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RPPL No. 8-51

EIGHTH OLBIL ERA KELULAU

Ninth Special Session, August 2010 RPPL No. 8-51
Passed As Senate Bill No. 8-147, SD2, HD2

AN ACT

To offer protection and create effective remedies to deter acts of family violence, expand and strengthen the ability of police officers to assist family violence victims, enforce the law effectively against family abusers, and establish family violence as a serious crime which will not be excused or tolerated, by bringing to bear strong law enforcement and appropriate legal penalties for acts of family violence and abuse, and for other related purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Short Title. This Act shall be known and may be cited as the “Palau Family Protection Act.”

Section 2. Legislative Findings. The Olbil Era Kelulau finds and declares that: family violence, is a serious crime against society; the number of people in Palau who are regularly abused by family members is unacceptably high; a significant number of women who are assaulted are pregnant; victims of family violence comes from all social and economic backgrounds and ethnic groups; spousal abuse is often accompanied by child abuse; and that children, even when they are not themselves physically assaulted, can suffer deep and lasting emotional effects from exposure to abuse and violence within a family. Furthermore, family violence is not limited to just the better known physical violence, but can also be emotional, psychological, and spiritual. It is therefore the intent of the Olbil Era Kelulau to ensure the victims of family violence receive the maximum protection under the law.

The Olbil Era Kelulau further finds and declares that, even though many of the existing criminal statutes are applicable to acts of family violence, this Family Protection Act will beneficially re-focus law enforcement specifically on family violence and help to improve the Republic’s ability

to respond to the needs of family violence victims.

Section 3. Amendment. Title 21 of the Palau National Code, entitled, “Domestic Relations” shall be amended to add a new Chapter, which shall state as follows:

CHAPTER 8

OFFENSES AGAINST THE FAMILY AND AGAINST INCOMPETENTS

PART I

GENERAL OFFENSES

§ 800. Definitions.

§ 801. Endangering the welfare of a minor in the first degree.

§ 802. Endangering the welfare of a minor in the second degree.

§ 803. Endangering the welfare of an incompetent person.

§ 804 Custodial interference in the first degree.

§ 805. Custodial interference in the second degree.

§ 806. Abuse of family or household members; penalty.

§ 807. Harassment by stalking.

§ 808. Customary or traditional reconciliation; no bar to criminal prosecution.

§ 800. Definitions.

In this part, unless a different meaning plainly is required:

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

“Dating relationship” means a romantic, courtship, or engagement relationship, often but not necessarily characterized by actions of an intimate or sexual nature, but does not include a casual acquaintanceship or ordinary fraternization between persons in a business or social context.

“Incompetent person” means a person who because of disease, disorder or defect is unable to care for himself or herself.

“Minor” means a person less than eighteen years of age.

“Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

“Substantial bodily injury” means bodily injury which causes:

- (1) A major avulsion, laceration, or penetration of the skin;
- (2) A burn of at least second degree severity;
- (3) A bone fracture;
- (4) A serious concussion; or
- (5) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.

§ 801. Endangering the welfare of a minor in the first degree.

(a) Except as provided in subsection (b) below, a person commits the offense of endangering the welfare of a minor in the first degree if, having care or custody of a minor, the person:

- (1) Intentionally or knowingly allows another person to inflict serious or substantial bodily injury on the minor; or
- (2) Intentionally or knowingly causes or permits the minor to inject, ingest, inhale, or otherwise introduce into the minor’s body any controlled substance listed in 34 PNC Chapter 31 that has not been prescribed by a physician for the minor.

(b) It shall be a defense to prosecution under 21 PNC sections 801(a)(1) if, at the time the person

allowed another to inflict serious or substantial bodily injury on a minor, the person reasonably believed the person would incur serious or substantial bodily injury in acting to prevent the infliction of serious or substantial bodily injury on the minor.

(c) Endangering the welfare of a minor in the first degree is a felony and upon conviction thereof shall be imprisoned for a period of not more than five years, or fined up to ten-thousand dollars (\$10,000), or both.

§ 802. Endangering the welfare of a minor in the second degree.

(a) Except as provided in 21 PNC section 801(b) above, a person commits the offense of endangering the welfare of a minor in the second degree if, having care or custody of a minor, the person:

(1) Recklessly allows another person to inflict serious or substantial bodily injury on the minor; or
(2) Recklessly causes or permits the minor to inject, ingest, inhale, or otherwise introduce into the minor's body any controlled substance listed in 34 PNC Chapter 31 that has not been prescribed by a physician for the minor.

(b) A person commits the offense of endangering the welfare of a minor in the second degree if, being a parent, guardian, or other person whether or not charged with the care or custody of a minor, the person knowingly endangers the minor's physical or mental welfare by violating or interfering with any legal duty of care or protection owed such minor.

(c) Endangering the welfare of a minor in the second degree is a misdemeanor and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined up to one-thousand dollars (\$1,000), or both.

§ 803. Endangering the welfare of an incompetent person.

(a) A person commits the offense of endangering the welfare of an incompetent person if he or she knowingly acts in a manner likely to be injurious to the physical or mental welfare of a person who is unable to care for himself or herself because of physical or mental disease, disorder, or defect

(b) Endangering the welfare of an incompetent person is a misdemeanor and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined up to one-thousand dollars (\$1,000), or both.

§ 804. Custodial interference in the first degree.

(1) A person commits the offense of custodial interference in the first degree if:

(a) The person:

(i) Intentionally or knowingly violates a court order issued pursuant to 21 PNC section 302, or intentionally or knowingly takes, entices, conceals, or detains the minor from any other person who has a right to custody pursuant to a court order, judgment, or decree; and

(ii) Removes the minor from the Republic of Palau;

(b) The person intentionally or knowingly takes, entices, conceals, or detains a minor less than twelve years old from that minor's lawful custodian, knowing that the person had no right to do so; or

(c) The person, in the absence of a court order determining custody or visitation rights, intentionally or knowingly takes, detains, conceals, or entices away a minor with the intent to deprive another person or a public agency of their right to custody, and removes the minor from the Republic of Palau.

(2) It is an affirmative defense to a prosecution under this section that the person had "good

cause” for the violation of a court order for the taking, detaining, concealing, or enticing away of the minor, or for removing the minor from the Republic of Palau; provided that the person asserting the affirmative defense filed a report with the clerk of the court detailing the whereabouts of the minor, the person who took, enticed, detained, concealed, or removed the minor or child, and the circumstances of the event as soon as the filing of the report was practicable; and provided further that the person asserting the affirmative defense also filed a request for a custody order as soon as the filing of the request was practicable.

As used in this section, “good cause” means a good faith and reasonable belief that the taking, detaining, concealing, enticing away, or removing of the minor is necessary to protect the minor from immediate bodily injury.

(3) The identity and address of the person reporting under subsection (2) above shall remain confidential unless the information is released pursuant to a court order.

(4) Custodial interference in the first degree is a felony and upon conviction thereof shall be imprisoned for a period of not more than five years, or fined up to ten- thousand dollars (\$10,000), or both.

§ 805. Custodial interference in the second degree.

(1) A person commits the offense of custodial interference in the second degree if:

(a) The person intentionally or knowingly takes, entices, conceals, or detains a minor knowing that the person has no right to do so; or

(b) The person intentionally or knowingly takes, entices, conceals, or detains from lawful custody any incompetent person, or other person entrusted by authority of law to the custody of another person or an institution.

(2) For purposes of this section, an “incompetent person” means a person who because of disease, disorder or defect is unable to care for himself or herself.

(3) Custodial interference in the second degree is a misdemeanor, if the minor or incompetent person is taken, enticed, concealed, or detained within the Republic of Palau, and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined up to one-thousand dollars (\$1,000), or both. If the minor or incompetent person is taken, enticed, concealed, or detained outside of the Republic of Palau under this section, custodial interference in the second degree is a felony and upon conviction thereof shall be imprisoned for a period of not more than five years, or fined up to ten-thousand dollars (\$10,000), or both.

§ 806. Abuse of family or household members; penalty.

(a) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member or to refuse compliance with the lawful order of a police officer under subsection (d) of this section. The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter.

For the purposes of this section, “family or household member” means spouses, former spouses, persons in a dating relationship, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

(b) Any police officer, with or without a warrant:

(1) may arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member and that the person arrested is guilty thereof; or

(2) shall arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member and that the person arrested is guilty thereof, and the officer has reasonable grounds to believe the physical abuse is occurring, or has occurred, in the presence of or within five hundred feet of a minor child or children.

(c) A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

(d) Any police officer, with or without a warrant, may take the following course of action where the officer has reasonable grounds to believe that there was physical abuse or harm inflicted by one person upon a family or household member, regardless of whether the physical abuse or harm occurred in the officer's presence:

(1) The police officer may make reasonable inquiry of the family or household member upon whom the officer believes physical abuse or harm has been inflicted and other witnesses as there may be;

(2) Where the police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm being inflicted by one person upon a family or household member, the police officer lawfully may order the person to leave the premises for a period of separation of twenty-four hours,

during which time the person shall not initiate any contact, either by telephone or in person, with the family or household member; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects;

(3) Where the police officer makes the finding referred to in paragraph (2) above and the incident occurs after 12:00 P.M. on any Friday, or on any Saturday, Sunday, or legal holiday, the order to leave the premises and to initiate no further contact shall commence immediately and be in full force, but the twenty-four hour period shall be enlarged and extended until 4:30 P.M. on the first day following the weekend or legal holiday;

(4) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report that shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person; and

(5) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member.

(e) Abuse of a family or household member and refusal to comply with the lawful order of a police officer under subsection (d) above are misdemeanors and the person shall be sentenced as follows:

(1) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and

(2) For a second offense that occurs within one year of the first conviction,

the person shall serve a minimum jail sentence of thirty days.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to 18 PNC Chapter 6. The court

may stay the imposition of the sentence if special circumstances exist. The court shall make findings as to the special circumstances on the record.

(f) Whenever a court sentences a person pursuant to subsection (e), it also shall require that the offender undergo any available domestic violence intervention programs ordered by the court. However, the court may suspend any portion of a jail sentence, except for the mandatory sentences under subsection (e)(1) and (2) above, upon the condition that the defendant remain arrest-free and conviction-free or complete court-ordered intervention.

(g) For a third or any subsequent offense that occurs within two years of a second or subsequent conviction, the offense shall be a felony and upon conviction thereof shall be imprisoned for a period of not more than five years, or fined up to ten-thousand dollars (\$10,000), or both.

(h) Where the physical abuse consists of intentionally or knowingly impeding the normal breathing or circulation of the blood of the family or household member by applying pressure on the throat or the neck, abuse of a family or household member is a felony and upon conviction thereof shall be imprisoned for a period of not more than five years, or fined up to ten-thousand dollars (\$10,000), or both.

(I) Any police officer who arrests a person pursuant to this section shall not be subject to any civil or criminal liability; provided that the police officer acts in good faith, upon reasonable belief, and does not exercise unreasonable force in effecting the arrest.

(j) This section shall not preclude the physically abused or harmed family or household member from pursuing any other remedy under law or in equity.

(k) When a person is ordered by the court to undergo any domestic violence intervention, that person shall provide adequate proof of compliance with the court's order. The court shall order a subsequent hearing at which the person is required to make an appearance, on a date certain, to determine whether the person has completed the ordered domestic violence intervention. The court may waive the subsequent hearing and appearance where a court officer has established that the person has completed the intervention ordered by the court.

§ 807. Harassment by stalking.

(a) A person commits the offense of harassment by stalking if, with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, that person engages in a course of conduct involving pursuit, surveillance, or nonconsensual contact upon the other person on more than one occasion without legitimate purpose.

(b) A person convicted under this section may be required to undergo a counseling program as ordered by the court.

(c) For purposes of this section, "nonconsensual contact" means any contact that occurs without that individual's consent or in disregard of that person's express desire that the contact be avoided or discontinued. Nonconsensual contact includes direct personal visual or oral contact and contact via telephone, facsimile, or any form of electronic communication, defined as "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, including electronic mail transmission."

(d) Harassment by stalking is a misdemeanor and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined up to one-thousand dollars (\$1,000), or both. For a second offense that occurs within one year of the first conviction, the person shall serve a minimum jail sentence of not less than thirty days.

(e) For a third or any subsequent offense that occurs within five years of a second or subsequent conviction, the offense shall be a felony and upon conviction thereof shall be imprisoned for a period of not more than five years, or fined up to ten-thousand dollars (\$10,000), or both.

§ 808. Customary or traditional reconciliation; no bar to criminal prosecution.

Nothing in this chapter shall preclude customary or traditional reconciliation. However, resolution of the matter through customary or traditional reconciliation shall not preclude or interfere with the institution of criminal charges and prosecution for violation of any offense under this Chapter. The Office of the Attorney General, or any other agency charged with the duty of law enforcement, shall institute a “no drop” policy in the filing and prosecution of cases involving domestic abuse.

PART II

DOMESTIC ABUSE RESTRAINING ORDERS AND PROTECTIVE ORDERS

§ 820. Definitions.

§ 821. Court jurisdiction.

§ 822. Order for protection.

§ 823. Temporary restraining order.

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§ 829. Right to apply for relief.

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§ 831. Copy to law enforcement agency.

§ 832. Violation of an order for protection.

§ 820. Definitions.

As used in this part:

“Dating relationship” means a romantic, courtship, or engagement relationship, often but not necessarily characterized by actions of an intimate or sexual nature, but does not include a casual acquaintanceship or ordinary fraternization between persons in a business or social context.

“Domestic abuse” means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse or malicious property damage between family or household members; or

(2) Any act that would constitute an offense under 21 PNC section 806, or under 17 PNC Chapter 28 committed against a minor family or household member by an adult family or household member.

“Extreme psychological abuse” means an intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual, and that serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer extreme emotional distress.

“Family or household member” means spouses, former spouses, persons who have a child in common, parents, children, persons related by consanguinity, persons jointly residing or formerly residing in the same dwelling unit, and persons who have or have had a dating relationship.

“Incapacitated person” means a person who, for reasons other than being a minor, is unable to

receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care even with appropriate and reasonably available technological assistance.●

“Law enforcement officer” means any public servant, whether employed by the Republic of Palau or political subdivisions thereof, or any state thereof, vested by law with

a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.

“Malicious property damage” means an intentional or knowing damage to the property of another, without his or her consent, with intent to thereby cause emotional distress.

§ 821. Court jurisdiction.

An application for relief under this chapter may be filed in any court in the Republic of Palau. Actions under this chapter shall be given docket priorities by the court.

§ 822. Order for protection.

(a) There shall exist an action known as a petition for an order for protection in cases of domestic abuse.

(b) A petition for relief under this chapter may be made by:

(1) Any family or household member on the member’s own behalf or on behalf of a family or household member who is a minor or who is an incapacitated person or who is physically unable to go to the appropriate place to complete or file the petition; or

(2) Any agency of the Republic of Palau on behalf of a person who is a minor or who is an incapacitated person or a person who is physically unable to go to the appropriate place to complete or file the petition on behalf of that person.

(c) A petition for relief shall be in writing upon forms provided by the court and shall allege, under penalty of perjury, that: a past act or acts of abuse may have occurred; threats of abuse make it probable that acts of abuse may be imminent; or extreme psychological abuse or malicious property damage is imminent; and be accompanied by an affidavit made under oath or a statement made under penalty of perjury stating the specific facts and circumstances from which relief is sought.

(d) The court shall designate an employee or appropriate nonjudicial agency to assist the person in completing the petition.

(e) The clerk of the court shall accept a petition for an order for protection without assessment of a filing fee.

§ 823. Temporary restraining order.

(a) Upon petition to any court, an ex parte temporary restraining order may be granted without notice to restrain either or both parties from contacting, threatening, or physically abusing each other. The order may be granted to any person who, at the time the order is granted, is a family or household member as defined in 21 PNC section 820 or who filed a petition on behalf of a family or household member. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

(1) Contacting, threatening, or physically abusing the protected party;

(2) Contacting, threatening, or physically abusing any person residing at the protected party’s residence; or

(3) Entering or visiting the protected party’s residence.

The ex parte temporary restraining order may also enjoin or restrain both of the parties from

taking, concealing, removing, threatening, physically abusing, or otherwise disposing of any animal identified to the court as belonging to a household, until further order of the court.

(b) For any person who is alleged to be a family or household member by virtue of a dating relationship, the court may consider the following factors in determining whether a dating relationship exists:

- (1) The length of the relationship;
- (2) The nature of the relationship; and
- (3) The frequency of the interaction between the parties.

(c) The court may issue the ex parte temporary restraining order orally, if the person being restrained is present in court. The order shall state that there is probable cause to believe that a past act or acts of abuse have occurred, or that threats of abuse

make it probable that acts of abuse may be imminent. The order further shall state that the temporary restraining order is necessary for the purposes of: preventing acts of abuse or preventing a recurrence of actual domestic abuse and ensuring a period of separation of the parties involved. The order shall also describe in reasonable detail the act or acts sought to be restrained. Where necessary, the order may require either or both of the parties involved to leave the premises during the period of the order; may also restrain the party or parties to whom it is directed from contacting, threatening, or physically abusing the applicant's family or household members; and may enjoin or restrain both parties from taking, concealing, removing, threatening, physically abusing, or otherwise disposing of any animal identified to the court as belonging to a household, until further order of the court. The order shall not only be binding upon the parties to the action, but also upon their officers, agents, servants, employees, attorneys, or any other persons in active concert or participation with them. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

- (1) Contacting, threatening, or physically abusing the protected party;
 - (2) Contacting, threatening, or physically abusing any person residing at the protected party's residence;
 - (3) Entering or visiting the protected party's residence; or
 - (4) Taking, concealing, removing, threatening harm, physically abusing, or otherwise disposing of any animal identified to the court as belonging to a household, until further order of the court.
- (d) If a divorce or a child custody proceeding is pending, a petition for a temporary restraining order may be filed in that same proceeding to the extent practicable. Any decree or order issued in a divorce or child custody proceeding subsequent to the petition being filed or an order being issued pursuant to this section, in the discretion of the court hearing the divorce or child custody proceeding, may supersede in whole or part the orders issued pursuant to this section. The factual findings and rulings made in connection with

the granting or denying of a temporary restraining order may not have binding effect in any other court proceeding, including child custody determinations under 21 PNC section 302, and the court in such proceedings may give de novo consideration to the facts and circumstances alleged in making later determinations affecting the parties, including determination of custody and visitation.

(e) When a temporary restraining order is granted and the respondent or person to be restrained knows of the order, a knowing or intentional violation of the restraining order is a misdemeanor. A person convicted under this section shall be referred to the Ministry of Health for behavioral

health assessment and mandatory counseling, or referred to any other domestic violence intervention programs as ordered by the court. The court additionally shall sentence a person convicted under this section as follows:

- (1) For a first conviction for violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of forty-eight hours and be fined not less than one hundred fifty dollars (\$150) nor more than five hundred dollars (\$500); provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and
- (2) For the second conviction for violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of thirty days, and be fined not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000); provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.
- (3) For the third and any subsequent conviction for violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of six months and be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000); provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to 18 PNC Chapter 6. The court may stay the imposition of the sentence if special circumstances exist. The court shall make findings as to the special circumstances on the record.

The court may suspend any jail sentence, except for the mandatory sentences under paragraphs (1), (2) and (3), upon condition that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor.

(f) Any fines collected pursuant to subsection (e) shall be deposited into a separate account within the National Treasury solely for use in creating and facilitating domestic violence intervention programs.

§ 824. Period of order; hearing.

(a) A temporary restraining order granted pursuant to this chapter shall remain in effect at the discretion of the court, for a period not to exceed one hundred eighty days from the date the order is granted or until the effective date, as defined in 21 PNC section 826, of a protective order issued by the court, whichever occurs first.

(b) On the earliest date that the business of the court will permit, but no later than fifteen days from the date the temporary restraining order is granted, the court, after giving due notice to all parties, shall hold a hearing on the application requiring cause to be shown why the order should not continue. In the event that service has not been effected, the court may set a new date for the hearing; provided that the date shall not exceed ninety days from the date the temporary restraining order was granted. All parties shall be present at the hearing and may be represented by counsel.

The protective order may include all orders stated in the temporary restraining order and may provide further relief, as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation with regard to minor children of the

parties and orders to either or both parties to participate in domestic violence intervention.

§ 825. Protective order; additional orders.

(a) If, after hearing all relevant evidence, the court finds that the respondent has failed to show cause why the order should not be continued and that a protective order is necessary to prevent domestic abuse or a recurrence of abuse, the court may order that a protective order be issued for a further fixed reasonable period as the court deems appropriate.

The protective order may include all orders stated in the temporary restraining order and may provide for further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or both parties to participate in domestic violence intervention services.

(b) A protective order may be extended for such further fixed reasonable period as the court deems appropriate. Upon application by a person or agency capable of petitioning under 21 PNC section 822, the court shall hold a hearing to determine whether the protective order should be extended. In making a determination, the court shall consider evidence of abuse and threats of abuse that occurred prior to the initial restraining order and whether good cause exists to extend the protective order.

The extended protective order may include all orders stated in the preceding restraining order and may provide such further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or

both parties to participate in domestic violence intervention services. The court may terminate the extended protective order at any time with the mutual consent of the parties.

§ 826. Effective date.

The temporary restraining order shall be effective as of the date of signing and filing; provided that if a temporary restraining order is granted orally in the presence of all the parties and the court determines that each of the parties understands the order and its conditions, if any, then the order shall be effective as of the date it is orally stated on the record by the court until further order of the court. Protective orders orally stated by the court on the record shall be effective as of the date of the hearing if the respondent attends the hearing or, if the respondent was served but failed to appear, then upon service of the protective order upon the respondent until further order of the court; provided that all oral protective orders shall be reduced to writing and issued forthwith. The judiciary shall provide forms that will enable the court to issue all temporary restraining orders forthwith.

§ 827. Notice of order.

(a) Any order issued under this chapter shall either be personally served upon the respondent, or served by certified mail, unless the respondent was present at the hearing in which case the respondent shall be deemed to have notice of the order. A filed copy of each order issued under this chapter shall be delivered to the Bureau of Public Safety.

(b) Except as otherwise provided in this chapter or in the order, a law enforcement officer may use a reliable copy, facsimile telecommunication, or other reliable reproduction of an order issued pursuant to this chapter in lieu of the original order for purposes of this section. Any such copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire

original order and may only be transmitted from law enforcement officer to law enforcement officer until served.

§ 828. Assistance of police in service or execution.

When an order is issued under this chapter upon request of the petitioner, the court may order the police to serve the order and related documents upon respondent and to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence.

§ 829. Right to apply for relief.

(a) A person's right to apply for relief shall not be affected by the person's leaving the residence or household to avoid abuse.

(b) The court shall not require security or bond of any party unless it is deemed necessary in exceptional cases.

§ 830. Modification of order.

Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection. The court may deny, without hearing, a motion to dismiss or to modify the terms of an existing order for protection if the motion, on its face, does not allege facts sufficient to establish a material change in the circumstances of the parties since the issuance or last modification of the order.

§ 831. Copy to law enforcement agency.

(a) Any order for protection granted pursuant to this chapter shall be transmitted by the clerk of the court within twenty-four hours to the police unit nearest the petitioner's residence.

(b) Each police department shall make available to other law enforcement officers, through a system for verification, information as to the existence and status of any order for protection issued pursuant to this chapter.

§ 832. Violation of an order for protection.

(a) Whenever an order for protection is granted pursuant to this chapter, a respondent or person to be restrained who knowingly or intentionally violates the order for protection is guilty of a misdemeanor. A person convicted under this section shall be referred to the Ministry of Health for behavioral health assessment and mandatory

counseling, or referred to any other domestic violence intervention programs as ordered by the court. The court additionally shall sentence a person convicted under this section as follows:

(1) For a first conviction for violation of the order for protection:

(A) That is in the nature of non-domestic abuse, the person may be sentenced to a jail sentence of forty-eight hours and be fined not more than one hundred fifty dollars (\$150); provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;

(B) That is in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not less than one hundred fifty dollars (\$150) nor more than five hundred dollars (\$500); provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;

(2) For a second conviction for violation of the order for protection:

(A) That is in the nature of non-domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of non-domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than two hundred fifty dollars (\$250); provided that the court shall not sentence a defendant to pay a

fine unless the defendant is or will be able to pay the fine;

(B) That is in the nature of domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days and be fined not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000); provided that

the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;

(C) That is in the nature of non-domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than two hundred fifty dollars (\$250); provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;

(D) That is in the nature of domestic abuse, and occurs after a first conviction for violation of the same order that is in the nature of non-domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than one hundred fifty dollars (\$150); provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;

(3) For any subsequent violation that occurs after a second conviction for violation of the same order for protection, the person shall be sentenced to a mandatory minimum jail sentence of not less than sixty days and be fined not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000); provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to 18 PNC Chapter 6. The court may stay the imposition of the sentence if special circumstances exist. The court shall make findings as to the special circumstances on the record.

The court may suspend any jail sentence, except for the mandatory sentences under subparagraphs (1)(B) and (2)(A) to (D), upon condition that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense. All remedies for the enforcement of judgments shall apply to this chapter.

(b) Any fines collected pursuant to subsection (a) shall be deposited into a separate account within the National Treasury solely for use in creating and facilitating domestic violence intervention programs.”

Section 4. Severability clause.

If any provision of this Act, or the application thereof to any person, thing or circumstance, is held invalid, the invalidity shall not affect the provisions or application of this Act that can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

Section 5. Amendment. Chapter 28 of Title 17 of the Palau National Code is hereby amended to state as follows:

Sex Crimes

§ 2800. Definitions of terms in this chapter.

§ 2801. Incest.

§ 2802. Sexual assault in the first degree.

§ 2803. Sexual assault in the second degree.

§ 2804. Sexual assault in the third degree.

§ 2805. Sexual assault in the fourth degree.

§ 2806. Continuous sexual assault of a minor under the age of fifteen years.

§ 2807. Sexual harassment.

§ 2808. Indecent exposure.

§ 2800. Definitions of terms in this chapter.

In this chapter, unless a different meaning plainly is required:

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

“Compulsion” means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.

“Dangerous instrument” means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

“Deviate sexual intercourse” means any act of sexual gratification between a person and an animal or a corpse, involving the sex organs of one and the mouth, anus, or sex organs of the other.

“Incompetent person” means a person who because of disease, disorder or defect is unable to care for himself or herself.

“Law enforcement officer” means any public servant, whether employed by the Republic of Palau or political subdivisions thereof, or any state thereof, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.

“Married” includes persons legally married or solemnized in accordance with recognized custom, and a male and female living together as husband and wife regardless of their legal status, but does not include spouses living apart.

“Mentally defective” means a person suffering from a disease, disorder, or defect that renders the person incapable of appraising the nature of the person’s conduct.

“Mentally incapacitated” means a person rendered temporarily incapable of appraising or controlling the person’s conduct as a result of the influence of a substance administered to the person without the person’s consent.

“Person” means a human being who has been born and is alive.

“Physically helpless” means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act.

“Relative” means parent, ancestor, brother, sister, uncle, aunt, or legal guardian.

“Restrain” means to restrict a person’s movement in such a manner as to interfere substantially with the person’s liberty,

(1) By means of force, threat, or deception; or

(2) If the person is under the age of eighteen or incompetent, without the consent of the relative, person, or institution having lawful custody of the person.

“Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

“Sexual contact” means any touching, other than acts of “sexual penetration”, of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

“Sexual penetration” means:

- (1) Vaginal intercourse, anal intercourse, fellatio, deviate sexual intercourse, or any intrusion of any part of a person’s body or of any object into the genital or anal opening of another person’s body; it occurs upon any penetration, however slight, but emission is not required. As used in this definition, “genital opening” includes the anterior surface of the vulva or labia majora; or
- (2) Cunnilingus or anilingus, whether or not actual penetration has occurred. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.

“Strong compulsion” means the use of or attempt to use one or more of the following to overcome a person:

- (1) A threat, express or implied, that places a person in fear of bodily injury to the individual or another person, or in fear that the person or another person will be kidnapped;
- (2) A dangerous instrument; or
- (3) Physical force.

“Substantial bodily injury” means bodily injury which causes:

- (1) A major avulsion, laceration, or penetration of the skin;
- (2) A burn of at least second degree severity;
- (3) A bone fracture;
- (4) A serious concussion; or
- (5) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.

§ 2801. Incest.

(a) A person commits the offense of incest if the person commits an act of sexual penetration with another who is within the degrees of consanguinity or affinity within which marriage is prohibited by law or custom.

(b) Incest is a strict liability offense.

(c) Incest is a felony and upon conviction thereof shall be imprisoned for a period of not more than twenty-five years, or fined up to fifty thousand dollars (\$50,000), or both.

§ 2802. Sexual assault in the first degree.

(a) A person commits the offense of sexual assault in the first degree if:

(1) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;

(2) The person knowingly engages in sexual penetration with another person who is less than fifteen years old;

(3) The person knowingly engages in sexual penetration with a person who is at least fifteen years old but less than seventeen years old; provided that:

(A) The person is not less than five years older than the minor; and

(B) The person is not legally married to the minor;

(4) The person knowingly subjects to sexual penetration another person who is mentally defective;

or

(5) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent. Paragraphs (2) and (3) shall not be construed to prohibit licensed medical practitioners from performing any act within their respective practices.

(b) Sexual assault in the first degree is a felony and upon conviction thereof shall be imprisoned for a period of not more than twenty-five years, or fined up to fifty thousand dollars (\$50,000), or both.

§ 2803. Sexual assault in the second degree.

(a) A person commits the offense of sexual assault in the second degree if:

(1) The person knowingly subjects another person to an act of sexual penetration by compulsion;

(2) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless; or

(3) The person, while employed:

(A) In a Republic of Palau correctional facility or a community-based residential facility;

(B) By a private company providing services at a correctional facility;

(C) By a private company providing community-based residential services to persons committed to the Bureau of Public Safety and having received notice of this statute;

(D) By a private correctional facility operating in the Republic of Palau; or

(E) As a law enforcement officer, knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person committed to the Bureau of Public Safety, a person residing in a private correctional facility operating in the Republic of Palau, or a person in custody; provided that paragraph (2) and this paragraph shall not be construed to prohibit licensed medical practitioners from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.

(2)[sic] Sexual assault in the second degree is a felony and upon conviction thereof shall be imprisoned for a period of not more than ten years, or fined up to twenty-five thousand dollars (\$25,000), or both.

§ 2804. Sexual assault in the third degree.

(a) A person commits the offense of sexual assault in the third degree if:

(1) The person recklessly subjects another person to an act of sexual penetration by compulsion;

(2) The person knowingly subjects to sexual contact another person who is less than fifteen years old or causes such a person to have sexual contact with the person;

(3) The person knowingly engages in sexual contact with a person who is at least fifteen years old but less than seventeen years old or causes the minor to have sexual contact with the person; provided that:

(A) The person is not less than five years older than the minor; and

(B) The person is not legally married to the minor;

(4) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;

(5) The person, while employed:

- (A) In a Republic of Palau correctional facility or a community-based residential facility;
- (B) By a private company providing services at a correctional facility;
- (C) By a private company providing community-based residential services to persons committed to the Bureau of Public Safety and having received notice of this statute;
- (D) By a private correctional facility operating in the Republic of Palau; or
- (E) As a law enforcement officer, knowingly subjects to sexual contact an imprisoned person, a person confined to a detention facility, a person committed to the Bureau of Public Safety, a person residing in a private correctional facility operating in the Republic of Palau, or a person in custody, or causes the person to have sexual contact with the actor; or

(F) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.

Paragraphs (2), (3), (4), and (5) shall not be construed to prohibit licensed medical practitioners from performing any act within their respective practices; provided further that paragraph (5)(E) shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or an exception to the warrant clause.

(b) Sexual assault in the third degree is a felony and upon conviction thereof shall be imprisoned for a period of not more than five years, or fined up to ten-thousand dollars (\$10,000), or both.

§ 2805. Sexual assault in the fourth degree.

(a) A person commits the offense of sexual assault in the fourth degree if:

- (1) The person knowingly subjects another person to sexual contact by compulsion or causes another person to have sexual contact with the actor by compulsion;
- (2) The person knowingly exposes the person's genitals to another person under circumstances in which the actor's conduct is likely to alarm the other person or put the other person in fear of bodily injury; or
- (3) The person knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the actor.

(b) Sexual assault in the fourth degree is a misdemeanor and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined up to one-thousand dollars (\$1,000), or both.

§ 2806. Continuous sexual assault of a minor under the age of fifteen years.

(a) A person commits the offense of continuous sexual assault of a minor under the age of fifteen years if the person:

- (1) Either resides in the same home with a minor under the age of fifteen years or has recurring access to the minor; and
- (2) Engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of fifteen years.

(b) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this section, unless the other charged offense occurred outside the period of the offense charged under this section, or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, unless more than one victim is involved, in which case a separate count may be charged for each victim.

(c) Continuous sexual assault of a minor under the age of fifteen years is a felony and upon conviction thereof shall be imprisoned for a period of not more than twenty-five years, or fined up to fifty thousand dollars (\$50,000), or both.

§ 2807. Sexual harassment.

(a) A person commits the offense of sexual harassment if:

(1) The person intentionally, knowingly or recklessly subjects a person to:

(A) Unwelcome sexual advances;

(B) Unwelcome requests for sexual favors; or

(C) Unwelcome verbal or physical conduct of a sexual nature.

(b) Sexual harassment is a misdemeanor and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined up to one-thousand dollars (\$1,000), or both.

§ 2808. Indecent exposure.

(a) A person commits the offense of indecent exposure if, the person intentionally exposes the person's genitals to a person to whom the person is not married under circumstances in which the actor's conduct is likely to cause affront.

(b) Indecent exposure is a misdemeanor and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined up to one-thousand dollars (\$1,000), or both."

Section 6. Amendment. Title 35 of the Palau National Code, as amended by RPPL No. 8-33, is hereby further amended to read as follows:

"§ 1305. Bureau of Lands and Surveys responsibilities; land registration employees.

(a) The Bureau of Lands and Surveys within a reasonable time period not to extend beyond March 31, 2013, shall proceed on a systematic basis to ensure the designation of areas and survey of all lands and the monumentation of all land within the Republic. . . .

...

(d) The Bureau shall complete the surveying required under this section within a reasonable time period not to extend beyond March 31, 2013.

...

..."

Section 7. Effective Date. This Act shall take effect upon its approval by the President of the Republic of Palau or upon its becoming law without such approval, except as otherwise provided by law.

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PASSED: November 01, 2012

Approved this 13th day of November 2012.

/s/

Johnson Toribiong

President

Republic of Palau

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