

P.L. 2011-60

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.

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

PART I - PRELIMINARY MATTERS

Section 1. Short title.

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

Section 2. Purpose.

The purposes of this Act are:

(1) to prevent violence between family members and others who are in domestic relationships, for the purposes of this Act;

(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.

Section 3. Definition.

In this Act, 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;

- 1 (ii) a person on whose behalf an application for a protection order is made;
- 2 (iii) any other person who can apply for a protection order under section 12 of
- 3 this Act.
- 4 (c) "care and custody" means a person who expressly or implicitly has, or under the
- 5 circumstances should have had, physical custody or care of a child at the time;
- 6 (d) "child" means an individual or person under the age of 18;
- 7 (e) "complainant" means the person who is sought to be protected by a protection order, or
- 8 temporary protection order under the Act,
- 9 (f) "court" means any Community Court, District Court and High Court of the Marshall
- 10 Islands;
- 11 (g) "community court" means court which have local and community jurisdiction as
- 12 described in Part V of the Judiciary 1983;
- 13 (h) "domestic violence" has the meaning given by section 4 of this Act;
- 14 (i) "economic abuse" includes:
- 15 (i) denying a spouse or partner access to joint finances;
- 16 (ii) failing to pay for bills, provide food, or shelter or to provide for children's
- 17 needs when finance is available;
- 18 (iii) prohibiting a spouse or partner from seeking or engaging in paid work or
- 19 attending educational or training, or engage in other income generating activities;
- 20 (j) "partner" means a person to whom the person is not married by law or custom but with whom
- 21 the person is living as a couple on a genuine domestic basis, or with whom the person is in a
- 22 relationship as a couple where one or each of them provides personal or financial

1 commitment and support of a domestic nature for the material benefit of the other,  
2 irrespective of whether or not they are living under the same roof.

3 (k) "protection order" means an order made under section 6 of this Act.

4 (l) "psychological abuse" means the perpetration of malicious and explicit nonphysical acts  
5 including but not limited to:

6 (i) intimidation;

7 (ii) harassment;

8 (iii) damage to property; or

9 (iv) threats of physical abuse or sexual abuse.

10 In relation to children, including, causing or allowing a child to see or hear physical,  
11 sexual or emotional abuse of a person with whom the child has a domestic relationship;

12 (m) "family member" means a partner, or a member of a person's family including spouse,  
13 child, parent, grandparent, sibling, uncle, aunt, brother-in-law or sister-in-law, or uncle-  
14 in-law or aunt-in-law, nephew, niece or cousin; any other person who is treated by the  
15 person as a family member or a member of a same household including by customary  
16 adoption;

17 (n) "respondent" means the person against whom a domestic violence prevention order is  
18 sought;

19 (o) "spouse of a person" means an individual who:

20 (i) is or has been married to the person under law or custom; or

21 (ii) is a biological parent of a child with the person (whether or not they are or have  
22 been married or are living or have lived together).

1 (p) "sexual assault" has the same meaning under the Criminal Code of Republic of the  
2 Marshall Islands;

3 (q) "stalking" means the pursuit of somebody with the intend of intimidating. "pursue" in  
4 relation to a person, includes:

5 (a) to repeatedly communicate with the person, whether directly or indirectly and  
6 whether in words or otherwise;

7 (b) to repeatedly follow the person;

8 (c) to repeatedly cause the person to receive unsolicited items;

9 (d) to watch or beset the place where the person lives or works or happens to be,  
10 or the approaches to such a place.

11 "intimidation" in relation to a person, includes:

12 (a) to cause physical or mental harm to the person;

13 (b) to cause apprehension or fear in the person;

14 (c) to prevent the person from doing an act that the person is lawfully entitled to  
15 do, or to hinder the person in doing such an act;

16 (d) to compel the person to do an act that the person is lawfully entitled to abstain  
17 from doing.

18 (r) "temporary protection order" means an order issued by the Community Court under  
19 section 9 of this Act.

20 **PART II - DOMESTIC VIOLENCE OFFENCE AND PENALTIES**

21 **Section 4. Domestic violence offences.**

22 (1) Any person who:

23 (a) assaults a family member;

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(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 or offensive 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 to 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.

**Section 5. Domestic Violence Penalties.**

(1) Any person who commits domestic violence pursuant to section 4 (1) is liable to 6 months imprisonment or a fine not exceeding \$1,000 or both for the first offence, or liable to 2 years imprisonment or \$2,000 fine for a second or subsequent offence.

(2) Any person who counsels or procures another person to commit domestic violence pursuant to section 4 (2) is guilty of an offence 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**

**Section 6. Power of court to grant a protection order.**

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1 (1) A court may on application made under section 12 grant a protection order against a  
2 respondent if the court is satisfied on the balance of probabilities that:

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

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

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

9 (a) all measures necessary to ensure that the complainant and any children are  
10 protected from future domestic violence;

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

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

14 Section 7. **Condition of a protection order: General.**

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

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

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

19 (2) the court may impose other conditions on the respondent in accordance with section 8  
20 if it considers necessary in the circumstances, and or desirable in the interests of the complainant  
21 or any other family member.

22 Section 8. **Conditions of a protection order: Specific**

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

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

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

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

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

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

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

14 (2) Conditions relating to weapon.

15 (a) prohibiting the respondent from possessing any weapon;

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

18 (3) Conditions relating to property.

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

21 (b) directing the respondent:

22 (i) to return any specified personal property of the complainant; or

1 (ii) allow the complainant to recover, have access to or make use of any  
2 specified personal property;

3 (c) granting the complainant exclusive occupancy to a residence or specified part  
4 of a residence whether or not the residence is solely owned or leased by the respondent.

5 (d) order the complaint to return specified personal property to the respondent.

6 (4) Conditions relating to counseling and or mediation.

7 (a) order one or both parties to attend counseling; or

8 (b) order mediation; or

9 (c) recommends counseling and mediation; or treatment, rehabilitation and  
10 recovery.

11 **Division 2 - Temporary Protection Order**

12 **Section 9. Temporary Protection Order.**

13 (1) A Community, District or High Court may on application made under section 12  
14 grant a temporary protection order if the court is satisfied that:

15 (a) the complainant or a child in their care and custody is in danger of an act of  
16 domestic violence; and

17 (b) because of distance, time or other circumstances of the case, it is not  
18 practicable to apply to a court

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

22 (4) A temporary protection order made under this section shall remain in force for not  
23 more than 28 days, and may be renewed by application of the complainant or by consent of the

1 parties for a further period of 28 days. A temporary protection order may stay in effect in  
2 accordance with section 10(c).

3 **Section 10. Further hearing by a Court.**

4 (1) If a temporary protection order is granted by a Court in accordance with section 9(3),  
5 the court shall issue a summons for the respondent to appear at a specified date before expiration  
6 of the temporary protection order for a further hearing.

7 (2) At a further hearing, a Court may confirm:

8 (a) make the temporary protection order permanent;

9 (b) revoke the temporary protection order;

10 (c) continue the hearing and order that the temporary protection order remain until  
11 completion of the next hearing;

12 (d) vary the temporary protection order.

13 **Division 3 – Judicial Separation Orders and other Domestic Relation Orders.**

14 **Section 11. Judicial Separation Order.**

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

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

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

23 **Division 4 - Application for Protection Orders**

1 **Section 12. Who can apply for a Protection Order?**

2 An application for a Protection Order may be made by:

3 (a) the complainant; or

4 (b) other family member or a friend of the complainant if, the complainant has given his  
5 or her oral or written consent for that friend to make the application;

6 (c) a qualified legal practitioner on behalf of the complainant; or

7 (d) any national or local police officer on behalf of the complainant; or

8 (e) any national or local government prosecutor; or

9 (f) any advocate or counselor or social worker from any crisis or rehabilitation centre.

10 **Section 13. Application to a court for a Protection Order.**

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

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

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

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

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

20 **Division 5 - Offence and restitution**

21 **Section 14. Breach to protection order.**

22 A person who breaches the protection order commits an offence and shall upon  
23 conviction be punishable by a term of imprisonment of 6 months or a fine of \$1000 or both.

1 Section 15. **Restitution.**

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

4 (a) personal injury; or

5 (b) damage to property; or

6 (c) financial loss.

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

9 (a) any pain and suffering;

10 (b) any physical or mental injury;

11 (c) cost of any medical treatment incurred;

12 (d) any loss of earnings;

13 (e) the value of any property that has been taken, destroyed or damaged;

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

16 (i) accommodation expenses; and

17 (ii) moving and transport expenses; and

18 (iii) expenses of setting up a separate household, including housing loan  
19 repayments or rent for as long as the court considers reasonably necessary.

20 **PART 4 - PROCEDURAL MATTERS RELATING TO PROTECTION ORDER**

21 **Division 1. Application and service**

22 Section 16. **Absent respondent.**

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

3 (2) The court must be satisfied that:

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

5 (b) the respondent is required to appear at the hearing;

6 (c) having regard to the circumstances of the case, all reasonable efforts have been  
7 made to give the respondent notice of the hearing.

8 **Section 17. Service of application and issue of summon or warrant.**

9 On application made to a court under section 12 for a protection order, whether or not an  
10 application for temporary protection order is made the court shall issue a summon directing the  
11 respondent to appear at the time and place set out in the summon.

12 **Section 18. Service of Protection Orders.**

13 (1) If a Protection Order or a Temporary Protection Order is made by a court, the court  
14 must:

15 (a) explain the order to the complainant and the respondent in a language that he  
16 or she understands;

17 (b) cause a copy of the order to be served personally on the complainant and on  
18 the respondent; and

19 (2) in the absence, cause a copy of the order to be given or forwarded to the police officer  
20 in charge to serve on the complainant or respondent, or to use to use alternative forms of service  
21 including radio.

22 **Division 2. Evidence and burden of Proof**

23 **Section 19. Evidence.**

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

3 Section 20. **Spouse may give evidence.**

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

6 **PART 5 - MISCELLANEOUS**

7 Section 21. **Variation and revocation of orders.**

8 (1) A court may vary or revoke a protection order upon application by any person whom  
9 the order applies.

10 (2) before the court varies or revokes a protection order, it must

11 (a) in the case of protection order, have regard to conditions in section 7 and 8;

12 (b) in the case of temporary protection order, consider whether the complainant is  
13 in danger of personal injury.

14 Section 22. **Consent orders.**

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

17 Section 23. **Collaborative Reporting.**

18 (1) Notwithstanding any other law or procedures concerning confidentiality to the  
19 contrary, any person, who in their professional or official capacity, have reason to believe that an  
20 act of domestic violence has occurred to a person or a child, or there is evidence to believe that  
21 such a person is at risk to domestic violence, shall immediately report the matter to a Police, or  
22 bring the matter before the court pursuant to section 12.

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

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

5 (b) employee or officers of public or private schools;

6 (c) employee or officers of law enforcement agencies or institutions;

7 (d) employee or officers of any public or private agency providing recreational,  
8 sports activities or spiritual welfare including churches.

9 **Section 24. No-drop policy.**

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

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

14 (a) believe that an act of domestic violence has been committed;

15 (b) have sufficient evidence to proceed with the case.

16 **Section 25. Emergency assistance.**

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

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

1 Section 26. **Domestic Violence Prevention and Protection Fund.**

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

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

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

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

15 Section 27. **Central data collection, monitoring, reporting etc.**

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

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

20 Section 28. **Effective date.**

This Act 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.93ND1 was passed by the Nitijela of the Republic of the Marshall Islands on the 29th day of September, 2011; and
2. That I am satisfied that Nitijela Bill No.93ND1 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 17th day of October 2011.

Attest:

[Signature of Alvin T. Jacklick]

Hon. Alvin T. Jacklick
Speaker
Nitijela of the Marshall Islands

[Signature of Lena E. Tiobech]

Lena E. Tiobech
Acting Clerk
Nitijela of the Marshall Islands