

**Fifth Session Third Parliament Republic of Trinidad  
and Tobago**

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**REPUBLIC OF TRINIDAD AND TOBAGO**

**Act No. 10 of 1991**

[L.S.]

**AN ACT to afford protection in the instance of domestic violence by the granting of a protection order, to provide the police with powers of arrest where a domestic violence offence occurs, and for other purposes.**

*[Assented to 16th August, 1991]*

<b>Preamble</b>	<p>WHEREAS it is provided by subsection (1) of section 13 of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:</p> <p>And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:</p> <p>And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.</p>
<b>Enactment</b>	<p>Enacted by the Parliament of Trinidad and Tobago as follows:</p>

## PART I

### PRELIMINARY

<b>Short title</b>	<p>1. This Act may be cited as the Domestic Violence Act, 1991.</p>
<b>Act inconsistent with sections 4 and 5 of the Constitution</b>	<p>2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.</p>
<b>Interpretation</b>	<p>3. (1) In this Act—</p> <p>“applicant” means a person applying for a protection order in accordance with section 7;</p> <p>“application” means an application for a protection order made under section 8;</p> <p>“attorney-at-law” means a person whose name is entered on the Roll in accordance with the Legal Profession Act, 1986;</p> <p>“child” in relation to a person includes a person under the age of 18 years—</p>

- (i) who normally resides or resides on a regular basis with the first mentioned person; or
- (ii) of whom the first mentioned person is a parent or guardian;

“clerk” means the Clerk or Deputy Clerk of the Court;

“Court” means “Summary Court” or “Court of Summary Jurisdiction”;

“*de facto* spouse” in relation to a person, means a person of the opposite sex to the first mentioned person who is living with the first mentioned person as the person’s husband or wife, although not legally married to the first mentioned person, or if not living with that person, is a parent, but not a grandparent, of a child of that person;

“dependant” in relation to a person means—

- (a) a person over the age of eighteen years;
- (b) who normally resides with the first mentioned person; and
- (c) who by reason of physical or mental disability is reliant on that first mentioned person for his welfare;

“domestic violence offence” means a prescribed offence committed by a person against—

- (a) a spouse of the person;
- (b) a child or dependant of the person or of a spouse of the person; or
- (c) a parent;

“drug” means a substance specified in the First Schedule of the Narcotic Drugs and Psychotropic Substances Control Act, 1985; No. 37 of 1985

“guardian” in relation to a child includes a person who has custodianship of that child within the meaning of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, 1981;

“interim protection order” means an order made under section 14;

“Minister” means the Minister with responsibility for Social Development and Family Services;

“parent” means a person who is a parent or grandparent in relation to a child, dependant, spouse or respondent, as the case may be—

- (a) by blood;
- (b) by marriage; or
- (c) by adoption,

and includes a person who is a parent within the meaning of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, 1981;

“prescribed offence” means—

- (a) murder or attempted murder;
- (b) manslaughter or attempted manslaughter;

Chap. 11:08

- (c) an offence under sections 12, 14, 15, 16, 17, 18, 21, 22, 23, 24 and 26 of the Offences Against the Person Act or an attempt to commit such an offence;

Chap. 27 of 1986

- (d) an offence under sections 4, 5, 6, 7, 8, 9, 10, 12, 13, 15 and 16 of the Sexual Offences Act, 1986 or an attempt to commit such an offence;

Chap. 46:01

- (e) an offence under sections 3, 4, 5, 6, 7 and 8 of the Children Act or an attempt to commit such an offence;

“prescribed person” means the spouse of the respondent (or for the purposes of Part III the spouse of the defendant), a parent, or a child or dependant of the spouse or of the respondent (or the defendant), as the case may be;

“protection order” means an order made under section 4 and “order” has the same corresponding meaning;

“respondent” means the person against whom an application is made;

“spouse” includes former spouse, *de facto* spouse and former *de facto* spouse.

(2) For the purposes of section 4(1)(c) “conduct of an offensive or harassing nature” in relation to a respondent includes—

- (a) the persistent intimidation of a person by the use of abusive and threatening language;
- (b) the damaging of the property of a person;
- (c) the persistent following of a person from place to place;
- (d) depriving a person of the use of his personal property;
- (e) the watching or besetting of the house or other place where a person resides, works, carries on business or happens to be;
- (f) the wilful or reckless neglect of a child or dependant person.

## PART II

### PROTECTION ORDERS

4. (1) Where, on an application made in accordance with <sup>Protection order or undertaking</sup> this Act, the Court is satisfied, on the balance of probabilities, that—

- (a) the respondent has engaged in conduct that constitutes a domestic violence offence and unless the respondent is restrained, the respondent is likely to engage in further conduct that would constitute that or another domestic violence offence;
- (b) the respondent has threatened to engage in conduct that would constitute a domestic violence offence and, unless the respondent is restrained, the respondent is likely to engage in conduct that would constitute that or another domestic violence offence; or

- (c) the respondent has engaged in conduct of an offensive or harassing nature in respect of a spouse of the respondent, a parent, or a child or dependant of the spouse or of the respondent, to the extent that the spouse or the parent is fearful of injury, physical or mental, to herself or himself or to a child or dependant of the spouse or of the respondent,

the Court shall, subject to this section, make a protection order restraining the respondent from engaging in such conduct or in any other conduct referred to in this section.

(2) The Court, when making a protection order, may impose one or more of the prohibitions or conditions specified in section 5.

(3) Where the Court is satisfied—

- (a) that a previous protection order has not been made against, and no undertaking has been given by, the respondent; and  
(b) that no allegation is made against the respondent of conduct referred to in subsection 1(a),

the Court may, at any time before a protection order is made, accept from the respondent a signed undertaking that he shall refrain from engaging in conduct of the nature specified in the application and in conduct that would constitute any domestic violence offence.

(4) An undertaking given under this section may deal with such other matters that may be dealt with in a protection order as the Court sees fit, having regard to the matters referred to in section 6.

(5) An undertaking given under this section and any matters dealt with in that undertaking remain in force for the period stated in the undertaking, but not exceeding twelve months.

(6) Sections 15, 17 and 18 apply, with such modifications as may be necessary, in relation to an undertaking as they do to a protection order.

(7) The Court is not precluded from making a protection order by reason of an undertaking being in force under a previous application.

5. (1) Subject to this Act, a protection order may— <sup>Restrictions  
in order</sup>
- (a) prohibit the respondent from being on premises in which a prescribed person resides or works;
  - (b) prohibit the respondent from being on premises specified in the order, being premises frequented by a prescribed person;
  - (c) prohibit the respondent from being in a locality specified in the order;
  - (d) prohibit the respondent from engaging in conduct of an offensive or harassing nature towards a prescribed person;
  - (e) prohibit the respondent from speaking or sending messages to a prescribed person;
  - (f) where the order contains a prohibition of the kind referred to in paragraph (d) relating to conduct of an offensive or harassing nature that amounts to wilful or reckless neglect of a child or dependant person—direct the respondent to ensure that reasonable care is provided in respect of that child or dependant person;
  - (g) prohibit the respondent from taking possession of specified personal property, being property that is reasonably used by a prescribed person specified in the application;
  - (h) direct the respondent to return specified personal property that is in his possession or under his control which belongs to the applicant or a prescribed person;
  - (i) prohibit the respondent from causing another person to engage in the conduct referred to in paragraph (d), (e) or (g);
  - (j) specify conditions subject to which the respondent may be on premises or in a locality specified in the order;
  - (k) direct that the applicant or respondent, or both, seek appropriate counselling or therapy from a person or agency approved by the Minister in writing.

(2) The Court may make an order that includes a prohibition of the kind referred to in subsection (1)(a) or (g) notwithstanding any legal or equitable interests the respondent might have in the property comprising the premises or in the property to which the prohibition of the kind referred to in subsection (1)(g) relates.

Matters  
to be taken  
into account

6. (1) In determining whether to impose one or more of the prohibitions or conditions specified under section 5, the Court shall have regard to the following—

- (a) the need to ensure that a prescribed person is protected from violence or harassment;
- (b) the welfare of a child of the spouse or of the respondent;
- (c) the accommodation needs of a prescribed person;
- (d) any hardship that may be caused to the respondent or to any other person as a result of the making of the order;
- (e) the income, assets and financial obligations of the respondent and of the spouse of the respondent, a parent or dependant person;
- (f) any other matter that, in the circumstances of the case, the Court considers relevant.

(2) In having regard to the matters referred to in subsection (1), the Court shall consider the matters referred to in subsection (1)(a) and (b) as being of primary importance.

Parties

7. (1) An application for a protection order may be made by—

- (a) the spouse of the person being the spouse in respect of whom the alleged conduct has been, or is likely to be engaged in by that person;
- (b) where the alleged conduct involves a child or dependant—
  - (i) a person with whom the child or dependant normally resides or resides on a regular basis;
  - (ii) a parent or guardian of the child or dependant;

- (iii) where the dependant is not mentally disabled—the dependant;
  - (iv) an experienced or qualified person in social welfare being a public officer and approved by the Minister in writing;
  - (v) a police officer; or
  - (vi) a person holding the office or performing the duties of a probation officer or medical social worker;
- (c) a police officer;
- (d) a parent of a spouse or a respondent or a parent against whom the alleged conduct has been, or is likely to be, engaged in.

(2) Where the applicant is a person referred to in subsection (1)(b) (iv), (v) or (vi) the parent or guardian in respect of whose child the alleged conduct has been engaged in and with whom the child normally resides or resides on a regular basis has a right to be a party to the proceedings.

(3) Where the application is made by a police officer in respect of a prescribed person who is an adult, that person shall be a party to the proceedings.

8. (1) An application for a protection order shall be made in accordance with Form 1 of the Schedule and shall be filed with the clerk. Application

(2) Proceedings in respect of an application shall be heard “in camera” unless the Court otherwise directs.

(3) Except as otherwise provided by this Act, the Summary Courts Act applies *mutatis mutandis* in respect of proceedings on an application. Chap. 4:20

9. The clerk shall fix a date for the hearing of an application for a protection order that is not more than seven days after the date on which the application is filed. Date of hearing

10. (1) Where an application has been filed with the clerk, a copy of the application together with notice of proceedings in accordance with Form 2 of the Schedule, shall, as soon as practicable, be served personally on the respondent. Service

(2) Where the application filed is in respect of a child or dependant, a copy of the application, together with notice of the date on which, and time and place at which, the application is to be heard shall, as soon as practicable, be served personally on—

- (a) the parent or guardian with whom the child or dependant normally resides or resides on a regular basis; or
- (b) where the child or dependant does not normally reside or does not reside on a regular basis with the parent or guardian—to the person with whom the child or dependant normally resides or resides on a regular basis.

(3) A notice of the proceedings which is issued and served under this section is deemed to be a summons that is duly issued and served under the Summary Courts Act and compels the respondent to appear in Court to answer the application as if it were a complaint to which that Act applies.

Chap. 4:20

(4) Any notice of proceedings issued under this section may be served by the applicant or his agent, and the Court may, at its discretion, receive proof of such service by affidavit in accordance with Form 3 of the Schedule.

Adjournment

11. Where the hearing of an application is adjourned by reason of the fact that the application and the notice of proceedings have not been served on the respondent, the date, time and place fixed by the Court for the adjourned hearing shall be the date, time and place stated in the notice of adjourned proceedings.

Procedure in  
the absence of  
the respondent

12. Where notice of the proceedings has been served on the respondent in accordance with section 10 and the respondent fails to appear in person at the Court at the time fixed for the hearing of the application of the protection order, the Court may—

- (a) proceed to hear and determine the matter in the respondent's absence; or
- (b) where the Court is satisfied having regard to the material before it, that it is appropriate to do so—adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the Court.

13. If, on the date of the hearing of the application, the respondent appears in Court, but neither the applicant nor the person on whose behalf the application is made appears either in person or by his attorney-at-law, the Court may—

Procedure in the absence of the applicant

- (a) dismiss the application;
- (b) having received a reasonable excuse for the non-appearance of either party—adjourn the hearing of the application upon such terms as the Court may think just; or
- (c) where the Court is satisfied having regard to the material before it, that it is appropriate for evidence to be given by affidavit—the Court may so direct, but the Court shall, on the application of any other party, order the attendance for cross examination of the person making any such affidavit.

14. (1) Where an application for a protection order has been made and the Court is satisfied on evidence that it is necessary, in order to ensure the safety of a prescribed person, pending the hearing and determination of the application, to make an interim protection order, the Court may make such order whether or not the application has been served on the respondent.

Interim orders

(2) An interim protection order—

- (a) shall restrain the respondent from engaging in the conduct on which the application is based;
- (b) may prohibit the respondent from being on premises on which a prescribed person resides; and
- (c) shall not contain any other prohibition or condition specified in section 5 unless the Court is satisfied by reason of the circumstances of the case that it is necessary to do so to ensure the safety of a prescribed person.

15. Where the Court proposes to make a protection order or an interim protection order and the respondent is before the Court, the Court shall before making the order explain to the respondent—

Explaining of proposed order or undertaking

- (a) the purpose, terms and effect of the proposed order;
- (b) the consequences that may follow if the respondent fails to comply with the terms of the proposed order; and
- (c) the means by which the proposed order may be varied or revoked.

**Duration of order**

16. (1) A protection order remains in force for such period not exceeding twelve months, as the Court specifies in the order.

(2) Where a protection order contains a prohibition of the kind specified in section 5, the Court may specify different periods, being periods none of which exceeds the period referred to in subsection (1), as the period for which each prohibition or condition is to remain in force.

(3) Subject to this section, an interim protection order remains in force for such period, not exceeding 14 days, as the Court specifies in the order.

(4) Where the Court adjourns the hearing of an application for a protection order and an interim protection order is in force in respect of the respondent, the Court may extend the period for which an interim order is to remain in force until the date fixed for the further hearing of the application.

(5) An interim protection order ceases to be in force—

- (a) when a protection order is made on that application and the respondent is present at the time the protection order is made;
- (b) when a protection order is made on that application but the respondent is not present at the time the protection order is made—when the protection order is served on the respondent; or
- (c) when the application is dismissed.

**Variation and revocation of order or undertaking**

17. (1) Where a protection order or an interim protection order is in force, a party to the proceedings in which the order was made may apply to the Court in the prescribed form for an order varying or revoking the order.

(2) On an application under subsection (1), the Court may by order vary or revoke the protection order or interim protection order.

(3) A copy of an application under this section shall be served personally on each person who was a party to the proceedings in which the original order was made.

(4) In determining whether to vary or revoke a protection order the Court shall have regard to the matters specified in section 6.

18. Where—

(a) a protection order or an interim protection order is made and—

Breach of  
protection order  
or undertaking

(i) the respondent was present at the time the protection order or interim protection order was made; or

(ii) where the respondent was not present at the time the protection order or interim protection order was made but the order has been served personally on the respondent; and

(b) the respondent contravenes the order in any respect,

the respondent is guilty of an offence punishable on summary conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding six months or both.

### PART III

#### BAIL

19. Where the Court is required to determine whether to grant bail in respect of an offence under section 18, the Court shall take into account, *inter alia*—

Criteria for bail

(a) the need to ensure that a prescribed person is protected from violence or harassment;

(b) where the defendant or the victim of the alleged offence has custody of a child—the welfare of that child;

(c) any hardships that may be caused to the defendant or to members of the family if bail is not granted.

Conditions  
of bail

20. (1) Where the defendant is charged with an offence under section 18, the Court, in granting bail, may also order that the recognisance be subject to such of the following further conditions as the Court considers appropriate—

- (a) that the defendant not harass or molest, or cause another person to harass or molest, a specified prescribed person;
- (b) that the defendant not be on the premises in which a specified prescribed person resides or works;
- (c) that the defendant not be in a locality in which are situated the premises in which a specified prescribed person resides or works; and
- (d) where the defendant continues to reside with a specified prescribed person—that the defendant do not enter or remain in the place of residence while under the influence of alcohol or a drug.

(2) Where a police officer believes on reasonable grounds that a person who has been admitted to bail subject to one or more of the conditions set out in subsection (1) has failed to comply with a condition of the recognisance, the police officer may apprehend the person without a warrant.

## PART IV

## MISCELLANEOUS

## Issue of warrant

21. Where a Magistrate is satisfied, by information on oath, that—

- (a) there are reasonable grounds to suspect that a person on premises has suffered, or is in imminent danger of physical injury at the hands of another person and needs assistance to prevent or deal with the injury; and
- (b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person,

the Magistrate may issue a warrant in writing authorising a police officer,

- (c) to enter the premises specified in the warrant at any time within 24 hours after the issue of the warrant; and
- (d) subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace or to protect life or property.

22. Where a police officer believes on reasonable grounds <sup>Arrest</sup> that a person has committed or is committing an offence under section 18 of this Act, he shall make an arrest without a warrant.

23. Where a person has been charged with a domestic violence offence and an application for a protection order is before the Court, the Court may exercise its power to grant the order, notwithstanding that the offence for which the person has been charged and the application for the protection order arise out of the same conduct. <sup>Criminal proceedings may be concurrent</sup>

24. (1) Where a protection order or an interim protection order is made or varied by the Court, the clerk shall arrange for an order in the prescribed form to be formally drawn up and filed in the Court. <sup>Form and service of order</sup>

(2) A copy of an order made under subsection (1) shall be served—

- (a) personally on the respondent;
- (b) on any other person who was a party to the proceedings; and
- (c) a police officer not below the rank of Sergeant in the district of the Court in which the order was made,

by the applicant or his agent.

(3) In subsection (1), a reference to an order in the prescribed form means—

- (a) in the case of the making of a protection order or an interim protection order—an order in accordance with Form 5 of the Schedule; and
- (b) in the case of the varying of a protection order or an interim protection order—an order in accordance with Form 6 of the Schedule.

Service  
other than  
personal service

25. Where it appears to the Court that it is not reasonably practicable to serve a copy of an application or an order personally, the Court may—

- (a) order that the copy of the application for the protection order or the copy of the protection order itself, be served by such other means as the Court thinks just; or
- (b) make an order for substituted service.

Jurisdiction

26. Nothing in this Act shall be regarded as removing any jurisdiction which the High Court may have in respect of the matters referred to under this Act.

Appeals

27. An appeal shall lie to the Court of Appeal from any order or judgment of the Court made or given under this Act and the procedure in respect of such an appeal shall be as is laid down in the Summary Courts Act.

Chap. 4:20

SCHEDULE

FORMS

Form 1

DOMESTIC VIOLENCE ACT, 1991

Section 8  
Section 14

APPLICATION FOR PROTECTION ORDER/INTERIM  
PROTECTION ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of.....

I .....  
(Name of Applicant)

of .....  
(Address)

.....  
hereby apply under section 8/section 14 of the Domestic Violence Act,  
1991 for a Protection Order/Interim Protection Order to be made by the

Magistrate of the district against.....  
(Name of Respondent)

who is.....  
(Specify relationship to the named respondent)

and who resides at.....  
(Specify address of respondent)

in respect of the following conduct.

Specify details of alleged conduct.

.....  
Applicant

Dated ..... 19.....

Form 2

DOMESTIC VIOLENCE ACT, 1991

Section 10

NOTICE OF PROCEEDINGS

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of.....

Between

..... *Applicant*

vs

..... *Respondent*

To the Respondent

An application under section 8/section 14 of the Domestic Violence Act, 1991 for a Protection Order/Interim Protection Order has been

made by.....  
against you. A copy of the application is attached. The application has been set down for hearing on , 19 , at (time) at (place).

If you do not appear in person at the hearing of the application, the Court may—

- (a) deal with the application in your absence; or
- (b) issue a warrant for your arrest to be brought before the Court.

.....  
*Clerk of the Magistrates' Court  
for the District*

Dated ....., 19.....

Form 3

DOMESTIC VIOLENCE ACT, 1991

Section 10

AFFIDAVIT FOR USE IN PROVING SERVICE OF PROCESS

REPUBLIC OF TRINIDAD AND TOBAGO

No. ....

Return of service of process in respect of Domestic Violence Offence for the Court.

Name of Applicant	Name of Respondent	Document served	Date of Service	Place of Service	Mode of Service

I do swear that the above Return of Service is true and in accordance with the facts of such Service.

(Signed) ..... (Deponent)

Sworn before me the above-named Deponent this.....

day of ....., 19.....

..... Magistrate or Justice (as the case may be)

Form 4

DOMESTIC VIOLENCE ACT, 1991

Section 17

APPLICATION FOR VARIATION OR REVOCATION OF PROTECTION ORDER OR INTERIM PROTECTION ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of.....

Between

..... Applicant

vs

..... Respondent

I ..... (Name of Applicant)

hereby apply for a variation/revocation of the Order made against

..... (Name of person against whom the Order was made)

on ..... by the ..... Court (a copy of which is attached to the said application) in respect of certain conduct or threatened conduct towards.....

..... (Name of person who is protected by Order)

There has been no previous proceedings in any Court in respect of the said order and I now ask for a revocation or variation of that order to be made.

Specify details of variation

..... Applicant

Dated ....., 19.....

**Form 5**

DOMESTIC VIOLENCE ACT, 1991

Section 24

PROTECTION ORDER OR INTERIM PROTECTION ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of.....

The Court having heard an application made by.....

.....  
*(Name of Applicant)*

towards .....  
*(Name of person to be protected)*

Now the Court this day orders that, for (period):

- 1. (Name of Respondent) not engage in the following conduct;
- 2. (Name of Respondent) not engage in conduct that constitutes a domestic violence offence;
- 3. (Name of Respondent) comply with the following prohibitions and conditions.

Specify Prohibitions and Conditions and any period or periods for which they may be imposed.

.....  
*Clerk of the Magistrates' Court of  
the District*

Dated ....., 19.....

Form 6

DOMESTIC VIOLENCE ACT, 1991

Section 24

ORDER VARYING PROTECTION ORDER OR INTERIM PROTECTION ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of.....

The Court, having heard an application made under section 17 of the Domestic Violence Act, 1991 by..... (Name of Applicant)

in respect of the conduct or threatened conduct of..... (Name of Respondent)

towards..... and having on (Name of person to be protected)

..... order that for (period): (Date of original order)

- 1. (Name of Respondent) not engage in the following conduct;
2. (Name of Respondent) not engage in conduct that constitutes a domestic violence offence;
3. (Name of Respondent) comply with the following prohibitions and conditions.

(Specify prohibitions and conditions and any other period or periods for which they are imposed).

Now the Court on the application of (Name of Applicant) this day orders that the Protection Order or (Interim Protection Order) be varied as follows:

(Specify details of variation)

Clerk of the Magistrates' Court of the District

Dated ....., 19.....

Passed in the Senate this 15th day of April, 1991.

R. CUMBERBATCH

*Acting Clerk of the Senate*

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all members of the Senate that is to say by the votes of twenty-six Senators.

R. CUMBERBATCH

*Acting Clerk of the Senate*

Passed in the House of Representatives this 1st day of July, 1991.

N. COX

*Acting Clerk of the House*

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House that is to say by the votes of twenty-three members of the House.

N. COX

*Acting Clerk of the House*

