

Act Partially Amending the Act on the Prevention of Spousal Violence and the Protection of Victims (Act No. 30 of 2023) (Outline)

Enters into effect on April 1, 2024 (except for some provisions)

<1. Expansion of the protection order system and stricter penalties for violation of protection orders>

(Currently) The system of protection orders provides for the court, at the petition of a victim, to issue orders to the other spouse prohibiting them from engaging in certain conduct (see below), such as following the victim or loitering in the vicinity of the victim's residence.

- A stay-away order covering the victim (prohibiting the spouse from following the victim or loitering in the vicinity of the victim's residence, workplace, etc.)
- A stay-away order covering a minor child living with the victim or covering the victim's relative or close associate
- An order prohibiting indirect contact with the victim (prohibiting the spouse from calling the victim on the telephone and not speaking, or from bombarding the victim with telephone calls, faxes, emails, or other such communications in non-emergency circumstances)
- An eviction order (evicting the spouse from the residence where they reside with the victim and prohibiting them from loitering in the vicinity)

* It is provided that, in principle, the court may not issue an order without hearing oral arguments or holding a hearing that the other spouse is permitted to attend.

(i) In addition to victims whose spouses have subjected them to:

{ physical violence, or threats of harm to their life or person, }

the amendments add **persons whose spouses have intimidated them by threatening their liberty, dignity, or property** as victims entitled to petition for a stay-away order.

- ◆ The amendments expand the scope of circumstances meeting the requirements for a stay-away order to be issued, to "if there is a **significant risk of serious physical or mental harm** due to further **physical violence or threats to their life, person, liberty, dignity, or property**".

[Article 10, paragraphs (1) through (4)]

(Currently, this is stated as "if there is a significant risk of serious **physical harm** due to further **physical violence**").

(ii) The term for stay-away orders and other orders will be extended from **six months** to **one year**. [Article 10, paragraphs (1) through (4)]

Note: A system has been established for a stay-away order covering a child or order prohibiting indirect contact with a child to be revoked if the circumstances no longer meet the requirements for the order in question (e.g., once it has been at least 6 months since the issuance of the stay-away order). [Article 17, paragraphs (3) through (7)]

(iii) **Bombarding the victim with written correspondence, DMs, or other such communications** in non-emergency circumstances; **sending late-night or early-morning (10pm to 6am) DMs or other such communications** in non-emergency circumstances; **sending sexual electronic or magnetic records that the victim finds objectionable**; and **obtaining information on the victim's location without their consent** are **added as conduct that is covered by orders prohibiting indirect contact**. [Article 10, paragraph (2)]

(iv) The amendments create **an order prohibiting indirect contact with a minor child who lives with the victim**^(Note 1) that can be issued in circumstances meeting the requirements for issuing **an order to stay away from that child**^(Note 2).

Note 1: Conduct covered by this type of order includes: suggesting to the child that they are being monitored or creating a situation in which they could become aware of that suggestion; speaking or acting in a way that is extremely coarse or abusive; calling the child on the telephone and not speaking; bombarding the child with telephone calls, faxes, emails, DMs, or other such communications in non-emergency circumstances; calling or sending faxes late at night or early in the morning in non-emergency circumstances; sending the child excrement or other foul materials; communicating something to the child that offends their dignity; communicating something sexual that the child finds objectionable; acquiring information on the child's location without their consent; etc.

Note 2: In addition to the requirements for issuing an order to stay away from the victim, requirements for issuing an order to stay away from the child include that the order needs to be issued to prevent the victim from being forced into contact with the spouse in connection with that child; and that the child consents to the order, if they are 15 or older.

[Article 10, paragraph (3)]

(v) The amendments establish a new special exception that makes **the term of an eviction order 6 months from the date of the petition** (whereas it is 2 months, in principle) if the victim is the sole owner or lessee of the residence.

[Article 10-2]

(vi) Stricter penalties for violation of protection orders

Imprisonment for 1 year or less / a fine of 1,000,000 yen or less

→ **Imprisonment for 2 years or less / a fine of 2,000,000 yen or less**

[Article 29]

<2. Expansion of particulars to be included in the Basic Policy and the prefectures' basic plans>

➤ (1) **Measures to support victims in becoming self-reliant** (see note) and

(2) **Coordination and cooperation** among the national government, local governments, and private organizations will be established as particulars that are required to be included in the Basic Policy established by the national government and the basic plans established by the prefectures.

Note: This is done by providing that "protecting victims [...] includes supporting victims in becoming self-reliant".

[Article 2-2, Article 2-3]

<3. Positioning of the council system as a matter of law >

➤ The amendments give **councils on preventing spousal violence and protecting victims**, composed of the relevant organizations and others, a position within the law; establish that the prefectures have a duty to endeavor to organize these councils (and provide that municipalities "are permitted to" organize them); and create a duty of confidentiality regarding council business in order to help facilitate the exchange of information. [Articles 5-2 through 5-4, new Article 30]

* In addition to the above, the amendments arrange for the necessary provisions and other measures in connection with protection order proceedings, in keeping with the amendment of other laws to increase the use of information technology in civil proceedings.

配偶者からの暴力の防止及び被害者の保護等に関する法律の一部を改正する法律（令和5年法律第30号）（概要）

令和6年4月1日施行（一部の規定を除く）

< 1. 保護命令制度の拡充・保護命令違反の厳罰化 >

（現行）保護命令とは、被害者からの申立てに基づき、裁判所が、相手配偶者に対して、被害者の身辺へのつきまといや住居等の付近のはいかい等の一定の行為を禁止する命令（下記）を発令する制度

- ・被害者への接近禁止命令（身辺へのつきまといや住居・勤務先等の付近のはいかいの禁止）
- ・同居する未成年の子／親族等への接近禁止命令
- ・被害者への電話等禁止命令（無言電話や緊急時以外の連続する電話・FAX・メール送信等の禁止）
- ・退去等命令（被害者と共に住む住居からの退去、住居付近のはいかいの禁止）

※口頭弁論又は相手配偶者が立ち会うことができる審尋の期日を経なければ発令できない原則を規定

- ① 接近禁止命令等の申立てをすることができる被害者について、配偶者からの
- | | | | |
|---|---------------------------------------|---|-------|
| { | 身体に対する暴力を受けた者、 | } | に加えて、 |
| { | 「生命又は身体」に対する加害の告知による脅迫を受けた者 | } | |
| | <u>「自由、名誉又は財産」に対する加害の告知による脅迫を受けた者</u> | | |

◆ 接近禁止命令の発令要件について、「更なる身体に対する暴力又は生命・身体・自由等に対する脅迫により心身に重大な危害を受けるおそれ大きいとき」に拡大（現行は「更なる身体に対する暴力により身体に重大な危害を受けるおそれ大きいとき」）

- ② 接近禁止命令等の期間を6か月間から1年間に伸長 [10条1項～4項] [10条1項～4項]
注：子への接近禁止命令・子への電話等禁止命令について、当該命令の要件を欠くに至った場合の取消し制度（接近禁止命令の発令後6か月以降等）を創設 [17条3項～7項]

- ③ 電話等禁止命令の対象行為に、緊急時以外の連続した文書の送付・SNS等の送信、緊急時以外の深夜早朝（午後10時～午前6時）のSNS等の送信、性的羞恥心を害する電磁的記録の送信、位置情報の無承諾取得を追加 [10条2項]

- ④ 被害者と同居する未成年の子への接近禁止命令の要件注1を満たす場合について、当該子への電話等禁止命令注2を創設

注1：被害者への接近禁止命令の要件のほか、被害者が当該子に関して配偶者と面会することを余儀なくされることを防止するため必要があること、15歳以上の子についてはその同意があること等

注2：対象行為は、監視の告知等、著しく粗野乱暴な言動、無言電話、緊急時以外の連続した電話・FAX・メール・SNS等送信、緊急時以外の深夜早朝の電話・FAX、汚物等の送付等、名誉を害する告知等、性的羞恥心を害する事項の告知等、位置情報の無承諾取得等 [10条3項]

- ⑤ 退去等命令の期間について、住居の所有者又は賃借人が被害者のみである場合には、申立てにより6か月（原則は2か月）とする特例を新設 [10条の2]

- ⑥ 保護命令違反の厳罰化

1年以下の懲役／100万円以下の罰金 → 2年以下の懲役／200万円以下の罰金 [29条]

< 2. 基本方針・都道府県基本計画の記載事項の拡充 >

➤ 国が定める基本的な方針及び都道府県が定める基本的な計画について、

- (1) 被害者の自立支援のための施策注、
- (2) 国・地方公共団体・民間の団体の連携・協力を必要的記載事項とする

注：「被害者の保護」に「被害者の自立を支援することを含む。」と規定することで対応 [2条の2・2条の3]

< 3. 協議会の法定化 >

➤ 関係機関等から構成される配偶者からの暴力の防止及び被害者の保護に関する協議会を法定化し、都道府県に協議会を組織する努力義務（市町村は「できる規定」）、情報交換の円滑化等を図るため、協議会の事務に関する守秘義務等を創設 [5条の2～5条の4・新30条]

※上記のほか、民事訴訟手続のIT化等を踏まえ、保護命令手続に係る所要の規定等を整備。