

The Domestic Violence Act and HIV/ AIDS: Amend, Expand or Interpret?

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The Domestic Violence Act 116 of 1998 does not make explicit reference to the issue of HIV/ AIDS. Given the high levels of domestic violence, coupled with the high number of persons living with HIV/AIDS in South Africa, it is important to explore the extent of the protection offered in terms of the DVA to women who are at increased risk of contracting HIV infection or who are living with HIV/AIDS.

This paper firstly investigates whether so-called 'harmful HIV-related behaviour' in the context of domestic relationships can be interpreted as 'domestic violence' as defined in the DVA. The authors argue that such harmful behaviour goes beyond intentional transmission of or exposure to HIV to also include acts such as obstructing women's access to health care. It is also essential to evaluate the potentially harmful behaviour in the broader context of a pattern of 'coercive control', and not to focus on individual acts or incidents in isolation.

Subsequently, the paper examines the scope of protection orders that can be issued in terms of the DVA against such harmful HIV-related behaviour. Here the broad discretion placed upon a court to impose any conditions deemed reasonably necessary to protect and provide for the 'safety, health or well being of the complainant' in terms of section 7 of the DVA is investigated. The authors also explore options such as orders mandating partner notification and ensuring enforceability of an order relating to harmful HIV-related behaviour.

In conclusion, the authors argue that in order to interpret the DVA appropriately in HIV-related applications, it is essential for courts to be mindful of the broader context of inequality that underlies both gender-based violence and women's heightened exposure to HIV.