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**AN ACT**

Adding a new Title 53 of the Pohnpei Code relative to Domestic Issues and inserting a new Chapter 1 therein relating to Domestic Violence; amending 59 PC 4-101 of the Pohnpei Code to provide consistency therewith; and for other purposes.

**BE IT ENACTED BY THE POHNPEI LEGISLATURE:**

1           Section 1. The Pohnpei Code is hereby amended by adding a new  
2 Title 53 and inserting a new Chapter 1 therein to read as follows:

3                           **“TITLE 53**

4                                   **DOMESTIC ISSUES**

5   **CHAPTER 1**

6   **DOMESTIC VIOLENCE**

7           §1-101. Public policy. The government of the state of Pohnpei  
8 recognizes that families form the core of our existence as a  
9 people, and they serve as the foundation of the structures of our  
10 communities. Acceptance of family values and recognition of  
11 the obligations of family members to honor and respect each  
12 other lay at the very heart of our Constitution and within the  
13 very soul of our traditions. It is therefore declared to be the  
14 public policy of the state of Pohnpei to preserve and promote  
15 harmonious relationships in domestic affairs and to prevent the  
16 perpetration of acts of violence within the families of Pohnpei  
17 State. In support of this public policy this chapter has been  
18 enacted and shall be known and may be cited as the “Domestic  
19 Violence Act of 2017”.

20           §1-102. Definitions. As used in this chapter:

21                   (1) “Attempt” has the same meaning as that term is  
22 utilized by the courts under Title 61 of the Code, as amended.

23                   (2) “Bodily injury” has the same meaning as that utilized  
24 by the courts under Title 61 of the Code, as amended;

25           PROVIDED that for purposes of this chapter the term “bodily

1 injury” shall include “bodily harm” as that term is utilized by  
2 the courts under Title 61 of the Code, as amended.

3 (3) “Discipline” means training that corrects, molds, or  
4 perfects mental faculties and/or moral character. For purposes  
5 of this chapter, discipline shall be that which is acceptable for  
6 family discipline purposes within the customs and traditions of  
7 Pohnpei State and in accordance with Article 5 of the Pohnpei  
8 Constitution.

9 (4) “Diversion” means the judicial process by which a  
10 person is diverted from the criminal proceedings and referred  
11 for an education and treatment program directed specifically to  
12 the violent conduct of the defendant.

13 (5) “Family or household members” include:

14 (a) Adults or minors who are current or former  
15 spouses;

16 (b) Adults or minors who live together or who have  
17 lived together within the past year;

18 (c) Adults or minors who are related by blood or  
19 adoption;

20 (d) Persons who have a child in common; and

21 (e) Minor children of a person in a relationship  
22 described in Paragraphs (a) through (d) above.

23 (6) “Serious psychological injury” means  
24 psychological or emotional damage that requires protracted  
25 psychological treatment or is characterized by extreme

1 behavioral changes or severe physical symptoms.

2 (7) “Domestic violence” means any offense listed in  
3 Chapter 5 of Title 61 of this Code, captioned “Offenses Against  
4 the Person” or Chapter 7 of Title 61 of this Code, captioned  
5 “Offenses Against the Family”, committed by a person against  
6 a family or household member as defined by this section, or the  
7 occurrence of an offense of one or more of the following acts  
8 by a person against a family or household member as defined  
9 by this section, but does not include discipline as described by  
10 Subsection (3) of this section or acts of self-defense or defense  
11 of others:

- 12 (a) Psychological abuse of a family or household  
13 member;
- 14 (b) Harassment of a family or household member;
- 15 (c) Intimidation of a family or household member;
- 16 (d) Stalking of a family or household member;
- 17 (e) Restriction of movement or confinement by force  
18 of a family or household member; and
- 19 (f) Deprivation of economic benefits of a spouse.

20 (8) “Harassment” means the systematic and/or continued  
21 unwanted and annoying actions of a person, including threats  
22 and demands upon a family or household member.

23 (9) “Intimidation” means the act of a person to make  
24 another person fearful or to put into fear. Generally, proof of  
25 actual fear is not required in order to establish intimidation. It

1           may be inferred from conduct, words, or circumstances  
2           reasonably calculated to produce fear.

3           (10) “Police officer” means a law enforcement officer  
4           within the Department of Public Safety, or of any local  
5           jurisdiction of the state of Pohnpei, which local jurisdiction is  
6           acting under a valid law enforcement agreement with the state  
7           of Pohnpei for the enforcement of state laws.

8           (11) “Prosecuting attorney” as used in this chapter means  
9           the Attorney General of Pohnpei and those persons employed  
10          by the Attorney General’s Office specifically designated by the  
11          Attorney General.

12          (12) “Psychological abuse” means, for purposes of this  
13          chapter, a course of conduct on the part of one member of the  
14          family or household toward another member of the family or  
15          household that can endanger the mental and physical health and  
16          efficiency of the other person to such an extent as to render  
17          continuance of the family or household relation intolerable.

18          (13) “Restriction of movement or confinement by force”  
19          means the act of a person who knowingly or intentionally:

20                  (a) Confines another person without the other  
21                  person’s consent; or

22                  (b) Removes another person, by fraud, enticement,  
23                  force, or threat of force, from one place to another.

24          (14) “Stalking” means the act of a person who  
25          intentionally and repeatedly follows or harasses another person

1 and who makes a credible threat, either expressed or implied,  
2 with the intent to place that person in reasonable fear of death  
3 or serious bodily harm.

4 (15) "Victim" means any natural person against whom a  
5 crime, as defined under the laws of Pohnpei, has been  
6 committed or attempted to be committed.

7 (16) "Witness" means any natural person:

8 (a) Having knowledge of the existence or  
9 nonexistence of facts relating to any crime; or

10 (b) Whose declaration under oath is received or has  
11 been received as evidence for any purpose; or

12 (c) Who has reported any crime to any police  
13 officer; or

14 (d) Who has been served with a subpoena issued  
15 under the authority of the Pohnpei Supreme Court; or

16 (e) Who would be believed by any reasonable person  
17 to be an individual described in Paragraphs (a) through (d),  
18 above, inclusive.

19 §1-103. Domestic violence offenses.

20 (1) Any offense listed in Chapter 5 of Title 61 of this  
21 Code, captioned "Offenses Against the Person" and any offense  
22 listed in Chapter 7 of Title 61 of the Code, captioned "Offenses  
23 Against the Family" committed by a person against a family or  
24 household member as defined by §1-102 of this chapter of the  
25 Code shall be deemed to be an act of domestic violence and

1 shall be subject to:

2 (a) The special provisions pertaining to enforcement,  
3 prosecution, sentencing, suspension and probation;

4 (b) The special provisions pertaining to judicial  
5 procedures and protective orders;

6 (c) The entitlement provisions for victim's and  
7 witness' rights and privileges; and

8 (d) The eligibility provisions for defendant  
9 diversions, education programs and counseling set forth in this  
10 chapter.

11 (2) In addition to the domestic violence offenses referred  
12 to in Subsection (1) of this section, any person who  
13 intentionally, knowingly, or recklessly commits an act of  
14 domestic violence, specifically listed in Paragraphs (a) through  
15 (f) of §1-102(8) of this chapter of the Code, is guilty of a  
16 misdemeanor offense of domestic violence and upon conviction  
17 thereof shall be imprisoned for not more than one year, or fined  
18 not more than \$1000, or both such fine and imprisonment.

19 (3) Any person who intentionally, knowingly, or  
20 recklessly commits three or more acts of domestic violence  
21 under this section, inclusive of Title 61, Chapter 5 and Title 61,  
22 Chapter 7 offenses referred to in Subsection (1) of this section  
23 and offenses referred to in Subsection (2) of this section, within  
24 seven years of the first conviction under this section must, upon  
25 conviction thereof, be imprisoned for the third or subsequent

1 offense, and may also be fined for that offense.

2 §1-104. Powers and duties of police officers.

3 (1) If a police officer has reasonable cause to believe that  
4 a person has committed a crime involving domestic violence,  
5 the police officer shall arrest the person.

6 (2) If a police officer receives complaints of domestic  
7 violence from two or more opposing persons, the officer shall  
8 evaluate each complaint separately to determine who was the  
9 primary aggressor. If the officer determines that one person  
10 was the primary aggressor, the officer need not arrest the other  
11 person believed to have committed domestic violence but the  
12 police officer shall document to the best of his or her ability the  
13 evidence concerning the actions of each participant in the  
14 incident.

15 (3) In determining whether a person is the primary  
16 aggressor, the officer shall consider:

- 17 (a) Prior complaints of domestic violence;  
18 (b) The relative severity of the injuries inflicted on  
19 each person;  
20 (c) The likelihood of future injury to each person;  
21 (d) Whether one of the persons acted in self-defense  
22 or defense of the others;  
23 (e) The use or threatened use of a weapon; and  
24 (f) The use or threatened use of physical force.

25 (4) A police officer shall not:

1 (a) Threaten, suggest, or otherwise indicate the  
2 possible arrest of all parties to discourage requests for  
3 intervention by police officers by any party; or

4 (b) Base the decision to arrest or not to arrest on:

5 (i) The specific consent or request of the  
6 victim; or

7 (ii) The officer's perception of the willingness  
8 of a victim of or witness to the domestic violence to testify or  
9 otherwise participate in a judicial proceeding.

10 (5) In addition to any other report required, a police  
11 officer who does not make an arrest after investigating a  
12 complaint of domestic violence or who arrests two or more  
13 persons for a crime involving domestic violence must submit a  
14 written report setting forth the grounds for not arresting or for  
15 arresting both parties.

16 §1-105. Authority of police officer to seize weapons. For a  
17 crime involving domestic violence, a police officer:

18 (1) Shall, incident to an arrest, seize all weapons that are  
19 alleged to have been involved or threatened to be used in the  
20 commission of a crime.

21 (2) May seize a weapon that is in the plain view of the  
22 officer or was discovered pursuant to consensual search, as  
23 necessary for the protection of the officer or other persons.

24 §1-106. Charge considerations.

25 (1) In determining whether any felony charge filed



1           pursuant to this chapter should be reduced to a misdemeanor,  
2           the court shall consider the following factors, among others:  
3                   (a) The extent or seriousness of the victim's injuries;  
4                   (b) The defendant's history of violence against the  
5           same victim whether charged or uncharged;  
6                   (c) The use of a gun or other weapon by the defendant;  
7                   (d) The defendant's prior criminal history;  
8                   (e) The victim's attitude and conduct regarding the  
9           incident;  
10                  (f) The involvement of alcohol or other controlled  
11           substance, and the defendant's history of substance abuse as  
12           reflected in the defendant's criminal history and other sources;  
13           and  
14                  (g) The defendant's history of and amenability to  
15           counseling.

16           (2) If the court, after hearing, finds substantial evidence  
17           that a victim suffered serious bodily injury, no felony charge  
18           filed under this section shall be reduced to a misdemeanor  
19           unless the court finds that due to unusual circumstances a  
20           reduction of the charge is manifestly in the interest of justice.

21           (3) The fact that an alleged criminal act involved  
22           domestic violence as defined in §1-102 of this chapter of the  
23           Code shall not preclude the prosecuting attorney from charging  
24           and prosecuting the defendant for any other violations of law.

25           §1-107. Spousal privileges inapplicable. Notwithstanding any

1 other provision of law, the following evidentiary privileges do  
2 not apply in any criminal proceeding in which a spouse or other  
3 family or household member is the victim of an alleged crime  
4 involving domestic violence perpetrated by the other spouse:

5 (1) The privilege not to testify against one's spouse; and

6 (2) The privilege for confidential marital communication.

7 §1-108. Probation; suspension of sentence.

8 (1) In any case in which a person is convicted of violating  
9 this chapter and probation is granted, the court shall require  
10 participation in an education and treatment program if one  
11 should be available.

12 (2) Subject to the provisions of Subsection (3) of this  
13 section, if a person has previously been convicted of a violation  
14 of this chapter within seven years of the date of the conviction  
15 for the violation of this chapter that is presently before the court  
16 for sentencing, it shall be a condition of any probation or  
17 suspended sentence for the conviction then before the court that  
18 he or she be punished by imprisonment for not less than ten  
19 days, and that he or she participates in an education and  
20 treatment program, for no less than one year, and that he or she  
21 successfully completes said education and treatment program,  
22 as designated by the court, if one should be available.

23 However, except as provided in §1-103(3) of this chapter of the  
24 Code, the court, upon a showing of good cause, may find that  
25 the minimum imprisonment, or the participation in an education

1 and treatment program, or both the minimum imprisonment and  
2 participation in an education and treatment program, as required  
3 by this subsection, shall not be imposed and may grant  
4 probation or the suspension of the imposition of a sentence.

5 (3) If a person has previously been convicted of two or  
6 more violations of this chapter within seven years of the date of  
7 the conviction for the violation of this chapter that is presently  
8 before the court for sentencing, it shall be a condition of any  
9 probation or suspended sentence for the conviction of the  
10 violation presently before the court for sentencing that he or she  
11 be punished by imprisonment for not less than 30 days and that  
12 he or she participates in an education and treatment program for  
13 no less than one year, and that he or she successfully completes  
14 said education and treatment program, as designated by the  
15 court, if one should be available. However, except as provided  
16 in §1-103(3) of this chapter of the Code, the court, upon a  
17 showing of good cause, may find that the minimum  
18 imprisonment, or the participation in an education and  
19 treatment program, or both the minimum imprisonment and  
20 participation in an education and treatment program, as required  
21 by this subsection, shall not be imposed and may grant  
22 probation or the suspension of the imposition of a sentence.

23 §1-109. Protective orders: eligible petitioners; relief.

24 (1) A person who is or has been a victim of a crime  
25 involving domestic violence may file a petition in the court for

1 a protective order against a family or household member. A  
2 parent, guardian, or other representative appointed by the court  
3 under this section may file a petition for a protective order on  
4 behalf of a minor. The court may appoint a guardian *ad litem*  
5 or attorney to represent the minor.

6 (2) When a petition for a protective order is filed, the  
7 court shall schedule a hearing and provide at least 5 days'  
8 notice to the respondent of the hearing and of the respondent's  
9 right to appear and be heard, either in person or by an attorney.

10 (3) Proceedings for a protective order shall be conducted  
11 *in camera* and shall not be open to the public.

12 (4) If the court finds by a preponderance of evidence that  
13 the respondent has committed a crime involving domestic  
14 violence against the petitioner, regardless of whether the  
15 respondent appears at the hearing, the court may order any  
16 relief available under Subsection (5) of this section. The  
17 provisions of a protective order issued under this section are  
18 effective for one year unless earlier dissolved by court order.

19 (5) A protective order under this section may:

20 (a) Prohibit the respondent from threatening to  
21 commit or committing domestic violence;

22 (b) Prohibit the respondent from telephoning, e-  
23 mailing, texting, contacting, or otherwise communicating  
24 directly or indirectly with the petitioner;

25 (c) Remove and exclude the respondent from the

1 residence of the petitioner; PROVIDED that if the ownership of  
2 the residence is the respondent's, the petitioner shall be allowed  
3 entry to gather belongings;

4 (d) Direct the respondent to stay away from the  
5 residence, school, or place of employment of the petitioner or  
6 any specified place frequented by the petitioner or any  
7 designated household member;

8 (e) Prohibit the respondent from entering a propelled  
9 vehicle in the possession of or occupied by the petitioner;

10 (f) Prohibit the respondent from using or possessing  
11 a deadly weapon if the court finds the respondent was in the  
12 actual possession of or used a weapon during the commission  
13 of domestic violence;

14 (g) Direct the respondent to surrender any firearm  
15 owned or possessed by the respondent if the court finds that the  
16 respondent was in the actual possession of or used a firearm  
17 during the commission of the domestic violence;

18 (h) Request a police officer to accompany the  
19 petitioner to the petitioner's residence to ensure that the petitioner:

20 (i) Safely obtains possession of the petitioner's  
21 residence, vehicle, or personal items; and

22 (ii) Is able to safely remove a vehicle or  
23 personal items from the petitioner's residence;

24 (i) Award temporary custody of a minor child to the  
25 petitioner and may arrange for visitation with a minor child if

- 1 the safety of the child and the petitioner can be protected;
- 2 (j) Give the petitioner possession and use of a
- 3 vehicle and other essential personal items, regardless of
- 4 ownership of the items;
- 5 (k) Prohibit the respondent from consuming
- 6 controlled substances;
- 7 (l) Require the respondent to pay support for the
- 8 petitioner or a minor child in the care of the petitioner if there is
- 9 an independent legal obligation of the respondent to support the
- 10 petitioner or child;
- 11 (m) Require the respondent to reimburse the
- 12 petitioner or other person for expenses associated with the
- 13 domestic violence, including medical expenses, counseling,
- 14 shelter, and repair or replacement of damaged property;
- 15 (n) Require the respondent to pay costs and fees
- 16 incurred by the petitioner in bringing the action under this chapter;
- 17 (o) Order the respondent, at the respondent's
- 18 expense, to participate in a program for the rehabilitation of
- 19 perpetrators of domestic violence under this chapter; and
- 20 (p) Order other relief the court determines necessary
- 21 to protect the petitioner or any family or household member.
- 22 (6) If the court issues a protective order under this
- 23 section, it shall:
- 24 (a) Make reasonable efforts to ensure that the order
- 25 is understood by the petitioner and by the respondent, if

1 present; and

2 (b) Have the order delivered to the appropriate local  
3 law enforcement agency for expedited service of process.

4 (7) A court may not deny a petition for a protective order  
5 under this section solely because of a lapse of time between an  
6 act of domestic violence and the filing of the petition.

7 §1-110. Ex parte and emergency protective orders.

8 (1) A person who is a victim of a crime involving  
9 domestic violence may file a petition under §1-109 of this  
10 chapter of the Code and request an ex parte protective order. If  
11 the court finds that the petition establishes probable cause that a  
12 crime involving domestic violence has occurred, it is necessary  
13 to protect the petitioner from violence, and if the petitioner has  
14 certified to the court in writing the efforts, if any, that have been  
15 made to provide notice to the respondent, the court shall ex  
16 parte and without notice to the respondent issue a protective  
17 order. An ex parte protective order may grant the protection  
18 provided by §1-109 of this chapter of the Code. An ex parte  
19 protective order expires 20 days after it is issued unless  
20 dissolved earlier by the court at the request of either the  
21 petitioner or the respondent and after notice and, if requested, a  
22 hearing. If a court issues an ex parte protective order, the court  
23 shall have the order delivered to the appropriate local law  
24 enforcement agency for expedited service of process.

25 (2) A court may not deny a petition for an ex parte

1 protective order filed under Subsection (1) of this section solely  
2 because of a lapse of time between an act of domestic violence  
3 and the filing of the petition.

4 (3) A police officer, on behalf of and with the consent of a  
5 victim of a crime involving domestic violence, may request an  
6 emergency protective order from a judicial officer. The request  
7 may be made orally or in writing based upon the sworn statement  
8 of a police officer, and in person or by telephone. If the court  
9 finds probable cause to believe that the victim is in immediate  
10 danger of domestic violence based on an allegation of the recent  
11 commission of a crime involving domestic violence, the court  
12 shall ex parte issue an emergency protective order. In an  
13 emergency protective order, the court may grant the protection  
14 provided by §1-109 of this chapter of the Code. An emergency  
15 protective order expires 72 hours after it is issued unless  
16 dissolved earlier by the court at the request of the petitioner.

17 (4) A police officer who obtains an emergency protective  
18 order under Subsection (3) of this section shall:

19 (a) Place the provisions of an oral order in writing on  
20 a form provided by the court and file the written order with the  
21 issuing court by the end of the judicial day after it was issued;

22 (b) Provide a copy of the order to the petitioner; and

23 (c) Serve a copy of the order on the respondent.

24 §1-111. Modification of protective orders.

25 (1) Either the petitioner or the respondent may request



1 modification of a protective order. If a request is made for  
2 modification of:

3 (a) An ex parte protective order under §1-110(1) of  
4 this chapter of the Code, the court shall schedule a hearing on  
5 three days' notice or on shorter notice as the court may  
6 prescribe; the court shall hear and rule on the request in an  
7 expeditious manner; or

8 (b) A protective order after notice and hearing under  
9 §1-109 of this chapter of the Code, the court shall schedule a  
10 hearing within 20 days after the date the request is made, except  
11 that if the court finds that the request is meritless on its face, the  
12 court may deny the request without further hearing.

13 (2) If a request for a modification is made under this  
14 section and the respondent raises an issue not raised by the  
15 petitioner, the court may allow the petitioner additional time to  
16 respond.

17 (3) If the court modifies a protective order under this  
18 section, it shall issue a modified order and shall:

19 (a) Make reasonable efforts to ensure that the order  
20 is understood by the petitioner and by the respondent, if present  
21 at the hearing; and

22 (b) Have the order delivered to the appropriate local  
23 law enforcement agency for expedited service of process.

24 §1-112. Specifics of protective orders.

25 (1) If a respondent in a protective order issued under this

1 chapter is prohibited from communicating with the petitioner,  
2 excluded from the residence of the petitioner, or ordered to stay  
3 away from the petitioner as provided in §1-109 and §1-110 of  
4 this chapter of the Code, an invitation by the petitioner to  
5 communicate, enter the residence or vehicle, or have other  
6 prohibited contact with the petitioner does not waive or nullify  
7 any provision in a protective order.

8 (2) A court may not grant protective orders against the  
9 petitioner and the respondent in the same action under this  
10 chapter.

11 (3) In addition to other required information contained in  
12 a protective order, the order must include in bold face type the  
13 following statements in both Pohnpeian and English:

14 (a) “Violation of this order may be a misdemeanor,  
15 punishable by up to one year of incarceration or a fine of not  
16 more than \$1,000, or both such fine and imprisonment.”;

17 (b) “If you are ordered to have no contact with the  
18 petitioner or to stay away from the petitioner’s residence,  
19 vehicle, or other place designated by the court, an invitation by  
20 the petitioner to have the prohibited contact or to be present at  
21 or enter the residence, vehicle, or other place does not in any  
22 way invalidate or nullify the order.”

23 (4) A protective order issued under this chapter is in  
24 addition to and not in place of any other civil or criminal remedy.  
25 §1-113. Protective orders of other states. [RESERVED]

1            §1-114. Forms for petitions and orders; fees.

2            (1) The forms for petitions for protective orders under  
3 this chapter shall be as prescribed in the rules of procedure  
4 issued by the Pohnpei Supreme Court pursuant to 4 PC 2-102 of  
5 the Code.

6            (2) Filing fees may not be charged in any action seeking  
7 only the relief provided in this chapter.

8            §1-115. Notification of law enforcement agencies. When a  
9 court issues or accepts for filing a protective order under this  
10 chapter, it shall send a copy of the order to the appropriate local  
11 law enforcement agency. Each law enforcement agency shall  
12 establish procedures to inform police officers of protective  
13 orders. Police officers shall use every reasonable means to  
14 enforce a protective order issued or filed under this chapter.

15            §1-116. Other matters pertaining to protective orders.

16            (1) The Department of Public Safety shall maintain a  
17 complete and systematic record of all protective orders with  
18 respect to domestic violence incidents, including orders which  
19 have not yet been served and proofs of service in effect. This  
20 shall be used to inform police officers responding to domestic  
21 violence calls of the existence, terms, and effective dates of  
22 protective orders in effect.

23            (2) The terms and conditions of the protective orders  
24 remain enforceable, notwithstanding the acts of the parties, and  
25 may be changed only by order of the court.

1           (3) Upon request, the Department of Public Safety shall  
2           serve the court orders specified in §1-109 and §1-110 of this  
3           chapter of the Code upon the party to be restrained at the scene  
4           of a domestic violence incident or at any time the party is in  
5           custody.

6           §1-117. Violation of a protective court order.

7           (1) Any knowing violation of a protective court order  
8           issued under the authority of §1-109 or §1-110 of this chapter  
9           of the Code shall be a misdemeanor punishable by  
10          imprisonment for not more than one year or by a fine of not  
11          more than \$1,000, or both such fine and imprisonment.

12          (2) In the event of a conviction for a violation of  
13          Subsection (1) of this section which results in bodily injury, the  
14          defendant shall be imprisoned for at least 48 hours.

15          (3) In the event of a conviction for a violation under  
16          Subsection (2) of this section, occurring within one year of a  
17          conviction of either Subsection (1) or Subsection (2) of this  
18          section, committed against the same victim, the defendant shall  
19          be imprisoned for no less than 30 days.

20          (4) When a police officer has probable cause to believe  
21          that a person has violated an order of the court specified in  
22          Subsection (1) of this section and verifies the existence of the  
23          order, the police officer shall arrest the person.

24          (5) An admission by the defendant that he or she had  
25          knowledge of the court order shall be admissible in court

1           notwithstanding the *corpus delicti* rule.

2           §1-118. Diversion eligibility. Except as otherwise provided in  
3           this section and notwithstanding any other provision of law, and  
4           upon the determination of the judge, this section shall apply  
5           whenever a case is before the court upon an accusatory pleading  
6           for any criminal act identified in §1-103 of this chapter of the  
7           Code against a family or household member as defined in §1-  
8           102(6) of this chapter of the Code.

9           (1) The following persons are ineligible for the diversion  
10          process:

11           (a) A defendant who has a felony conviction for any  
12          offense involving violence within seven years prior to the  
13          alleged commission of the charged offense;

14           (b) A defendant who has been diverted pursuant to  
15          this section within five years prior to the alleged commission of  
16          the charged offense;

17           (c) A defendant who has been sentenced for a  
18          violation of §1-103 of this chapter of the Code within one year  
19          prior to the alleged commission of the charged offense; or

20           (d) A defendant whose current charge involves  
21          serious bodily injury, or sexual assault, unless the court finds  
22          that due to unusual circumstances diversion of the criminal  
23          proceedings is manifestly in the interest of justice.

24          (2) The fact that a defendant is not made ineligible by  
25          Subsection (1) of this section does not automatically entitle a

1 defendant to the diversion process.

2 (3) The prosecuting attorney shall determine whether the  
3 defendant is ineligible for diversion by reason of any of the  
4 factors set forth in Subsection (1) of this section. If the  
5 prosecutor finds that the person is eligible, and the prosecutor  
6 will agree to diversion, the prosecutor shall notify the  
7 defendant.

8 (4) If the prosecutor finds that the defendant is ineligible,  
9 or if the prosecutor will not agree to diversion although the  
10 defendant is not excluded by reason of Subsection (1) of this  
11 section, the prosecutor shall notify the defendant.

12 (5) Any defendant who is not specifically ineligible for  
13 the diversion process pursuant to Subsection (1) of this section  
14 may apply to the court, by noticed motion for an order granting  
15 diversion. The prosecuting attorney may oppose this  
16 application.

17 §1-119. Diversion hearing.

18 (1) Upon noticed motion, the court shall hold a hearing  
19 and, after consideration of any and all information the court  
20 believes to be relevant to its decision, the court shall determine  
21 if the defendant consents to further proceedings under this  
22 section and waives his or her right to a speedy trial, and if the  
23 defendant should be diverted from the criminal proceedings and  
24 referred for an education and treatment program directed  
25 specifically to the violent conduct of the defendant, if one is

1 available. The court, in determining the defendant's eligibility  
2 for diversion, shall consider the nature and extent of the injury  
3 inflicted upon the victim, any prior incidents of domestic  
4 violence by the defendant, and any factors which would  
5 adversely influence the likelihood of successful completion of  
6 the diversion process. If the court does not deem the defendant  
7 a person who would be benefited by diversion, or if the  
8 defendant does not consent to participate, the criminal  
9 proceedings shall continue as in any other case. If the court  
10 orders a defendant to be diverted, the court shall make inquiry  
11 into the financial condition of the defendant and upon a finding  
12 that the defendant is able in whole or part to pay the expense of  
13 such counseling the court may order him or her to pay for all or  
14 part of such expense. Nothing in this subsection shall prohibit  
15 the placement of a defendant in another appropriate counseling  
16 program if the court determines that there is no available  
17 education and treatment program.

18 (2) At such time that the defendant's case is diverted, any  
19 bail bond or undertaking, or deposit in lieu thereof, on file by or  
20 on behalf of him or her shall be exonerated, and the court shall  
21 enter an order so directing.

22 (3) The period during which further criminal proceedings  
23 against a person may be diverted pursuant to this section shall  
24 be no less than one year, and no more than three years if a  
25 misdemeanor is charged, and not less than one year, and no

1 more than five years if a felony is charged.

2 (4) The court shall set forth in writing or state on the  
3 record its reason for granting or denying diversion. The court's  
4 decision in such a matter shall be final and shall not constitute  
5 an appealable order.

6 §1-120. Reinstatement of criminal proceedings; dismissal. If it  
7 appears to the prosecuting attorney, the court or the probation  
8 officer that the divertee under this chapter is performing  
9 unsatisfactorily in the assigned program, or that the divertee is  
10 not benefiting from education and treatment programs, or that he  
11 or she has been convicted of any offense involving violence,  
12 after notice to the divertee, and upon motion by the prosecuting  
13 attorney or on the court's own motion, the court shall hold a  
14 hearing to determine whether the criminal proceedings should be  
15 reinstated. If the court finds by substantial evidence that the  
16 divertee is not performing satisfactorily in the assigned program,  
17 or that the divertee is not benefiting from diversion, or the court  
18 finds that the divertee has been convicted of a crime as set out  
19 above, the criminal case shall be referred back to the court for  
20 resumption of the criminal proceedings. If the divertee has  
21 performed satisfactorily during the period of diversion, at the  
22 end of the period of diversion, the criminal charges shall be  
23 dismissed upon motion or application of the defendant.

24 §1-121. Use of arrest record. Any records filed with the  
25 Pohnpei Department of Public Safety and the Office of the



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1 Attorney General shall set out the disposition of those cases  
2 diverted pursuant to this chapter. The divertee may indicate in  
3 response to any question concerning his or her prior criminal  
4 record that he or she was not arrested or diverted for such  
5 offense. A record pertaining to an arrest resulting in successful  
6 completion of the diversion process shall not, without the  
7 divertee's consent, be used in any way which could result in the  
8 denial of any employment, benefit, license, or certificate.

9 §1-122. Admissibility of statement or information. Any  
10 statement or any information procured from the arrest record as  
11 set forth in §1-121 of this chapter of the Code, with respect to  
12 the specific offense with which the defendant is charged, which  
13 is made to any probation officer or counselor during the process  
14 of determining the defendant's eligibility for diversion or  
15 subsequent to the granting of diversion, shall be inadmissible.

16 §1-123. Counseling and education and treatment programs.

17 (1) If a person is ordered to complete a counseling  
18 program or education and treatment program as a result of  
19 being in diversion, entering a deferred plea of guilty to  
20 domestic violence, or is adjudged guilty of domestic violence,  
21 he or she shall be ordered to pay a fee to the Pohnpei Supreme  
22 Court for such service.

23 (2) The fee shall be set by order of the presiding judge of  
24 the Trial Division of the Pohnpei Supreme Court. The fee shall  
25 not exceed \$10 per session or per class.

1                   (3) The fee shall be paid into a revolving fund of the  
2 Pohnpei Treasury hereby established and maintained apart from  
3 other funds of the Pohnpei Supreme Court. The Clerk of the  
4 Pohnpei Supreme Court shall be the certifying officer for the  
5 fund. The revolving fund shall be expended by the Pohnpei  
6 Supreme Court without necessity of appropriation to hire, as  
7 independent contractors, licensed individual and family  
8 counselors who shall conduct either group sessions or  
9 individual sessions for the perpetrators of domestic violence,  
10 victims of domestic violence or children who have witnessed  
11 domestic violence.

12                   §1-124. Training courses. To the extent that sufficient monies  
13 are budgeted or are otherwise available through special grants  
14 or donations and to the extent practicable, the Department of  
15 Public Safety shall implement a course or courses of instruction  
16 for the training of police officers in Pohnpei in the handling of  
17 domestic violence complaints and also shall develop guidelines  
18 for law enforcement response to domestic violence. The course  
19 or courses of instruction and the guidelines shall stress  
20 enforcement of criminal laws in domestic violence situations,  
21 availability of civil remedies and community resources, and  
22 protection of the victim.”

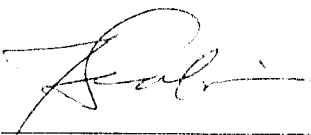
23                   Section 2. Section 4-101 of Title 59 of the Pohnpei Code is amended  
24 to read as follows:

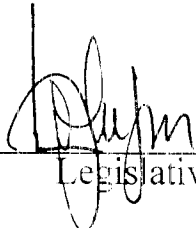
25                   “§4-101. Spouses. Except as otherwise provided by Pohnpei

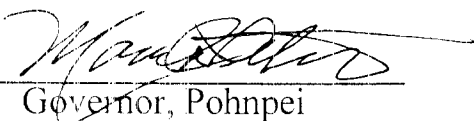
1 law, neither husband nor wife shall be compelled to testify  
2 against the other in the trial of an information, complaint,  
3 citation or other criminal proceeding.”

4 Section 3. This act shall take effect upon its approval by the  
5 Governor, or upon its becoming law without such approval; PROVIDED  
6 that Section 1-109 through Section 1-117 of Chapter 1 of Title 53 of the  
7 Pohnpei Code, as added to the Code by this act, shall not take effect until  
8 these sections of the Code are amended to provide for an effective date for  
9 said sections; PROVIDED FURTHER that not later than 30 days following  
10 the effective date of this act the Governor shall establish a task force to  
11 review and study the concept of utilizing protective orders in the context of  
12 domestic violence situations in this state; PROVIDED FURTHER that the  
13 task force shall submit its recommendations to the Governor and the  
14 Legislature no later than six months following the effective date of this act.

15  
16 PASSED BY THE POHNPEI LEGISLATURE ON THE 7<sup>TH</sup> DAY OF  
17 NOVEMBER, 2017.

18  
19   
20 \_\_\_\_\_  
21 Speaker, Pohnpei Legislature

22  
23 Attest:   
24 \_\_\_\_\_  
25 Legislative Clerk

26  
27 Approved:   
\_\_\_\_\_ Governor, Pohnpei  
12/12/17  
\_\_\_\_\_ Date

NINTH POHNPEI LEGISLATURE  
FIFTEENTH SPECIAL ~~REGULAR~~ SESSION, 2017

AN ACT

Adding a new Title 53 of the Pohnpei Code relative to Domestic Issues and inserting a new Chapter 1 therein relating to Domestic Violence; amending 59 PC 4-101 of the Pohnpei Code to provide consistency therewith; and for other purposes.

INTRODUCED BY SENATOR Shelten G. Neth

et. al.

DATE April 04, 2016

MEMO

REFERRED TO: J&GO Comm.  
COMMITTEE REPORT: SCR No. 230-17  
FIRST READING: November 06, 2017  
SECOND READING: November 07, 2017  
TRANSMITTED: November 14, 2017  
GOVERNOR'S ACTION: Approved  
STATE LAW NO: S.L. No. 9L-56-17  
FURTHER LEGISLATIVE ACTION:



Charles B. Johnson  
LEGISLATIVE CLERK  
POHNPEI LEGISLATURE