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1 NITIJELA OF THE MARSHALL ISLANDS,

2 23rd CONSTITUTIONAL REGULAR SESSION, 2002, BILL NO: 92 N.D.2

3
4 P.L. 2002-64
5

6
7 An Act
8

9 To provide for a comprehensive set of procedures to govern
10 the adoption of children in the courts of the Republic of
11 the Marshall Islands.
12

13 **BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS:**

14 Section 1. Short Title.

15 (1). This Act may be cited as the Adoptions Act, 2002.
16

17 Section 2. Applicability

18 (1). This Act applies to the adoption of all resident
19 children in the Marshall Islands, except;

20 (a). to adoptions finalized in accordance
21 with Marshallese customary laws; or

22 (b). to the confirmation of adoptions finalized
23 in accordance with Marshallese customary laws, in the
24 High Court of the Republic of the Marshall Islands.

25 (c). to adoptions that have been granted prior to
26 the effective date of this Act;

27 (d). to adoption proceedings that have been filed

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1
2 prior to the effective date of this Act.

3 Section 3. **Definitions**

4 (1). As applied in this Act:

5 (a). "abuse" means, to inflict intentional,
6 physical and emotional harm on the child causing
7 noticeable injury to the child or attempting to cause
8 such injury;

9 (b). "Sexual Assault" means, to inflict physical,
10 mental and emotional harm in the child by physical
11 conduct that is sexual in nature, against the person
12 of the child;

13 (c). "abandonment" means the failure to provide
14 financial support to the child; or knowingly failing
15 to provide a normal parent-child relationship with the
16 child for a period of six or more months, and
17 deliberately failing to arrange for the provision of
18 care and supervision of a child by another adult or
19 adults who are willing and able to care for the child.

20 (d). "adoption" means the termination of all
21 parental rights and responsibilities of the natural
22 parent(s) to their child and attaching such rights and
23 responsibilities to the adoptive parents.

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1 (e). "agency" means any domestic or foreign
2 government or state social affairs services entity
3 duly empowered by law to place minor children for
4 adoption, including foreign adoptions, including duly
5 licensed adoption agencies;

6 (f). "birth family" means members of the child's
7 biological family on both paternal and maternal sides,
8 and includes the birth parents, birth grandparents and
9 birth aunts and uncles of the subject child in an
10 adoption proceeding.

11 (g). "Central Adoption Authority" means the
12 agency created under Section 5 herein.

13 (h). "child" means, for the purposes of this Act,
14 a person younger than 16 years of age.

15 (i). "court" means the High Court of the Republic
16 of the Marshall Islands.

17 (j). "Marshallese child" means a child who is the
18 off spring of at least one Marshallese citizen and
19 who is resident of the Republic.

20 (k). "marriage" refers to the relationship
21 between a man and a woman who are a legally
22 acknowledged couple either through law or custom of
23 their country of residence.

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(l). "natural parent" means the biological father or mother of the child to be adopted;

(m). "Republic" means the Republic of Marshall Islands.

(n). "resident adoption" means the adoption of a child by petitioners who are resident in the Republic at the time of the adoption.

(o) "solicitation" means active encouragement or pursuit of a natural parent, to coerce his or her consent to the adoption of their child, by conduct that is prohibited under this Act or any other Act.

(p). "Ministry" means the Ministry of Internal Affairs.

Section 4. **Exclusive Jurisdiction of the High Court.**

The High Court of the Republic of Marshall Islands shall have original and exclusive jurisdiction to grant an adoption pursuant to this Act.

Section 5. **Establishment of Central Adoption Authority**

(1) The Central Adoption Authority is hereby established.

(2). The Authority shall be created within the Ministry of Internal Affairs, and shall be responsible for

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1 the supervision of all adoption proceedings in the Republic
2 of the Marshall Islands.

3 Section 6. **Duties of the Authority**

4 (1). The Central Adoption Authority shall;

5 (a). Serve as a central receiving point for or all
6 referrals of children to be adopted;

7 (b) conduct investigations into the backgrounds
8 and circumstances under which an adoption is being
9 proposed by the natural parents;

10 (c). Provide case management services to natural
11 parents and children, including:

12 (i). Birth parent counseling as to options
13 for realistic and effective parenting, including
14 the possibility of traditional or foreign
15 adoption;

16 (ii) Facilitating meetings with both sides
17 of the extended family to explore options for the
18 child;

19 (iii) Pre-natal nutrition and medical
20 referral services to the birth mother in
21 cooperation with other government agencies,
22 departments, or ministries, as appropriate;

23 (iv). Coordinating with licensed agencies in
24 monitoring the quality of applications, and

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1 providing a recommendation to the Court on

2 individual applications,

3 (v) Facilitating the medical, nutritional,
4 and emotional needs of the children by the
5 provision of appropriate placements and services
6 during the process of adoption.

7 (vi). For children, whose consent to
8 adoption is required, provide counseling to
9 ascertain the child's wishes regarding adoption.

10 (d). Monitor post-adoption progress in coordination
11 with the foreign agencies;

12 (e). Providing a resource to adoptive parents for
13 post-adoption consultation on issues related to the
14 adoption.

15 Section 7. Legal Representation of the Authority

16 The Central Adoption Authority shall be represented
17 by the office of the Attorney General in all court
18 appearances.

19 Section 8. Adoption of resident Children

20 The adoption of resident children in any manner other
21 than as provided for under this Act, shall not be valid.

22 Section 9 The Controlling Consideration

23 (1). In all petitions for adoption of children under
24 this Act, the Court shall consider first and foremost the

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1 "best interests" of the child.

2 (2). In determining the issue of the "best interests
3 of the child", the court shall consider all the
4 circumstances as set forth under Section 26, and any other
5 matters the court considers relevant to the issue.

6 Section 10 **Solicitation unlawful**

7 (1). It shall be unlawful and a violation of this Act
8 for any person to:

9 (a). Solicit the birth parents of a child,
10 guardians of a child, or members of their families and
11 other relatives, to put up a child for adoption;

12 (b). to facilitate contact between the
13 prospective adoptive parents and the child's natural
14 parents or guardians prior to the signing of the
15 consent by the natural parents.

16 (c). Knowingly, encouraging, advising or
17 facilitating a person to travel outside the Republic
18 for purposes of placing that person's child or
19 children, whether born or unborn, for adoption.

20 Section 11. **Eligibility to petition for adoption.**

21 (1) Any person of the age of majority, whether
22 married or single, or a husband and wife jointly, may
23 petition to adopt a child who is not their biological
24 child.

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(2). A petitioner shall be at least 15 years older than the child to be adopted.

(3). Same sex couples or an individual living as a member of a same sex couple is, not eligible to petition the court for the adoption of any children.

Section 12 **Adoption Petition**

(1). All proceedings for adoption shall be commenced by a petition signed and sworn to by the petitioner(s).

(2). An adoption petition shall contain, at the minimum, the following information:

(a). name and address of the petitioner(s);

(b). the names of the child and biological parents(s);

(c). date and place of the child's birth;

(d). date and place of marriage of the petitioners, if applicable;

(e). the requested new name for the child, if any.

(3). The adoption petition shall be accompanied by the following documents:

(a). a certified copy of the Certificate of Live Birth of the Child;

(b). an Affidavit of Parentage, executed by one or both of the natural parents. When the child to be adopted does not live with at least one of the

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1 biological parents, the names of the guardian(s) shall
2 be set out in the affidavit.

3 (c). an Affidavit of Relinquishment of Parental
4 Rights and Consent signed by the natural parent(s) (or
5 guardian(s) where applicable).

6 (d). an Affidavit executed by the Head of the
7 Central Adoptions Authority or his/her designee,
8 certifying that the natural parent(s) or guardian(s)
9 have been counseled in all aspects of the adoption
10 process, and its full legal ramification have been
11 explained to them clearly, in the appropriate
12 language.

13 (e). a properly conducted home study evaluation
14 of the adoptive family which, at minimum, shall
15 include:

16 (i). the educational background and any
17 future plans for further education;

18 (ii). employment history, current status and
19 any changes in the foreseeable future;

20 (iii). income history and future
21 projections, if available;

22 (iv). history of prior marriages, if any,
23 including the basis for divorce, the age and
24 gender of each child, the history of child

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1 support for and current relationship with those
2 children;

3 (v). history of current marriage, if
4 applicable; age and gender of each child already
5 in the home; and detailed report of any prior
6 adoption experiences;

7 (vi). participation in any civic or
8 religious activity of prospective parents; and

9 (vii). A nation wide criminal background
10 search in the country of residence or citizenship
11 of the prospective parent(s), and locally in the
12 Republic of the Marshall Islands jurisdiction

13 (viii). an original child abuse records
14 search on the petitioners; or, where such is not
15 available, a report by the local child welfare
16 agency;

17 (f). a certified copy of the petitioner's
18 marriage certificate, if married, regardless of
19 whether petitioning jointly or individually;

20 (g). a certified birth certificate of each
21 petitioner;

22 (h). a photocopy of each petitioner's passport;

23 (i). an original signed letter from the
24 petitioner's primary physician who has a history of

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1 treating the petitioner for at least 2 years,
2 attesting to the physical and mental health and
3 capability of the petitioner to adopt and raise a
4 child and clearing the adoptive parents of any
5 communicable diseases;

6 (4) In the case where the prospective parents are
7 citizens and domiciles of a foreign country, the Home Study
8 Report anticipated by section 12(3)(e) herein, shall be
9 conducted by the appropriate or responsible state or
10 government agency in their country of citizenship or
11 domicile.

12 (5). In the case of a resident adoption, the Home
13 Study Report anticipated by section 12 (3)(e) herein, shall
14 be conducted by the Central Adoption Agency.

15 Section 13. **Consent to Adoption**

16 (1). Unless consent is specified as unnecessary under
17 respective subsections hereof, a petition to adopt a child
18 may be granted only if the following consents have been
19 obtained.

20 (a). consent of the natural parents(s);

21 (b). if the child to be adopted is not in the
22 custody or care of either parent, consent of the
23 person(s) who have primary guardianship or custody of

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the child pursuant to a court Order or to Marshallese culture.

Section 14. **Duty to Advise natural parents/guardians**

(1) The Court shall ensure that the person(s) whose consent is required, fully understand the consequences of the adoption.

(2) In all phases of the adoption process, the natural parent(s) or guardian(s) shall be entitled to the services of the Central Adoption Authority.

(3). The Central Adoption Authority may however recommend legal representation for the natural parent(s) or guardians(s) of the child depending on the circumstances of each case.

(4). In all phases of representation the natural parent(s) or guardian(s) of a child shall have interpretation of the proceedings their primary language.

(5). All documents presented to the natural parent(s) or guardian(s) shall be translated into his or her primary language. If the natural parent(s) or guardian(s) are illiterate, they shall have a thorough explanation of the contents of the documents, including the consent documents, by an officer of the Central Adoption Authority or an attorney, prior to signing any such document. The Head of the Central Adoption Authority or his designee, shall

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1 attest to this fact in the affidavit referred to in section
2 12 (3) (d) above.

3 Section 15. **Certification by Central Adoption Authority**

4 (1). In addition to the matters referred to under
5 section 12 (3) (d) and section 14(5) above, The Head of the
6 Central Adoption Authority shall also certify that;

7 (a). the natural parent(s) or guardian(s) are not
8 in a state of mind which would raise the question of
9 judgment or clarity of thought; and

10 (b). the natural parent(s) or guardian(s)
11 understand the permanency of adoption, and that
12 neither of them was acting under duress, coercion, or
13 belief of financial, material, or opportunity gain
14 from the adoption-of the child.

15 (2). No valid consent may be obtained if either of the
16 natural parent(s) or guardian(s) is under the influence of
17 mind-altering drugs, alcohol, or other chemicals which may
18 impair judgment or clarity of thought.

19 Section 16. **Consent not Required**

20 (1). Notwithstanding the consent provisions above, it
21 is not necessary to obtain the consent of the following
22 persons;

23 (a). In the case where the child to be adopted
24 was conceived out of wedlock, and the parent who does

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1 not have custody of the child has failed to
2 acknowledge the child, provide for the child, assist
3 in the upbringing of the child, or develop a
4 relationship with the child, such parent's consent is
5 not required.

6 (b). In the case where the child to be adopted
7 was born out of wedlock and the natural father of the
8 child could not be identified or determined, the
9 consent of such a father is not required;

10 (c). Where the child was conceived as a result of
11 a sexual assault or any other sex crime against the
12 natural mother, the assailant's consent is not
13 required

14 (d). in the case where a natural parent is unable
15 to care for the child by reason of severe mental
16 illness the consent of such parent is not required.
17 Such mental illness may be established by the
18 testimony of a qualified physician.

19 (e). In the case where the natural parents
20 have both abandoned the child and the child is in
21 the custody or guardianship of another person, such
22 parents' consent is not required.

23 (f). in the case where the natural parent(s)'
24 rights have been terminated by a court Order, such

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parents' consent is not required.

Section 17 **Revocation of Consent**

(1) The natural parent(s) or guardians, as the case may be, may revoke consent to the adoption at any time during the proceedings, provided that such revocation is communicated to the court prior to the filing of the order granting the adoption.

(2). Such revocation may be effected by;

(a). the delivery of a written revocation to the Court at any time during the adoption proceedings, and prior to the filing of the Order granting the adoption;

(b). by orally revoking the consent in open court, at any time during the proceedings prior to the filing of the Order granting adoption.

Section 18. **Children Eligible for Adoption**

In the case of a resident adoption, the petitioners may petition to adopt any child, provided that such a child has not attained the age of 16 years.

Section 19. **Consent and Representation of the Child**

(1). Depending on the circumstances of each particular case, the court shall have the discretion to appoint an attorney or guardian ad litem, to act for and on behalf of the interests of the child, who is the

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1 subject of the adoption proceedings.

2 (2). If the child to be adopted is twelve years
3 of age or older, that child shall be examined by the Court
4 as to the child's understanding of the adoption, prior to
5 the child issuing his or her consent.

6 (4). If a child of twelve (12) years or older
7 objects to the adoption, such objection is controlling.

8 (5). If a child who is younger than twelve years
9 of age objects, the Court shall determine whether the
10 child understands the consequences of his objection and if
11 the court so determines, then the objection is controlling.

12 (6) In all other instances the best interests of the
13 child shall be the controlling consideration.

14 Section 20. **Determination of Consent**

15 Where necessary, a motion for a
16 determination that consent of a parent is not necessary,
17 pursuant to the preceding provisions of this Act shall be
18 heard by the Court prior to the final hearing, at the
19 instance of the petitioner(s).

20 Section 21. **Certification of Readiness for Final**
21 **Hearing.**

22 (1). Upon complete filing of the contents of the
23 petition and the accompanying documents as required in

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Section 12 above, the Court may, upon motion of the
petitioner(s):

(a) Issue a Certification of Readiness for Final
Hearing;

(b) Order further investigation on specified
matters, or;

(2). The issuance of a Certificate for Readiness for
Hearing is not a substitute for competent proof of all
required evidence at final adoption hearing.

Section 22. **Notice of Hearing.**

(1). Notice of all court hearings in the adoption
proceedings shall be served;

(a). on the natural parent(s) or guardian(s) of
the child to be adopted;

(b). on the prospective adoptive parents;

(c). on the child if 12 years or older

(d). on the Central Adoption Authority,
at least 7 days prior to the final hearing.

(2). Voluntary appearance in court shall constitute a
waiver of notice.

Section 23. **Waiting period-Final Hearing**

No final hearing of the adoption shall be held until
at least thirty (30) days have elapsed since the signing of

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1 the Affidavit of Relinquishment of Parental or guardianship
2 Rights.

3 Section 24. **Court appearances.**

4 The child to be adopted, the natural parents or
5 guardian(s), and the petitioner(s) must appear in person
6 before the Court at the final hearing.

7 Section 25. **Best interest of child and other**

8 **Considerations**

9 (1). No adoption shall be granted unless the court,
10 based on clear and convincing evidence, is satisfied;

11 (a). that the necessary consents have been
12 obtained;

13 (b). that the consents were given voluntarily and
14 not coerced by conduct prohibited under this or any
15 other Act;

16 (c). that the natural parent(s) or guardian(s)
17 fully understand the consequences of an adoption;

18 (d). most importantly, that granting the adoption
19 is in the best interest of the child;

20 (2). In determining the issue of what is in the best
21 interests of the child, the Court may, in addition to other
22 considerations, consider, inter alia:

23 (a). the child's safety, and health and welfare,
24 and the resources available to meet those needs;

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(b). the child's level of development and
physical and emotional needs;

(c). the relationship the child has with his or
her current family and the importance of continuity
in the child's well-being;

(d). the child's cultural, racial, linguistic and
religious heritage and the fostering of a strong
personal identity;

(e). the child's views toward being adopted; and

(f). the resources available to meet the child's
natural needs

Section 26. **Effect of decree.**

(1). After a decree of adoption has been granted, the
child and the adopting parents shall hold towards each
other the legal relation of parent and child and shall have
all the rights and be subject to all the duties of that
relationship.

(2). The natural parents of the adopted child are, as
of the date of the Order granting the adoption, relieved of
all parental duties and responsibility for the child and
shall have no right over the child.

(3). A child adopted under this Act shall have the
same rights of inheritance as if he were the natural child
of the adoptive parents.

P.L. 2002-64Section 27 **Content of decree; specific provisions.**

(1) The adoption decree, in addition to establishing a parent-child relationship, granting a name change if requested, and other provisions, shall include the following;

(a). a requirement that the adoptive parents arrange for at least one post-adoption home visit during the first six months of the adoption and to file a Post-Adoption Report with the Central Adoption Authority at the conclusion of the six months period.

Section 28 **Content of the Post Adoption Report**

(1). The Post-Adoption report anticipated by section 27 (1) (a) above, shall contain a description of how the child and family are adjusting, whether bonding and attachment between the child and family are sufficient, whether the child's health and emotional needs are being met, what the family is doing to encourage the child's cultural heritage, and any other pertinent data sufficient to inform the natural families of the status of the child.

Section 29. **Monetary inducement.**

(1). It shall be unlawful for any person to offer;

(a). financial remuneration;

(b). aid,

(c). gifts,

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(d). promises of items of monetary value;

(e). or future opportunities;

to any natural parent(s) or guardians, for the purpose of inducing that parent or guardian to relinquish parental rights, or consent to an adoption.

(2). The same prohibition shall apply to the inducement of consent from a child who is old enough to give consent.

Section 30. **Criminal penalties.**

Any person that violates any provisions of this Act or commits an offense as prescribed by this Act, shall be guilty of an offense, and shall, upon conviction, be liable to a fine not exceeding \$1,000 or, to a term of imprisonment not exceeding twelve (12) months, or both.

Section 31. **Fees**

Unless otherwise directed by the Court, the petitioners shall be responsible for all administrative fees and expenses incurred in the adoption action.

Section 32. **Regulations.**

Cabinet may, in accordance with the Administrative Procedure Act, promulgate the necessary rules and regulations to give effect to the provisions of this Act.

Section 33. **Adoption records.**

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All adoption records shall remain open for public inspection.

Section 34. **Transition and Repeal**

The provisions of 26 MIRC Chapter 1 Part III, in its entirety, and the Adoption Residency (Domestic Relations Amendment) Act-1999 PL-95, will continue in force, and will be deemed repealed, only on the date that the Minister responsible, certifies or declares in writing that the Central Adoption Authority has been duly established.

Section 35. **Effective Date**

This Act shall take effect on the date of certification in accordance with Article IV, Section 21, of the Constitution.

CERTIFICATE

I hereby certify;

(1) that Nitijela Bill No. 92 N.D.2 was passed by the Nitijela of the Marshall Islands on the 11th day of October 2002; and

(2) that I am satisfied that Nitijela Bill No. 92 N.D.2 was passed in accordance with the Constitution of the Marshall Islands and the Rules of Procedure of the Nitijela.

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I hereby place my signature before the Clerk of the
Nitijela on this 11th day of November 2002.

Attest:


Litokwa Tomeing
Speaker,
Nitijela of the Marshall Islands


Joe Riklon,
Clerk,
Nitijela of the Marshall Islands