

NINTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

SECOND REGULAR SESSION, 1994

H. B. NO. 9-260, S. D. 1

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AN ACT

To prescribe and provide protection and penalties for the "Man-amko" against physical abuse and mental cruelty, and for other purposes.

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

Section 1. Title. This Act shall be known and be cited as "The Commonwealth "Man-Amko" Physical Abuse and Mental Cruelty Act."

Section 2. Legislative Intent. The Legislature finds that it is in the best interest of the Commonwealth to have statutory protections of the mental and physical health of the "Man-amko" of the Commonwealth of the Northern Mariana Islands.

Section 3. Definition: For the purpose of this Act, the following words are defined as follows:

(a) "MAN-AMKO" means all persons residing within the Commonwealth of the Northern Mariana Islands and who have reached the age of 55 years and over.

(b) "COMMONWEALTH" means the Commonwealth of the Northern Mariana Islands and its government.

Section 4. Purposes. This Act seeks to:

(a) Insure each abused member of the "Man-amko" receives such care as will serve the emotional, mental, and physical welfare of the "Man-amko" and the best interests of the Commonwealth.

(b) Require reporting of physical abuse and mental cruelty incidents perpetuated against any member of the "Man-amko" so such persons may be identified and given such care deemed to be in the best interest of the "Man-amko" and the Commonwealth.

Section 5. Senior Citizen Physical Abuse/Or Mental Cruelty.

(a) A person commits the offense of "Man-amko" physical abuse if he or she willfully, knowingly, and intentionally endangers, hurts, ill treats, mistreats, mishandles, victimizes, strikes, beats or in any manner inflicts physical pain, injury, or mental distress or undue anguish upon any member of the "Man-amko";

(b) A person commits the offense of "Man-amko" mental cruelty when he or she knowingly endangers, dishonors, hurts, mistreats, mishandles, victimizes the mental health of such member of the "Man-amko" to such an extent as to render the conduct intolerable, or he or she had a duty to and failed to provide the person with adequate food, clothing, or shelter and that such failure was the proximate cause which endangered, harmed, or threatened the mental health of a member of the "Man-amko" while the "Man-amko" is under his or her care or custody;

(c) "Man-amko" physical abuse and/or mental cruelty shall not include the exercise of sound and reasonable decision, discretion, or judgment in providing or rendering care, assistance, or services to a member of the "Man-amko" and that such caring, assistance, or services are consistent with the prevailing community and cultural standards;

(d) A person convicted of "Man-amko" mental cruelty or physical abuse is guilty of a crime and upon conviction thereof shall be imprisoned for not more than one year, or fined of not more than One Thousand Dollars (\$1,000.00), or both.

#### Section 6. Duty To Report.

(a) Any physician or other hospital personnel engaged in the admission, examination, care or treatment of persons, or any medical examiner or coroner, dentist, physical therapist, religious healer, social worker, peace officer or law enforcement official who comes into contact in his or her professional capacity with a member of the "Man-amko" and has knowledge or reason to believe that such person has been a subject or victim of mental cruelty or physical abuse by a person having custody or responsibility of the welfare of a member of the "Man-amko" shall report that knowledge immediately to the Commonwealth Department of Public Safety. The report shall contain a statement of the time, date, circumstances, and other information material and relevant to the nature of the case, showing a reasonable belief that a physical abuse or mental cruelty occurred to a member of the "Man-amko";

(b) All such reports communicated, transmitted, or made to the Commonwealth

Department of Public Safety shall be privileged and confidential and not be disclosed to the public until a criminal information has been filed with the Superior Court of the Commonwealth, except to persons identified under;

(c) The Commonwealth Department of Public Safety shall report and forward to the Commonwealth Office of the Attorney General reported cases of "Man-amko" mental cruelty and/or physical abuse. This reporting and forwarding shall be made within 24 hours of having knowledge or information of alleged "Man-amko" physical abuse or mental cruelty;

(d) In the event that the suspected perpetrator is an employee or agent of a Government agency or activity which is customarily represented or advised by the Office of the Attorney General, the Attorney General shall not be involved in the report or investigation of prosecution of the case or the proceedings for wardship. In such case the Office of the Public Defender shall be appointed as Special Prosecutor.

Section 7. Immunity From Liability. Any person making an accurate, true, or good faith report shall be immune from criminal or civil liability which might arise from such action.

Section 8. Failure To Report. Any person who willfully, knowingly, intentionally, or deliberately fails to report and who is required to report under Section 6 of this Act, upon conviction, shall be sentenced and punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment of not more than (90) Ninety Days, or both.

Section 9. Protection.

(a) Any Commonwealth Police Officer, peace officer, law enforcement official, hospital agency or personnel may take any member of the "Man-amko" suspected of being physically abused or otherwise victimized pursuant to Section 5 (a) or (b) into protective custody, without the consent of the responsible person or persons provided:

(1) The official has reason to believe that there exists an immediate and imminent danger to the mental and/or physical health of the subject member of the "Man-amko";

(2) The responsible person, or persons, is not immediately available or will not be available within twenty-four hours to care or be responsible for the member of the "Man-amko";

(3) There is not enough time to petition and to obtain a court order giving

him or her custody of the subject member of the "Man-amko";

(b) A member of the "Man-amko" taken into custody pursuant to Subsection (a) shall be placed and held at the respective Senatorial District health center for protective custody, care, and other pertinent and necessary treatment, services, etc., until the case has been appropriately resolved. The subject Health Center, while in protective custody of the subject member of the "Man-amko", shall make every reasonable effort to locate and notify relatives of such person other than the accused custodial or responsible person or persons about the nature of the case;

(c) Upon notification by the Department of Public Safety, the Office of the Attorney General or the Special Prosecutor, as provided for in Section 6 (d), shall immediately make an investigation into the matter to determine if there is a need for a court to order wardship of the affected member of the "Man-amko"; if so, the official shall, within 24 hours, move the Superior Court of the Commonwealth for a Wardship Order;

(d) A member of the "Man-amko" taken into custody pursuant to Subsection (a) shall be released within 72 hours by the protective custodial Health Center unless, during that period, the Attorney General files a petition in the Superior Court of the Commonwealth to have such person declared a ward of the court. Such a hearing shall be conducted before the closing of the following judicial day and in no event more than 48 hours after the petition is filed. On weekends, holidays, and evenings the petition shall be considered filed when presented to a judge or clerk of the Superior Court of the Commonwealth;

(e) A court presented with a petition pursuant to this Section shall determine if there is reasonable cause to believe that the safety of a member of the "Man-amko" would be imminently endangered by a return to the custodial person or responsible person. If the court determines that the safety of the subject member of the "Man-amko" would be imminently endangered by a return to the before-mentioned person, the court may make such member of the "Man-amko" a temporary ward of the court under the supervision of the respective Senatorial District Health Center. Such temporary wardship shall expire in 15 days. If the court determines that the ward's safety would not be imminently endangered by a return to that custodial person the court shall order the return of the affected member of the "Man-amko" to the custodial person upon any conditions appropriate to the mental and physical

health of the member of the "Man-amko". Hearsay shall not be admissible at the hearing, except as allowed by the Rules of Evidence;

(f) Within 15 days of a temporary wardship finding, the court shall determine whether the wardship should be continued. The Prosecutor shall prove by a preponderance of the evidence that the subject member of the "Man-amko" is either; (1) in need of proper and effective custodial care and has no other person willing to exercise or capable of exercising such care; or (2) is in a home that is an unfit place for him or her by reason of neglect, cruelty, depravity, or physical abuse by either his or her custodial persons. The court shall, upon determination of further wardship, declare the affected member of the "Man-amko" a ward of the Court for a period of not more than one year. At the end of one year, wardship may be continued only upon a new finding or on necessity pursuant to a new hearing;

(g) If a member of the "Man-amko" is declared a ward of the court, the court may:

(1) limit the control to be exercised over the ward by any custodial person or guardian; or

(2) place the affected member of the "Man-amko" under the care and custody of the respective Senatorial District Health Center who shall place such ward with a person of good moral character who consents to take care of the subject member of the "Man-amko" or with a public agency organized to provide care for the "Man-amko";

(h) The court shall not remove any member of the "Man-amko" from his or her custodial person or guardian unless it first makes the determination that such removal is in the best interest of the affected member's physical and mental health and of the Commonwealth;

(i) While the affected member of the "Man-amko" is a ward of the Court, the Court will make every effort he or she is accorded the rights and protection afforded by the Northern Marianas Protection and Advocacy Systems, Inc. office through federal mandates.

Section 10. Annual Report. The Attorney General shall prepare and transmit to the Governor and to the presiding officer of each house of the Legislature an annual report on "Man-amko" mental cruelty and physical abuse cases. The annual report shall also describe the specific measures adopted to implement the provisions of this Act, as well as the accomplishments and shortcomings of efforts to prevent and to treat "Man-amko" mental cruelty and physical abuse. Further, the report shall also

include recommendations for additional legislation or services to fulfill the purposes of this Act.

Section 11. 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 thereby.

Section 12. 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 shall already be in existence at the date this Act becomes effective.

Section 13. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

**CERTIFIED BY:**

/s/ Diego T. Benavente  
DIEGO T. BENAVENTE  
Speaker  
House of Representatives

**ATTESTED BY:**

/s/ Evelyn C. Fleming  
EVELYN C. FLEMING  
House Clerk

Approved this 16th day of January, 1995

/s/ Froilan C. Tenorio  
FROILAN C. TENORIO  
Governor  
Commonwealth of the Northern Mariana Islands