Fighting Domestic Violence - Trinidad and Tobago

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# 1. Legal provisions

## 1.1 What are the relevant statutes and codes?

The equal rights of men and women are guaranteed under Article 4 of the 1979 Republican Constitution.

The main statute that specifically addresses domestic violence is the Domestic Violence Act (1999), as amended ("**Domestic Violence Act**"). This act allows a person to apply for a protection order under circumstances of domestic violence. The statute contains no subsidiary legislation under the Domestic Violence Act. Numerous pieces of legislation are relevant to the Domestic Violence Act.

A draft Domestic Violence Amendment Bill 2020 ("**Amendment Bill**") was introduced in June 2020, which seeks to amend and expand the key protections and categories of people who can apply for protection orders under the Domestic Violence Act. However, the Amendment Bill has not been passed into law yet.

## 1.2 What is the controlling case law?

N/A

## 1.3 What are the specific parts of the court system that address domestic violence?

The magistrates' court determines whether a *prima facie* case has been established against the accused before he or she can be indicted for a trial at the High Court Division of the Supreme Court.

## 1.4 What are potential causes of action?

When arresting a suspect, the police will do so under one of the acts contained in the First Schedule of Section 25 of the Domestic Violence Act, which are as follows:

Summary Offenses Act

Malicious Damage Act

Offenses Against the Person Act

Children Act

Sexual Offenses Act

# 2. Introduction: framework guiding domestic violence law

## 2.1 Are there civil and criminal legal remedies for domestic violence victims?

The principal remedy provided for in law is a court-ordered protection order, which can sanction domestic violence offenders and provide certain protections to victims of domestic violence.

**Who can apply?** A person, including a spouse of the respondent, child, dependent, parent, family member of the respondent or spouse, partner, police officer or approved social worker, may apply for a protection order on the basis that the respondent has been engaged in domestic violence.[1]

**When are they granted?** Where the court determines, on the balance of probabilities, that the respondent has or is likely to engage in conduct that would constitute domestic violence, or considers in the circumstances that the order is necessary for the protection of the applicant, the court may issue a protection order.[2]

**What protections do they offer?** The terms of the protection order are broad and the court can determine to effect any or all of them. They include (but are not limited to) the following:[3]

prohibiting the respondent from engaging in conduct that would constitute domestic violence, attending premises or locations specified by the order, or coming within a certain distance of them

requiring the respondent to pay monetary relief, vacating a place of residence, making or continuing to make payments and ensuring the child has reasonable care

ensuring that the applicant or both receive professional counseling or therapy

**What factors does the court consider?** The court considers multiple factors such as the nature, history or pattern of violence that has occurred, the need to protect the applicant and the welfare of any child, as well as factors such as the hardship caused to the respondent, the financial situation of the respondent and the need to preserve and protect the institution of marriage.[4]

**What are the consequences of breaching a protection order?** Breaching a protection order can result in an offense ranging from a fine not exceeding TTD 9,000 to five years of imprisonment, depending on how many convictions the respondent has.[5]

Please refer to Section 4.1 for more detail.

## 2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

No, the Domestic Violence Act does not recognize protection from domestic violence as a human right and protection from domestic violence is not specifically cited in the ratification of the 1979 Convention as a human right.

## 2.3 Has your country signed and ratified the conventions?

Yes. On 3 September 1981, Trinidad and Tobago passed into law the United Nations (UN) Convention on the Elimination of All Forms of Discrimination Against Women ([adoption of the 1979 Convention](http://opm-gca.gov.tt/Portals/0/Documents/Legal/Women/Convention%20on%20the%20Elimination%20of%20all%20forms%20of%20Discrimination%20Against%20Women%20%28CEDAW%29.pdf?ver=qZQuNQmXyVnRCwm6vUJElw%3d%3d)).

## 2.4 If it has ratified the Maputo Protocol, how has it been implemented into national law (African Union member states only)?

N/A

## 2.5 If it has ratified the 1979 Convention (CEDAW), how has the recommendations part of General Comment No. 35 been implemented into national law?

The Domestic Violence Act sought to introduce comprehensive domestic violence legislation on par with international standards as specified by the UN Commission on Human Rights.

The preamble to the Domestic Violence Act captures some of the recommendations that Recommendation 35 had called for, including needing to support social change and influencing the community attitude toward domestic violence, as well as ensuring that legislation provides a prompt and equitable legal remedy for victims of domestic violence.

The draft Amendment Bill seeks to strengthen this by expanding key definitions and categories of those who can seek protection and redress under domestic violence legislation to provide additional protection for victims of domestic violence in Trinidad and Tobago.

## 2.6 If the conventions have not been ratified or signed, is it envisaged that your country will do so?

N/A

# 3. Similarities and differences in terminology

## 3.1 Domestic violence

The current definition of domestic violence under the Domestic Violence Act[6] is broad and includes "physical, sexual, emotional or psychological or financial abuse committed by a person against a married or common law spouse (including former spouse), child, any other person who is a member of the household or dependent."

However, the Amendment Bill proposes the following amendments:

The present category of persons who may be considered domestic violence victims is broadened to allow for abuse against anyone in a domestic relationship with the respondent, including a cohabitant or a person in a dating relationship, to be considered domestic violence.

"Emotional or psychological abuse" is deleted and substituted with a new definition, thus expanding the current scope of what may be considered emotional or psychological abuse. Critically, it is proposed that the definition be broadened so that emotional abuse includes the making of unwelcome or intimidatory contact with the person by any means (including electronic means) and the dissemination of intimate images of the applicant or applicant's child (electronically or by any other means). Moreover, preventing a person from making or keeping connection with his or her family or friends, or any other controlling or coercive behavior toward the person or his or her child, will be considered "emotional or psychological abuse."

The definition of a "member of household" is deleted and substituted with the definition of a "member of the same household." In relation to an applicant or a respondent, a member of the same household means a person who ordinarily or periodically resides in the same dwelling house as the applicant or respondent; who is related to the applicant or respondent by consanguinity, affinity or adoption; who is or has been the subject of an order of the court under the Family Law (Guardianship of Minors, Domicile and Maintenance) Act 1981 ("**Family Law Act**") or the Children's Authority Act; or who is or has been treated like a child of the family.

## 3.2 Stalking

There is no specific anti-stalking or harassment law in Trinidad and Tobago, although some stalking behavior may be policed under the Offenses Against the Person (Amendment) (Harassment) Act,[7] which was introduced in June 2005[8] and came into force under legal notice number 113 on 30 June 2008.[9]

## 3.3 Harassment

Harassment is defined under Section 30A(1) of the Offences Against the Person Act to include alarming a person or causing them distress by engaging in a **course of conduct** such as the following:

following, making visual recordings of, stopping or accosting the person

watching, loitering near or hindering or preventing access to or from the person's place of residence, workplace or any other place frequented by the person

entering property or interfering with property in the possession of the person

making contact with the person, whether by gesture, directly, verbally, by telephone, computer, post or in any other way

giving offensive material to the person, or leaving it where it will be found by, given to or brought to the attention of the person

acting in any manner described in subparagraphs (i) to (v) toward someone with a familial or close personal relationship to the person

acting in any other way that could reasonably be expected to alarm or cause the person distress

The conduct referred to must have been done on at least two occasions.

## 3.4 Victim

"Victim" is not defined in the Domestic Violence Act, but is defined in other criminal related laws. For example, under the Trafficking in Persons Act, a victim means a "person against whom an offence is committed or against whom an offence is alleged to have committed under the Trafficking in Persons Act."[10] Under the Criminal Injuries Compensation Act, a victim means a "person who suffers criminal injury or is killed by any act or omission of another person which act or omission is a crime listed in the First Schedule."

## 3.5 Abuser

There is no reference to an "abuser" in the relevant Trinidad and Tobago laws. The word "respondent" is used throughout the Domestic Violence Act.

## 3.6 Civil protection order

This is a court document that prevents a person from engaging in abusive behavior of any type. This includes prohibiting the respondent from engaging or threatening to engage in conduct that would constitute domestic violence toward the applicant; engaging in direct or indirect communication with the applicant; taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in or is reasonably used by the applicant; and approaching the applicant within a specified distance. Please refer to Section 4.1 for more detail.

## 3.7 Causes of action

An action means any civil proceedings in a court of law other than those relating to real property.[11]

## 3.8 Marital rape

Previously, the law only recognized that sexual intercourse between a husband and wife could be nonconsensual in limited circumstances, including where there was a separation or if a *decree nisi* was in effect. Now, the law fully recognizes rape within marriage and makes no distinction between nonconsensual sexual intercourse between persons who are married or cohabiting and the rape of a person who is not the husband, wife or cohabitant of the offender.[12]

Rape under the law of Trinidad and Tobago is an indictable offence, created by Section 4 of the Sexual Offenses Act. Under subsection 5 of the Sexual Offenses Act, rape is extended to marital rape, applying to a husband in relation to committing the offense of rape on his wife.[13]

## 3.9 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

**Emotional or psychological abuse**

This is defined as a pattern of behavior of any kind, the purpose of which is to undermine the emotional or mental well-being of a person, including the following:

persistent intimidation by the use of abusive or threatening language

persistently following the person from place to place

depriving the person of the use of their property

watching or besetting the place where the person resides, works, carries on business or happens to be

interfering with or damaging the property of the person

the forced confinement of the person

persistently telephoning the person at the person's place of residence or work

making unwelcome and repeated or intimidating contact with a child or older relative of the person

This is a similar definition to the definition under the Offenses Against the Persons Act 2005 — see the definition of "harassment" above.

As mentioned in point (a) above, the Amendment Bill[14] proposes broadening the definition of emotional or psychological abuse to encompass making unwelcome or intimidating contact with the person by any means.

**Financial abuse**

This is defined as a pattern of behavior of a kind, the purpose of which is to exercise coercive control over or to exploit or limit a person's access to financial resources to ensure financial dependence.

# 4. Protection for domestic violence victims and relief granted

## 4.1 Civil protection orders

## 4.1.1 Are there civil protection orders available to victims of domestic abuse?

Yes, under the Domestic Violence Act.

## 4.1.2 Who can petition for civil protection orders?

The following people can petition for civil protection orders:

the spouse of the respondent

a member of the household of the respondent

a child of either the spouse or the respondent

a child of whom the spouse or the respondent is the legal guardian

a child who is or has been a member of the household of the spouse or the respondent

a dependent

a parent or sibling — by blood — of the spouse or the respondent who is not a member of the household

a person who has a child in common with the spouse of respondent

a person who is or has been in a nonmarital (visiting) relationship with a member of the opposite sex for a period of 12 months — this means that it is not mandatory to be married to have a protection order granted

It is interesting that the legislation specifically mentions the opposite sex. By implication, same-sex couples are therefore not able to petition for a civil protection order under this legislation. Trinidad and Tobago does not recognize same-sex marriages or relationships; therefore, the law does not afford protection in a dispute.

## 4.1.3 Are there temporary custody of a child or child support orders?

If the custody of a child is contested or the parents are in the process of getting a divorce and the circumstances may subsequently change, then the courts may grant a temporary custody order.[15]

## 4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

Yes. The Domestic Violence Act[16] provides for a protection order to prohibit the respondent from the following:

being on the premises specified in the order, which are premises frequented by the applicant, including any residence, property, business, school or place of employment

being in a locality specified in the order

There is no specific mention of moving out, but it would be inferred that the home would be specified premises within the order.

## 4.1.5 Are there any other types of emergency, preventive and civil protection orders?

Yes, the court can make an interim order upon the application for a protection order if it appears necessary or appropriate to do so to ensure the safety and protection of the applicant, until the hearing for the issue of the protection order can happen.[17]

## 4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

Yes. These orders may be requested by the following:

a police officer, probation officer or social worker or the Children's Authority

someone with whom the child normally resides

someone who is *in* *loco parentis* to the child[18]

## 4.1.7 Are there different types of civil protection orders, e.g., for a short- term period?

There are interim orders that must not exceed 21 days in length. These can be made pending the hearing for a protection order if it appears necessary or appropriate to do so to ensure the safety and protection of the applicant.

They can be extended for another 21 days upon an application to the court, once the respondent has been summoned to a hearing.

## 4.1.8 Are ex parte orders permitted without the aggressor being present?

Yes, as long as the correct procedure has been followed to serve notice on the respondent that the hearing will take place and that the court is satisfied that delaying proceedings is not a sensible course of action.

The court may make an interim order whether or not the respondent is present at the proceedings or the respondent has been given notice of the proceedings.

A judge may continue with the hearing if the respondent does not appear in court and proceed to issue a protection order, provided that the notice of the court proceedings can be proven to have been issued to the respondent. It is also within their power to issue a warrant for the respondent's arrest to be brought before the court.

If the applicant is not in court but the respondent is in court, then the judge has flexibility to dismiss the case or grant an adjournment to the hearing until the applicant is available to appear or to proceed with the hearing, as long as the person providing the relevant evidence can do so by affidavit, but that person must appear in person to confirm their evidence.

Where notice has not been able to be served on the respondent, provided that it can be evidentially proven that the notice has tried to be serviced in a variety of ways, then the court may continue with the hearing and grant an order. However, in this event, the order has to be served on the respondent or he is not liable to be bound by the terms of the order.

## 4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

No, unless they are also "victims" in the protection order application.

## 4.1.10 How long do the orders last?

Each order can be different and the validity will be detailed in the orders, but the maximum time that they can be in force is three years.

## 4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any relevant demographics information, e.g., police reports, convictions, etc.

Between 2003 and 2018, 154,288 applications for protection orders were made. The average number per year dropped from 10,286 to 8,232.[19]

Between 2010 and 2015, there were reports of 11,441 domestic violence incidents. Around 75% of these were violence against women.[20] During this same period, there were 131 deaths attributable to domestic violence, of which 56% were female.

Reports of domestic violence attacks doubled in February and March 2020, thought to be due to the stay-at-home orders[21] that were issued to control the spread of
COVID-19.[22]

The Trinidad and Tobago 2019 Human Rights Report shows that domestic violence is a growing problem with a known high percentage of attacks continuing to go unreported. In addition, child abuse is a growing issue.[23]

## 4.2 Steps for receiving a protective order

## 4.2.1 What documentation is needed to obtain a civil protection order?

The applicant or the applicant's representative should complete Form 1 in the Second Schedule of the Domestic Violence Act.[24] This details the following:

name and address of the applicant

name, relationship to the applicant and address of the respondent

details of the dates, times and descriptions of the conduct leading to the application being made

## 4.2.2 Does the victim need to attend a hearing?

No; however, if the victim (applicant) does not attend a hearing, then the application may be dismissed. It is within the powers of the judge to grant an adjournment to the hearing until the applicant is available to appear or to proceed with the hearing, as long as the person providing the relevant evidence can do so by an affidavit, but that person must appear in person to confirm their evidence.

## 4.2.3 Can you request remedies?

It is possible for a party to whom the order applies to make a request to the court to have the original order varied or revoked. To do this, Form 5 in the Second Schedule of the Domestic Violence Act must be completed. Relevant details of the reasons for the variation or revocation must be provided.

## 4.2.4 Are there time limits?

The only time limit specified is that of the maximum duration of three years for a protection order to be in force.

## 4.2.5 Are there different rules in emergencies?

In an emergency, the court may issue an interim order that specifies the same level of protection. These are initially issued for a period of seven days; they can be extended if the date for the court proceedings cannot happen before that time.

In the Amendment Bill,[25] there is provision to insert a new section on "emergency protection orders." This section will allow for a police officer or the Children's Authority to make an emergency application when the court is not sitting to a master or judge of the family or children court for a protection order where the applicant has been injured or is deemed to be in danger of serious physical injury at the hands of the respondent.

## 4.3 Judicial discretion

## 4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

Factors that are considered when determining whether to impose a prohibition or direction under the Domestic Violence Act are listed in Section 7 of the Domestic Violence Act and they include (but are not limited to) the following:

nature, history or pattern of the violence that has occurred

the need to protect the applicant and any other person for whose benefit the order has been granted from further domestic violence

the welfare of the child

any other matter that in the circumstances of the case the court considers relevant

The judge has flexibility regarding the term for which a protection order will run, up to a maximum of three years.

The judge has discretion to include in the terms of the order financial compensation amounts to cover medical, dental, moving and reasonable legal costs. There is also the ability to order counseling or therapy sessions and for the counselor or therapist to make a report to the court.

## 4.3.2 Are there age limits on who can obtain orders?

Applications need to be made by adults (those over 16 years old). There is no age limit on to whom an order can apply.

## 4.4 Restitution and remedies available to victims

## 4.4.1 Can victims obtain reimbursement for costs and restitution paid?

Yes; the courts have the ability to award compensation costs for loss of earnings, legal fees, medical and dental costs, moving or relocation fees and reasonable legal costs, including the cost of the application pursuant to the Domestic Violence Act.[26]

## 4.4.2 Can they recover wages and profits lost?

Yes. Compensation includes loss of earnings.[27]

## 4.4.3 Is a separate civil process required?

No. Nothing in the Domestic Violence Act indicates that a separate civil process is required.

# 5. Prosecutorial considerations

## 5.1 Police procedures

## 5.1.1 When do the police get involved in domestic disputes or legal actions?

A police officer has a duty to be involved from every complaint or report alleging domestic violence whether that report or complaint is made by the victim or not. They must fill out a domestic violence report that forms the basis for which the magistrate may issue a warrant for arrest or issue a protection order (Sections 21 and 22 of the Domestic Violence Act).

Despite the requirement that police officers become involved in every report, victims of sexual-based and gender-based violence who engage with the criminal justice system often complain that they are ill-treated by police officers and that medical examiners often treat them with distrust.[28]

Under Section 22 of the Domestic Violence Act, a magistrate may issue a warrant authorizing a police officer to enter the relevant premises and take the necessary action to prevent the commission or repetition of the offense in question, provided that the magistrate is satisfied that there are reasonable grounds that a person has suffered or is in imminent danger of suffering physical violence.

Under Section 23 of the Domestic Violence Act, a police officer has certain powers of entry and arrest that are exercisable without a warrant, in accordance with the Criminal Law Act, where the police officer has reasonable cause to believe that a person is engaging in or attempting to engage in conduct that amounts to physical violence and the failure to act immediately may result in serious physical injury or death.

## 5.1.2 What circumstances effect law firm involvement?

Please see Section 5.1.1.

## 5.2 Standard of proof

## 5.2.1 Is proof required by any legal means?

N/A

## 5.2.2 Are there any requirements regarding evidence and documents?

The Evidence Act 1848 sets out the requirements for evidence and documents. Under Section 2 of the Evidence Act 1848, the English law on evidence is to be observed. Therefore, there are specific rules and requirements regarding the admissibility of a piece of evidence or document depending on what it is.

## 5.2.3 Is proof "beyond a reasonable doubt" required?

As potential domestic violence offenders are arrested under the offenses listed in the First Schedule (Section 25) of the Domestic Violence Act, the burden and standard of proof rests upon the prosecution and it is for the prosecution to prove to the jury that, having considered all the evidence relevant to the charge, it is sure that the accused is guilty.[29]

Notably, there is no specific criminal penalty for domestic violence. Those suspected of domestic violence are arrested under another relevant offense, e.g., assault. If they are criminally charged, it will be under that criminal penalty.

 However, for a protection order to be issued against a respondent under Section 4 of the Domestic Violence Act, the court has to determine, on the balance of probabilities, that domestic violence has or may occur (Section 5 of the Domestic Violence Act). However, there are considerations such as whether the incident was an isolated one, where there is a desire to preserve the family unit and where the conduct is not considered sufficiently grave. Then, with the consent of the applicant or complainant, the court may withhold the protection order or penalty and require the respondent or defendant to enter a bond of good behavior for a maximum of six months (Section 25 of the Domestic Violence Act).

## 5.2.4 Is the standard of proof different for ex parte orders?

N/A

## 5.3 Affirmative defenses

## 5.3.1 Are affirmative defenses available to the accused?

No defenses are mentioned in the Domestic Violence Act.

 There is a defense for sexual offenses against children; however, they require the offender to honestly believe that the victim was 18 years old or more.[30] This is unlikely to apply in a domestic violence situation.

## 5.3.2 Is willful intent required?

Willful intent is not mentioned in the Domestic Violence Act. Domestic violence is defined in the law as "physical, sexual, emotional or psychological or financial abuse committed by a respondent against a person who is in a domestic relationship with the respondent."[31] However, the term "willfully" is used in the Offences Against the Person Act and the Criminal Offenses Act.

## 5.3.3 Are false accusations punishable for the victim?

Yes, under the Perjury Act. If the victim has made false statements in legal proceedings, they may be liable to pay a fine or to be imprisoned for seven years.[32]

## 5.3.4 How is consent discussed in the law?

Consent is not discussed in the Domestic Violence Act. Nevertheless, under the Sexual Offenses Act, the jury has to consider whether a person believed that another person consented to sexual intercourse or to any other sexual act. The judge will direct the jury that the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, when considering whether that person believed it.[33]

The law does not recognize consent as follows:

where it is extorted by threat or fear of bodily harm to the complainant or to another

where it is obtained by impersonating someone else

where it is obtained by false or fraudulent representations regarding the nature of the intercourse

where it is obtained by unlawfully detaining the complainant[34]

Additionally, the law fully recognizes rape in marriage and makes no distinction between nonconsensual sexual intercourse between persons who are married or cohabiting and the rape of a person who is not the husband, wife or cohabitant of the offender.[35]

## 5.3.5 Is self-defense or insanity a defense?

Common law governs self-defense in Trinidad and Tobago.

*Palmer v. R* [1971] AC 814 is regarded as the classic pronouncement upon the common law relating to self-defense. Lord Morris approved as correct the self-defense direction given by the trial judge, who stated the following:

A man who is attacked in circumstances where he reasonably believes his life to be in danger or that he is in danger of serious bodily harm, may use such force as on reasonable ground he believes is necessary to prevent and resist the attack; and if in using such force he kills his assailant he is not guilty of any crime even if the killing was intentional.[36]

It must be clearly conveyed to the jury that a man (or woman) can act in self-defense even if he has the intention to kill.

Further, under Section 4(A)(1) of the Offenses Against the Person Act, the following applies:

Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

Therefore, this provides the defense of diminished responsibility.

## 5.4 Witness status

## 5.4.1 What is a witness's duty to testify honestly and completely?

This is not discussed in the Domestic Violence Act.

## 5.4.2 Who may abstain from testifying in certain situations?

There are no circumstances in the Domestic Violence Act for a person to abstain from testifying.

## 5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

There are no potential excuses in the Domestic Violence Act for a witness to refuse to testify.

## 5.4.4 What is the impact of domestic violence on witnesses who are children?

Where the court is required to determine whether to grant bail to the offender, the court will consider the welfare of a child and the welfare of any child being a member of the household.[37]

## 5.4.5 Can children be called upon to testify?

Children may testify if they want to. If they do, the court will consider the age and maturity of the child and their ability to express their views.[38]

## 5.4.6 What is the effect of a child victim on the charges against the offender?

Police officers or the Children's Authority may make an emergency application to a master or judge of the family or children court for a protection order if the child has suffered or is in danger of suffering serious physical injury at the hands of the offender.[39]

## 5.5 Penalties and sentencing; penalty enhancements

## 5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

First-time domestic violence offenders must pay a fine not exceeding TTD 9,000 or imprisonment for a period not exceeding three months.[40]

## 5.5.2 Are there criminal penalties?

The only criminal penalty mentioned in the Domestic Violence Act is imprisonment.[41]

## 5.5.3 What is the result of a violation of an existing order for protection?

Violating an existing order for protection will lead to imprisonment for six months.[42]

## 5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

The Domestic Violence Act does not impose any other types of penalties besides incarceration and liberty restriction.

## 5.6 Post-release restrictions

## 5.6.1 Does the law notify the victim of the offender's release from custody?

The law does not notify the victim but the court will consider implementing some conditions for the release of the offender, such as preventing the offender from being on the premises in which the victim resides or works.[43]

# 6. Special issues

## 6.1 Battered woman syndrome

## 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered Woman Syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

Battered woman syndrome is not recognized under Trinidad and Tobago law. However, other defenses are available. Please refer to Section 5.3 for further information.

## 6.2 Domestic violence in the workplace

## 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

Although employers cannot apply for protection orders on behalf of employees,[44] greater engagement by employers has been strongly encouraged and mandatory reporting is provided in the Amendment Bill.

**Domestic Violence in the Workplace Policy**

The Crime and Justice Committee of the Trinidad and Tobago Chamber of Industry and Commerce introduced the Domestic Violence in the Workplace Policy. The policy's objective is to guide businesses to develop systems in their own organizations to address domestic violence and create a culture of zero tolerance toward it.

A number of leading companies — including Ansa McAL, Imjin Security Services Limited, Massy Holdings, L.I.F.E. Programme-Massy, Massy Motors, Regency Recruitment, the Trinidad and Tobago Chamber of Industry and Commerce, and others — have pledged support for the policy.[45]

A copy of the policy is accessible here: <https://j47y02wug002xeou1gnclloy-wpengine.netdna-ssl.com/wp-content/uploads/2020/01/domestic-violence-workplace-policy-version-28-jan-2020.pdf>.

**Mandatory reporting**

Section 26A of the Amendment Bill[46] contemplates the creation of mandatory reporting obligations for employers that, for a special purpose, have temporary custody, care, charge or control of an adult who due to physical or mental disability, age or infirmity is dependent on another person or a child. In this scenario, and where the employer has reasonable grounds to suspect domestic violence against such a person, the employer will commit an offense and be liable to a fine and potentially imprisonment if it fails to report its suspicion to the police.

## 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

Although there is no specific provision in law to that effect, the Domestic Violence in the Workplace Policy acknowledges the following:

Victims of domestic violence may need time off to obtain or attempt to obtain a protection order or any other legal assistance to help ensure his or her health, safety, or welfare or that of his or her child or other dependent.

The employer should collaborate with the employee to provide flexible leave options to balance the needs of the domestic violence victim and the employer.

## 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

There is no specific legal provision that provides the right to such absence.

## 6.3 Immigration

## 6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents from using immigration laws to perpetrate domestic violence against their spouse?

No. For more detail on immigration laws, please refer to the Immigration Manual 2008.[47] Although the Immigration Manual 2008 specifies certain special cases[48] that should be referred to a senior officer, these are limited to the following:

anything of a classified and/or politically sensitive nature

a victim of human trafficking or smuggling

other persons in need of international protection, such as refugees

other cases involving compelling circumstances

People that fall into one of the above categories should not be automatically denied entry but should be referred to the senior officer. There is nothing to suggest that domestic violence itself is considered a special case for these purposes.

## 6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

No.

## 6.3.3 Does domestic violence law discuss asylum accessibility?

No.

## 6.4 Armed forces

## 6.4.1 Can a victim seek a military protective order if the abuser is in active military?

While no form of protection order is specifically designed for the military sector, an ordinary protection order has sufficient scope to extend to this scenario.

The principal remedy is a protection order, which is addressed in detail in Section 4.1. A protection order may prohibit the respondent from being on the same premises as the applicant, including any "residence, property, business, school or place of **employment**"[49] (emphasis added).

As a result, protection orders will apply to women working in the military alongside men.

Finally, in 2013, the government called for increased effort by the Trinidad and Tobago Defence Force and the Trinidad and Tobago Police Service to fight crime. Cooperation between the army and the police involved increased patrols in areas prone to crime, with the intention of making residents feel safer in their own homes. This training may have the resulting effect of reducing domestic violence within the armed forces and police too.

## 6.5 Child custody and child/spousal support

## 6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

Section 13(1) of the Family Law Act[50] states that the court will award custody as it thinks fit, considering the welfare of the child and the conduct and wishes of the applicant for custody. It is implied that the judge will consider any reported domestic violence when granting custody, but the Family Law Act does not outline any special rules to determine custody in domestic violence cases. Furthermore, subsection 14(1) of the Family Law Act outlines how the court may grant custody and visitation to the exclusion of a surviving parent of the child by primarily considering the welfare of the child. Again, no special rules are mentioned in the Family Law Act with regard to domestic violence.

Under subsections 26-30 of the Family and Children Division Act 2016,[51] a specific "children court judge" and "children court master" may be assigned to judge a child-related matter; they may be particularly suitable to judge on such matter due to their special training, experience and temperament.

## 6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

In its general principles, the Family Law Act[52] outlines that the welfare of the child should be regarded as the first and paramount consideration when deciding who to grant custody to. The Family Law Act does not mention anything about considering testimonies when determining custody, but it does mention that any claim or right of common law of the individual parents in respect of such custody, upbringing, administration or application will not be considered unless directly related to the welfare of the child.

## 6.6 Housing rights of domestic violence victims

## 6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

No, neither the Domestic Violence Act nor the Land Tenants (Security of Tenure) Act 1981[53] includes specific barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence. However, no clauses state that domestic violence is a valid reason for a landlord to evict a tenant. As such, an unlawfully evicted tenant would be able to appeal any eviction based upon domestic violence.

The landlord would need to end the tenancy by giving the tenant a valid and written "notice to quit."[54] If the tenancy is fixed, that is, for a specified number of years, the tenancy will end at its expiration. If the tenancy is periodic, for example, monthly or yearly, the notice period is one month and six months, respectively. As stated above, there are no provisions for a landlord to use domestic violence as a valid reason for terminating a tenancy. A landlord can go to court for a possession order against the tenant for reasons such as the nonpayment of rent or on the grounds that the property is required for personal use. Again, domestic violence is not a valid reason for a possession order against a tenant.

## 6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

The Domestic Violence Act and the Land Tenants (Security of Tenure) Act 1981, do not allow a tenant to terminate a lease early due to domestic violence. However, the Domestic Violence Act includes provisions to exclude the abuser from a residence while directing them to continue contributing payments for the maintenance of the property while the victim/family continues to be in the residence (see below).

## 6.6.3 Can an order exclude the abuser from the residence?

Yes. A protection order can direct an abuser to immediately vacate any place or residence for a specified period regardless of whether the residence is jointly owned or leased by the abuser and the victim, or solely owned or leased by the abuser or the victim.[55]

Where the court makes a protection order that directs the abuser to vacate a residence, in the same order, the court may direct the police to: (a) remove the abuser either immediately or within a specified time from the residence; or (b) accompany the victim either immediately or within a specified time to the residence to supervise the removal of property belonging to the victim and to ensure the protection of the victim.[56]

## 6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

Yes. A protection order can forbid an abuser from taking possession of, damaging, converting or otherwise dealing with property that the victim may have an interest in or reasonably uses.[57] This would apply to the family domicile.

A protection order can also direct an abuser to make or continue to make payments in respect of rent or mortgage payments for premises occupied by the victim. This precludes the abuser from alienating or mortgaging the property in his/her name if it is the family domicile, and if the victim and any wider family continue to be in residence.[58]

In addition, where the court makes a protection order that directs the payment of compensation under subsection 6(1)(c)(ii), the compensation will include moving and accommodation expenses. The court has the jurisdiction to award compensation not exceeding TTD 15,000 and the payment of this compensation will be received by the court on behalf of the victim.[59]

# 7. Endnotes

[1]    Section 4 of the Domestic Violence Act 45:56.

[2]    Section 5 of the Domestic Violence Act 45:56.

[3]    Section 6 of the Domestic Violence Act 45:56.

[4]    Section 7 of the Domestic Violence Act 45:56.

[5]    Section 20 of the Domestic Violence Act 45:56.

[6]    Section 3 of the Domestic Violence Act 45:56.

[7]    <https://www.stalkingriskprofile.com/what-is-stalking/stalking-legislation/international-legislation>.

[8]    The Offences Against the Person Act 2005 [www.ttparliament.org/legislations/a2005-11.pdf](http://www.ttparliament.org/legislations/a2005-11.pdf).

[9]    [www.newsday.co.tt/news/0,83520.html](http://www.newsday.co.tt/news/0%2C83520.html).

[10]    <https://www.unodc.org/res/cld/document/trafficking-in-persons-act_html/Trafficking_in_Persons_Act.pdf>.

[11]    Limitation of Certain Actions Act 7:09 <https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/7.09.pdf>.

[12]    <https://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-country-resources/trinidad-and-tobago>.

[13]    <https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/11.28.pdf>.

[14]    Domestic Violence Amendment Bill 2020.

[15]    Family Law (Guardianship of Minors, Domicile and Maintenance) Act 1981 <https://www.oas.org/dil/Family_Law_Act_Trinidad_and_Tobago.pdf>.

[16]    Domestic Violence Act 45:56.

[17]    Section 8 of the Domestic Violence Act 45:56.

[18]    Section 4 of the Domestic Violence Act 45:56.

[19]    <https://newsday.co.tt/2019/04/11/no-bail-for-breaking-restraining-orders/>.

[20]    [http://www.opm-gca.gov.tt/Gender/GenderInitiatives/DomesticViolenceReport(s)](http://www.opm-gca.gov.tt/Gender/GenderInitiatives/DomesticViolenceReport%28s%29).

[21]    <https://globalvoices.org/2020/04/10/stay-at-home-orders-accompanied-by-rise-in-domestic-violence-in-trinidad-tobago/>.

[22]    <https://trinidadexpress.com/opinion/editorials/a-crisis-of-domestic-violence/article_1e443934-3410-11ea-ab2d-23fa629e5fb3.html>.

[23]    <https://www.state.gov/wp-content/uploads/2019/01/Trinidad-and-Tobago-1.pdf>.

[24]    Domestic Violence Act 45:56.

[25]    Domestic Violence Amendment Bill 2020.

[26]    Section 6(4) of the Domestic Violence Act 45:56.

[27]    Ibid.

[28]    <https://newsday.co.tt/2018/03/06/treated-like-criminals/>.

[29]    Criminal Bench Book 2015," p. 34

[30]    <https://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-country-resources/trinidad-and-tobago>.

[31]    Domestic Violence Amendment Bill 2020, Part 1 (3) (accessible here: <http://ttparliament.org/documents/2964.pdf>).

[32]    Chapter 11:14, Section 4 (1) of the Perjury Act.

[33]    Section 28 of the Sexual Offenses Act.

[34]    <https://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-country-resources/trinidad-and-tobago>.

[35]    <https://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-country-resources/trinidad-and-tobago>.

[36]    [1971] AC 814, 823.

[37]    Section 27 (1) (a) and (b) of the Domestic Violence Act 45:56.

[38]    Section 10 (5) of the Domestic Violence Act 45:56.

[39]    Section 19A (1) (b) of the Domestic Violence Amendment Bill 2020.

[40]    Section 20 (1) (i) of the Domestic Violence Act 45:56.

[41]    Ibid.

[42]    <https://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-country-resources/trinidad-and-tobago>.

[43]    Section 27 (2) of the Domestic Violence Act 45:56.

[44]    Section 4(2) of the Domestic Violence Act 45:56.

[45]    <https://chamber.org.tt/domestic-violence-in-the-workplace-policy>.

[46]    Section 26A of the Domestic Violence Amendment Bill 2020.

[47]     <https://caribbeanmigration.org/sites/default/files/repository/tt_immigration_division_manual_vol1.pdf>.

[48]    Paragraph B3.15 of the Immigration Manual 2008.

[49]    Section 6(1)(a)(ii) of the Domestic Violence Act 45:56.

[50]    <https://www.oas.org/dil/Family_Law_Act_Trinidad_and_Tobago.pdf>.

[51]    <http://www.ttparliament.org/legislations/a2016-6.pdf>.

[52]    <https://www.oas.org/dil/Family_Law_Act_Trinidad_and_Tobago.pdf>.

[53]    <https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/59.54.pdf>.

[54]    <https://www.guardian.co.tt/article-6.2.390762.8b2c540e8b>.

[55]    Section 6(1)(c)(iv) of the Domestic Violence Act 45:56.

[56]    Section 6(6) of the Domestic Violence Act 45:56.

[57]    Section 6(1)(a)(v) of the Domestic Violence Act 45:56.

[58]    Section 6(1)(c)(vi) of the Domestic Violence Act 45:56.

[59]    Sections 6(4)(c) and 6(5) of the Domestic Violence Act 45:56.

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