

**Reprint
as at 1 July 2019**



Domestic Violence Amendment Act 2009

Public Act 2009 No 43
Date of assent 27 October 2009
Commencement see section 2

Domestic Violence Amendment Act 2009: repealed, on 1 July 2019, pursuant to section 258 of the Family Violence Act 2018 (2018 No 46).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Domestic Violence Amendment Act 2009.

2 Commencement

- (1) Section 9 comes into force on 1 July 2010.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Domestic Violence Act 1995.

4 Standard conditions of protection order

Section 19(2)(e) is amended by inserting “electronic message,” after “telephone,”.

5 Power to direct respondent or associated respondent to attend programme

Section 32(3) is repealed.

6 Confidentiality of information disclosed to programme provider

Section 43(4)(c)(i) is amended by omitting “section 49(1)(c)” and substituting “section 49A”.

7 New sections 49 and 49A substituted

(1) Section 49 is repealed and the following sections are substituted:

49 Offence to breach protection order

- (1) Every person commits an offence who breaches a protection order by—
- (a) doing any act in contravention of the protection order; or
 - (b) failing to comply with any condition of the protection order.
- (2) It is a defence in a prosecution for an offence under subsection (1) if the defendant proves that he or she had a reasonable excuse for breaching the protection order.
- (3) Every person who is convicted on indictment of an offence against this section is liable to imprisonment for a term not exceeding 2 years.
- (4) To avoid doubt, a failure to comply with a direction made under section 32(1) or (2) to attend a specified programme is not a breach of a protection order under subsection (1)(b).

49A Offence to fail to comply with direction

- (1) Every person commits an offence who, without reasonable excuse, fails on any occasion to comply with a direction made under section 32(1) or (2) to attend a specified programme.
- (2) Every person who commits an offence against this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$5,000.

(2) The second column of the item relating to the Domestic Violence Act 1995 in Part 2 of Schedule 1 of the Summary Proceedings Act 1957 is consequentially amended by omitting “49(3)” and substituting “49(2)”.

8 New section 50 substituted

Section 50 is repealed and the following section substituted:

50 Power to arrest for breach of protection order

Where a protection order is in force, any constable may arrest, without warrant, any person who the constable has good cause to suspect has—

- (a) contravened the protection order; or

- (b) failed to comply with any condition of the protection order.

9 New Part 6A inserted

The following Part is inserted after section 124:

Part 6A Police safety orders

124A Interpretation

In this Part, unless the context otherwise requires,—

constable has the meaning given to it by section 4 of the Policing Act 2008

Police safety order or **order** means an on-the-spot order issued by a qualified constable under section 124B in the prescribed form

qualified constable means a constable who is of or above the level of position of sergeant.

124B Qualified constable may issue Police safety order

- (1) A qualified constable may issue an order against a person (**person A**) who is, or has been, in a domestic relationship with another person (**person B**) if the constable—
- (a) does not arrest person A for an offence against any enactment involving the use of violence against person B; but
 - (b) has reasonable grounds to believe, having regard to the matters specified in subsection (2), that the issue of an order is necessary to ensure the safety of person B.
- (2) When considering whether to issue an order against person A, the constable must have regard to the following matters:
- (a) whether, in the circumstances, he or she considers it is likely that—
 - (i) person A has used, or is using, domestic violence against person B;
 - (ii) person A has used, or is using, domestic violence against any other person with whom he or she has a domestic relationship;
 - (b) whether there is a likelihood that person A will use, or again use, domestic violence against person B;
 - (c) the welfare of any children residing with person B;
 - (d) the hardship that may be caused if the order is issued;
 - (e) any other matter the constable considers relevant.
- (3) A constable who is not a qualified constable may issue an order under this section only if he or she is specifically authorised by a qualified constable to issue that order.

124C Consent to issue of Police safety order not required

An order may be issued without the consent of the person for whose safety the order is proposed to be issued.

124D Police safety order not to be issued against child

An order may not be issued against a child.

124E Effect of Police safety order

- (1) A person against whom an order is issued must immediately—
 - (a) surrender to a constable—
 - (i) any weapon in his or her possession or control; and
 - (ii) any firearms licence held by him or her;
 - (b) vacate any land or building occupied by a person at risk, whether or not he or she has a legal or equitable interest in the land or building.
- (2) It is a condition of every order that the person against whom the order is issued must not—
 - (a) physically or sexually abuse a person at risk; or
 - (b) threaten to physically or sexually abuse a person at risk; or
 - (c) damage, or threaten to damage, property of a person at risk; or
 - (d) engage, or threaten to engage, in other behaviour, including intimidation or harassment, that amounts to psychological abuse of a person at risk; or
 - (e) encourage any person to engage in behaviour against a person at risk, where the behaviour, if engaged in by the person against whom the order is issued, would be prohibited by the order; or
 - (f) watch, loiter near, or prevent or hinder access to or from the place of residence, business, or employment of a person at risk, or an educational institution attended by a person at risk, or any other place that a person at risk visits often; or
 - (g) follow a person at risk about or stop or accost a person at risk in any place; or
 - (h) where a person at risk is present on any land or building, enter or remain on that land or building in circumstances that constitute a trespass; or
 - (i) make any other contact with a person at risk (whether by telephone, electronic message, correspondence, or otherwise), except such contact as is reasonably necessary in any emergency.
- (3) In this section, **person at risk** means—
 - (a) the person named in the order for whose safety the order is issued; and
 - (b) any child residing with that person.

124F Suspension of firearms licence on issue of Police safety order

On the issue of an order, and for the period that the order is in force,—

- (a) any firearms licence held by the person against whom the order is issued is deemed to be suspended; and
- (b) the person against whom the order is issued is deemed, for all purposes, not to be the holder of a firearms licence.

124G Suspension of parenting orders, etc

- (1) This section applies where—
 - (a) an order is issued; and
 - (b) a child is residing with a person named in the order for whose protection the order is issued (a **protected child**); and
 - (c) a parenting order or day-to-day care or contact agreement is in force in respect of a protected child; and
 - (d) the person against whom the order is issued is a party to that parenting order or agreement.
- (2) While an order continues in force against any person, the provisions of a parenting order or an agreement affording to that person the day-to-day care of, or contact with, a protected child are suspended.

124H Prompt service of Police safety order required

- (1) An order issued under section 124B must be served by a constable as soon as practicable on the person against whom the order is issued.
- (2) If an order issued under section 124B has not been served within 48 hours from the time of issue, the order lapses.

124I Detention by constable

- (1) A constable who is proposing to issue a Police safety order under section 124B against any person may detain that person for a period, not exceeding 2 hours, that may be necessary to enable the constable to do 1 or more of the following:
 - (a) obtain authorisation under section 124B(3) to issue the order;
 - (b) issue the order;
 - (c) serve the order.
- (2) If a person who is detained under subsection (1) fails or refuses to remain at the place where he or she is detained, that person—
 - (a) commits an offence and is liable on summary conviction to the penalty specified in subsection (4); and
 - (b) may be arrested without warrant.
- (3) To avoid doubt, subsection (2) applies in respect of a person detained under subsection (1)(a) regardless of whether an order is issued.

- (4) The maximum penalty for an offence against subsection (2)(a) is a fine not exceeding \$500.
- (5) In this section, **detain** includes move the person to a Police station.

124J Police safety order to be explained

- (1) A constable who issues an order must, if and to the extent that it is reasonably practicable to do so in the circumstances, either at the time of issue or service of the order, explain to the person against whom the order is issued—
 - (a) the purpose, duration, and effect of the order; and
 - (b) the consequences that may follow if the person against whom the order is issued contravenes the order.
- (2) A constable who issues an order must also, either before or after issue and service of the order, explain to the person for whose safety the order is issued the matters set out in subsection (1)(a) and (b).

124K Duration of Police safety order

- (1) An order comes into force immediately on being served on the person against whom the order is issued.
- (2) An order continues in force for the period specified in the order, but that period must not exceed 5 days.
- (3) In considering the period to be specified in the order, the qualified constable must have regard to the matters set out in section 124B(2).

124L Contravention of Police safety order

- (1) Subsection (2) applies where a person against whom an order is issued refuses or fails to comply with—
 - (a) the order; or
 - (b) any condition of the order.
- (2) If this subsection applies, a constable may take the person into custody by—
 - (a) using such force as is reasonably necessary; or
 - (b) executing a warrant to arrest issued in respect of that person under section 124O(1)(a).
- (3) Where a person has been taken into custody under subsection (2), the constable may apply to a District Court, by making a complaint in the prescribed form, for a direction or an order under section 124N.
- (4) A person who is taken into custody under subsection (2)(a) must be brought before a District Court within 24 hours.

124M Issue of summons where person cannot be brought before District Court within 24 hours

- (1) If a person who is taken into custody under section 124L(2)(a) is not brought before a District Court within 24 hours, that person must, at or before the expiry of that period,—
 - (a) be released; and
 - (b) be served by a constable with a summons requiring him or her to appear before a District Court at the place and time specified in the summons.
- (2) A summons served under subsection (1)(b) must be in the prescribed form.
- (3) If a person who has been served with a summons under subsection (1)(b) does not attend personally at the place and time specified in the summons, the District Court may issue a warrant, in the prescribed form, to—
 - (a) arrest him or her; and
 - (b) bring him or her before the Court.

124N Jurisdiction of District Court

- (1) If a District Court presided over by 1 or more Justices, or 1 or more Community Magistrates, is satisfied that a person has refused or failed to comply with a Police safety order, the Court may,—
 - (a) if the order has not expired, direct that another order, which is to continue in force for a period not exceeding 5 days specified by the Court, be—
 - (i) issued against the person in substitution of the earlier order for the safety of the person named in the earlier order; and
 - (ii) served by a constable or officer of the Court as soon as practicable; or
 - (b) if the order has expired, direct that another order, which is to continue in force for a period not exceeding 5 days specified by the Court, be—
 - (i) issued against the person for the safety of the person named in the earlier order; and
 - (ii) served by a constable or officer of the Court as soon as practicable; or
 - (c) if it considers it appropriate in the circumstances to do so,—
 - (i) adjourn the proceedings to a specified time and place to enable a District Court Judge to consider whether a temporary protection order should be issued under subsection (2)(b); and
 - (ii) make a direction of the kind specified in paragraph (a) or (b), as the case may require.
- (2) If a District Court presided over by a District Court Judge is satisfied that a person has refused or failed to comply with a Police safety order, the Judge may—

- (a) make a direction of the kind specified in subsection (1)(a) or (b); or
- (b) issue, without application from any person, a temporary protection order under section 14 as if—
 - (i) every reference in that section to the respondent were a reference to the person who the Judge is satisfied has refused or failed to comply with the Police safety order (**person R**); and
 - (ii) every reference in that section to the applicant were a reference to the person named in the Police safety order for whose safety the order was issued (**person S**).
- (3) A District Court Judge may issue a temporary protection order under subsection (2)(b) in the absence of person R, person S, or both.
- (4) Subsection (2)(b) is subject to subsection (5).
- (5) A District Court Judge may only issue an order of the kind referred to in subsection (2)(b) if person S—
 - (a) does not object; and
 - (b) has not made an application for a protection order against person R that is currently pending determination by a Court.
- (6) Where the Court makes a direction of the kind specified in subsection (1)(a) or (b), the Court may direct that the person against whom the order is to be issued be detained in the custody of the Court for a period, not exceeding 2 hours, that may be necessary to enable the order to be issued and served on that person.

124O Issue of warrant to arrest person who contravenes Police safety order or fails to attend adjourned proceedings

- (1) Subsection (2) applies if—
 - (a) a person against whom a Police safety order is issued refuses or fails to comply with the order, or any condition of the order; or
 - (b) a person who the District Court is satisfied has refused or failed to comply with a Police safety order does not attend personally at the time and place to which proceedings have been adjourned under section 124N(1)(c)(i).
- (2) The District Court may issue a warrant in the prescribed form.
- (3) A warrant to arrest a person under this section—
 - (a) must be directed either—
 - (i) specifically to a constable; or
 - (ii) generally to every constable; but
 - (b) may be executed by any constable.
- (4) For the purpose of executing a warrant issued under this section, the constable executing it may at any time enter on to any premises, by force if necessary, if

the constable has reasonable grounds to believe that the person against whom it is issued is on those premises.

- (5) The constable executing the warrant—
 - (a) must have the warrant with him or her; and
 - (b) must produce it on initial entry and, if requested, at any subsequent time; and
 - (c) if he or she is not in uniform, produce evidence that he or she is a constable.
- (6) A person who is arrested under this section must, as soon as possible, be brought before a District Court to enable it to exercise its jurisdiction under section 124N.

124P Protection order to be issued and served

- (1) Where a District Court makes a temporary protection order under section 124N(2)(b), the Registrar of that Court must—
 - (a) immediately issue the order; and
 - (b) wherever practicable, serve a copy of the order on the person against whom the order is made before that person leaves the Court.
- (2) For the purpose of subsection (1), the Court may direct that the person against whom the order is made be detained in the custody of the Court for a period, not exceeding 2 hours, that may be necessary to enable the order to be issued and a copy served on that person.

124Q Protection order to be sent to Family Court

- (1) Immediately after the issue of a protection order under section 124N, the District Court must send a copy of the order to the Family Court nearest to the residence of the person for whose safety the Police safety order and temporary protection order were issued.
- (2) On receipt of a copy of an order under subsection (1), the Registrar of the Family Court must enter the order in the records of the Family Court.

124R Protection order treated as if made by Family Court

As soon as an order has been entered in the records of the Family Court under section 124Q(2), the order is to be treated as if it were a temporary protection order made by that Court.

124S Police employees, etc, protected from proceedings

No action or proceedings may be brought against the Crown or any constable in respect of any thing done, or omitted to be done, for the purpose of carrying out the provisions of this Part, where the Crown or the constable acted in good faith and with reasonable care.

10 Consequential amendments to other enactments

The regulations listed in the Schedule are amended in the manner indicated in that schedule.

Schedule

Regulations amended

s 10

Domestic Violence Rules 1996 (SR 1996/148)

Schedule 1, form DV 16, the heading “**(a) Standard conditions prohibiting domestic violence and contact**”, paragraph 2(e): insert “electronic message,” after “telephone,”.

Schedule 1, form DV 16, under “**Important information for respondent/associated respondent**”, the heading “**Consequences of a breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

You commit an offence if you breach the order by—

- (a) doing an act in contravention of this order; or
- (b) failing to comply with any condition in this order.

You have a defence to proceedings for this offence if you can prove that you had a reasonable excuse for breaching the order.

The maximum penalty for this offence is 2 years’ imprisonment.

If a constable has good cause to suspect that you have breached this order, you may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

Consequences of failing to comply with direction

You commit an offence if, without reasonable excuse, you fail on any occasion to comply with a direction to attend a programme.

The maximum penalty for this offence is 6 months’ imprisonment or a fine not exceeding \$5,000.

Schedule 1, form DV 16, under “**Important information for protected persons**”, the heading “**Consequences of a breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

The respondent or associated respondent commits an offence if he or she—

- (a) does any act in contravention of this order; or
- (b) fails to comply with any condition in this order.

The respondent or associated respondent will have a defence to proceedings for this offence if it can be proved that he or she had a reasonable excuse for breaching the order.

The maximum penalty for this offence is 2 years’ imprisonment.

If a constable has good cause to suspect that the respondent or associated respondent has breached the order, the respondent or associated respondent may be arrested with-

Domestic Violence Rules 1996 (SR 1996/148)—continued

out warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

Consequences of failing to comply with direction

The respondent or associated respondent commits an offence if, without reasonable excuse, he or she fails on any occasion to comply with a direction to attend a programme.

The maximum penalty for this offence is 6 months' imprisonment or a fine not exceeding \$5,000.

Schedule 1, form DV 17, the heading “**(a) Standard conditions prohibiting domestic violence and contact**”, paragraph 2(e): insert “electronic message,” after “telephone,”.

Schedule 1, form DV 17, “**Important information for respondent/associated respondent**”, the heading “**Consequences of a breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

You commit an offence if you breach the order by—

- (a) doing an act in contravention of this order; or
- (b) failing to comply with any condition in this order.

You have a defence to proceedings for this offence if you can prove that you had a reasonable excuse for breaching the order.

The maximum penalty for this offence is 2 years' imprisonment.

If a constable has good cause to suspect that you have breached this order, you may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

Consequences of failing to comply with direction

You commit an offence if, without reasonable excuse, you fail on any occasion to comply with a direction to attend a programme.

The maximum penalty for this offence is 6 months' imprisonment or a fine not exceeding \$5,000.

Schedule 1, form DV 17, under “**Important information for protected persons**”, the heading “**Consequences of a breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

The respondent or associated respondent commits an offence if he or she—

- (a) does any act in contravention of this order; or
- (b) fails to comply with any condition in this order.

Domestic Violence Rules 1996 (SR 1996/148)—continued

The respondent or associated respondent will have a defence to proceedings for this offence if it can be proved that he or she had a reasonable excuse for breaching the order.

The maximum penalty for this offence is 2 years' imprisonment.

If a constable has good cause to suspect that the respondent or associated respondent has breached the order, the respondent or associated respondent may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

Consequences of failing to comply with direction

The respondent or associated respondent commits an offence if, without reasonable excuse, he or she fails on any occasion to comply with a direction to attend a programme.

The maximum penalty for this offence is 6 months' imprisonment or a fine not exceeding \$5,000.

Family Courts Rules 2002 (SR 2002/261)

Schedule 5, form DV 14, paragraph 1(b)(v): insert "electronic message," after "telephone,".

Schedule 5, form DV 14, under "**Important information for respondent (or associated respondent)**" the heading "**Consequences of breach of this order**": revoke the paragraphs under this heading and substitute the following paragraphs and heading:

You commit an offence if you breach the order by—

- (a) doing an act in contravention of this order; or
- (b) failing to comply with any condition in this order.

You have a defence to proceedings for this offence if you can prove that you had a reasonable excuse for breaching the order.

The maximum penalty for this offence is 2 years' imprisonment.

If a constable has good cause to suspect that you have breached this order, you may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

Consequences of failing to comply with direction

You commit an offence if, without reasonable excuse, you fail on any occasion to comply with a direction to attend a programme.

The maximum penalty for this offence is 6 months' imprisonment or a fine not exceeding \$5,000.

Family Courts Rules 2002 (SR 2002/261)—continued

Schedule 5, form DV 14, under “**Important information for protected persons**”, the heading “**Consequences of breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

The respondent or associated respondent commits an offence if he or she—

- (a) does any act in contravention of this order; or
- (b) fails to comply with any condition in this order.

The respondent or associated respondent will have a defence to proceedings for this offence if it can be proved that he or she had a reasonable excuse for breaching the order.

The maximum penalty for this offence is 2 years’ imprisonment.

If a constable has good cause to suspect that the respondent or associated respondent has breached the order, the respondent or associated respondent may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

Consequences of failing to comply with direction

The respondent or associated respondent commits an offence if, without reasonable excuse, he or she fails on any occasion to comply with a direction to attend a programme.

The maximum penalty for this offence is 6 months’ imprisonment or a fine not exceeding \$5,000.

Schedule 5, form DV 15, paragraph 1(b)(v): insert “electronic message,” after “telephone,”.

Schedule 5, form DV 15, under “**Important information for respondent (or associated respondent)**”, the heading “**Consequences of breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

You commit an offence if you breach the order by—

- (a) doing an act in contravention of this order; or
- (b) failing to comply with any condition in this order.

You have a defence to proceedings for this offence if you can prove that you had a reasonable excuse for breaching the order.

The maximum penalty for this offence is 2 years’ imprisonment.

If a constable has good cause to suspect that you have breached this order, you may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

Family Courts Rules 2002 (SR 2002/261)—continued**Consequences of failing to comply with direction**

You commit an offence if, without reasonable excuse, you fail on any occasion to comply with a direction to attend a programme.

The maximum penalty for this offence is 6 months' imprisonment or a fine not exceeding \$5,000.

Schedule 5, form DV 15, under “**Important information for protected persons**”, the heading “**Consequences of breach of this order**”: revoke the paragraphs under this heading and substitute the following paragraphs and heading:

The respondent or associated respondent commits an offence if he or she—

- (a) does any act in contravention of this order; or
- (b) fails to comply with any condition in this order.

The respondent or associated respondent will have a defence to proceedings for this offence if it can be proved that he or she had a reasonable excuse for breaching the order.

The maximum penalty for this offence is 2 years' imprisonment.

If a constable has good cause to suspect that the respondent or associated respondent has breached the order, the respondent or associated respondent may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

Consequences of failing to comply with direction

The respondent or associated respondent commits an offence if, without reasonable excuse, he or she fails on any occasion to comply with a direction to attend a programme.

The maximum penalty for this offence is 6 months' imprisonment or a fine not exceeding \$5,000.

Reprints notes

1 *General*

This is a reprint of the Domestic Violence Amendment Act 2009 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Family Violence Act 2018 (2018 No 46): section 258