

FOURTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

FIRST REGULAR SESSION, 2004

**PUBLIC LAW NO. 14-9
H. B. NO. 14-5, HS1**

A BILL FOR AN ACT

To establish a Domestic Violence Criminal Act in the Commonwealth, by adding Article 5 to Title 6, Division 1, Chapter 4; and to add the crime of stalking to the Commonwealth Criminal Code.

**BE IT ENACTED BY THE FOURTEENTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

Section 1. Findings. The Legislature finds that domestic violence is a serious problem within the Commonwealth, and that the current criminal laws are inadequate to protect the community, provide redress to the victims, and deter or rehabilitate offenders.

The Legislature finds domestic violence is a serious problem for many reasons. Paramount among these is the effect of domestic violence on victims. Statistics show that domestic violence is the number one cause of injury to women. Nearly 4,000,000 women are beaten by their husbands or partners annually. Approximately 1,400 women are killed in the United States each year as a result of domestic violence.

According to data generated by the Criminal Justice Information System (CJIS), during the past six years, the CNMI Department of Public Safety has responded to over 300 cases, on average, classified as "domestic disturbance complaints." For example, of the 277 domestic disturbances responded to in calendar year 2001, the Criminal Division of the Attorney General's Office received 205 referred cases. Of the 205 cases referred, 164 resulted in criminal charges filed against a defendant. Of those 164 cases filed, 103 either pled guilty or were found guilty at trial, as of December 31, 2001. Of the 103 convictions, only 86 received any jail time.

The Department of Public Safety responded to 284 domestic disturbance complaints in calendar year 2002, with the Attorney General's Office reporting 135 reports received. Of the 135 reports received, 87 resulted in charges being filed. Of the 87 cases filed, there were

32 convictions, as of December 31, 2002. Only 22 of the convictions resulted in any jail time for the defendant.

There is no consistent mechanism in the current law for identifying a crime as one involving domestic violence. Therefore, the statistics cited above should not be considered definitive, but rather very conservative estimates. The Legislature notes that in many jurisdictions, domestic violence crimes are some of the most underreported crimes on the books. In order to track the incidence of crimes involving domestic violence within the Commonwealth, the Courts are encouraged to amend the Rules of Practice to require a certification by the prosecutor filing the information, or the police officer filing a complaint, that the crime or crimes charged are, or are not, crimes involving domestic violence. A certification by the law enforcement officer or prosecutor that a criminal offense is a crime involving domestic violence will ensure that court personnel can readily identify those files subject to the special arrest, bail, sentencing and other provisions provided by this Act.

The Legislature also finds that domestic violence in a relationship tends to escalate over time, resulting in more frequent assaults and more serious injuries. Jurisdictions that have had some success in deterring crimes of domestic violence have done so, in part, by aggressively prosecuting misdemeanor assaults before they escalate to felony level crimes. Because domestic violence crimes tends to escalate over time, and because of the need to deter those crimes before serious injuries or fatality results, this Act provides for mandatory minimum penalties for crimes involving domestic violence, and for more severe penalties for repeat offenders.

The Legislature also finds that the direct and indirect effects of domestic violence on the children of the Commonwealth pose a serious risk to the continued health of our families. Children who live in homes where domestic violence occurs are more likely to be physically abused than children from homes where such violence does not occur. They may be severely traumatized by witnessing family violence directed at a parent or other loved one. They are more likely to suffer secondary effects from having witnessed or experienced abuse within

the home, such as sleeplessness, nervous disorders, stomach ailments, poor grades, difficulty relating to their peers, fewer hobbies or outside interests, and more disciplinary problems.

However, the most ominous consequence of growing up in an abusive home is the effect that experience has on the child's future relationships with his or her loved ones. Parents are the ultimate role models for their children. When a child sees his fathers beat his mother, he learns that it may be acceptable behavior. Thus, boys who grow up in abusive homes are 10 times more likely to be prosecuted for committing crimes involving domestic violence than boys who do not experience such abuse in the home. Girls who grow up in abusive homes are significantly more likely to themselves be the victims of crimes involving domestic violence when they become adults. Our failure, as a society, to deal with the problem of domestic violence, means that many of our young men will go to jail, and many of our young women will wind up in the emergency room.

To effectively deter such crimes from being committed in the future, the Legislature finds that a multi-pronged approach is required, including new criminal offenses for addition to the Commonwealth Criminal Code; a mandatory arrest provision for those who commit such crimes, or violate pre-trial release conditions; enhanced penalties for those who commit such crimes, particularly for repeat offenders; and special conditions of release for those who have been charged with such crimes. In addition, statistics show that by the time an offender is first convicted of a crime involving domestic violence, he has engaged in many such acts that have either not been reported, or not resulted in conviction. Because of the compelling need to identify domestic violence abusers and deter them from repeat offenses before their crimes escalate, this Act requires that suspended imposition of sentence be denied those convicted of crimes involving domestic violence.

Among the new crimes authorized by this revision are Stalking in the First Degree and Stalking in the Second Degree. The Legislature finds that it is in the best interest of the Commonwealth to enact this protective legislation. Since the passage of the first anti-stalking measure in the United States, in 1991, all 50 states have enacted laws prohibiting the conduct known as stalking. The conduct is not only threatening to the victim and the

victim's family, but also compromises the victims' right to a safe environment. This conduct results in decreased productivity in the public and private sectors, through increased absenteeism, and the threat of workplace violence. Although the crime of stalking is often identified as a crime involving domestic violence, the new crimes authorized by this legislation, stalking in the first degree and stalking the second degree, need not be crimes involving domestic violence. A person engaging in stalking conduct may be guilty of stalking whether or not the victim of the crime is a household member.

This is also generally true of all the crimes identified as crimes involving domestic violence in this Act. Rather than create a new category of entirely separate crimes, this Act makes clear that many existing crimes in the Commonwealth Code may also be crimes involving domestic violence if they are committed by one household member against another household member. It is this special relationship between the perpetrator and victim that gives rise to the special provisions of this Act, including additional conditions of pretrial release, mandatory arrest and enhanced penalties.

It is the intent of the Legislature that this Act be interpreted harmoniously, to the extent possible, with Public Law 12-19, the Domestic and Family Violence Prevention Act, given its remedial purposes. This Act is also intended to supplement, and not supercede, Public Law 9-21, the "Man-Amko" Physical Abuse and Mental Cruelty Act, and Public Law 3-18, the provisions of the Commonwealth Code dealing with the protection of abused and neglected children.

Section 2. Short Title. This act shall be known as the "Domestic Violence Criminal Act of 2004."

Section 3. Amendment. Title 6, Division 1, Chapter 4 is amended by adding a new Article 5 to read as follows:

"ARTICLE 5

Section 1501. Definitions.

- (a) In this Act,

(1) 'domestic violence' and 'crime involving domestic violence' mean one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member:

- (A) a crime against the person under Title 6, Division 1, Part 1;
- (B) burglary under 6 CMC § 1801;
- (C) criminal trespass under 6 CMC § 1804;
- (D) arson or reckless burning under 6 CMC § 1802;
- (E) criminal mischief under 6 CMC § 1803;
- (F) riot under 6 CMC § 3102;
- (G) violating an order for protection under 6 CMC § 1504;
- (H) disturbing the peace under 6 CMC § 3101;
- (I) stalking in the first or second degree under 6 CMC §§ 1508-1509;
- (J) interfering with a domestic violence report under 6 CMC § 1502;
- (K) unlawful contact under 6 CMC § 1503.

(2) 'household member' includes

- (A) adults or minors who are current or former spouses;
- (B) adults or minors who live together or who have lived together;
- (C) adults or minors who are dating or who have dated;
- (D) adults or minors who are engaged in or who have engaged in a sexual relationship;
- (E) adults or minors who are related to each other up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption, computed under the rules of civil law;
- (F) adults or minors who are related or formerly related by marriage;

- (G) persons who have a child of the relationship; and
- (H) minor children of a person in a relationship that is described in (A) through (G) of this subsection.

(3) 'physical injury' means any physical pain, or any impairment of physical condition;

(4) 'victim' means a person against whom an offense has been perpetrated;

(5) 'witness' means a person who contacted in connection with a criminal case because the person may have knowledge or information about the criminal case.

Section 1502. Interfering with a domestic violence report.

(a) A person, other than the victim, commits the crime of interfering with a domestic violence report if the person knowingly interferes with another person who is reporting or attempting to report a crime involving domestic violence to a law enforcement agency, emergency medical personnel, or any other person who might reasonably be expected to render assistance to the victim.

(b) A person convicted under this section may be punished by imprisonment for a term not to exceed one year, by a fine not to exceed \$1,000, or both.

Section 1503. Unlawful contact.

- (a) A person commits the crime of unlawful contact if the person
 - (1) is arrested for a crime involving domestic violence, and before the person's initial appearance before a judge, the person initiates communication or attempts to communicate with the alleged victim of the crime for which the person was arrested, with the intent of inducing or encouraging the alleged victim to drop the charges, or not to cooperate with the investigation or prosecution of the case; or

(2) has been ordered not to contact the alleged victim or any witness in the case as a court-ordered condition of release, or a condition of probation or parole, and knowingly contacts or attempts to contact, either directly or indirectly, the alleged victim or witness in violation of the order.

(b) In this section:

(1) a defendant 'initiates communication' or 'attempts to communicate' by sending or causing to be sent, any oral, pictorial or written message to be conveyed to the victim, regardless of the form or medium, whether directly conveyed to the victim by the defendant, or delivered through some third party, whether or not the message actually reaches the victim.

(2) In determining whether the defendant had the requisite intent of inducing or encouraging the alleged victim to drop the charges, or not to cooperate with the investigation or prosecution of the case, the court may consider any evidence going to the defendant's intent, including prior incidents of domestic violence engaged in by the defendant, prior communications between the defendant and the victim or victims of such incidents, and what the victim believed the communication was intended to convey.

(c) A person convicted under this section may be punished by imprisonment for a term not to exceed one year, by a fine not to exceed \$1,000, or both.

Section 1504. Violating an order for protection.

(a) A person commits the crime of violating an order for protection if the person is subject to an order for protection containing a provision listed in Section 205(c) or 206(b) or (c), as enacted by Public Law 12-19, and knowingly commits or attempts to commit an act in violation of that provision.

- (b) Violating an order for protection is punishable by term of imprisonment not to exceed one year, by a fine of not more than \$2,000, or both. In addition, a person convicted of violating an order for protection, for conduct charged and specially found to be true, as described in (b)(1) or (b)(2) of this section, shall be sentenced to a mandatory minimum term of imprisonment, which may not be suspended, and which shall run consecutively to any other term of imprisonment:
- (1) if the person threatens to cause physical injury to any other person, or attempts to cause physical injury to any other person, 10 days; and
 - (2) if the person causes physical injury to any other person, 20 days.
- (c) For purposes of this section
- (1) a person 'attempts to cause physical injury' when he or she intentionally, knowingly or recklessly engages in any conduct that a reasonable person would know is likely to result in any physical pain or any impairment of physical condition to any person;
 - (2) a person 'threatens to cause physical injury' when, by words or other conduct, that person recklessly places another person in fear of imminent physical injury;
 - (3) 'physical injury' means any physical pain or any impairment of physical condition.

Section 1505. Duties of Law Enforcement Officer in a crime involving domestic violence.

- (a) A law enforcement officer investigating a crime involving domestic violence shall protect the victim and any member of the victim's family and prevent further violence by
- (1) transporting an adult victim and any member of the victim's family from the place of the offense or the place of contact, to a location within the

- community where the offense occurred that is a shelter, a safe home, or another location in the community requested by the victim;
- (2) assisting the victim in removing from the residence essential items belonging to the victim, such as clothing, vehicles, medication, personal records, and legal documents;
 - (3) assisting the victim and any member of the victim's family in obtaining medical treatment necessitated by the offense, by contacting emergency medical services or by transporting the victim to a local medical facility; and
 - (4) providing notice of the rights of victims and services available to victims of domestic violence as provided in 6 CMC § 1506.
- (b) If a law enforcement officer investigating a crime involving domestic violence determines that it is necessary to protect the victim or the victim's family from domestic violence or to protect the officer or the public during the investigation, the officer may
- (1) seize a deadly weapon in plain view of the officer, and
 - (2) if a deadly weapon was actually possessed during, or used in the domestic violence, shall seize all deadly weapons owned, used, possessed, or within the control of the alleged perpetrator.

Section 1506. Notification to victims of domestic violence.

- (a) A law enforcement officer investigating a crime involving domestic violence shall orally and in writing inform the victim of the rights of victims of domestic violence and the services available to them. The notice must be in substantially the following form:

If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection.

You may also request that the officer assist you in obtaining your essential personal belongings and locating and taking you to a place of safety. In some places in the Commonwealth there are organizations that provide aid and shelter to victims of domestic violence. The nearest organization is located at _____.

If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment.

You may request a copy of the police report in your case, at no cost to you, from the Department of Public Safety within three calendar days. You may ask the prosecuting attorney to file a criminal information. The victim advocate within the Office of the Attorney General may also be able to help you by providing information about your rights, how to apply for an order of protection, whether there are shelter or counseling services available to you, and other information. The information is available from the Office of the Attorney General.

You also have the right to file a petition in court requesting an order of protection that may include any of the following provisions:

- (1) an order prohibiting your abuser from threatening to commit or committing further acts of domestic violence;
- (2) an order prohibiting your abuser from harassing, annoying, telephoning, contacting, or otherwise communicating with you, directly or indirectly;
- (3) an order removing your abuser from your residence;
- (4) an order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you or another household member;

- (5) an order prohibiting your abuser from entering your vehicle or a vehicle you occupy;
- (6) an order prohibiting your abuser from using or possessing a firearm or other weapon specified by the court;
- (7) an order granting you possession and use of the automobile and the essential effects;
- (8) an order denying your abuser visitation with any minor children in your custody;
- (9) an order specifying arrangements for visitation, including requiring supervised visitation;
- (10) an order requiring your abuser to pay certain costs and fees, such as rental or mortgage payments or other expenses for shelter, child support payments, medical expenses, courts costs, and attorney's fees; and
- (11) other relief the court determines to be necessary for your safety.

The forms you need to obtain an order for protection are available from the Clerk of the Superior court and other designated agencies. It is not necessary to have a lawyer to get an order for protection, but you may consult a lawyer if you choose.

The resources available in this community for information relating to domestic violence, treatment of injuries, and places of safety and shelters are: Karidat and the Department of Community and Cultural Affairs, Division of Youth Services and the Domestic Violence Intervention Center. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained, and damage to your property. This

can be done with or without a lawyer in small claims court if the total amount is less than \$3,000.00.

(b) If the victim of domestic violence does not understand English, the police officer shall make reasonable efforts to inform the victim of the services and rights specified in (a) of this section in a language the victim understands.

Section 1507. Mandatory arrest for crimes involving domestic violence, violation of protective orders, and violation of conditions of release.

(a) Except as provided in (b) or (c) of this section, a law enforcement officer, with or without a warrant, shall arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer, within the previous 12 hours

(1) committed a crime involving domestic violence, except an offense under 6 CMC § 1101 or 1102, whether the crime is a felony or a misdemeanor; or

(2) violated a condition of release imposed by a court pursuant to 6 CMC § 6407.

(b) If a law enforcement officer receives complaints of domestic violence from more than one person arising from the same incident, the officer shall evaluate the conduct of each person to determine who was the principal physical aggressor. If the officer determines that one person was the principal physical aggressor, the other person or persons need not be arrested. In determining whether a person is a principal physical aggressor, the officer shall consider

(1) prior complaints of domestic violence;

(2) the relative severity of the injuries inflicted on each person;

(3) the likelihood of future injury from domestic violence to each person;

and

(4) whether one of the persons acted in defense of self or others.

(c) A law enforcement officer is not required to make an arrest under (a) of this section if the officer has received authorization not to arrest from the attorney general or an assistant attorney general assigned to the criminal division of the Attorney General's Office.

(d) When investigating a crime involving domestic violence, a law enforcement officer may not threaten or suggest the possible arrest of all persons involved in the same incident in a manner that would have a tendency to discourage requests for intervention by law enforcement in incidents involving domestic violence.

(e) In addition to the contents of any other report, a law enforcement officer who does not make an arrest after investigating a complaint of domestic violence, or who arrests two or more persons based on the same incident, shall describe in writing the reasons for not making an arrest or for arresting more than one person.

(f) A person may not bring a civil action for damages for a failure to comply with the provisions of this section.

Section 1508. Stalking in the first degree.

(a) A person commits the crime of stalking in the first degree if the person violates 6 CMC § 1509 and

- (1) the actions constituting the offense are in violation of an order of protection issued by a court of law;
- (2) the actions constituting the offense are in violation of a condition of probation, release before trial, release after conviction, or parole;
- (3) the victim is under 16 years of age;
- (4) at any time during the course of conduct constituting the offense, the defendant possessed a dangerous weapon;
- (5) the defendant has been previously convicted of stalking in the first degree, stalking in the second degree, violating an order for protection, or a law or ordinance of this or another jurisdiction with elements similar to

stalking in the first degree, stalking in the second degree, or violating an order for protection;

(6) the defendant has been previously convicted of a crime involving domestic violence, or an attempt or solicitation to commit a crime involving domestic violence, under (A) murder in the first or second degree or manslaughter, under 6 CMC § 1101-1102; (B) assault, assault and battery, aggravated assault or assault with a dangerous weapon, under 6 CMC § 1201-1204; (C) kidnapping, under 6 CMC § 1421; (D) sexual assault or sexual abuse of a minor in any degree, under 6 CMC §§ 1301—1309, or the former crimes of Rape, Rape of Spouse, Criminal Sodomy, Criminal Oral Copulation, Rape By Object, or Sexual Abuse of a Child, under former 6 CMC §§ 1301—1311; (E) terroristic threatening, under 6 CMC § 3112; (F) violating an order of protection, under 6 CMC § 1504; (G) disturbing the peace, under 6 CMC § 3101; or (H) a law or an ordinance of this or another jurisdiction with elements similar to any crime listed in (A) through (G) of this subsection, involving the same victim as the present offense.

(b) In this section, ‘course of conduct’ and ‘victim’ have the meanings given in 6 CMC § 1509.

(c) Stalking in the first degree is punishable by a term of imprisonment not to exceed five years, a fine not to exceed \$2,000, or both.

Section 1509. Stalking in the second degree.

(a) A person commits the crime of stalking in the second degree if the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member.

(b) In this section,

(1) ‘course of conduct’ means repeated acts of nonconsensual contact involving the victim or a family member;

(2) ‘family member’ means a

(A) spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt, nephew, or niece, of the victim, whether related by blood, marriage, or adoption;

(B) person who lives, or has previously lived, in a spousal relationship with the victim;

(C) person who lives in the same household as the victim; or

(D) person who is a former spouse of the victim or is or has been in a dating, courtship, or engagement relationship with the victim;

(3) 'nonconsensual contact' means any contact with another person that is initiated or continued without that person's consent, that is beyond the scope of the consent provided by that person, or that is in disregard of that person's expressed desire that the contact be avoided or discontinued; "nonconsensual contact" includes

(A) following or appearing within the sight of that person;

(B) approaching or confronting that person in a public place or on private property;

(C) appearing at the workplace or residence of that person;

(D) entering onto or remaining on property owned, leased, or occupied by that person;

(E) contacting that person by telephone;

(F) sending mail or electronic communications to that person;

(G) placing an object on, or delivering an object to, property owned, leased, or occupied by that person;

(4) 'victim' means a person who is the target of a course of conduct.

(c) Stalking in the second degree is punishable by a term of imprisonment not to exceed one year, a fine of \$1,000, or both.”

Section 4. Amendment. Title 6, Division 6, Chapter 4 of the Commonwealth Code is amended by adding a new Section 6407 to read as follows:

“Section 6407. Bail and conditions of release in domestic violence cases.

(a) In making a decision concerning the bail or conditions of release of a person who is arrested for or charged with a crime involving domestic violence or violating an order of protection, the court shall consider

- (1) the nature and circumstances of the offense charged, including the effect of the offense upon the alleged victim;
- (2) the weight of the evidence against the person;
- (3) the person’s family ties;
- (4) the person’s employment;
- (5) the person’s financial resources;
- (6) the person’s character and mental condition;
- (7) the length of the person’s residence in the community;
- (8) the person’s record of convictions;
- (9) the person’s record of appearance at court proceedings;
- (10) the flight of the accused to avoid prosecution or the person’s failure to appear at court proceedings;
- (11) threats the person has made, and the danger the person poses, to the alleged victim; and
- (12) whether the defendant has a history of domestic violence, as indicated by criminal informations or complaints filed, judgments of conviction, incident reports, victim statements, medical records, petitions for orders of protection, orders of protection issued, or other credible information, whether or not charges were filed, and irrespective of whether a conviction was obtained. In any case in

which the court finds the defendant has a history of domestic violence with the alleged victim in the instant case, the court shall consider any available evidence concerning whether the frequency or severity of the abuse appears to be escalating.

(b) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the court shall consider the safety of the alleged victim or other household members. To protect the alleged victim, household members, and the public, and to reasonably assure the person's appearance, the court may impose bail and any of the conditions authorized under this chapter, any provision listed in Section 205(c) or 206(b) or (c), as enacted by Public Law 12-19, and any other condition necessary to protect the alleged victim, household members, and the public, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

(c) A court may not order or permit a person released under (a) of this section to return to the residence of the alleged victim, or the residence of a petitioner who has an order of protection directed to the person and issued or filed under Title 8, Division 1, Chapter 9, Article 2.

(d) If the court imposes conditions of release under (a) of this section, the court shall

- (1) issue a written order specifying the conditions of release;
- (2) provide a copy of the order to the person arrested or charged; and
- (3) immediately distribute a copy of the order to the law enforcement agency that arrested the person, the Office of Adult Probation, and any other agency or individual responsible for supervision of the defendant.

(e) When a person is released from custody under (a) of this section,

- (1) from a correctional facility, the correctional facility shall notify the prosecuting authority and the prosecuting authority shall make reasonable efforts

to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release;

(2) from other than a correctional facility, the arresting authority shall make reasonable efforts to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release.

(f) A person arrested for a crime involving domestic violence may not be released from custody until the person has appeared before a judge for determination of the person's release conditions under (a) of this section.

(g) A person may not bring a civil action for damages for a failure to comply with the provisions of this section.

(h) In this section, 'crime involving domestic violence' has the meaning given in 6 CMC § 1502."

Section 5. Amendment. Title 6, Division 4, Chapter 1 of the Commonwealth Code is amended by adding new §§ 4102(f), (g), and (h) and 4113(h) to read as follows:

(a) **"Section 4102. Mandatory Sentencing.**

(f) A defendant convicted of assault and battery in violation of 6 CMC § 1202 that is a crime involving domestic violence shall be sentenced to serve no less than

(1) 72 consecutive hours, less any credit for time served while in pre-trial custody upon the defendant's arrest, if the defendant has not been previously convicted of a crime against a person or a crime involving domestic violence;

(2) 30 days if the defendant has been previously convicted of a crime against a person or a crime involving domestic violence;

(3) 60 days if the defendant has been previously convicted two or more times of a crime against a person or a crime involving domestic violence, or a combination of those crimes.

A minimum term of imprisonment imposed under this subsection may not be suspended, and shall run consecutively to any other term of imprisonment.

(g) If it has been charged and specially found to be true that any person convicted of a crime against a person that is also a crime involving domestic violence, committed that crime in the presence of a child, the court shall consider the harm to the child in whose presence the crime was committed, and may increase the mandatory minimum jail term provided for in subsection (f), in the court's discretion, not to exceed the maximum term allowable under the law.

(h) For purposes of this section

(1) 'crime against a person' means a crime under Title 6, Division 1, Part 1, or a crime in this or another jurisdiction having elements similar to those of a crime under Title 6, Division 1, Part 1;

(2) 'crime involving domestic violence' has the meaning given in 6 CMC § 1501;

(3) 'in the presence of a child' means

(A) in the physical presence of a child under the age of 16 years; or

(B) having knowledge that a child under the age of 16 years is present and may see or hear an act of domestic violence.

(4) 'previously convicted' means convicted in this or another jurisdiction of an offense having elements similar to those of an offense defined as such under the laws of the Commonwealth at the time the offense was committed. A defendant may not be considered to have been previously convicted if a period of ten years or more has elapsed since the defendant's unconditional discharge from all disability arising under the sentence on the preceding offense, including probation and parole, and the commission of the present offense."

(b) "Section 4113. Probation and Suspension of Imposition of Sentence; Probation Service Fee Required.

(h) Notwithstanding subsection (a) above, the court may not suspend the imposition of sentence upon entering a judgment of conviction for any crime involving domestic violence, as defined by 6 CMC § 1501(a)."

Section 6. **Amendment.** Title 7, Division 3, Chapter 3 of the Commonwealth Code is amended by adding new §§ 3309, 3310, 3311, 3312, and 3313 to read as follows:

“§ 3309. Compulsory disclosure of communications prohibited.

(a) Except as provided in 7 CMC § 3310 or 7 CMC § 3311 below, a victim or victim counselor may not be compelled, without appropriate consent, to give testimony or to produce records concerning confidential communications for any purpose in a criminal, civil, legislative, or administrative proceeding. In this subsection, "appropriate consent" means

- (1) the consent of the victim with respect to the testimony of
 - (A) an adult victim; and
 - (B) a victim counselor when the victim is an adult;
- (2) the consent of the victim's parent, legal guardian, or guardian *ad litem* with respect to the testimony of a
 - (A) victim who is a minor or incompetent to testify; and
 - (B) victim counselor when the victim is a minor or incompetent to testify.

(b) Either party may apply for appointment of a guardian *ad litem* for purposes of (a)(2) of this section.

(c) A victim or victim counselor may not be compelled to provide testimony in a civil, criminal, or administrative proceeding that would identify the name, address, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding, or the name, address, or telephone number of a victim counselor, unless the court or hearing officer determines that the information is necessary and relevant to the facts of the case.

(d) Notwithstanding (a) of this section,

- (1) a minor may waive the privilege provided under (a) of this section and testify or give consent for a victim counselor to testify if the court determines that the minor is capable of knowingly waiving the privilege;
- (2) a parent or legal guardian may not, on behalf of a minor, waive the privilege provided under (a) of this section with respect to the minor's testimony or the testimony of a victim counselor if
 - (A) the parent or legal guardian has been charged with a crime against the minor;
 - (B) a protective order or restraining order has been entered against the parent or legal guardian on request of or on behalf of the minor; or
 - (C) the parent or legal guardian otherwise has an interest adverse to that of the minor with respect to the waiver of privilege.

§ 3310. Exceptions.

The privilege provided under 6 CMC § 3309 does not apply to

- (1) reports of suspected child abuse or neglect under 6 CMC §§ 5311—5316;
- (2) evidence that the victim is about to commit a crime;
- (3) a proceeding that occurs after the victim's death;
- (4) a communication relevant to an issue of breach by the victim or victim counselor of a duty arising out of the victim-victim counselor relationship;
- (5) a communication that is determined to be admissible hearsay as an excited utterance under the Commonwealth Evidence Rules;
- (6) any court proceeding authorized under 6 CMC § 5323;
- (7) a communication made during the victim-victim counselor relationship if the services of the counselor were sought, obtained, or used to enable anyone to commit or plan a crime or to escape detection or apprehension after the commission of a crime; or
- (8) a criminal proceeding concerning criminal charges against a victim of domestic violence or sexual assault where the victim is charged with a crime

- (A) under Commonwealth statutes dealing with crimes against a person, where the crime is committed against a minor; or
- (B) in which the physical, mental, or emotional condition of the victim is raised in defense of the victim.

§ 3311. Waiver.

(a) A victim does not waive the protections provided in 7 CMC § 3309 by testifying, except that, if the victim partially discloses the contents of a confidential communication in the course of testifying in a civil, criminal, or administrative proceeding, then either party may request the court or hearing officer to rule that justice requires the protections of 7 CMC § 3309 to be waived to the extent they apply to that portion of the communication. A waiver under this subsection applies only to the extent necessary to require a witness to respond to counsel's questions concerning the confidential communications that were disclosed and only to the extent that they are relevant to the facts of the case.

(b) A victim counselor may not waive the protections afforded to a victim under 7 CMC § 3309 without the consent of the victim or the consent of a parent, legal guardian, or guardian *ad litem* authorized to give consent under 7 CMC § 3309 .

§ 3312. Inference from claim of privilege; instruction.

(a) The claim of a privilege under 7 CMC § 3309, whether in a present proceeding or upon a prior occasion, is not a proper subject of comment by a judge, hearing officer, legislator, or counsel. An inference may not be drawn from the claim of privilege.

(b) In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of a claim of privilege under 7 CMC § 3309 without the knowledge of the jury.

(c) Upon request, a party against whom a jury might draw an adverse inference from a claim of privilege under 7 CMC § 3309 is entitled to an instruction that an inference may not be drawn from the claim of privilege.

§ 3313. Definitions.

In §§ 3309—3312 of this Chapter,

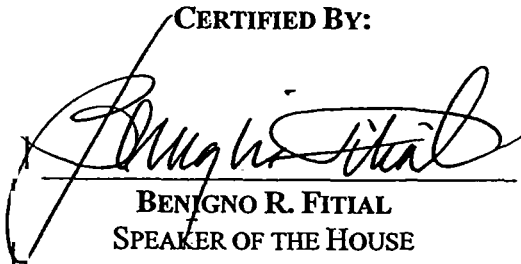
- (1) ‘confidential communication’ means information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and that is disclosed in the course of victim counseling resulting from a sexual assault or domestic violence;
- (2) ‘sexual assault’ means sexual assault or sexual abuse of a minor in any degree, under 6 CMC §§ 1301—1309, or the former crimes of Rape, Rape of Spouse, Criminal Sodomy, Criminal Oral Copulation, Rape By Object, or Sexual Abuse of a Child, under former 6 CMC §§ 1301—1311, or an offense in another jurisdiction whose elements are similar to the elements of an offense listed in this subsection;
- (3) ‘victim’ means a person who consults a victim counselor for assistance in overcoming adverse effects of a sexual assault or domestic violence;
- (4) ‘victim counseling’ means support, assistance, advice, or treatment to alleviate the adverse effects of a sexual assault or domestic violence on the victim;
- (5) ‘victim counseling center’ means a private organization or a local government agency that
 - (A) has as one of its primary purposes the provision of direct services to victims for trauma resulting from a sexual assault or domestic violence; and
 - (B) is not affiliated with a law enforcement agency or a prosecutor's office.
- (6) ‘victim counselor’ means an employee or supervised volunteer of a victim counseling center that provides counseling to victims
 - (A) who has undergone a minimum of 40 hours of training in domestic violence or sexual assault, crisis intervention, victim support, treatment and related areas; and
 - (B) whose duties include victim counseling.”

Section 7. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected.

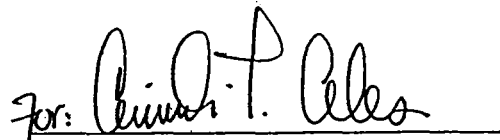
Section 8. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which is already in existence on the date this Act becomes effective.

Section 9. Effective Date. This Act shall take effect upon its approval by the Governor or upon becoming law without such approval.

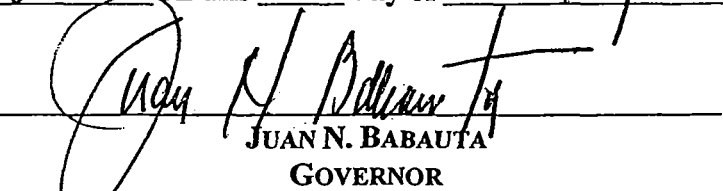
CERTIFIED BY:


BENIGNO R. FITIAL
SPEAKER OF THE HOUSE

ATTESTED BY:

for: 
EVELYN C. FLEMING
HOUSE CLERK

Approved on this 20th day of May, 2004


JUAN N. BABAUTA
GOVERNOR
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS