NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
39TH CONSTITUTION REGULAR SESSION, 2018

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

DOMESTIC PREVENTION AND PROTECTION (AMENDMENT) ACT 2018

Index

Section **Page**

§101. Short title. 3
§102. Amendment. 3
§103. Effective date. 14

NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
39TH CONSTITUTION REGULAR SESSION, 2018

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

DOMESTIC PREVENTION AND PROTECTION (AMENDMENT) ACT 2018

AN ACT to amend the Domestic Violence Prevention and Protection Act, 2011, 26 MIRC Chp. 9.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

§101. Short title.

This Act may be cited as the Domestic Prevention and Protection (Amendment) Act 2018.

§102. Amendment.

The Domestic Violence Prevention and Protection Act, 2011, 26 MIRC Chp. 9, amended to read as follows:

§901. Short title.

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

§902. Purposes.

(1) To prevent violence between family members and others who are in domestic relationships;

(2) To emphasize that domestic violence is not acceptable in the Republic;

(3) To ensure the investigation~~,~~ of claims of domestic violence and the prosecution and punishment of persons who commit domestic violence; and

(4) To provide support for victims of domestic violence.

(5)

§903. Definitions.

As used in this Chapter, unless the

(1) "assault"—means intentionally, knowingly or recklessly causing or attempting to cause bodily injury to another person, or negligently causing bodily injury to another person with a deadly weapon;

(2) "child" means a person under 18 years of age;

(3) "court" means any Community Court~~,~~ or District Court or the High Court;

(4) "domestic partner" means a person who is living with the subject person as a couple on a genuine domestic basis, or a person who is in a relationship with the subject person where one provides or both provide personal or financial commitment and support of a domestic nature for the benefit of the other, even if they are not living together;

(5) "economic abuse" means:

(a) denying a spouse or domestic partner access to joint finances;

(b) failing to pay bills, provide food, provide shelter or provide for children's needs when money is available~~;~~ for such things; or

(c) prohibiting a spouse or domestic partner from

seeking engaging in paid work or attending education or training, or engaging in other income generating activities.;

(6) "family member" means immediate family members which includes, a spouse, child and parent,

(7) "petition" means a petition for a protection order;

(8) "petitioner" means the person for whom a protection order is sought;

(9) "protection order" means an order issued by a court pursuant to Section 906 of this Chapter.;

(10) "psychological abuse" means the perpetration of malicious and explicit nonphysical acts–such as intimidation,–harassment, damage to property and threats of physical abuse or sexual abuse, and in relation to children, includes 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;

(11) "respondent" means the person against whom a protection order is sought;

(12) "spouse" includes the current spouse of the subject person, a former spouse of the subject person, and the other biological parent of a child for whom the subject person is also a biological parent;

(13) "sexual assault"includes every act of a sexual nature made illegal by the Criminal Code; and

(14) "to stalk" means to pursue or harass or persecute another person by means of unwanted or obsessive attention.

§904. Domestic Violence Offenses.

(1) A person commits an act of domestic violence if the person:

(a) assaults a family member;

(b) psychologically abuses 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; or

(h) unlawfully damages or causes damage to a family member's property.

(2) Any person who solicits or causes another to commit any of the acts identified in subsection (1) commits an act of domestic violence.

(3) Any person who threatens to commit any of the acts identified in subsection (1) commits an act of domestic violence.

§905. Domestic Violence Penalties.

Any person who commits an act of domestic violence shall be guilty of an offense, and upon conviction for a first offense, shall be liable to pay a fine not to exceed $400 or to serve a term of imprisonment not to exceed six months, or both. Upon conviction for a second or subsequent offense, the person shall be liable to pay a fine not to exceed $4,000 or to serve a term of imprisonment not to exceed 35 months, or both.

§906. Power of Court to Grant Protection Order.

(1) A court may grant a protection order against a respondent if it is shown by a preponderance of the evidence that:

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

(b) the respondent is likely to commit an act of domestic violence against the petitioner.

(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 petitioner and any children and other family members are secured~~d~~;

(b) the well-being and accommodation needs of the and any children and other family members; and

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

§907. Mandatory Conditions of Protection Order.

Each protection order shall:

(1) require the respondent to be of good behavior towards the petitioner and any other person identified in the protection order; and

(2) require the respondent not to commit an act of domestic violence.

§908. Permissive Conditions of Protection ~~o~~Order.

Each protection order may:

(1) prohibit the respondent from approaching within a certain distance of the petitioner and any other person identified in the protection order;

(2) prohibit~~ing~~ the respondent from approaching within a certain distance of the petitioner and any other person identified in the

protection order while under the influence of alcohol, other forms of drugs, or non-prescription drugs;

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

(4) prohibit the respondent from communicating with the petitioner and any other person identified in the protection order;

(5) prohibit the respondent from soliciting or causing another person to engage in conduct identified in subsections (1) through (4).

(6) prohibit the respondent from possessing any weapons;

(7) require the respondent to dispose of any weapon or forfeit any weapon to the police for;

(8) prohibit the respondent from damaging or taking the privately or jointly owned property of the petitioner;

(9) require the respondent to return any specified personal property to the petitioner; or allow the petitioner to recover, have access to, or make use, of any specified personal property;

(10) grant the petitioner exclusive occupancy of a residence or specified part of a residence whether or not the residence is solely owned or leased by the respondent;

(11) order or recommend that the respondent or petitioner or both attend counseling, mediation; treatment, rehabilitation or recovery; or

(12) include any other order the court deems necessary and appropriate.

§909. Temporary Protection Order.

(1) A court may–issue a temporary protection order without notice to the respondent.

(2) If the petitioner is unable to appear in court, the court may accept affidavit or hearsay evidence on behalf of the petitioner.

(3) A temporary protection order shall remain in force for not more than 28 days, but may be extended upon motion of the petitioner or by consent of the parties for a further period of 28 days.

§910. Further Hearing.

(1) If the court issues a temporary protection order, the court shall include an order requiring the respondent to appear for a further hearing at a specified date and time before the expiration of the temporary protection order.

(2) At a further hearing the court may:

(a) issue a permanent protection order;

(b) modify or rescind the temporary protection order; or

(c) continue the hearing and order that the temporary protection order remain in effect until completion of the next hearing.

(3) The court may proceed in the respondent's absence if the respondent has been served with an order to appear.

§911. Reserved.

§912. Who Can File Petition.

A petition may be filed by:

(1) petitioner;

(2) person authorized by the petitioner to file the petition;

(3) a qualified legal practitioner on behalf of the petitioner;

(4) a police officer on behalf of the petitioner;

(5) a prosecutor; or

(6) an advocate or counselor or social worker from any crisis or rehabilitation center.

§913. Form and Content of Petition.

(1) A petition may be made orally, in writing,or by any other method allowed by court rules.

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

(3) At a minimum, the petition must include the identity of the petitioner and the respondent, describe the relationship between the petitioner and the respondent, identify any other persons for whom protection is sought, describe the act(s) of domestic violence committed by the respondent, and identify the types of protection sought.

§914. Violation of Protection Order.

Any person who violates a protection order shall be guilty of an offense, and upon conviction for a first offense, shall be liable to pay a fine not to exceed $400 or to serve a term of imprisonment not to exceed six months, or both. Upon conviction for a second or subsequent offense, the

person shall be liable to pay a fine not to exceed $4,000 or to serve a term of imprisonment not to exceed 35 months, or both.

§915. Restitution.

(1) A court may order the respondent to pay restitution to the petitioner if the petitioner, as a result of an act of domestic violence, suffered:
personal injury;
damage to property; or
financial loss.

(2) The court may take into account the following, in making an order for restitution:
(a) any pain and suffering;
(b) any physical or mental injury;
(c) the cost of any medical treatment incurred;
(d) any loss of earnings;
(e) the value of any property that was taken, destroyed or damaged; and
(f) any necessary and reasonable expenses incurred as a result of separation arising from the act of the domestic violence, including:
(i) accommodation expenses;
(ii) moving and transport expenses; and
(iii) the expenses of setting up a separate household, including housing loan repayments or rent for as long as the court considers reasonably necessary.

§916. Reserved.

§917. Reserved.

§918. Service of Protection Orders.

If a temporary protection order or protection order is, the court shall:

(1) if the petitioner or respondent are present, explain the order to them in a language they understands; and

(2) cause a copy of the order to be served personally on the respondent;

§919. Reserved.

§920. Reserved.

§921. Modification and Rescission.

(1) A court may modify or rescind a protection order upon motion of any person to whom the order applies.

(2) Before the court modifies or rescinds a protection order, it must:

consider the safety of all persons protected by the order.

§922. Consent Orders.

A court may issue a protection order pursuant to the consent of the petitioner and the respondent.

§923. Collaborative Reporting.

(1) Notwithstanding any other law or rule or procedure concerning confidentiality to the contrary, any person, who in his/her professional or official capacity, has reason to believe that an act of domestic violence has been committed, or who has evidence to believe that a person is at risk of domestic violence, shall immediately report the matter to the police or the court.

(2) The following persons have a duty to report pursuant to subsection (1):

(a) licensed or registered health care professionals, including medical examiners or coroners, counselors, social workers or case managers;

(b) employees or officers of public or private schools;

(c) employees or officers of law enforcement agencies or institutions; and

(d) employees or officers of any public or private agency providing recreational or sports;

except for those persons subject to a penitent-clergy privilege, employees or officers of a church.

§924. Duty to Investigate and Prosecute.

(1) Upon being assigned to investigate a report of domestic violence, a police officer shall immediately investigate the claim. If the officer determines that an act of domestic violence has been committed, the officer shall, without undue delay, forward the results of the investigation to the appropriate prosecution agency or court.

(2) If the prosecutor assigned to prosecute an alleged act of domestic violence determines that the allegation is supported by sufficient evidence, he/she shall, without undue delay, file the charge in an appropriate court.

§925. Emergency Assistance.

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

(2) The 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 victim(s) from harm, and may advise the victim(s) of 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, or all funds appropriated by the Nitijela for the purpose of the Fund, and any grants and gifts received for the purpose of the Fund shall be deposited into the Fund.

(3) The Secretary of the Ministry of Culture and Internal Affairs shall make requests for withdrawal of funds to assist domestic violence centers or safe houses for women and children, community education programs, counseling programs, transportation services, call forwarding services, or any other services in accordance with the purpose for which the Fund is 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, and Reporting.

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

(1) collecting and maintaining data of reported domestic violence cases; and

(2) monitoring, evaluating, and reporting the progress and outcomes of, domestic violence cases.

§103. 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.

CERTIFICATE

I hereby certify:

1. That Nitijela Bill No: 151ND1 was passed by the Nitijela of the Republic of the Marshall Islands on the 29th day of March 2019; and

2. That I am satisfied that Nitijela Bill No: 151ND1 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 18th day of April 2019.

Hon. Kenneth A. Kedi
Speaker
Nitijela of the Marshall Islands

Attest:

Morean S. Watak
Clerk
Nitijela of the Marshall Islands