

Crimes (Family Violence) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 24 March 1987

(Brought in by the Honourable J. H. Kennan)

A BILL

to provide for intervention orders in cases of family violence and to make amendments to the *Crimes Act* 1958 and for other purposes

Crimes (Family Violence) Act 1987

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

- 5 1. The main purposes of this Act are to provide for intervention orders in cases of family violence and to amend the *Crimes Act* 1958.

Commencement.

2. This Act comes into operation on a day to be proclaimed.

Definitions.

- 10 3. In this Act—
“**Aggrieved family member**” means the family member whose person or property is the subject of the complaint for an order.
“**Assault**” has the same meaning as in section 31 of the *Crimes Act* 1958.
15 “**Child**” in relation to a person, includes a person under the age of 18 years—

- (a) who normally or regularly resides with the first mentioned person; or
- (b) of whom the first mentioned person is a guardian.
- “Clerk”** means a Clerk of a Magistrates’ Court and includes a Deputy Clerk of a Magistrates’ Court. 5
- “Court”** means a Magistrates’ Court.
- “De facto spouse”** means a person who is living or has lived with another person of the opposite sex as the spouse of that person although not married to that person.
- “Family member”**, in relation to a person means— 10
 - (a) the spouse of that person; or
 - (b) a child of that person or a child of the spouse of that person; or
 - (c) another person who is or has been ordinarily a member of the household of that person. 15
- “Order”** means an intervention order or an interim intervention order.
- “Parent”**, in relation to a child, includes a guardian of the child or a person with whom the child normally or regularly resides. 20
- “Spouse”** includes former spouse and de facto spouse.

PART 2—INTERVENTION ORDERS

Intervention orders.

- 4. (1) A court may make an intervention order in respect of a person if satisfied on the balance of probabilities that— 25
 - (a) the person has assaulted a family member or caused damage to property of a family member and is likely to again assault the family member or cause damage to property of the family member; or
 - (b) the person has threatened to assault a family member or cause damage to property of a family member and is likely to assault the family member or cause damage to property of the family member; or 30
 - (c) the person has harassed or molested a family member or has behaved in an offensive manner towards a family member and is likely to do so again. 35
- (2) The order may impose any restrictions or prohibitions on the person that appear necessary or desirable in the circumstances to the court.

Restrictions in order.

5. (1) Without limiting the generality of section 4, an order may do all or any of the following—

5 (a) prohibit or restrict approaches by the defendant to the aggrieved family member including prohibiting the defendant from approaching within a specified distance from the aggrieved family member; or

10 (b) prohibit or restrict access by the defendant to premises in which the aggrieved family member lives, works or frequents and such an order may be made whether or not the defendant has a legal or equitable interest in those premises;

(c) prohibit or restrict the defendant from being in a locality specified in the order;

15 (d) prohibit the defendant from contacting, harassing, threatening or intimidating the aggrieved family member;

(e) prohibit the defendant from damaging property of the aggrieved family member;

(f) prohibit the defendant from causing another person to engage in conduct restrained by the court;

20 (g) direct the defendant to participate in prescribed counselling;

(h) revoke any licence or permit or other authority to possess carry or use firearms and direct the forfeiture or disposal of any firearms in the defendant's possession.

25 (2) Before making an order which restricts the defendant's access to any premises, the court must take into account—

(a) the need to ensure that the aggrieved family member is protected from violence; and

(b) the welfare of any children who may be affected by the order; and

30 (c) the accommodation needs of all persons who may be affected by the order—

and give paramount consideration to the matters in paragraph (a).

Duration of order.

35 6. An intervention order remains in force for the period, not exceeding 12 months, specified by the court.

Complaints for intervention orders.

7. A complaint for an intervention order may be made by—

(a) a member of the police force; or

(b) the aggrieved family member; or

40 (c) if the aggrieved family member is a child—

(i) a member of the police force; or

- (ii) a parent of the child; or
- (iii) any other person with the written consent of a parent of the child; or
- (d) any other person, with the written consent of the aggrieved family member.

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Interim intervention orders made in the absence of defendant.

8. (1) A court may make an interim intervention order whether or not a copy of the complaint for the intervention order has been served on the defendant if the court is satisfied that it is necessary to ensure the safety of the aggrieved family member pending the hearing and determination of the complaint.

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(2) A court must not make an interim intervention order unless the complaint is supported by oral evidence.

(3) An interim intervention order made in the absence of the defendant only operates until the time specified in the order or the further order of a court.

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PART 3—PROCEDURE

Warrant may issue on certain complaints.

9. If a complaint has been made for an intervention order—

(a) the clerk may issue a summons; or

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(b) if—

(i) the complaint alleges that the aggrieved family member has been assaulted or threatened with assault; and

(ii) the clerk is satisfied that the personal safety of the aggrieved family member would be seriously threatened unless the defendant was apprehended and brought into custody—

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the clerk may issue a warrant for the apprehension of the defendant as if the complaint alleged the commission of an offence.

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Complaint on oath if warrant to issue.

10. If the complainant seeks a warrant to issue in the first instance for the apprehension of the defendant the complaint must be in writing and on oath and the complaint and the warrant are to be in the same document.

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Service of complaint.

11. If the person making the complaint is not the aggrieved family member, that person must as soon as practicable after the complaint has been made arrange for a copy of the complaint to be served

personally on the aggrieved family member or, if the aggrieved family member is a child and the complaint was made with the consent of a parent under section 7 (c) (iii), on that parent.

Procedure in the absence of the defendant.

- 5 12. If—
- (a) a summons has been served on the defendant or the defendant is bailed to appear at the hearing of the complaint for the intervention order; and
 - 10 (b) the defendant fails to appear in person at the time fixed for the hearing of the complaint—
- the court may—
- (c) proceed to hear and determine the matter in the defendant's absence; or
 - 15 (d) if satisfied that it is appropriate to do so, adjourn the matter and issue a warrant for the defendant to be apprehended and brought before the court.

Procedure in third party complaints.

- 20 13. (1) If a complaint for an order or an application under section 16 is made by a person other than an aggrieved family member or a member of the police force a court must not commence or continue the hearing of the complaint or the application if the aggrieved family member or, if the aggrieved family member is a child, the parent who consented to the complaint under section 7 (c) (iii) objects to the complaint or application being heard and determined.
- 25 (2) Sub-section (1) does not apply if the applicant under section 16 is the defendant.

Consent orders.

14. A court may make any order under this Act with the consent of all the parties to the proceedings.

30 **Explanation of orders.**

15. If—
- (a) a court proposes to make an order; and
 - (b) the defendant is before the court—
- the court must, before making the order, explain to the defendant—
- 35 (c) the purpose, terms and effect of the proposed order; and
 - (d) the consequences that may follow if the defendant fails to comply with the terms of the proposed order; and
 - (e) the means by which the proposed order may be varied or revoked.

Variation and revocation of order.

16. (1) A court may order the revocation or variation of an order on an application under this section.

(2) If an order is in force—

- (a) a party to the proceedings in which the order was made; or
- (b) if the aggrieved family member was not a party to the proceedings, the aggrieved family member; or
- (c) if the aggrieved family member is a child and the complaint was made with the consent of a parent under section 7 (c) (iii) that parent—

may apply to a court for an order varying or revoking the order or extending the period the order remains in force for any period not exceeding twelve months.

(3) If the applicant is not a member of the police force or the aggrieved family member or the defendant the application may only be made with the written consent of the aggrieved family member or, if the aggrieved family member is a child and the complaint was made with the consent of a parent under section 7 (c) (iii), that parent.

(4) The applicant must cause a copy of the application to be served personally —

- (a) on each other party to the proceedings under which the original order was made; and
- (b) if the aggrieved family member was not a party to those proceedings and is not the applicant, on the aggrieved family member; and
- (c) if the aggrieved family member is a child and the complaint was made with the consent of a parent under section 7 (c) (iii), on that parent.

(5) If it appears to the court that it is not reasonably practicable to serve a copy of the application personally it may—

- (a) order that a copy of the application be served by any other means which it thinks appropriate; or
- (b) make an order for substituted service.

Service of intervention orders.

17. (1) If an order is made or varied by a court the clerk must—

- (a) arrange for the order to be drawn up and filed in court; and
- (b) if the defendant is in court, cause a copy of the order to be served personally on the defendant at the court; and
- (c) if the defendant is not in court, cause a copy of the order to be served personally on the defendant; and
- (d) cause a copy of the order to be forwarded to—
 - (i) the Chief Commissioner of Police; and

- (ii) each person who was a party to the proceedings; and
- (iii) if the aggrieved family member was not a party to the proceedings, the aggrieved family member; and
- (iv) if the aggrieved family member is a child and a complaint was made with the consent of a parent under section 7 (c) (iii), that parent; and
- (v) the officer in charge of the police station closest to the place of residence of the aggrieved family member.

- 5
- 10 (2) If it appears to the court that it is not reasonably practicable to serve a copy of an order personally, it may—
- (a) order that a copy of the order be served by any other means which it thinks appropriate; or
 - (b) make an order for substituted service.

Concurrent criminal proceedings.

- 15 18. (1) A court may make an order in respect of a person even though the person has been charged with an offence arising out of the same conduct as that out of which the complaint for the order arose.

(2) The order may be made at any time before or after the commencement of proceedings for the offence.

PART 4—MISCELLANEOUS

Bail on appearance to summons or on arrest.

- 25 19. The *Bail Act* 1977 applies to and in respect of a defendant to a complaint for an intervention order arrested pursuant to a warrant or on the defendant's appearance before a court in answer to a summons issued on the making of the complaint as if the defendant were an accused person charged with an offence to whom section 4 of the *Bail Act* 1977 applies.

Appeal by defendant.

- 30 20. (1) The defendant may appeal to the County Court against the making of an intervention order.

(2) The giving of notice of appeal to the County Court does not stay the operation of the order but the court which made the order may, on the application of the defendant, in its discretion stay the operation of the order pending the decision of the appeal.

- 35 (3) The appellant must give notice of appeal to an aggrieved family member who was not a party to the proceedings for the order appealed against or, if the aggrieved family member is a child and the complaint was made with the consent of a parent of the child under section 7 (c) (iii), to that parent as if the aggrieved family member or parent were a
- 40 party.

(4) An appellant applying for the stay of operation of an order must give notice to the complainant and any person required to be notified under sub-section (3).

(5) In staying the operation of the order the court may impose bail conditions on the appellant as though the appellant were an accused person being released from custody on bail. 5

Appeal by complainant.

21. (1) If—

- (a) a court decides not to make an order; or
- (b) a court makes an order and the complainant is aggrieved by the terms of the order— 10

the complainant may appeal to the County Court against the decision not to make the order or the terms of the order.

(2) A complainant who wants to appeal must cause notice of the appeal to be given to the defendant at any time within one month after the decision not to make an order or the making of the order by serving on— 15

- (a) the defendant; and
- (b) the clerk of the court; and
- (c) if the aggrieved family member is not the complainant, the aggrieved family member; and 20
- (d) if the aggrieved family member is a child and the complaint was made with the consent of a parent under section 7 (c) (iii), that parent; and
- (e) the Registrar of the County Court— 25

notice in writing signed by the complainant of the complainant's intention to appeal and setting out the grounds of the appeal.

(3) The County Court must proceed to re-hear the case upon appeal and may confirm, reverse or vary the decision or order of the court and make any other order that the court could have made and exercise any other powers which the court might have exercised. 30

(4) The complainant may not bring any further appeal against any order made by the County Court.

(5) Sections 75, 76, 78, 81 and 82 of the *Magistrates' Courts Act* 1971 so far as applicable and with any modifications and adaptations as are necessary extend and apply to appeals under this section. 35

(6) If the complaint for the order was made by a person other than the aggrieved family member or a member of the police force the County Court must not commence or continue the hearing of the appeal if— 40

- (a) the aggrieved family member objects to the appeal; or

- (b) if the aggrieved family member is a child, and the complaint was made with the consent of a parent under section 7 (c) (iii), that parent objects to the appeal.

Breach of an order.

- 5 22. A person against whom an order has been made who—
- (a) has been served with a copy of the order; and
 - (b) contravenes the order in any respect—

is guilty of an offence and liable to a penalty not exceeding 20 penalty units or to imprisonment for 6 months or both.

10 **Arrest for breach of an order.**

23. If a member of the police force believes on reasonable grounds that a person has committed an offence under section 22 the member of the police force may, without warrant, arrest and detain the person.

Restriction on reports of proceedings involving children.

- 15 24. If the aggrieved family member is a child, in proceedings under this Act—
- (a) a person must not publish or cause to be published in any newspaper or broadcast by means of wireless, telegraphy, television or other means a report of any of the proceedings containing the locality or any particulars calculated to lead to identification of the particular court or the name, address or school or any particulars calculated to lead to the identification of the child or any other person in the proceedings either as a party to the proceedings or as a witness in the proceedings; and
 - (b) a person must not publish or cause to be published in a newspaper or by television or other means any picture of or including the child or other person concerned in the proceedings.

- 30 Penalty: 20 penalty units.

Intervention order prevails over order under *Children's Court Act*.

25. An order under this Act applies despite any order under the *Children's Court Act* 1958.

Regulations.

- 35 26. The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

PART 5—AMENDMENTS TO *CRIMES ACT 1958*

Proceeding for offences against spouse’s property.

27. Section 95 of the *Crimes Act 1958* is amended as follows:

- (a) In sub-section (2) omit “Subject to sub-section (3)”
- (b) Sub-section (3) is repealed.

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Accessory after the fact to certain offences.

28. In section 338 of the *Crimes Act 1958* omit “or guilty of” and paragraphs (a) (b) and (c).

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No. 10094
Subsequently
amended by Nos.
10152, 10233,
10244, 10249,
10260, 16/1986,
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1986, 117/1986,
124/1986, and
127/1986

