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An Act to prevent domestic violence, protect complainants or survivors of domestic violence; to ensure investigation, prosecution and punishment of perpetrators of domestic violence; to provide treatment, rehabilitation of survivors and perpetrators, and other related matters.

Commencement: September 29, 2011
 Source: P.L. 2011-60

PART I - PRELIMINARY MATTERS

§901. Short title.

This Chapter may be cited as the Domestic Violence Prevention and Protection Act, 2011.

§902. Purpose.

The purposes of this Chapter are:

- (1) to prevent violence between family members and others who are in domestic relationships;
- (2) to recognize that domestic violence of any kind is not acceptable in the Republic;
- (3) to ensure investigation, prosecution and punishment of persons who commit domestic violence;
- (4) to provide support for complainants/survivors.

§903. Definition.

In this Chapter, unless the context otherwise requires:

- (a) “assault” has the same meaning as an offence defined under the Criminal Code.
- (b) “applicant” means:
 - (i) the person completing the application for a protection order on his or her behalf;
 - (ii) a person on whose behalf an application for a protection is made;
 - (iii) any other person who can apply for a protection order under section 912 of this Act
- (c) “care and custody” means a person who expressly or implicitly has, or under the circumstances should have had, physical custody or care of a child at the time;
- (d) “child” means an individual or person under the age of 18;
- (e) “complainant” means the person who is sought to be protected by a protection order, or temporary protection order under this Chapter;
- (f) “court” means any Community Court, District Court and High Court of the Marshall Islands;
- (g) “community court” means court which have local and community jurisdiction as described in Part V of the Judiciary Act 1983;
- (h) “domestic violence” has the meaning given by section 904 of this Chapter;
- (i) “economic abuse” includes:
 - (i) denying a spouse or partner access to joint finances;
 - (ii) failing to pay bills, provide food, or shelter or to provide for children’s needs when finance is available;
 - (iii) prohibiting a spouse or partner from seeking of engaging in paid work or attending educational or training, or engage in other income generating activities.
- (j) “partner” means a person to whom the person is not married by law or custom but with whom the person is living as a couple on a genuine domestic basic, or with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support or a domestic nature for the material benefit of the other, irrespective of whether or not they are living under the same roof.
- (k) “protection order” means an order made under section 906 of this Chapter .
- (l) “psychological abuse” means the perpetration of malicious and explicit nonphysical acts including but not limited to”
 - (i) intimidation;

- (ii) harassment;
 - (iii) damage to property; or
 - (iv) threats of physical abuse or sexual abuse
- In relation to children, including, causing or allowing a child to see or hear physical, sexual or emotional abuse of a person with whom the child has a domestic relationship;
- (m) “family member” means a partner, or a member of a person’s family including spouse, child, parent, grandparent, sibling, uncle, aunt, brother-in-law or sister-in-law, or uncle-in-law or nephew, niece or cousin; any other person who is treated by the person as a family member or a member of a same household including by customary adoption;
- (n) “respondent” means the person against whom a domestic violence prevention order is sought;
- (o) “spouse of a person” means an individual who”
- (i) is or has been married to the person under law or custom; or
 - (ii) is a biological parent of a child with the person (whether or not they are or have been married or are living or have lived together).
- (p) “sexual assault” has the same meaning under the Criminal Code of the Republic of the Marshall Islands;
- (q) “stalking” means the pursuit of somebody with the intend of intimidating “pursue” in relation to a person, includes:
- (a) to repeatedly communicate with the person, whether directly or indirectly and whether in words or otherwise;
 - (b) to repeatedly follow the person;
 - (c) to prevent the person from doing an act that the person is lawfully entitled to do, or to hinder the person in doing such an act
 - (d) to compel the person to do an act that the person is lawfully entitled to abstain from doing.
- (r) “temporary protection order” means an order issued by the Community Court under section 909 of this Chapter .

PART II - DOMESTIC VIOLENCE OFFENSE AND PENALTIES

§904. Domestic violence offenses.

- (1) Any person who:
- (a) assaults a family member;
 - (b) psychologically abuses or intimidates a family member;
 - (c) sexually assaults a family member;
 - (d) economically abuses a family member;
 - (e) continuously and unlawfully restrains the freedom of movement of a family member;
 - (f) stalks a family member;
 - (g) unlawfully behaves in an indecent manner to a family member;
 - (h) unlawfully damages or causes damage to a family member’s property, commits an act of domestic violence.
- (2) Any person who counsels or procures another ro commit any of the acts under subsection (1) commits an act of domestic violence.
- (3) Any person who threatens to commit any of the acts under subsection (1) commits an act of domestic violence.

§905. Domestic Violence Penalties.

- (1) Any person who commits domestic violence pursuant to section 904 (1) is liable to 6 months imprisonment or a fine not exceeding \$1,000 or both for the first offense, or liable to 2 years imprisonment or \$2,000 fine for a second or subsequent offense.
- (2) Any person who counsels or procures another person to commit domestic violence pursuant to section 904 (2) is guilty of an offense and is liable to 6 months imprisonment or a fine not exceeding \$1,000 or both.

PART III - DOMESTIC VIOLENCE PROTECTION ORDER**Division 1 - Power of court to grant protection order****§906. Power of court to grant a protection order.**

(1) A court may on application made under section 912 grant a protection order against a respondent if the court is satisfied on the balance of probabilities that:

(a) the respondent has committed an act of domestic violence against the complainant; or

(b) the respondent is likely to commit an act of domestic violence against the complainant; or

(2) In deciding whether to grant a protection order, the court shall take into account the following:

(a) all measures necessary to ensure that the complainant and any children, as well as other family members are secured;

(b) the well-being and accommodation needs of the complainant and children, as well as other family members are secured;

(c) any other matter that the court consider relevant and significant.

§907. Condition of a protection order: General

(1) if a court grants a protection order, it must include that:

(a) the respondent must be of good behavior towards the complainant and any person named in the order; and

(b) the respondent must not commit an act of domestic violence.

(2) the court may impose other conditions on the respondent in accordance with section 908 if it considers necessary in the circumstances, and or desirable in the interests of the complainant or any other family member.

§908. Conditions of a protection order: Specific

A court may include all or any of the following specific conditions in a protection order:

(1) Conditions relating to individual protection and harmonious family relationships.

(a) prohibiting the respondent or complainant from approaching within a certain distance of each other;

(b) prohibiting the respondent or complainant from approaching within a certain distance of each other while under the influence of alcohol, other forms of drugs or non-prescription drugs;

(c) prohibiting the respondent or complainant from being in or within a specified distance of specified premises, even though the respondent has a legal or equitable interest in the premises;

(d) prohibiting the respondent or complainant from communicating with each other by any means including telephone or electronically;

(e) prohibiting the respondent or complainant from causing another person to engage in conduct referred to in paragraphs (a) to (e).

(2) Conditions relating to weapon:

(a) prohibiting the respondent from possessing any weapons;

(b) directing that the respondent dispose of any weapon or that it be forfeited to the police for disposal by a police officer in accordance with the order.

(3) Conditions relating to property:

(a) prohibiting the respondent from damaging or taking property of the complainant or property jointly owned by the complainant;

- (b) directing the respondent:
 - (i) to return any specified personal property of the complainant; or
 - (ii) allow the complainant to recover, have access or to make use of any specified personal property
- (c) granting the complainant exclusive occupancy to a residence or specified part of a residence whether or not the resident is solely owned or leased by the respondent;
- (d) order the complaint to return specified personal property to the respondent.
- (4) Conditions relating to counseling and or mediation:
 - (a) order one or both parties to attend counseling; or
 - (b) order mediation; or
 - (c) recommends counseling and mediation; or treatment, rehabilitation and recovery.

Division 2 - Temporary Protection Order

§909. Temporary Protection Order.

(1) A Community, District or High Court may on application made under section 912 grant a temporary protection order if the court is satisfied that:

- (a) the complainant or a child in their care and custody is in danger of an act of domestic violence; and
- (b) because of distance, time or other circumstances of the case, it is not practicable to apply to a court.

(3) A Court may grant a temporary protection order whether or not the respondent or complainant is in court. If the respondent or complainant is unable to attend or appear, the court may accept affidavit or hears any evidence on behalf of the complainant.

(4) A temporary protection order made under this section shall remain in force for not more than 28 days, and may be renewed by application of the complainant or by consent of the parties for a further period of 28 days. A temporary protection order may stay in effect in accordance with section 910(2)(c).

§910. Further hearing by a Court.

(1) If a temporary protection order is granted by a Court in accordance with section 909(3), the court shall issue a summons for the respondent to appear at a specified date before expiration of the temporary protection order for a further hearing.

- (2) At a further hearing, a Court may confirm:
 - (a) make the temporary protection order permanent;
 - (b) revoke the temporary protection order permanent;
 - (c) continue the hearing and order that the temporary protection order remain until completion of the next hearing.
 - (d) vary the temporary protection order.

Division 3 - Judicial Separation Orders and other Domestic Relation Orders.

§911. Judicial Separation Order.

(1) A court may on application by the applicant grant a judicial separation order, based on the circumstances of the case and, on any grounds on which a petition for divorce may have been presented under the provisions and procedures of the Domestic Relations Act, 26 MIRC Ch.1.

(2) Where the court grants a separation order in accordance with this section, it shall no longer be obligatory for the parties to cohabit with each other.

(3) On application for judicial separation order, the court may grant other orders regarding custody of and access to children, maintenance of the complaint, financial support for children, occupation of and distribution of real and personal property.

Division 4 - Application for Protection Orders.

§912. Who can apply for a Protection Order?

An application for a Protection Order may be made by:

- (a) the complainant; or
- (b) other family member or a friend of the complainant if, the complainant has given his or her oral or written consent for that friend to make the application;
- (c) a qualified legal practitioner on behalf of the complainant; or
- (d) any national or local police officer on behalf of the complainant; or
- (e) any national or local government prosecutor; or
- (f) any advocate or counselor or social worker from any crisis or rehabilitation center.

§913. Application to a court for Protection Order.

(1) An application to a court for a protection order may be made orally, by telephone or by radio, in writing, by facsimile, telex or email, or any other mode as required by the court rules and procedures.

(2) If the application is made in a non-written form, the court must reduce the application to writing.

(3) An application for a temporary protection order shall be made as part of the application and must state the grounds for the application for the temporary protection order.

(4) In the case of temporary protection order, an application may be made *ex parte*.

(5) Where possible evidence supporting the application should be taken under oath.

Division 5 - Offense and restitution.

§914. Breach to protection order.

A person who breaches the protection order commits an offense and shall upon conviction be punishable by a term of imprisonment of 6 months or a fine of \$1,000 or both.

§915. Restitution.

(1) A court may make an order that the respondent pay restitution to the complainant if he or she as a result of an act of domestic violence suffered:

- (a) personal injury; or
- (b) damage to property; or
- (c) financial loss.

(2) The court may take into account the following, in making an order for restitution to a complainant:

- (a) any pain and suffering;
- (b) any physical or mental injury;
- (c) cost of any medical treatment incurred;
- (d) any loss of earnings;
- (e) the value of any property that has been taken, destroyed

or damaged;

(f) any necessary and reasonable expenses incurred as a result of separation which results from the act of the domestic violence, including:

- (i) accommodation expenses; and
- (ii) moving and transport expenses; and
- (iii) expenses of setting up a separate household, including housing loan repayments or rent for as long as the court considers reasonably necessary.

PART 4 - PROCEDURAL MATTERS RELATING TO PROTECTION ORDER

Division 1. Application and service.

§916. Absent respondent.

(1) Subject to subsection (2), a court may proceed to hear and determine an application for a protection order if the respondent is not present.

(2) The court must be satisfied that:

- (a) the respondent has been served with a summons to appear at the hearing;

- (b) the respondent is required to appear at the hearing;
- (c) having regard to the circumstances of the case, all reasonable efforts have been made to give the respondent notice of the hearing.

§917. Service of application and issue of summon or warrant.

On application made to a court under section 912 for a protection order, whether or not an application for temporary protection order is made the court shall issue a summon directing the respondent to appear at the time and place set out in the summon.

§918. Service of Protection Orders.

- (1) If a Protection Order or a Temporary Protection Order is made by a court, the court must:
 - (a) explain the order to the complainant and the respondent in the language that he or she understands;
 - (b) cause a copy of the order to be served personally on the complainant and on the respondent; and
 - (c) in the absence, cause a copy of the order to be given or forwarded to the police officer in charge to serve on the complainant or respondent, or to use alternative forms of service including radio.

Division 2. - Evidence and burden of proof.

§919. Evidence.

The Rules of Evidence contained in the Evidence Act, 28 MIRC Ch. 1, do not apply to an application for a protection order or temporary protection order.

§920. Spouse may give evidence.

If a person is charged with an offense under this Chapter, respondent's spouse is a competent but not a compellable witness in any legal proceedings in connection with the offense.

PART 5 - MISCELLANEOUS

§921. Variation and revocation of orders.

- (1) A court may vary or revoke a protection order upon application by any person whom the order applies.
- (2) Before the court varies or revokes a protection order, it must:
 - (a) in the case of protection order, have regard to conditions in section 907 and 908;
 - (b) in the case of temporary protection order, consider whether the complainant is in danger of person injury.

§922. Consent orders.

On application for protection order, a court may grant protection order with the consent of the complainant and the respondent.

§923. Collaborative Reporting.

(1) Notwithstanding any other law or procedures concerning confidentiality to the contrary, any person, who in their professional or official capacity, have reason to believe that an act of domestic violence has occurred to a person or a child, or there is evidence to believe that such person is at risk to domestic violence, shall immediately report the matter to a Police, or bring the matter before the court pursuant to section 912.

(2) For the purposes of this section, "person in their professional or official capacity" includes:

- (a) licensed or registered health or medical professionals including medical examiners or coroners, counselors, social workers or case managers;
- (b) employee or officers of public or private schools;

- (c) employee or officers of law enforcement agencies or institutions;
- (d) employee or officers of any public or private agency providing recreational, sports activities or spiritual welfare including churches.

§924. No-drop policy.

(1) A police officer upon receiving reports of domestic violence cases shall immediately investigate and press charges if appropriate.

(2) A prosecutor shall proceed with the case in court, before proceeding however, the prosecutor must:

- (a) believe that an act domestic violence has been committed;
- (b) have sufficient evidence to proceed with the case.

§925. Emergency assistance.

(1) Nothing in this Chapter shall prohibit a local or national police officer from rendering assistance to any person who alleges that he or a minor child has been the victim or survivor of domestic violence.

(2) The local or national police officer responding to the request for assistance shall as soon as practicable and acting within the law take whatever steps are reasonably necessary to protect the complainant or survivor from harm, and may advise the complainant of the sources of shelter, medical care, counseling and other services.

§926. Domestic Violence Prevention and Protection Fund.

(1) A Domestic Violence Prevention and Protection Fund is hereby established. The Fund shall be a fund within the National Treasury and under the control and supervision of the Ministry of Finance, which shall provide for its administration in accordance with the Financial Management Act of 1990.

(2) All fines imposed and collected under this Chapter, and funds appropriated by the Nitijela for the purpose of the Fund, or any grants and gifts received for the purpose of the fund shall be deposited into the Fund.

(3) The Secretary of Internal Affairs shall make requests for withdrawn of funds to assist domestic violence center or safe house for women and children, community education program, counseling program, transportation services and call forwarding during the night or any other services in accordance with the purpose for which the fund in created.

(4) The fund shall be subject to audit by Auditor General as provided under Article VIII, section 15 of the Constitution.

§927. Central data collection, monitoring, reporting etc.

The Secretary of the Ministry of Internal Affairs shall be responsible for:

- (a) collection and maintaining data of reported domestic violence cases;
- (b) monitoring, evaluating and providing surveillance to domestic violence vases;
- (c) reporting and providing necessary activities relating to domestic violence cases.

§928. Effective date.

This Chapter shall take effect on the date of certification in accordance with the Constitution and the Rules of Procedures of the Nitijela.