing.

(6) Where the respondent fails to attend the hearing, the emergency protection order may be confirmed in the respondent's absence.

(7) At the hearing, the judge may confirm, terminate or vary the emergency protection order.

**12 (1)** Notwithstanding subsection 11(2) and at any time after a respondent has been served with an emergency protection order, the court, on application by a victim or respondent named in the order, may

(a) make changes to, or terminate, any provision of the order;

(b) decrease or extend the period for which any provision in the order is to remain in force; or

(c) revoke the order.

(2) On an application pursuant to subsection (1), the evidence before a justice of the peace on previous applications pursuant to this Act shall be considered evidence.

(3) Unless otherwise ordered by the court, an emergency protection order continues in effect and is not stayed by a direction for a hearing pursuant to subsection 11(3) or an application pursuant to subsection (1).

(4) On an application pursuant to clause (1)(b) the judge may extend the emergency protection order for a period not to exceed thirty days from the expiration date of the original order.

**13 (1)** The clerk of the court and the designated justice of the peace shall keep the victim's address confidential.

(2) The court may order that the hearing or any part of the hearing be held in private.

(3) At the request of the victim, the court may order that the court file only be accessible to the victim and respondent, and their counsel, if the court believes that the public access to the file

(a) would not be in the best interests of the victim or any child of the victim or any child who is in the care and custody of the victim; or

(b) would be likely to identify, have an adverse effect on or cause hardship to the victim or any child of the victim or any child who is in the care and custody of the victim.

(4) At the request of the victim, the court may make an order prohibiting the publication of any report of a hearing or any part of a hearing if the court believes that the publication of the report

(a) would not be in the best interests of the victim or any child of the victim or any child who is in the care and custody of the victim; or

(b) would be likely to identify, have an adverse effect on or cause hardship to the victim or any child of the victim or any child who is in the care and custody of the victim.

**14 (1)** An emergency protection order does not in any manner affect the title to or an ownership interest in any real or personal property jointly held by the parties or solely held by one of the parties.

(2) Where a residence is leased by a respondent pursuant to an oral, written or implied agreement and a victim who is not a party to the lease is granted exclusive occupation of that residence, no landlord shall evict the victim solely on the

basis that the victim is not a party to the lease.

**(3)** On the request of a victim referred to in subsection (2), the landlord shall advise the victim of the status of the lease and serve the victim with notice of a claim against the respondent arising from the lease and the victim, at the victim's option, may assume the responsibilities of the respondent pursuant to the lease.

**15** An application for an emergency protection order under this Act is in addition to and does not diminish any existing right of action for the applicant or for any other victim of domestic violence.

**16** Nothing in this Act affects a duty set out in Section 23 or 24 of the *Children and Family Services Act*.

**17** No action or other proceeding shall be instituted against a peace officer or clerk of the court or any other person for any act done in good faith or for any alleged neglect or default in good faith, in the execution or intended execution of

(a) the person's duty under this Act; or

(b) the person's duty to carry out the provisions of an order made under this Act.

**18** Any person who

(a) fails to comply with the provisions of an order made pursuant to this Act;

(b) falsely and maliciously makes an application under this Act;

(c) obstructs any person who is performing any function authorized by an order; or

(d) publishes any information in contravention of an order,

is guilty of an offence and upon summary conviction is liable, in the case of a first offence, to a fine of not more than five thousand dollars or to imprisonment for a term of not more than three months, or to both, and, in the case of a second or subsequent offence, to a fine of not more than ten thousand dollars or to imprisonment for a term of not more than two years, or to both.

**19** A peace officer may arrest without warrant a person the peace officer believes on reasonable and probable grounds to have contravened any terms of an emergency protection order.

**20 (1)** In addition to its powers in respect of contempt, the court may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not exceed five thousand dollars nor shall the term of imprisonment exceed ninety days.

**(2)** An order for imprisonment under subsection (1) may be conditional upon default in the performance of a condition set out in the order.

**21 (1)** The Governor in Council may make regulations

(a) prescribing classes of persons who may apply for an emergency protection order on behalf of a victim with the victim's consent;

(b) prescribing the form and manner of an application for an emergency protection order;

(c) prescribing the form and manner of providing any notice or summons required to be provided pursuant to this Act, including prescribing substituted service and a rebuttable presumption of service;

(d) prescribing the manner in which a designated justice of the peace is to forward a copy of an emergency protection order and all supporting documentation to the court;

(e) prescribing the period of time within which a judge must review an emergency protection order and confirm or vary the order;

(f) prescribing forms for the purposes of this Act;

(g) prescribing the procedures to be followed for applications and hearings pursuant to this Act;

(h) defining any word or expression used in this Act but not defined in this Act;

(i) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is regulations with the meaning of the *Regulations Act*.

**22** This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

