

TITLE 11

CRIMES

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**CHAPTER 1
General Provisions**

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Editor's note: Former chapter 1 of this title on General Provisions was repealed in its entirety by PL 11-72 § 1. This new chapter 1 was enacted by PL 11-72 § 2 and is part of the Revised Criminal Code Act.

§ 101. Title.

This Act shall be known and cited as the "Revised Criminal Code Act".

Source: PL 11-72 § 3.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendars, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

Editor's note: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

§ 102. Applicability to crimes committed before and after effective date.

(1) Except as provided in subsection (2) of this section, this act does not apply to crimes committed before its effective date. For purposes of this section, a crime is committed before the effective date if any of the elements of the crime occurred before that date.

(2) Prosecutions for offenses committed before the effective date are governed by the prior law, which is continued in effect for that purpose, as if this act were not in force.

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Source: PL 11-72 § 4; PL 11-76 § 2.

Editor's note: PL 11-72 § 1 repealed chapters 1 through 10 and 12 through 14 of the National Criminal Code (PL 1-134, as amended) as previously codified herein. PL 11-72 left untouched the provisions of chapter 11 which is the Trust Territory Controlled Substances Act.

PL 11-72 was signed into law on January 25, 2001. PL 11-72 had effective date provisions as follows:

Section 210. Notwithstanding this act becoming law pursuant to section 211 hereof chapter 9 of this act shall take effect on July 1, 2001.

Section 211. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

Case annotations: Title 11 of the TTC, prior to effective date of National Criminal Code, is not a national law because its criminal jurisdiction was not expressly delegated to the national government, nor is the power it confers of indisputably national character; therefore, it is not within the jurisdiction of the FSM Supreme Court. *Truk v. Otokichy (I)*, 1 FSM R. 127, 130 (Truk 1982).

The delegation of judicial functions to the FSM, pursuant to Secretarial Order 3039, does not by itself give the FSM Supreme Court jurisdiction over title 11, TTC crimes occurring before the effective date of the National Criminal Code. U.S. Dept. Int. Sec. Order 3039, § 2 (1979). *Truk v. Otokichy(I)*, 1 FSM R. 127, 131 (Truk 1982).

Offenses prior to the effective date of the National Criminal Code are outside the jurisdiction of the FSM Supreme Court. *Truk v. Otokichy (II)*, 1 FSM R. 133, 134 (Truk 1982).

National Criminal Code preserves President's parole powers for offenses committed before the Code's effective date; the repeal of parole powers applies only to offenses committed thereafter. 1 F.S.M.C. 102(1); 11 TTC 1501. *Tosie v. Tosie*, 1 FSM R. 149, 151, 158 (Kos. 1982).

Sections of title 11 of the TTC covering matters within jurisdiction of Congress owe their continuing vitality to § 102 of the National Criminal Code. Thus, criminal prosecutions thereunder are a national matter and fall within FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102. *In re Otokichy*, 1 FSM R. 183, 185 (App. 1982).

Upon inception of constitutional self-government by people of FSM, criminal law provisions in Title 11 of TTC became the law of governments within FSM by virtue of Constitution's transition provisions. *In re Otokichy*, 1 FSM R. 183, 187 (App. 1982).

Prosecutions of title 11 TTC offenses occurring before the effective date of the National Criminal Code are specifically authorized by § 102(2) of the National Criminal Code. 11 F.S.M.C. 102(2). *In re Otokichy*, 1 FSM R. 183, 189 (App. 1982).

The savings clause, 11 F.S.M.C. 102(2), unlike the other sections of the National Criminal Code, was intended to apply to offenses committed before the Code's effective date. It specifically authorizes prosecutions of Title 11, TTC offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. *In re Otokichy*, 1 FSM R. 183, 189-90 (App. 1982).

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Section 102(2), the savings clause of the National Criminal Code, authorizes prosecutions of title 11 TTC offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102(2). *In re Otokichy*, 1 FSM R. 183, 190 (App. 1982).

Section 102(2) of the National Criminal Code preserved all the substantive rights of defendants applicable in a guilt determination proceeding as of the time of the crime's commission. 11 F.S.M.C. 102(2). *In re Otokichy*, 1 FSM R. 183, 191-92 (App. 1982).

Presumably, Congress inserted no specific jurisdictional provision in § 102 of the National Criminal Code because Congress recognized that this Court would have jurisdiction over all cases arising under national law by virtue of art. XI, § 6(b) of the Constitution. 11 F.S.M.C. 102. *In re Otokichy*, 1 FSM R. 183, 193 (App. 1982).

Change of forum for Title 11 TTC cases from the Trust Territory High Court to the FSM Supreme Court is a procedural matter with no effect on the substantive rights of defendants. *In re Otokichy*, 1 FSM R. 183, 193 (App. 1982).

The case annotations found throughout this title may refer to earlier provisions of the National Criminal Code that was repealed by PL 11-72 (Revised Criminal Code). These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

§ 103. Jurisdiction of the FSM.

(1) The National Government of the Federated States of Micronesia has exclusive jurisdiction over all national crimes, as defined in section 104(7) of this chapter, pursuant to article IX, section 2(p) of the Constitution of the Federated States of Micronesia.

(2) A person may be convicted and sentenced under the laws of the Federated States of Micronesia if:

(a) he or she commits, or attempts to commit a crime, in whole or in part within the Federated States of Micronesia; or

(b) being outside the Federated States of Micronesia, he or she conspires with, causes, assists, aids or abets another to commit or attempt to commit a crime within the Federated States of Micronesia; or

(c) being outside the Federated States of Micronesia, he or she intentionally causes, or attempts to cause a result within the Federated States of Micronesia prohibited by the criminal laws of this country.

Source: PL 11-72 § 5.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

Case annotations: National Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the National Criminal Code. *FSM v. Albert*, 1 FSM R. 14, 15 (Pon. 1981).

§ 104. Definitions.

The definitions in this section shall apply throughout this title, unless otherwise specified or a different meaning is plainly required.

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(1) "Crime" means an act committed or omitted in violation of any law forbidding or commanding it, and which, upon conviction, is punishable by either or both of the following:

- (a) imprisonment; or
- (b) fine.

(2) "Criminal negligence" means to engage in conduct which creates a substantial and unjustifiable risk of bodily injury to another, or to engage in conduct which constitutes gross deviation from the standard of care that a reasonable person would exercise, which conduct causes the criminal result.

(3) "Felony" means any crime which is punishable by imprisonment for more than one year.

(4) "Intent" means acting with the conscious purpose to engage in the conduct specified, refrain from the omission specified or cause the specific result.

(5) "Knowledge" means being aware of the nature of the conduct or omission or of the existing circumstances, or believing that a fact exists which brings the conduct or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such conduct or omission.

(6) "Misdemeanor" means any crime which is not a felony.

(7) "National crime" means:

- (a) any crime which is
 - (i) inherently national in character and defined anywhere in this title; or
 - (ii) otherwise a crime against the Federated States of Micronesia.
- (b) A crime is "inherently national in character" when any of the following is true:
 - (i) the crime is committed in the exclusive economic zone of the Federated States of Micronesia as defined in title 18 of this code;
 - (ii) the crime is committed in the airspace above the territory comprising the Federated States of Micronesia as defined in article I, section 1 of the FSM Constitution;
 - (iii) the crime is committed on any airborne vehicle of the National Government, regardless of that vehicle's location;
 - (iv) the crime is committed on any watergoing vessel flagged and registered by the Federated States of Micronesia regardless of that watergoing vessel's location;
 - (v) the crime is committed on any watergoing vessel of the National Government regardless of that vessel's location;
 - (vi) the crime is committed against a national public servant in the course of, in connection with, or as a result of that person's employment or service;
 - (vii) the crime is committed against a former national public servant in retaliation for an act undertaken while that person was engaged in public service and within the scope of his or her official duties;
 - (viii) the crime is committed by a national public official or public servant while that person is engaged in his or her official duties or in violation of a fiduciary duty;
 - (ix) the crime involves property belonging to the National Government; or
 - (x) the crime is committed against any person participating in or attempting to participate in a national election.

(8) "Official proceedings" means any proceeding conducted by or under the supervision of a judge, magistrate, judicial officer or other public official in relation to any alleged offense or proven offense, and includes an inquiry, investigation, or preliminary or final determination of facts.

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(9) Person. The terms "person", "he", "she", "accused" and "defendant" include any natural or legal person, including but not limited to, a government, corporation or unincorporated association, or other organization.

(10) "Principal" means a person who commits or participates in the commission of a crime and shall include a co-conspirator, accomplice or an aid or abettor.

(11) "Property" shall mean both real and personal property.

(12) "Public official" and "public servant" means any person elected, appointed or employed to perform a governmental function on behalf of the Federated States of Micronesia, or any department, agency or branch thereof, or any allottee as defined in the Financial Management Act of 1979 or any successor law, in any official function under or by authority of any such agency or branch of government. The terms include, but are not limited to, the President, Vice President, department heads and other government employees, legislators, judges, law enforcement officers, advisors and consultants, but do not include witnesses.

(13) "Reckless" means to engage in conduct with a willful disregard for the safety of others or to engage in conduct in a manner that constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

(14) "Serious bodily injury" means bodily injury which creates a high probability of death or which causes serious permanent disfigurement or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other bodily injury of like severity.

(15) "Willfully" means to act with a purpose or willingness to commit an act, or to make an omission. It does not require any intent to violate the law, or to injure another, or to acquire any advantage.

Source: PL 11-72 § 6; PL 11-76 § 2.

Editor's note: Subsections rearranged in alphabetical order.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that was repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

In context of a claim of aggravated assault which calls for "causing serious bodily injury intentionally," the words, "engage in the conduct," in 11 F.S.M.C. 104(4) mean engaging in the conduct of causing serious bodily injury. Section 104(4) requires a conscious purpose either to engage in the conduct of causing bodily injury or to cause a result, which is itself serious bodily injury. *Laion v. FSM*, 1 FSM R. 503, 519 (App. 1983).

The requisite intent for aggravated assault cannot be found simply by determining that the defendant purposely engaged in conduct which caused serious bodily injury. The crime of aggravated assault assumes at the very least disregard by the defendant for the well-being of the victim, and more typically, requires desire on the part of the defendant to injure the victim seriously. *Laion v. FSM*, 1 FSM R. 503, 519_20 (App. 1983).

Causal connection between an act done purposely and serious bodily injury to another is not sufficient to establish the crime of aggravated assault, even when the act is coupled with an intention to cause bodily injury. Serious bodily injury, not just any injury, must have been intended in order to commit aggravated assault. *Laion v. FSM*, 1 FSM R. 503, 520 (App. 1983).

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National Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the National Criminal Code. *FSM v. Albert*, 1 FSM R. 14, 15 (Pon. 1981).

To dismiss litigation against juvenile defendants for lack of jurisdiction would be contrary to the National Criminal Code despite the fact that the Code makes no reference to charges against juveniles or the Juvenile Code. *FSM v. Albert*, 1 FSM R. 14, 15 (Pon. 1981).

Fact that Congress repealed many provisions of title 11 of the TTC by implication does not lead to the conclusion that all provisions of title 11 are repealed. *FSM v. Boaz (II)*, 1 FSM R. 28, 29 (Pon. 1981).

Since national government does not have major crimes jurisdiction over Title 11 TTC assaults calling for imprisonment of no more than six months, the repealer clause of the National Criminal Code would not appear to repeal those sections. *FSM v. Boaz (II)*, 1 FSM R. 28, 30 (Pon. 1987).

It is doubtful that Congress would have the power to require that all criminal prosecutions be in the name of the Federated States of Micronesia. *FSM v. Boaz (II)*, 1 FSM R. 28, 31 (Pon. 1981).

Since the National Criminal Code has defined major crimes as those calling for more than three years imprisonment, this major crimes provision could not be relied upon as authority for congressional action making the FSM a party to all criminal proceedings. FSM Const. art. IX, § 2(p). *FSM v. Boaz (II)*, 1 FSM R. 28, 32 (Pon. 1981).

All elements of a crime need not themselves be criminal in order for the combination of those elements to be criminal. *FSM v. Boaz (II)*, 1 FSM R. 28, 33 (Pon. 1981).

Familial relationships are an important segment, perhaps the most important component, of the custom and tradition referred to generally in the Constitution FSM Const. art. V, art. XI, § 11, and more specifically in the National Criminal Code. 11 F.S.M.C. 108, 1003. *FSM v. Ruben*, 1 FSM R. 34, 40 (Truk 1981).

Where FSM Supreme Court has jurisdiction over a violation of the National Criminal Code, it cannot then take jurisdiction over a non-major crime, which arose out of the same transaction and formed part of the same plan, under a theory of ancillary jurisdiction. *FSM v. Hartman*, 1 FSM R. 43, 44-46 (Truk 1981).

The repealer clause of the National Criminal Code repealed those provisions of Title 11 of the TTC above the monetary minimum of \$1,000 set for major crimes. Where the value is below \$1,000, section 2 does not apply because it is not within the national court jurisdiction. *FSM v. Hartman*, 1 FSM R. 43, 46 (Truk 1981).

Title 11 of the TTC is not inconsistent with nor violative of the FSM Constitution; therefore Title 11 of the TTC continued in effect after the effective date of the Constitution and until the effective date of the National Criminal Code. *Truk v. Otokichy (I)*, 1 FSM R. 127, 130 (Truk 1982).

FSM Supreme Court is required by National Criminal Code to recognize generally accepted customs and to determine the applicability and effect of customary law in a criminal case; it is not authorized to develop new customary law. 11 F.S.M.C. 108. *FSM v. Mudong*, 1 FSM R. 135, 140, 146-47 (Pon. 1982).

FSM Supreme Court has jurisdiction to try Title 11 TTC cases if they arise under a national law. Title 11 of TTC is not a national law. It was not adopted by Congress as a national law and it did not become a national law by virtue of the transition article. *Truk v. Hartman*, 1 FSM R. 174, 178 (Truk 1982).

Sections of Title 11 of the TTC covering matters within jurisdiction of Congress owe their continuing vitality to section 102 of the National Criminal Code. Thus, criminal prosecutions thereunder are a national matter and fall within FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102. *In re Otokichy*, 1 FSM R. 183, 185 (App. 1982).

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Upon inception of constitutional self-government by people of FSM, criminal law provisions in Title 11 of the TTC became law of governments within FSM by virtue of Constitution's transition provisions. *In re Otokichy*, 1 FSM R. 183, 187 (App. 1982).

National Criminal Code is exercise of Congress' power to define and provide penalties for major crimes. FSM Const. art. IX, § 2(p). *In re Otokichy*, 1 FSM R. 183, 187 (App. 1982).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language. *Laion v. FSM*, 1 FSM R. 503, 507 (App. 1983).

Although the Model Penal Code was the primary source for the National Criminal Code it was modified to suit the particular needs of the area. *Laion v. FSM*, 1 FSM R. 503, 511 (App. 1983).

Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. *Laion v. FSM*, 1 FSM R. 503, 523-24 (App. 1983).

Statutory construction rule of lenity reflects the reluctance of courts to increase or multiply punishments absent a clear and definite legislative direction. *Laion v. FSM*, 1 FSM R. 503, 528 (App. 1983).

Where two statutory provisions aimed at similar types of wrongdoing and upholding citizen and public interests of the same nature would apply to a solitary illegal act, which caused only one injury, the statutes will be construed not to authorize cumulative convictions in absence of a clear indication of legislative intent. However, the government is not denied the right to charge separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. *Laion v. FSM*, 1 FSM R. 503, 529 (App. 1983).

The savings clause, 11 F.S.M.C. 102(2), unlike the other sections of the National Criminal Code, was intended to apply to offenses committed before the Code's effective date. It specifically authorizes prosecutions of Title 11 TTC offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. *In re Otokichy*, 1 FSM R. 183, 189-90 (App. 1982).

Section 102(2) of the National Criminal Code preserved all the substantive rights of defendants applicable in a guilt determination proceeding as of the time of the crime's commission. 11 F.S.M.C. 102(2). *In re Otokichy*, 1 FSM R. 183, 191-92 (App. 1982).

Change of forum for Title 11 TTC cases from Trust Territory High Court to FSM Supreme Court is a procedural matter with no effect on the substantive rights of defendants. *In re Otokichy*, 1 FSM R. 183, 193 (App. 1982).

Presumably, Congress inserted no specific jurisdictional provision in section 102 of National Criminal Code because Congress recognized that FSM Supreme Court would have jurisdiction over all cases arising under national law by virtue of art. XI, § 6(b) of the Constitution. 11 F.S.M.C. 102. *In re Otokichy*, 1 FSM R. 183, 193 (App. 1982).

The court must first look to sources of law and circumstances here to establish legal requirements in criminal cases rather than begin with a review of cases decided by other courts. *Alaphonso v. FSM*, 1 FSM R. 209, 214 (App. 1982).

Although Model Penal Code was primary source for National Criminal Code it was modified to suit particular needs of the area. *Laion v. FSM*, 1 FSM R. 503, 511 (App. 1984).

Where more than one offense or wrongful intent is charged in a single count, the trial court may require the government to select among the charges if failure to do so might result in prejudice to the defendant. However, this is a matter within the discretion of the trial court. *Laion v. FSM*, 1 FSM R. 503, 517 (App. 1984).

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A defendant is not unfairly prejudiced or incapable of preparing an intelligent defense, simply because the government insisted on each of 11 F.S.M.C. §§ 918 and 919's three adjectives, "intentionally, knowingly and recklessly," as possibly accurate descriptions of a defendant's frame of mind. *Laion v. FSM*, 1 FSM R. 503, 518 (App. 1984).

FSM Supreme Court Rules of Criminal Procedure were designed to avoid technicalities and gamesmanship in criminal pleading. They are to be construed to secure simplicity in procedure. FSM Crim. R. 2 convictions should not be reversed, nor information thrown out, because of minor, technical objections which do not prejudice the accused. *Laion v. FSM*, 1 FSM R. 503, 518 (App. 1984).

Trial court may in its discretion permit a case involving separate charges based upon the same act to proceed to trial. However, court should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. After appeal, if any, has been completed, and the greater charge is reversed on appeal, the trial court may then find it necessary to enter a judgment on the lesser charge. *Laion v. FSM*, 1 FSM R. 503, 529 (App. 1984).

FSM Const., art. IV, § 6, as implemented by FSM Crim. R. 7(c), requires that the government's reliance upon aggregation to bring an alleged crime within the jurisdictional boundaries of the court be plainly disclosed to the defendant in the information. *Fred v. FSM*, 3 FSM R. 141, 144 (App. 1987).

State courts are not prohibited by FSM Const., art. XI, § 6(b) from hearing and determining cases where the defendants are from FSM states other than the prosecuting state. Jurisdiction over criminal matters between the national and state governments is determined by the severity of the crime; not diversity of citizenship. *Pohnpei v. Hawk*, 3 FSM R. 543, 554 (Pon. S. Ct. App. 1988).

The general rule of criminal procedure is that jurisdiction over a particular crime places in the trial division the necessary authority to find a defendant guilty of any offense necessarily included in the offense charged. *Kosrae v. Tosie*, 4 FSM R. 61, 63 (Kos. 1989).

The function of the criminal law is to declare what conduct a society considers to be unacceptable and worthy of sanctions at the instigation of government on the society's behalf; the criminal law is thus the principal vehicle for the expression of the people's standards of right and wrong. *Hawk v. Pohnpei*, 4 FSM R. 85, 91 (App. 1989).

In course of formation of FSM, allocation of responsibilities between states and nation was such that the impact of the national courts in criminal matters was to be in the area of major crimes and as the ultimate arbiter of human rights issues. *Hawk v. Pohnpei*, 4 FSM R. 85, 93 (App. 1989).

Under equal protection clause of Declaration of Rights in FSM Constitution, indigency alone should not disadvantage an accused in our system of criminal justice. *Gilmete v. FSM*, 4 FSM R. 165, 169 (App. 1989).

In adopting Declaration of Rights as part of FSM Constitution and therefore supreme law of the land, people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause, that determinations of guilt are arrived at fairly, and that punishments for wrongdoing are proportionate to the crime and meet prescribed standards. *Tammed v. FSM*, 4 FSM R. 266, 281-82 (App. 1990).

Where crimes charged are no longer those expressly delegated to Congress to define, or are not indisputedly of a national character FSM Supreme Court has no subject matter jurisdiction. *FSM v. Jano*, 6 FSM R. 9, 11 (Pon. 1993).

§ 105. Statute of limitations.

(1) A prosecution for murder or treason may be commenced at any time.

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(2) A prosecution for a crime which is punishable by imprisonment for ten years or more must be commenced within six years after it is committed or within two years after it is discovered or with reasonable diligence could have been discovered, whichever is longer.

(3) A prosecution for any other felony must be commenced within three years after it is committed, or within one year after it is discovered or with reasonable diligence could have been discovered, whichever is longer.

(4) A prosecution for a misdemeanor must be commenced within two years after it is committed.

(5) The time limitation set by the statute does not run:

(a) during any time when the accused is continuously absent from the complaining jurisdiction or has no reasonably determinable place of abode or work within the jurisdiction; or

(b) during any time when a prosecution against the accused for the same conduct is pending in this jurisdiction.

(6) A prosecution is commenced either when an information or complaint is filed or when an arrest warrant, summons or other process is issued, provided that reasonable attempts are made at service.

Source: PL 11-72 § 7.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

The day upon which a crime is committed is to be excluded in the computation of the statute of limitations. *In re Extradition of Jano*, 6 FSM R. 93, 106 (App. 1993).

Where the prosecution of an underlying offense is not time-barred, prosecution of conspiracy to commit that offense is not time-barred even if part of the conspiracy extends back in time to a point that would be time-barred. *In re Extradition of Jano*, 6 FSM R. 93, 107 (App. 1993).

Section 105(3)(b)'s object was to apply the statute of limitations exception to all public officers, not just to those defined as "public servants" in section 104(11) or as "public officials" in section 1301(2). This was 11 F.S.M.C. 105(3)(b)'s plain and unambiguous meaning. If the drafters had intended to restrict the section 105(3)(b) exception to just those persons that had been defined as "public servants," or as "public officials" they could easily have inserted either term into section 105(3)(b) as they so easily inserted "public servants" in so many other criminal code sections or as they so easily used "public officials" in chapter 13. Instead, the drafters deliberately chose the term "public officer" for section 105(3)(b). *FSM v. Wainit*, 13 FSM R. 532, 539 (Chk. 2005).

Section 105(3)(b) "public officer" exception to the statute of limitations applied to persons based upon their status as public officers persons holding posts and exercising governmental functions. It did not matter whether that status was defined and bestowed upon a person by the national government or by another level of government. It only mattered that the person held that status. That the term "public officer" cannot possibly refer to state and municipal public officials since the national government lacks the constitutional power to define those offices and to determine or install those officials is a frivolous and misplaced contention because national laws are often applied to persons based on their status, even when that status is defined solely by another government. *FSM v. Wainit*, 13 FSM R. 532, 539 (Chk. 2005).

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When the public officer tolling exception was part of a provision of general application to the whole criminal code, not to just one portion and the information alleges that the accused used his office to commit the charged offenses, that section did not require that the accused additionally actually use the office to conceal the wrongful act(s), the statute's application was triggered by the accused's alleged use of his office to commit allegedly national offenses. *FSM v. Wainit*, 13 FSM R. 532, 541 (Chk. 2005).

The section 105(3)(b) exception to the criminal statute of limitations applied to any public officer in any level of government in the FSM who, based on the public officer's misconduct in office, was charged with the commission of a national criminal offense. *FSM v. Wainit*, 13 FSM R. 532, 541 (Chk. 2005).

The time limitation does not run during any time when a prosecution against the accused for the same conduct is pending in the jurisdiction. *FSM v. Wainit*, 13 FSM R. 532, 541 (Chk. 2005).

As a general principle, the subsection 105(4)(b) tolling the statute of limitations while a prosecution is pending operated independently of the public officer tolling exception in subsection 105(3) because it was applicable to all limitations on criminal prosecutions. Thus, the time tolled by the operation of subsection (4)(b) cannot be included in the subsection (3)(b) three-year limit to the public officer extension of the statute of limitations. *FSM v. Wainit*, 13 FSM R. 532, 541-42 (Chk. 2005).

FSM law provides that a prosecution commences when an information is filed, and the filing of an information is sufficient for statute of limitations purposes. *FSM v. Kansou*, 14 FSM R. 128, 131 (Chk. 2006).

§ 106. Venue.

- (1) All trials of national crimes shall be held in the State in which the crime was committed.
- (2) If elements of the crime(s) were committed in different States, the trial may be held in any State in which a material element was committed.
- (3) If elements of a national crime were committed in the exclusive economic zone, or elsewhere out of the boundaries of any State, the trial shall be held in the State in which the accused is arrested or is first brought or in which the majority of the witnesses are located.
- (4) Either a defendant or the Government may petition the court for a change of venue for good cause. The court shall determine the place of trial with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

Source: PL 11-72 § 8.

§ 107. Defenses.

- (1) A defense is a fact or set of facts which removes or mitigates penal liability.
- (2) No defense may be considered by the trier of fact unless evidence of the specified fact or facts has been presented.
 - (a) a defendant is entitled to an acquittal if, in light of all the evidence presented, a reasonable doubt as to the defendant's guilt is found to exist; however,
 - (b) if a defense is designated an affirmative defense by this act or another statute, the defendant is entitled to an acquittal if the defense evidence presented, when considered in the light of any contrary evidence, proves by a preponderance of the evidence the specified fact or facts, which fact(s) remove or mitigate penal liability.
- (3) It is a complete defense to a criminal charge that at the time of engaging in the wrongful conduct the defendant was legally incapable of committing a crime as defined in chapter 3, section 301A of this title.

Source: PL 11-72 § 9.

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Case annotations: The case annotations found throughout this title may refer to earlier provisions of the National Criminal Code that were repealed by PL 11-72 (Revised Criminal Code). These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

As a matter of constitutional due process, a trial court presented with an alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find the defendant guilty if after considering all of that evidence, the judge feels there is a reasonable doubt as to the defendant's guilt. *Alaphonso v. FSM*, 1 FSM R. 209, 223-25 (App. 1982).

Statutes which provided a defense in the form of exceptions to a general proscription do not reduce or remove the government's traditional burden of proving beyond a reasonable doubt every fact necessary to constitute the offense. *Ludwig v. FSM*, 2 FSM R. 27, 35 (App. 1985).

The government ultimately bears the burden of disproving the applicability of a statutory exception when it is properly presented as a defense. *Ludwig v. FSM*, 2 FSM R. 27, 35 (App. 1985).

The 11 F.S.M.C. 1203(1), (4) and (5) exemptions whereunder possession of a firearm is permissible are defenses within the meaning of 11 F.S.M.C. 107, although they are not affirmative defenses for they are not so designated. The ultimate burden of persuasion remains with the government, but the defendant has the burden of going forward with sufficient evidence to raise these exemptions as issues. *Ludwig v. FSM*, 2 FSM R. 27, 36 (App. 1985).

Some exceptions under 11 F.S.M.C. 1203 whereunder possession of a firearm is permissible relate to considerations separate from the essential elements of the crime and require the defendant to place them in issue. A defendant claiming exemption as a law enforcement officer or United States military person engaged in official duty, §§ 1203(1), (4), or as a designated crocodile hunter, § 1203(5), is not disputing any element of the government's basic case. Instead, these exemption claims bring into play new facts, uniquely within the knowledge of the defendant, which the government could overlook by focusing on whether the conduct prohibited by the Weapons Control Act has occurred. The defendant is in a far better position to place these exemptions in issue and it is fair to require that he do so. *Ludwig v. FSM*, 2 FSM R. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(2) exemption for curios, ornaments and historical pieces where possession of a firearm is permissible requires findings that the firearm be in "unserviceable condition" and "incapable of being fired or discharged". *Ludwig v. FSM*, 2 FSM R. 27, 37 (App. 1985).

If there are defenses, proof of which would not negate any essential element of the crime itself, it is constitutionally permissible to place same burden of proof for those defenses upon defendant. *Runmar v. FSM*, 3 FSM R. 308, 311 (App. 1988).

11 F.S.M.C. 107 does not create any presumption as to mental health or lack thereof but merely establishes the standard of proof for a defense based upon mental disease, disorder, or defect, and places the burden of persuasion for that defense upon the defendant. *Runmar v. FSM*, 3 FSM R. 308, 314 (App. 1988).

Defendant who fails to request consideration of a lesser offense normally may not successfully appeal from a conviction arrived at without such consideration, but where all elements for murder exist but homicide was caused under extreme mental or emotional disturbance for which there is reasonable explanation or excuse, defendant is entitled to be convicted of manslaughter rather than murder, without regard to whether request for consideration of manslaughter was made by either counsel. *Runmar v. FSM*, 3 FSM R. 308, 319 (App. 1988).

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. FSM Crim. R. 52(a). *Otto v. Kosrae*, 5 FSM R. 218, 222 (App. 1991).

Self-Defense

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The general rule is that a person can use no more force than is necessary to protect himself, his family, and his home and property from an intruder and to expel the intruder. *FSM v. Ruben*, 1 FSM Instr. 34, 37 (Truk 1981).

There is no automatic prohibition against use of a dangerous weapon to protect oneself and family against an intruder, even against an intruder without a weapon, so long as the weapon is not used in deadly fashion and the actual force employed is not more than would be reasonably necessary for purposes of protection. *FSM v. Ruben*, 1 FSM R. 34, 38 (Truk 1981).

The court is willing to assume that the homeowner whose wife's brother is seeking to enter the house by force late at night in a threatening manner should as a matter of customary law go lightly and use less force than he might to expel some other intruder. *FSM v. Ruben*, 1 FSM R. 34, 41 (Truk 1981).

Privilege to use reasonable force in defense of family, home and property may under the circumstances extend onto the road adjacent to the home. *Tosie v. FSM*, 5 FSM R. 175, 177 (App. 1991).

A person can use no more force than is reasonably necessary to protect himself, his family, home and property from an intruder, and to expel the intruder. *Tosie v. FSM*, 5 FSM R. 175, 177-78 (App. 1991).

A claim of self-defense is meritless when the only provocation is an insulting gesture and there is no imminent threat of bodily harm. *Alik v. Kosrae*, 6 FSM R. 469, 472 (App. 1994).

There are two different standards used when reviewing a claim of self-defense. When one is threatened with imminent serious bodily harm or death by another he may justifiably use deadly force if necessary to protect himself from great bodily harm or death. When one is threatened with imminent unlawful bodily harm (but not serious bodily harm or death) he may justifiably use nondeadly force if force is necessary to prevent the unlawful bodily harm. Where there is no threat of deadly force the correct standard is that the unlawful force must at least constitute imminent threat of an assault before one may defend oneself by force. The force employed must be reasonable in the light of the amount, degree and kind of force being used by the aggressor. *Alik v. Kosrae*, 6 FSM R. 469, 473 (App. 1994).

Self-defense is not an affirmative defense. A defense is an affirmative defense only if it is so designated by the National Criminal Code or another statute. *Engichy v. FSM*, 1 FSM R. 532, 554 (App. 1984).

A police officer is entitled under 12 F.S.M.C. 215 to respond to physical resistance or attacks against him as he attempts to make an arrest and he may use whatever force is reasonably necessary to defend himself or others from harm. However, the police officer may not employ more force than he reasonably believes to be necessary, either to effect arrest or to defend himself. *Loch v. FSM*, 1 FSM R. 566, 570 (App. 1984).

§ 108. Customary law.

(1) Generally accepted customs prevailing within the Federated States of Micronesia relating to crimes and criminal liability shall be recognized and considered by the national courts. Where conflicting customs are both relevant, the court shall determine the weight to be accorded to each.

(2) Unless otherwise made applicable or given legal effect by statute, the applicability and effect of customary law in a criminal case arising under this act shall be determined by the court of jurisdiction in such criminal case.

(3) The party asserting applicability of customary law has the burden of proving by a preponderance of the evidence the existence, relevance, applicability, and customary effect of such customary law.

Source: PL 11-72 § 10.

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Cross-reference: FSM Const., art. V and art. XI, § 11. The provisions of the Constitution are found in Part I of this code.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

Custom and Tradition

A customary privilege to enter one's cousin's house cannot be exercised by pounding on the walls of the house at two a.m. until a hole for entry is created and shouting threats at the occupants. *FSM v. Boaz (I)*, 1 FSM R. 22, 26 (Pon. 1981).

The fact that one may have a general customary privilege to enter property does not necessarily mean that the privilege may be exercised at all times and in every conceivable manner. *FSM v. Ruben*, 1 FSM R. 34, 39 (Truk 1981).

Familial relationships are at the core of Micronesian society and are the source of numerous rights and obligations which influence practically every aspect of the lives of individual Micronesians. *FSM v. Ruben*, 1 FSM R. 34, 40 (Truk 1981).

Familial relationships are an important segment, perhaps the most important component, of the custom and tradition referred to generally in the Constitution, FSM Const. art. V, art. XI, § 11, and more specifically in the National Criminal Code, 11 F.S.M.C. 108, 1003. *FSM v. Ruben*, 1 FSM R. 34, 40 (Truk 1981).

While the court may find that a criminal defendant's conduct did not violate the criminal law and the defendant owes no debt to society in general, this does not suggest that the defendant has necessarily fulfilled all customary obligations he may owe to a relative who was the victim of his actions. *FSM v. Ruben*, 1 FSM R. 34, 41 (Truk 1981).

The court is willing to assume that the homeowner whose wife's brother is seeking to enter the house by force late at night in a threatening manner should as a matter of customary law go lightly and use less force than he might to expel some other intruder. *FSM v. Ruben*, 1 FSM R. 34, 41 (Truk 1981).

Customary law is placed in neither an overriding nor inferior position by the FSM Constitution and statutes. *FSM v. Mudong*, 1 FSM R. 135, 139 (Pon. 1982).

Customary settlements do not require court dismissal of court proceedings if no exceptional circumstances are shown. *FSM v. Mudong*, 1 FSM R. 135, 140 (Pon. 1982).

The prosecutor does not have authority to dismiss an existing prosecution on the basis of customary law but the court does have power to respond to a prosecutorial suggestion for dismissal because of customary considerations. *FSM v. Mudong*, 1 FSM R. 135, 141 (Pon. 1982).

The burden of proof is on a defendant to establish effect of customary law; the effect of customary apology ceremony on court proceedings is not self-evident. 11 F.S.M.C. 108(3). *FSM v. Mudong*, 1 FSM R. 135, 141-43 (Pon. 1982).

Under appropriate circumstances customary law may assume importance equal to or greater than particular written provisions in the National Criminal Code. 11 F.S.M.C. 108. *FSM v. Mudong*, 1 FSM R. 135, 139-40 (Pon. 1982).

FSM Supreme Court is required by National Criminal Code to recognize generally accepted customs and determine applicability and effect of customary law in a criminal case; it is not authorized to develop new customary law. 11 F.S.M.C. 108. *FSM v. Mudong*, 1 FSM R. 135, 140, 146-47 (Pon. 1982).

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Customary law and the constitutional legal system perform different roles; they may mutually support each other. Neither system controls the other. *FSM v. Mudong*, 1 FSM R. 135, 145 (Kos. 1982).

Custom is more properly considered during sentencing than at other stages of a criminal prosecution. *FSM v. Mudong*, 1 FSM R. 135, 147-48 (Pon. 1982).

The constitutional government seeks not to override custom but to work in cooperation with the traditional system in an atmosphere of mutual respect. *In re Iriarte (II)*, 1 FSM R. 255, 271 (Pon. 1982).

Where no custom is established by a preponderance of the evidence that the vile phrases used are sufficient provocation for a serious attack on the speaker, that alleged custom will not be considered in determining the criminal culpability of the person who attacks the one who has used vile phrases. *FSM v. Raitoun*, 1 FSM R. 589, 591-92 (Truk 1984).

The Major Crimes Clause, with its admonition to Congress to have due regard for local custom and tradition, unmistakably reflects awareness of the framers that Congress would be empowered under this clause to regulate crimes that would require consideration of local custom and tradition. *Tammow v. FSM*, 2 FSM R. 53, 57 (App. 1985).

Duty of a national court justice to give full and careful consideration to a request to consider a particular customary practice or value in arriving at a decision requires careful investigation of the nature and customary effect of the specific practice at issue, a serious effort to reconcile the custom and tradition with other constitutional requirements, and an individualized decision as to whether the specific custom or tradition should be given effect in the particular contexts of the case before the court. *Tammed v. FSM*, 4 FSM R. 266, 279 (App. 1990).

Congress has no power to specify voting requirements for the Constitutional Convention and therefore any attempt to exercise this power so as to uphold tradition is also outside the powers of Congress under art. V, § 2 of the Constitution, which is not an independent source of congressional power but which merely confirms the power of Congress, in exercising national legislative powers, to make special provisions for Micronesian tradition. *Constitutional Convention 1990 v. President*, 4 FSM R. 320, 328 (App. 1990).

6 F.S.M.C. 1614 exempts adoptions effected in accordance with local custom from the domestic relations law of the FSM. Customary adoptions are an alternative to court-ordered adoptions which are established by the Code. *In re Marquez*, 5 FSM R. 381, 383 (Pon. 1992).

Parties who wish to adopt a child have a choice of method of adoption. They may adopt according to local custom, or they may adopt according to the laws of the FSM. What a petitioner may not do is seek the court's involvement in a customary adoption. *In re Marquez*, 5 FSM R. 381, 383 (Pon. 1992).

Determining the relevancy of custom in carrying out the mandate of art. XI, § 11 of the FSM Constitution must proceed on a case-by-case basis. *Wito Clan v. United Church of Christ*, 6 FSM R. 129, 132 (App. 1993).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. *Wito Clan v. United Church of Christ*, 6 FSM R. 129, 133 (App. 1993).

§ 109. Severability.

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

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Source: PL 11-72 § 11.

Case annotations: Since the National Government does not have major crimes jurisdiction over title 11 TTC assaults calling for imprisonment of no more than six months, the repealer clause of the National Criminal Code would not appear to repeal those sections. *FSM v. Boaz (II)*, 1 FSM R. 28, 30 (Pon. 1981).

The repealer clause of the National Criminal Code repealed those provisions of title 11 of the TTC above the monetary minimum of \$1,000 set for major crimes. Where the value is below \$1,000, § 2 does not apply because it is not within the national court jurisdiction. *FSM v. Hartman*, 1 FSM R. 43, 46 (Truk 1981).

FSM Supreme Court has jurisdiction to try title 11 TTC cases if they arise under a national law. Title 11 of the TTC is not a national law. It was not adopted by Congress as a national law and it did not become a national law by virtue of the transition article. Pub. L. No. 1-134, § 2 (1st Cong., 4th Reg. & 3rd Spec. Sess. 1980_81); FSM Const., art. XV, § 1. *Truk v. Hartman*, 1 FSM R. 174, 178 (Truk 1982).

National Government has exclusive jurisdiction over crimes arising under national law. Pub. L. No. 1-134, § 2 (1st Cong., 4th Reg. & 3rd Spec. Sess. 1980-81). *Truk v. Hartman*, 1 FSM R. 174, 181 (Truk 1982).

Title 11 of TTC is not inconsistent with nor violative of FSM Constitution; therefore 11 TTC continued in effect after the effective date of the Constitution and until the effective date of the National Criminal Code. FSM Const. art XV, § 1; Pub. L. No. 1-134, §§ 2-3 (1st Cong., 4th Reg. Sess. 1980). *Truk v. Otokichy (I)*, 1 FSM R. 127, 130 (Truk 1982).

§ 110. Effective date.

Upon the approval of the President of the Federated States of Micronesia, or upon its becoming law without such approval, the act from which this section derives shall take effect on July 12, 1981.

Source: PL 1-134 § 3.

Case annotations: Title 11 of TTC is not inconsistent with nor violative of the FSM Constitution; therefore 11 TTC continued in effect after the effective date of the Constitution and until the effective date of the National Criminal Code. FSM Const., art. XV, § 1; Pub. L. No. 1-134 §§ 2-3 (1st Cong., 4th Reg. Sess. 1980). *Truk v. Otokichy*, 1 FSM R. 127, 130 (Truk 1982).

CHAPTER 2
Inchoate Crimes

SECTIONS

- § 201. Attempts.**
§ 202. Solicitation.
§ 203. Conspiracy.
§ 204. Penalties for attempt, solicitation, and conspiracy.

Editor's note: Former chapter 2 of this title on Inchoate Crimes (§§ 201-204) was repealed in its entirety by PL 11-72 § 2. This new chapter 2 was enacted by PL 11-72 § 12 and is part of the Revised Criminal Code Act.

§ 201. Attempts.

(1) A person commits the crime of an attempt to commit a crime if, with intent to commit a national crime, he or she does an act which constitutes a substantial step in a course of conduct planned to culminate in the commission of that crime.

(2) It is an affirmative defense to a charge of attempt that the crime was not committed because the defendant desisted voluntarily and in good faith and abandoned his or her intention to commit the crime.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

Source: PL 11-72 § 13.

Case annotations: National civil rights claims under 11 F.S.M.C. 701 furnish a jurisdictional basis for the case to be heard by the FSM Supreme Court. *Panuelo v. Pohmpei*, 2 FSM R. 150, 153 (Pon. 1986).

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 202. Solicitation.

(1) A person commits the crime of solicitation if, with intent to promote or facilitate the commission of a national crime, he or she commands, encourages, or requests another person to engage in conduct or cause the result specified by the definition of the crime, which would be sufficient to establish complicity in the specified conduct or result.

(2) Communication with the person being solicited may be direct or indirect. It is immaterial under subsection (1) of this section that the defendant fails to actually communicate with the person being solicited or if the defendant fails to convince the person being solicited to participate.

(3) It is an affirmative defense to the prosecution for solicitation that the defendant, under circumstances showing a complete and voluntary renunciation of his or her criminal intent, made a reasonable effort to prevent the conduct or result solicited.

Source: PL 11-72 § 14.

§ 203. Conspiracy.

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(1) A person commits the crime of conspiracy if he or she agrees with one or more persons to:

(a) commit any crime; and

(b) any party to the conspiracy commits an overt act in furtherance of the conspiracy.

(2) If a person conspires to commit a number of crimes, he or she is guilty of only one conspiracy if the multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(3) The agreement to conspire may be implicit or explicit and need not be oral or in writing but may be shown by the circumstances surrounding the conduct of the conspirators.

(4) The crime underlying the conspiracy need not have been accomplished for the crime of conspiracy to occur.

(5) Nothing in this section shall be construed as a bar to prosecution of the underlying crime.

(6) A defendant is responsible for all actions of a co-conspirator that are taken in furtherance of the conspiracy, whether or not those actions were part of any plan and whether or not the defendant was privy to them.

(7) It is an affirmative defense to a prosecution for conspiracy that the defendant, under circumstances showing a complete and voluntary renunciation of criminal intent, made a reasonable effort to prevent the conduct or result which was the object of the conspiracy.

Source: PL 11-72 § 15.

§ 204. Penalties for attempt, solicitation, and conspiracy.

A person convicted of attempt, solicitation, or conspiracy shall be imprisoned:

(1) for not more than ten years if the maximum sentence provided for any crime which was the object of the attempt, solicitation, or conspiracy is life imprisonment; or

(2) for not more than one-half the maximum sentence which is provided for the most serious crime which was the object of the attempt, solicitation, or conspiracy, if the maximum is less than life imprisonment.

Source: PL 11-72 § 16.

CHAPTER 3
General Principles of Responsibility

SECTIONS

- § 301. Liability for crimes.**
§ 301A. Persons capable of committing crimes.
§ 302. Physical or mental disease, disorder, or defect excluding criminal responsibility.
§ 303. Evidence of physical or mental disease, disorder, or defect admissible when relevant to element of the crime.
§ 304. Physical or mental disease, disorder, or defect excluding fitness to proceed.
§ 305. Statements for purposes of examination and treatment.
§ 306. Voluntary intoxication.

Editor's note: Former chapter 3 of this title on General Principles of Responsibility was repealed in its entirety by PL 11-72 § 1. This new chapter 3 was enacted by PL 11-72 § 17 and is part of the Revised Criminal Code Act.

§ 301. Liability for crimes.

- (1) A person shall be treated as a principal to a crime if that person:
- (a) directly commits any act constituting a crime;
 - (b) while acting with the state of mind that is sufficient for the commission of the crime, causes an innocent person or person legally incapable, as defined by section 301A of this chapter, to engage in such conduct;
 - (c) having a legal duty to prevent the commission of a crime, fails to make proper effort to do so; or
 - (d) whether or not being present during the commission of the crime, intentionally aids, abets, advises, solicits, counsels, encourages, commands, threatens, menaces or coerces another to commit a crime, or conspires with or otherwise procures another to commit a crime.
- (2) A person liable under subsection (1) of this section is also liable for any other crime committed in the pursuance of the intended crime if that crime is reasonably foreseeable by him as a probable consequence of committing, or attempting to commit, the crime intended.
- (3) A person liable under this section may be charged with and convicted of the crime although other principals to the same crime have not been prosecuted or convicted, or have been convicted of a different crime or degree of crime.

Source: PL 11-72 § 18; PL 11-76 § 3.

Editor's note: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

Case annotations: 11 F.S.M.C. 301 is one of a set of sections in chapter 3 of National Criminal Code specifying general principles of responsibility which apply implicitly to all substantive offenses but do not themselves enunciate substantive offenses. These are not subject to "violation" and are therefore not reached by rule 7 of the FSM Rules of Criminal Procedure. These general principles are deemed applicable to all crimes, and mere failure to restate them in an Information is not a failure to inform or a violation of due process. *Engichy v. FSM*, 1 FSM R. 532, 542 (App. 1984).

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Under 11 F.S.M.C. 301(2) defendants are held responsible for the natural consequences of joining and encouraging others in unlawful use of dangerous weapons and brutal beatings of others. *Engichy v. FSM*, 1 FSM R. 532, 548 (App. 1984).

In a criminal prosecution under 11 F.S.M.C. 301, where defendants' overt actions indicated their intention to aid those involved in attacks, and where it was reasonably foreseeable by them that somebody might be fatally injured as a probable consequences of the beatings that they aided and abetted, they may be held legally responsible for the death resulting from the assaults even if the defendants did not actually intend that the victims be killed or seriously injured. *Engichy v. FSM*, 1 FSM R. 532, 548 (App. 1984).

Aiding and Abetting

A person is criminally liable under 11 F.S.M.C. 301(1)(d) if he, whether or not being present during the commission of the crime, intentionally aids, abets, advises, solicits, counsels, encourages, commands, threatens, menaces or coerces another to commit a crime, or conspires with or otherwise procures another to commit a crime. *FSM v. Sam*, 14 FSM R. 328, 332 (Chk. 2006).

The terms "aid" and "abet" are frequently used interchangeably, although they are not synonymous. To "aid" is to assist or help another. To "abet" means, in its legal sense, to encourage, advise, or instigate the commission of a crime. *FSM v. Sam*, 14 FSM R. 328, 332 (Chk. 2006).

Mere presence at the scene of a crime is not enough to hold someone criminally liable under an aiding or abetting theory. *FSM v. Sam*, 14 FSM R. 328, 332 (Chk. 2006).

In order to convict any defendant of either aiding or abetting another, the government will have to prove beyond a reasonable doubt that that defendant did something to, or was prepared to do something to, assist or help the other or to encourage, advise, or instigate the other in the commission of an offense charged. The government will have to do this for each count for each defendant or that defendant will be acquitted on that count. *FSM v. Sam*, 14 FSM R. 328, 332 (Chk. 2006).

Although the prior criminal code provided that no person could be convicted of aiding and abetting unless the information specifically alleged that the defendant aided and abetted and the information provided specific acts constituting the means of aiding and abetting so as to afford the defendant adequate notice to prepare his defense, that provision was eliminated when the current criminal code was enacted. It is thus no longer necessary for the information to recite each specific act each alleged aider and abetter allegedly committed. *FSM v. Sam*, 14 FSM R. 328, 333 (Chk. 2006).

Since there is no language in the aid or abet statute, 11 F.S.M.C. 301(1)(d), or in the firearms possession or use statutes, 11 F.S.M.C. 1023(5) and (7), that limits the application of one statute to the other, a defendant may be charged with aiding or abetting firearms possession or use. *FSM v. Sam*, 14 FSM R. 328, 333 (Chk. 2006).

Under 11 F.S.M.C. 301(d), a person can be held liable as a principal if he "intentionally aids, abets, advises, solicits, counsels, encourages, commands, threatens, menaces or coerces another to commit a crime, or conspires with or otherwise procures another to commit a crime." *FSM v. Esefan*, 17 FSM R. 389, 397 (Chk. 2011).

Although the terms are frequently used interchangeably, to "aid" is to assist or help another, and to "abet" means, in its legal sense, to encourage, advise, or instigate the commission of a crime. *FSM v. Esefan*, 17 FSM R. 389, 397 (Chk. 2011).

The prosecution may pursue aiding and abetting charges against an accused when he is charged with being present and in the possession of a shotgun while another possessed a handgun and the accused encouraged the other to shoot certain persons. *FSM v. Esefan*, 17 FSM R. 389, 398 (Chk. 2011).

Like aiding and abetting, soliciting and conspiring are all bases for criminal liability for the acts of another found in 11 F.S.M.C. 301(1)(d). *FSM v. Esefan*, 17 FSM R. 389, 398 n.5 (Chk. 2011).

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In criminal proceedings where several persons are charged with the murder of the same victim, the plain implication is that while one person's act may have been the direct cause of the death of the victim, the government surely will be contending that all others have participated or aided or assisted the killing in some way. It is inherent in a prosecution against multiple defendants for a single murder that defendants will be confronted with charges that they either actually killed the victim or assisted one or more persons who did so. *Engichy v. FSM*, 1 FSM R. 532, 544 (App. 1984).

One who suggests to his drinking companions that they obtain additional liquor by taking a bottle from construction laborers in the area, and who then leads his companions in an effort to attack one of the workers, solicits more possibilities than just the taking of a bottle, and is guilty of aiding and abetting the robbery of a watch and money from another construction worker carried out by his companions while the original instigator is still pursuing the first laborer. *FSM v. Hadley*, 3 FSM R. 281, 284 (Pon. 1987).

When there are verdicts that are inconsistent to such an extent that an essential element cannot be proven beyond a reasonable doubt a resulting conviction is reversible error. Thus when someone is convicted of a charge for which an essential element is being aided and abetted by another and that other is acquitted of being an aider and abettor the conviction is reversible error for failure of proof beyond a reasonable doubt of the essential element of being aided and abetted. *Hartman v. FSM*, 6 FSM R. 293, 300-01 (App. 1993).

Like aiding and abetting, soliciting and conspiring are all bases for criminal liability for the acts of another found in 11 F.S.M.C. 301(1)(d). *FSM v. Esefan*, 17 FSM R. 389, 398 n.5 (Chk. 2011).

A conspiracy count is sufficient if it alleges an agreement, and identifies the object towards which the agreement is directed and an overt act. But it is not necessary that the information state the object of the agreement with the detail required of an information charging the substantive offense, and it is not necessary in a conspiracy charge to allege with precision all the elements essential to the offense which is the object of a conspiracy; allegations clearly identifying the offense the defendants conspired to commit are sufficient. *FSM v. Sorim*, 17 FSM R. 515, 523 (Chk. 2011).

When, although the information could have been drawn with greater care, the accused is not misled to his prejudice because the prosecution failed to cite the statute(s) that the codefendants allegedly conspired to violate, the conspiracy count will not be dismissed. *FSM v. Sorim*, 17 FSM R. 515, 523 (Chk. 2011).

Since the existence of an agreement forming a conspiracy may be proven entirely by circumstantial evidence, circumstantial evidence can be sufficient to establish probable cause that such an agreement existed. *FSM v. Sorim*, 17 FSM R. 515, 524 (Chk. 2011).

Customarily, persons charged with conspiracy are tried together. *FSM v. Sorim*, 17 FSM R. 515, 524 (Chk. 2011).

A statement by a party's co-conspirator made during the course and in furtherance of a conspiracy is not hearsay and is admissible. *FSM v. Sorim*, 17 FSM R. 515, 525 n.3 (Chk. 2011).

§301A. Persons capable of committing crimes.

All persons are capable of committing crimes except the following:

- (1) Children under the age of 14, unless there is clear proof that at the time of engaging in the wrongful conduct, they knew it was wrong.
- (2) Persons under the legal conservatorship of another, unless there is clear proof that at the time of engaging in the wrongful conduct, they knew it was wrong.
- (3) Persons whose conduct was a result of an ignorance or mistake of fact, which disproves criminal intent.
- (4) Persons who engaged in the wrongful conduct without being conscious.
- (5) Persons whose actions are a result of duress such that they had reasonable cause to and did believe that they would suffer immediate, life threatening injury if they refused to act.

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Source: PL 11-72 § 19.

Case annotations: As a matter of law, a search warrant's invalidity is not a defense under 11 F.S.M.C. 107(1) because it is not a fact or set of facts which removes or mitigates penal liability. Even a belief that a search warrant is invalid does not remove or mitigate penal liability. If a person believes that he has a legal right to resist an invalid search warrant that is a mistake or ignorance of law, not a mistake (or ignorance) of fact, and that is not a defense under section 301A(3). *FSM v. Wainit*, 13 FSM R. 433, 446 (Chk. 2005).

Only ignorance or mistake of fact is a defense under 11 F.S.M.C. 301A(3). A mistake of, or ignorance of, law is not a defense under the FSM statute. Nor is it generally a defense to penal liability. *FSM v. Wainit*, 13 FSM R. 433, 447 (Chk. 2005).

A criminal defendant may not use mistake or ignorance of the law as a defense. He therefore may not use as a defense a mistaken belief that he had a legal right to resist a search warrant that he thought was invalid (even if it should later be shown to be invalid). *FSM v. Wainit*, 13 FSM R. 433, 447 (Chk. 2005).

Subsection 107(3) makes it a complete defense to a criminal charge that at the time of engaging in the wrongful conduct the defendant was legally incapable of committing a crime as defined in 11 F.S.M.C. 301A. Legal incapacity to commit a crime is often thought to include defenses such as insanity, mental incapacity, infancy, automatism, sometimes intoxication, and crimes where a certain status, not held by the defendant, is a necessary element of the offense. *FSM v. Wainit*, 13 FSM R. 433, 447 (Chk. 2005).

If a statute makes it an offense for a government employee to commit a certain act, a person who did not have the status of a government employee would be legally incapable of violating the statute. Usually this is analyzed as the inability to prove an element of the offense. *FSM v. Wainit*, 13 FSM R. 433, 447 n.8 (Chk. 2005).

Section 301A lists five instances where a person may be legally incapable of committing a crime □ infancy; persons under another's legal conservatorship; persons whose conduct was the result of ignorance or mistake of fact, disproving criminal intent; persons who engaged in the wrongful conduct without being conscious; and persons whose actions were the result of life-threatening duress. *FSM v. Wainit*, 13 FSM R. 433, 447 (Chk. 2005).

§ 302. Physical or mental disease, disorder, or defect excluding criminal responsibility.

(1) No person shall be convicted, sentenced, or otherwise punished for any crime committed while suffering from a physical or mental disease, disorder or defect such that the disease, disorder or defect prevented that person from knowing the nature of the criminal act or that it was wrong.

(2) The terms "physical or mental disease, disorder, or defect" do not include voluntary intoxication or an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(3) The party asserting such a condition has the burden of proving the existence of the physical or mental disease, disorder, or defect by clear and convincing evidence.

(4) When the defendant is acquitted on the grounds of physical or mental disease, disorder, or defect excluding responsibility, the verdict and the judgment shall so state. If the court determines that a person accused of a felony was suffering such a condition at the time of the criminal conduct, judgment in favor of the defendant shall be entered and:

(a) the court shall retain jurisdiction over the accused for a period not to exceed the maximum time of imprisonment allowed for the crime;

(b) the court shall, subject to the law governing the civil commitment or conditional release of persons suffering from physical or mental disease, disorder, or defect, order the defendant to be committed or released on such conditions as the court determines necessary; or

(c) the court may, at regular intervals, review the condition and behavior of the defendant and continue or revise any orders as the court determines necessary.

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(5) Judgment in favor of the defendant shall reflect the physical or mental disease, defect or disorder suffered by the defendant at the time the crime was committed, the condition of the defendant at the time judgment is entered and the course of treatment, if any is ordered.

Source: PL 11-72 § 20.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

Case annotations: The mental disease, disorder or defect defense established by 11 F.S.M.C. 302 is an affirmative defense. Under 11 F.S.M.C. 302(3), the party asserting this defense has the burden of proving the existence of the physical or mental disease, disorder, or defect by clear and convincing evidence. *FSM v. Andrew*, 17 FSM R. 213, 216 (Pon. 2010).

Insanity

Mental condition defense established by 11 F.S.M.C. 302(1) is an affirmative defense and therefore places squarely upon the defendant the burden to establish "the facts which negative liability" by a "preponderance of the evidence." 11 F.S.M.C. 107(1)(b). *Runmar v. FSM*, 3 FSM R. 308, 312 (App. 1988).

Mental condition defense established by 11 F.S.M.C. 302(1), and other affirmative defenses, do not lift from government the burden of establishing all essential elements of the crime beyond a reasonable doubt. *Runmar v. FSM*, 3 FSM R. 308, 312 (App. 1988).

§ 303. Evidence of physical or mental disease, disorder, or defect admissible when relevant to element of the offense.

Evidence that the defendant suffered from a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the crime.

Source: PL 11-72 § 21.

§ 304. Physical or mental disease, disorder, or defect excluding fitness to proceed.

(1) No person who, as a result of physical or mental disease, disorder, or defect, lacks capacity to understand the proceedings against him or her, or to assist in his or her own defense, shall be tried, convicted, or sentenced for the commission of a crime so long as such incapacity endures.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him or her shall be suspended, and the court shall commit him or her, for a reasonable period of time, to an appropriate institution for the purpose of restoring fitness to proceed. If the court is satisfied that the defendant may be released on conditions without danger to himself or herself or to the person or property of another, the court shall order his or her release, which shall continue at the discretion of the court, on such conditions as the court determines necessary.

(3) When the court, on its own motion or upon the application of the institution, or the prosecuting attorney, or the defendant, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If the court determines that so much time has elapsed due to the unfitness of the defendant to proceed that it would be unjust to resume the criminal proceeding, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment or conditional release of persons

suffering from physical or mental disease, disorder, or defect, order the defendant to be committed or released on such conditions as the court determines necessary.

Source: PL 11-72 § 22.

§ 305. Statements for purposes of examination and treatment.

A statement of a person made pursuant to treatment under this chapter, or made pursuant to an examination for the purpose of assessing criminal responsibility or fitness to proceed, shall not be admissible in evidence against him or her in any criminal proceeding on any issue other than that of his or her physical or mental condition excluding responsibility or fitness to proceed, but it shall be admissible upon those issues of whether or not it would otherwise be deemed a privileged communication, unless such statement constitutes an admission of guilt to the crime charged.

Source: PL 11-72 § 23.

§ 306. Intoxication.

(1) An act committed while in a state of voluntary intoxication is not less criminal by reason thereof. Evidence of voluntary intoxication shall not be admitted regarding the capacity to form any mental states for the crimes charged. Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, when a specific intent crime is charged.

(2) Intoxication does not, in itself, constitute a physical or mental disease, disorder, or defect within the meaning of this chapter.

(3) When recklessness establishes an element of the crime, if the defendant, due to voluntary intoxication, is unaware of a risk that he or she would have been aware of had he or she been sober, such unawareness is immaterial.

(4) "Intoxication" means a disturbance of mental or physical capabilities resulting from the introduction of substances into the body regardless of whether the substance introduced is legal, illegal, prescribed by a medical practitioner, or otherwise taken for health reasons.

Source: PL 11-72 § 24.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

Intoxication

A contention that defendant's voluntary intoxication absolves him of the legal consequences of his conduct by preventing him from forming the requisite intent to commit a crime is not a defense. The defendant, rather than the rest of the community should bear the risk of his own intoxication. *FSM v. Boaz (I)*, 1 FSM R. 22, 27 (Pon. 1981).

Mere observation by a police officer of a person conducting himself in a manner generally associated with intoxication could be "reasonable grounds" for a cautious person to consider it more likely than not that the person has been consuming alcohol. This of course would depend upon the opportunity to observe actions and mannerisms usually associated with intoxication. *Ludwig v. FSM*, 2 FSM R. 27, 33, n.3 (App. 1985).

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In the absence of evidence as to how much alcohol the defendant drank and how it affected his conduct, the court need not determine whether the defendant's intoxication negated his ability to form the intent to kill. *Jonah v. FSM*, 5 FSM R. 308, 312 (App. 1992).

Voluntary intoxication does not excuse a defendant from awareness of the risk of causing serious bodily injury to another through recklessly dangerous behavior. *Machuo v. FSM*, 6 FSM R. 40, 44 (App. 1993).

CHAPTER 4
Crimes Against National Security

SECTIONS

- § 401. Treason.**
- § 402. Armed insurrection.**
- § 403. Advocating armed insurrection.**
- § 404. Revealing classified information.**

Editor's note: Former chapter 4 of this title on Offenses Against the National Security was repealed in its entirety by PL 11-72 § 1. This new chapter 4 was enacted by PL 11-72 § 25 and is part of the Revised Criminal Code Act.

§ 401. Treason.

(1) A person who is a citizen or national of, or who is domiciled in, the Federated States of Micronesia commits the crime of treason if that person:

- (a) levies war against the Federated States of Micronesia; or
- (b) adheres to the enemies of the Federated States of Micronesia, giving them aid and comfort.

(2) "Levying war" includes an act of war or insurrection of several persons with intent to prevent, by force or intimidation, the execution of a statute of the Government, or to force its repeal. It does not include either a conspiracy to commit an act of war or a single instance of resistance to the execution of the law for a private purpose.

(3) A person convicted under this section shall be imprisoned for not less than two years and may be imprisoned for life.

Source: PL 11-72 § 26.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 402. Armed insurrection.

(1) A person commits the crime of armed insurrection if he or she engages in an armed insurrection with intent to overthrow, supplant, or change the form of Government of the Federated States of Micronesia, or, knowing that such armed insurrection is in progress or impending, he or she facilitates it or solicits, incites, or conspires with another to engage in or facilitate it.

(2) A person convicted under this section shall be imprisoned for not more than 20 years.

Source: PL 11-72 § 27.

§ 403. Advocating armed insurrection.

(1) A person commits the crime of advocating armed insurrection if, with intent to induce or otherwise cause another to engage in armed insurrection in violation of section 402 of this chapter, he or she:

- (a) advocates the desirability or necessity of armed insurrection under circumstances in which there is substantial likelihood that his or her advocacy will immediately produce a violation of section 402 of this chapter; or

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(b) organizes an association which engages in the advocacy prohibited in subsection (1)(a) of this section, or, as an active member of such association, facilitates such advocacy.

(2) A person convicted under this section may be imprisoned for life if death or serious bodily injury results from the violation, otherwise that person shall be imprisoned for not more than ten years.

Source: PL 11-72 § 28.

§ 404. Revealing classified information.

(1) A person commits the crime of revealing classified information if he or she:

(a) intentionally communicates classified information to an unauthorized person;

(b) knowingly obtains classified information without authorization; or

(c) solicits another to communicate classified information to an unauthorized person.

(2) "Classified information" means information the dissemination of which has been restricted by the President for reasons of national security.

(3) A person convicted under this section shall be imprisoned for not more than 20 years.

Source: PL 11-72 § 29.

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CHAPTER 5
Crimes Against Public Administration

SUBCHAPTER I
Obstructing Government Operations

SECTIONS

- § 501. **Obstructing a public official in discharge of duties.**
- § 502. **Resisting arrest or other law enforcement.**
- § 503. **Hindering apprehension or prosecution.**
- § 504. **Compounding.**
- § 505. **Escape.**
- § 506. **Implements for escape and other contraband.**
- § 507. **Bail jumping; Default in required appearance.**
- § 508. **Disrupting Government meetings.**
- § 509. **Flight to avoid prosecution or giving testimony.**

SUBCHAPTER II
Public Officials Code of Conduct

SECTIONS

- § 510. **Policy.**
- § 511. **Definitions.**
- § 512. **Conflict of interest.**
- § 513. **Disqualification of former public official.**

SUBCHAPTER III
Public Corruption

SECTIONS

- § 514. **Official oppression.**
- § 515. **Speculating or wagering on official action or information.**
- § 516. **Bribery in official and political matters.**
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- § 518. **Retaliation for past official action.**
- § 519. **Gifts to public servants by persons subject to their jurisdiction.**
- § 520. **Compensating public servant for assisting private interests in relation to matters before him.**
- § 521. **Selling political endorsement; Special influence.**

SUBCHAPTER IV
Perjury and Related Crimes of Falsification

SECTIONS

- § 522. **Perjury.**

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- § 523. **False swearing in official matters.**
- § 524. **Unsworn falsification to authorities.**
- § 525. **Limitations on prosecutions of perjury and related offenses.**
- § 526. **Tampering with witnesses and informants.**
- § 527. **Retaliation against witness or informant.**
- § 528. **Tampering with or fabricating physical evidence.**
- § 529. **Tampering with public records or information.**
- § 530. **Impersonating a public servant.**

SUBCHAPTER I Obstructing Government Operations

Editor's note: Former chapter 5 of this title on Offenses Against Public Administration was repealed in its entirety by PL 11-72 § 1. This new chapter 5 was enacted by PL 11-72 § 30 and is part of the Revised Criminal Code Act.

§ 501. Obstructing administration of law or other governmental function.

- (1) A person commits a crime if he or she wilfully interferes with, delays, or obstructs a public official in the discharge or attempted discharge of any duty of his or her office.
- (2) A person convicted under this section shall be punished by imprisonment for not more than one year.

Source: PL 11-72 § 32.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

Case annotations: A police vehicle being used to transport an arrested person from the police station to the jail is a custodial facility within the meaning of 11 F.S.M.C. 505(3), and a person who, having been informed that he is under arrest, flees from such a vehicle and the custody of a police officer authorized to detain or arrest persons on behalf of the Federated States of Micronesia, is guilty of an escape under 11 F.S.M.C. 501(1). *Doone v. FSM*, 2 FSM R. 103, 106 (App. 1985).

§ 502. Resisting arrest or other law enforcement.

- (1) A person commits a crime if, for the purpose of preventing a public official from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public official or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

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(2) A person convicted under this section shall be punished by imprisonment for not more than five years.

Source: PL 11-72 § 33.

§ 503. Hindering apprehension or prosecution.

(1) A person commits a crime if, with purpose to hinder the apprehension, prosecution, conviction, or punishment of another for a national crime he or she:

- (a) harbors or conceals the other;
- (b) provides or aids in providing a weapon, transportation, disguise, or other means of avoiding apprehension or effecting escape;
- (c) conceals or destroys evidence of the crime, or tampers with a witness, informant, document, or other source of information, regardless of its admissibility in evidence;
- (d) warns the other of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law; or
- (e) volunteers false information to any law enforcement officer.

(2) A person convicted under this section shall be imprisoned:

- (a) for not more than five years if the conduct which the defendant knows has been charged or is liable to be charged against the person aided is punishable by imprisonment for ten or more years;
- (b) otherwise, for not more than one year.

Source: PL 11-72 § 34.

§ 504. Compounding.

(1) A person commits a crime if he or she accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of any national crime or information relating to such a crime, or from cooperating with prosecution of such a crime. It is a defense to prosecution under this section that the pecuniary benefit did not exceed an amount which the defendant believed to be due as restitution or indemnification for harm caused by the offense.

(2) A person convicted under this section shall be punished by imprisonment for not more than one year.

Source: PL 11-72 § 35.

§ 505. Escape.

(1) A person commits the crime of escape if he or she unlawfully removes himself or herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. "Official detention" means arrest and detention in any facility for custody of persons under charge or conviction of a national crime, under detention for extradition or deportation, or any other detention for law enforcement purposes. The term "official detention" shall apply only to detention by a public servant of the Federated States of Micronesia, or by any other person legally authorized or empowered to arrest or detain on behalf of the Federated States of Micronesia.

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"Official detention" does not include supervision of probation or parole, or constraint incidental to release on bail.

(2) A public servant involved in detention commits a crime if he or she knowingly permits an escape or attempt to escape.

(3) Any person who knowingly causes or facilitates an escape or attempt to escape commits a crime. "Facilitating" includes providing any assistance necessary for an escape or attempt to escape.

(4) Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, shall not be a defense to prosecution under this section if the escape is from a prison or other custodial facility or from detention pursuant to commitment by official proceedings. In the case of other detentions, irregularity or lack of jurisdiction shall be a defense only if:

(a) the escape involved no substantial risk of harm to the person or property of anyone other than the defendant; or

(b) the detaining authority did not act in good faith under the color of law.

(5) A person convicted under this section shall be imprisoned:

(a) for not less than six months and not more than ten years if the escaping inmate employs force, a deadly weapon, or other dangerous instrumentality to make the escape; or

(b) otherwise, for not more than three years.

(6) Any sentence imposed under this section shall be served consecutive to all other criminal penalties imposed on the defendant.

Source: PL 11-72 § 36.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

A police vehicle being used to transport an arrested person from the police station to the jail is a custodial facility within the meaning of 11 F.S.M.C. 505(3), and a person who, having been informed that he is under arrest, flees from such a vehicle and the custody of a police officer authorized to detain or arrest persons on behalf of the Federated States of Micronesia, is guilty of an escape under 11 F.S.M.C. 505(1). *Doone v. FSM*, 2 FSM R. 103, 106 (App. 1985).

Illegality of arrest or detention is no defense to a charge that one has unlawfully escaped from a custodial facility. *Doone v. FSM*, 2 FSM R. 103, 106 (App. 1985).

Escape from state police officers, authorized by a Joint Law Enforcement Agreement Between the National Government and the State to detain and arrest persons on behalf of the FSM, can be the foundation for an escape conviction under 11 F.S.M.C. 505(1), without regard to whether the detention was for a major crime. *Doone v. FSM*, 2 FSM R. 103, 106 (App. 1985).

The national escape statute's requirements are met where an escaped defendant was being held for law enforcement purposes by state police officers authorized to detain on behalf of the FSM. 11 F.S.M.C. 505. *FSM v. Doone*, 1 FSM R. 365, 367 (Pon. 1983).

A prisoner held illegally in a custodial facility is never permitted to escape. 11 F.S.M.C. 505(3). *FSM v. Doone*, 1 FSM R. 365, 368 (Pon. 1983).

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Outside of a custodial facility, one illegally detained by a law officer acting in good faith is entitled to escape only if he can do so with "no substantial risk of harm to the person or property of anyone other than the defendant." *FSM v. Doone*, 1 FSM R. 365, 368 (Pon. 1983).

The law generally requires that a prisoner test the legality of his detention in a court of law rather than attempt to enforce his own claim to freedom. *FSM v. Doone*, 1 FSM R. 365, 368 (Pon. 1983).

To minimize disruption and challenges to official police authority, the statutory exceptions to prohibitions against escape should be read restrictively. 11 F.S.M.C. 505. *FSM v. Doone*, 1 FSM R. 365, 368-69 (Pon. 1983).

A police car being used to maintain custody as well as transport a detainee from one custodial facility to another is a custodial facility within the meaning of 11 F.S.M.C. 505(3). *FSM v. Doone*, 1 FSM R. 365, 369 (Pon. 1983).

In the absence of any explanation in the legislative history or from the government to justify a different interpretation, the only apparent reason for the deletion of the words "alleged to be found delinquent" from the Model Penal Code definition of official detention is that Congress wished to exclude detained juveniles from the national prohibitions against escape. 11 F.S.M.C. 505(1). *In re Cantero*, 3 FSM R. 481, 484 (Pon. 1988).

Juveniles alleged or found to be delinquent children are not under "official detention" within the meaning of 11 F.S.M.C. 505(1). *In re Cantero*, 3 FSM R. 481, 484 (Pon. 1988).

§ 506. Implements for escape; Other contraband.

(1) A person commits a crime if:

(a) he or she unlawfully introduces, within a detention facility, or unlawfully provides an inmate of a detention facility with any weapon, tool, or other thing which may be useful for escape; or

(b) being an inmate of a detention facility, he or she unlawfully procures, makes, or otherwise provides himself or herself with, or has in his or her possession, any weapon, tool, or other thing which may be useful for escape.

(2) A person commits a crime if:

(a) he or she provides an inmate of a detention facility with anything which the defendant knows the inmate may not lawfully possess; or

(b) being an inmate of a detention facility, he or she unlawfully procures, makes, or otherwise provides himself or herself with, or has in his or her possession, anything which he or she knows is unlawful to possess.

(3) "Detention facility" refers only to a detention facility owned or operated by the Federated States of Micronesia, or to any other detention facility if the inmate is detained therein pursuant to an arrest, charge, or conviction for a national crime, or to an accusation or adjudication of delinquency based upon a national crime, or detained for extradition or deportation purposes.

(4) "Unlawfully" means surreptitiously or contrary to law, regulation, or order of the detaining authority.

(5) A person convicted under this section shall be imprisoned for not more than ten years if the unlawful item provided or possessed was a deadly weapon. Otherwise, a person convicted under this section shall be imprisoned for not more than three years.

Source: PL 11-72 § 37.

§ 507. Bail jumping; Default in required appearance.

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(1) A person set at liberty by court order, with or without bail, upon condition that he or she will subsequently appear at a specified time and place, commits a crime if, without lawful excuse, he or she fails to appear at that time and place.

(2) This section shall apply only to persons whose detention was based upon a charge or conviction for a national crime, or upon an accusation or adjudication of delinquency based upon a national crime, or whose detention was for extradition or deportation purposes, except that this section does not apply to obligations to appear incident to release under suspended sentence or on probation or parole.

(3) A person convicted under this section shall be imprisoned:

(a) for not more than three years if the required appearance was to answer to a charge of felony, or for disposition of any such charge, and the defendant took flight or went into hiding to avoid apprehension, trial, or punishment;

(b) otherwise, by imprisonment for not more than one year.

Source: PL 11-72 § 38.

§ 508. Disrupting Government meetings.

(1) A person commits a crime if, with intent to prevent or substantially disrupt, or recklessly creating a risk thereof, or after a reasonable warning or request to desist has been made, he or she continues in conduct which prevents or substantially disrupts any official proceeding or any meeting, ceremony, procession, or other official gathering of the Federated States of Micronesia, and he or she:

(a) does any act which physically obstructs or interferes with the gathering;

(b) engages in fighting or in violent behavior;

(c) addresses abusive language to any person present, which is likely to provoke a violent response; or

(d) creates a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit.

(2) A person convicted under this section shall be imprisoned for not more than one year.

Source: PL 11-72 § 39.

§ 509. Flight to avoid prosecution or giving testimony.

(1) A person commits a crime if he or she moves or travels in interstate or foreign commerce with intent either:

(a) to avoid prosecution, or custody, or confinement after conviction, under the laws of the jurisdiction from which the fugitive flees, for a crime or an attempt to commit a crime which is a felony under the laws of the jurisdiction from which the fugitive flees;

(b) to avoid giving testimony in any criminal proceedings in such jurisdiction in which the commission of a crime which is a felony under the laws of such jurisdiction is charged; or

(c) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a jurisdiction empowered by the law of such jurisdiction to conduct investigations of alleged criminal activities.

(2) A person convicted under this section shall be imprisoned:

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(a) for not more than three years if the required appearance was to answer to a charge of a felony, or for disposition of any such charge, and the defendant took flight or went into hiding to avoid apprehension, trial, or punishment;

(b) otherwise, by imprisonment for not more than one year.

(3) Violations of this section may be prosecuted only in the Federated States of Micronesia Supreme Court sitting in the State in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in subsection (1)(c) of this section is alleged to have been committed, and only upon formal approval in writing by the Secretary of the Department of Justice, or an assistant Attorney General of the Federated States of Micronesia, whose function of approving prosecutions may not be delegated.

Source: PL 11-72 § 40.

SUBCHAPTER II Public Officials Code of Conduct

§ 510. Policy.

Inherent in the success of any democracy is the trust of its citizens in the honesty and integrity of its public officials. To encourage such trust and insure the integrity of public office, a standardized code of conduct is needed. A public official must conduct himself or herself in such a way, in both public and private life, so as not to:

- (1) place himself or herself in a position in which there exists a conflict of interest or in which the fair exercise of his or her public or official duties might be compromised;
- (2) demean his or her office or position;
- (3) call into question his or her integrity;
- (4) endanger or diminish respect for or confidence in the integrity of the Federated States of Micronesia, National Government; or
- (5) actually use or give the appearance of using his or her public office for personal gain.

Source: PL 11-72 § 42.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 511. Definitions.

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The definitions in this section shall apply throughout this title, unless otherwise specified or a different meaning is plainly required.

- (1) "Benefit" shall mean gain or advantage of any kind, and shall include financial gain, property, service, or improvement of condition.
- (2) "Business" shall mean businesses of any kind whether situated in the Federated States of Micronesia or elsewhere and whether incorporated or not.
- (3) "Family member" shall mean a parent, brother, sister, spouse, nephew, niece or child, including a person who is adopted legally or in accordance with custom, or for whom care was given by the public official such that there exists a relationship in the nature of parent and child. The term shall also include a spouse of any person referred to in this definition and their children.
- (4) "Interest" shall mean either direct ownership of, indirect ownership of, shares in, financial benefit from, or complete or partial control of, such property or business.
- (5) "National Government" shall mean the National Government of the Federated States of Micronesia, including any department, agency or branch thereof.
- (6) "Property" shall mean real or personal property of every description whether situated in the Federated States of Micronesia or elsewhere.

Source: PL 11-72 § 43; PL 11-76 § 5.

§ 512. Conflict of interest.

- (1) A public official who willingly participates in a matter in which he or she knows or reasonably should know there exists a conflict of interest commits a crime.
- (2) A public official has a conflict of interest in a matter if the public official or a family member could benefit directly or indirectly from a decision on a matter over which that public official has influence or control, or if a matter over which that public official has influence or control relates in any way to:
 - (a) a business or property the public official directly or indirectly owns or controls;
 - (b) a business or property owned or controlled, directly or indirectly, by a family member of the public official; or
 - (c) a business or property in which the public official has a beneficial interest of any kind, whether through a trust or otherwise.
- (3) Nothing in this section is meant to interfere with the right of a public official or the family members of a public official to participate in public elections or in decisions of a community or group nature.
- (4) A person convicted under this section shall be imprisoned for not more than five years.

Source: PL 11-72 § 44.

§ 513. Disqualification of former public officials.

- (1) A public official who, within one year of the termination of his employment with or appointment to the National Government, knowingly acts as agent or attorney for anyone other than the branch of the National Government or its entity in connection with any judicial or other matter involving a specific party or parties in which the branch of the National Government or its entity is a party or has a direct and substantial interest, and in which that person participated personally and substantially as an officer or employee, commits a crime.

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(2) Any person who is a business partner or family member of a public official and who acts as agent or attorney for anyone other than the branch of the National Government or its entity in connection with any judicial or other matter in which the branch of the National Government or its entity is a party or has a direct and substantial interest and in which such public official participates or has participated personally and substantially in the conduct of his or her official duties, or which is the subject of his or her official responsibility, commits a crime.

(3) A person convicted under this section shall be imprisoned:

(a) for not more than five years if the person is a former public official found guilty of a violation of subsection (1) of this section;

(b) otherwise, for not more than one year.

Source: PL 11-72 § 45.

SUBCHAPTER III Public Corruption

§ 514. Official oppression.

(1) A person acting or purporting to act in an official capacity on behalf of the Federated States of Micronesia, or taking advantage of such actual or purported capacity, commits a crime if, knowing that his or her conduct is illegal, he or she:

(a) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or

(b) denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity.

(2) A person convicted under this section shall be imprisoned for not more than ten years, and shall be disqualified from holding any position in the National Government.

Source: PL 11-72 § 47.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 515. Speculating or wagering on official action or information.

(1) A public official commits a crime if, in contemplation of official action by himself or herself, or by a governmental unit with which he or she is associated, or in reliance on information to which he or she has access in his or her official capacity and which has not been made public, he or she:

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- (a) acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action;
- (b) speculates or wagers on the basis of such information or official action; or
- (c) aids another to do any of the foregoing.

(2) A person convicted under this section shall be imprisoned for not more than ten years, and shall be disqualified from holding any position in the National Government.

Source: PL 11-72 § 48.

§ 516. Bribery in official and political matters.

(1) A person commits the crime of bribery if he or she offers, confers, or agrees to confer upon another, or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public official, or as a voter in any election, referendum, or plebiscite of the Federated States of Micronesia;

(b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion as a public official in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known legal duty as a public official.

(2) For the purpose of this section, "public servant" or "public official" includes, in addition to those persons who are defined as such under section 104 of this title, persons who have been elected, appointed, hired or designated to become a public official although not yet occupying that position.

(3) A person convicted under this section shall be imprisoned for not more than ten years, and shall be disqualified from holding any position in the National Government.

Source: PL 11-72 § 49.

§ 517. Threats and other improper influence in official and political matters.

(1) A person commits a crime if he or she:

(a) threatens unlawful harm to any person with purpose to influence his or her decision, opinion, recommendation, vote, or other exercise of discretion as a public official, or a voter in any election, referendum, or plebiscite of the Federated States of Micronesia;

(b) threatens harm to any public official with purpose to influence his or her decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

(c) threatens harm to any public official with purpose to influence him or her to violate his or her known legal duty; or

(d) privately addresses to any public official who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication with the purpose to influence the outcome on the basis of considerations other than those authorized by law.

(2) It is no defense to prosecution under this section that a person whom the defendant sought to influence was not qualified to act in the desired way, whether because he or she had not yet assumed office, or lacked jurisdiction, or for any other reason.

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- (3) A person convicted under this section shall be punished:
- (a) by imprisonment for not more than ten years if the defendant threatened to commit a crime or made a threat with the purpose to influence a judicial or administrative proceeding;
 - (b) otherwise, by imprisonment for not more than five years.

Source: PL 11-72 § 50.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 518. Retaliation for past official action.

- (1) A person commits a crime if he or she harms another by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of public official.
- (2) A person convicted under this section shall be imprisoned for not more than ten years.

Source: PL 11-72 § 51.

§ 519. Gifts to public servants by persons subject to their jurisdiction.

(1) A public official in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the Government, or having custody of prisoners, commits a crime if he or she solicits, accepts, or agrees to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody, or against whom such litigation is known to be pending or contemplated.

(2) A public official having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the Government commits a crime if he or she solicits, accepts, or agrees to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.

(3) A public official having judicial or administrative authority or employed by or in a court or other tribunal having such authority, or participating in the enforcement of its decisions, commits a crime if he or she solicits, accepts, or agrees to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public official or a tribunal with which he or she is associated.

(4) A public official who is a member of the Congress of the Federated States of Micronesia, or who is employed by the Congress or by any committee or agency thereof, commits a crime if he or she solicits, accepts, or agrees to accept any pecuniary benefit from any person known to be interested in a bill, transaction, or proceeding, pending or contemplated, before the Congress or any committee or agency thereof.

(5) This section shall not apply to:

- (a) fees prescribed by law to be received by a public official or any other benefit for which the recipient gives legitimate consideration or to which he or she is otherwise legally entitled;

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(b) gifts or other benefits conferred on account of custom, tradition, kinship, or other personal, professional, or business relationship independent of the official status of the receiver; or

(c) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(6) A person commits a crime if he or she knowingly confers, or offers, or agrees to confer, any benefit prohibited in this section.

(7) A person convicted under this section shall be imprisoned for not more than ten years.

Source: PL 11-72 § 52.

Cross-reference: The statutory provisions on the Legislative and the FSM Congress are found in title 3 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 520. Compensating public officials for assisting private interests in relation to matters before him.

(1) A public official commits a crime if he or she solicits, accepts, or agrees to accept compensation for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal as to which he or she knows that he or she has or is likely to have an official discretion to exercise.

(2) A person commits a crime if he or she pays or offers or agrees to pay compensation to a public official with knowledge that acceptance by the public official is unlawful.

(3) A person convicted under this section shall be imprisoned for not more than ten years.

Source: PL 11-72 § 53.

§ 521. Selling political endorsement; special influence.

(1) A person commits a crime if he or she solicits, receives, agrees to receive, or agrees that any other person shall receive any pecuniary benefit as consideration for approval or disapproval of an appointment or advancement in public service, or for approval or disapproval of any person or transaction for any benefit conferred by an official or agency of the Government. "Approval" includes recommendation, failure to disapprove, or any other manifestation of favor or acquiescence. "Disapproval" includes failure to approve, or any other manifestation of disfavor or nonacquiescence.

(2) A person commits a crime if he or she solicits, receives, or agrees to receive any pecuniary benefit as consideration for exerting special influence upon a public servant or procuring another to do so. "Special influence" means power to influence through kinship, friendship, or other relationship, apart from the merits of the transaction.

(3) A person commits a crime if he or she offers, confers, or agrees to confer any pecuniary benefit receipt of which is prohibited by this section.

(4) A person convicted under this section shall be imprisoned for not more than ten years, and shall be disqualified from holding any position of honor or trust in the National Government.

Source: PL 11-72 § 54.

SUBCHAPTER IV

Perjury and Related Crimes of Falsification

§ 522. Perjury.

(1) A person commits the crime of perjury if, in any official proceeding, he or she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he or she does not believe it to be true.

(2) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification immaterial.

(3) A person convicted of perjury shall be punished by not more than five years imprisonment.

Source: PL 11-72 § 56.

§ 523. False swearing in official matters.

(1) A person commits the crime of false swearing if:

(a) he or she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he or she does not believe the statement to be true, and:

(i) the falsification occurs in an official proceeding;

(ii) the falsification is intended to mislead a public servant in performing his or her official function; or

(b) he or she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he or she does not believe the statement to be true and the statement is one which is required by statute or regulation of the Federated States of Micronesia to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) A person convicted of false swearing shall be imprisoned for not more than five years.

Source: PL 11-72 § 57.

§ 524. Unsworn falsification to authorities.

(1) A person commits the crime of falsification if, with purpose to mislead a public servant in performing his or her official function, he or she:

(a) makes any written false statement which he or she does not believe to be true;

(b) purposely creates a false impression in a written application for any pecuniary or other benefit, by omitting information necessary to prevent statements therein from being misleading;

(c) submits or invites reliance on any writing which he or she knows to be forged, altered, or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he or she knows to be false.

(2) A person commits the crime of falsification if he or she makes a written false statement which he or she does not believe to be true, on or pursuant to a form bearing notice, authorized by

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statute or regulation of the Federated States of Micronesia, to the effect that false statements made therein are punishable.

(3) A person convicted under this section shall be imprisoned for not more than five years.

Source: PL 11-72 § 58.

Case annotations: To be criminally liable under 11 F.S.M.C. 524(1)(c) it is enough that the accused invite reliance on any writing which he knows to be lacking in authenticity. The statute does not require that he himself make the writing that is lacking in authenticity. *FSM v. Sorim*, 17 FSM R. 515, 522 (Chk. 2011).

When the offense alleged in the U.S. indictment is false use of a passport, and when, in the FSM, a person commits the crime of tampering with public records under 11 F.S.M.C. 529 if he makes, presents, or uses any record, document, or thing knowing it to be false, and with the purpose that it be taken as a genuine part of information or records that are received or kept by a public servant or required to be kept by anyone for the government's information, and under 11 F.S.M.C. 524, a person commits the crime of falsification if, with purpose to mislead a public servant in performing his or her official function, he or she submits or invites reliance on any writing which he or she knows to be forged, altered, or otherwise lacking in authenticity, these two FSM statutes proscribe the conduct charged, and the requirement of dual criminality is satisfied. *In re Extradition of Benny Law Boon Leng*, 13 FSM R. 370, 373-74 (Yap 2005).

§ 525. Limitations on prosecutions of perjury and related offenses.

The following limitations apply to prosecutions under sections 521, 522 and 523 of this chapter:

(1) It is not a defense that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the defendant presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(2) No person shall be guilty of a crime if he or she retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(3) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case, it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(4) No person shall be convicted of a crime where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

Source: PL 11-72 § 59.

§ 526. Tampering with witnesses and informants.

(1) A person commits a crime if, believing that an official proceeding or investigation is pending or about to be instituted, he or she:

- (a) attempts to induce or otherwise cause a witness or informant to:
 - (i) testify or inform falsely;
 - (ii) withhold any testimony, information, document, or thing;
 - (iii) elude legal process summoning him to testify or supply evidence;

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- (iv) absent himself from any proceeding or investigation to which he or she has been legally summoned; or
 - (b) being a witness or informant, solicits, accepts, or agrees to accept any benefit in consideration of his or her doing any of the things specified in subsection (1)(a) of this section.
- (2) A person convicted under this section shall be imprisoned for not more than five years.

Source: PL 11-72 § 60.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 527. Retaliation against witness or informant.

- (1) A person commits a crime if he or she harms another by any unlawful act in retaliation for anything lawfully done in that other person's capacity of witness or informant.
- (2) A person convicted under this section shall be imprisoned for not more than five years.

Source: PL 11-72 § 61.

§ 528. Tampering with or fabricating physical evidence.

- (1) A person commits a crime if, believing that an official proceeding or investigation is pending or about to be instituted, he or she:
- (a) alters, destroys, conceals, or removes any record, document, or thing with the purpose to impair its verity or availability in such proceeding or investigation; or
 - (b) makes, presents, or uses any record, document, or thing knowing it to be false and with the purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.
- (2) A person convicted under this section shall be imprisoned for not more than five years.

Source: PL 11-72 § 62.

§ 529. Tampering with public records or information.

- (1) A person commits a crime if he or she:
- (a) knowingly makes a false entry in, or false alteration of, any record, document, or thing received or kept by a public servant, or belonging to the Government of the Federated States of Micronesia for information or record, or required by statute or regulation of the Federated States of Micronesia to be kept by anyone for information of the Government;
 - (b) makes, presents, or uses any record, document, or thing knowing it to be false, and with the purpose that it be taken as a genuine part of information or records referred to in paragraph (a) of this subsection; or
 - (c) purposely and unlawfully destroys, conceals, removes, or otherwise impairs the verity or availability of any such record, document, or thing.
- (2) A person convicted under this section shall be punished:
- (a) by imprisonment for not more than five years if the defendant's purpose was to defraud or injure anyone;
 - (b) otherwise, by imprisonment for not more than one year.

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Source: PL 11-72 § 63.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

Case annotations: When the information alleges that the accused presented checks to merchants knowing that those checks were false documents, those factual allegations, supported by affidavit, establish probable cause that the accused violated 11 F.S.M.C. 529(1)(b). *FSM v. Sorim*, 17 FSM R. 515, 522 (Chk. 2011).

A conspiracy count is sufficient if it alleges an agreement, and identifies the object towards which the agreement is directed and an overt act. But it is not necessary that the information state the object of the agreement with the detail required of an information charging the substantive offense, and it is not necessary in a conspiracy charge to allege with precision all the elements essential to the offense which is the object of a conspiracy; allegations clearly identifying the offense the defendants conspired to commit are sufficient. *FSM v. Sorim*, 17 FSM R. 515, 523 (Chk. 2011).

When the offense alleged in the U.S. indictment is false use of a passport, and when, in the FSM, a person commits the crime of tampering with public records under 11 F.S.M.C. 529 if he makes, presents, or uses any record, document, or thing knowing it to be false, and with the purpose that it be taken as a genuine part of information or records that are received or kept by a public servant or required to be kept by anyone for the government's information, and under 11 F.S.M.C. 524, a person commits the crime of falsification if, with purpose to mislead a public servant in performing his or her official function, he or she submits or invites reliance on any writing which he or she knows to be forged, altered, or otherwise lacking in authenticity, these two FSM statutes proscribe the conduct charged, and the requirement of dual criminality is satisfied. *In re Extradition of Benny Law Boon Leng*, 13 FSM R. 370, 373-74 (Yap 2005).

§ 530. Impersonating a public servant.

(1) A person commits a crime if he or she falsely pretends to be a public servant with the purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his or her prejudice.

(2) A person convicted under this section shall be imprisoned for not more than one year.

Source: PL 11-72 § 64.

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CHAPTER 6
Crimes Against Property and Persons

SUBCHAPTER I
General Offenses

SECTIONS

- § 601. Definitions.
- § 602. Theft.
- § 603. Criminal mischief.
- § 604. Unauthorized possession or removal of property.
- § 605. Trespassing.
- § 606. Murder.
- § 607. Manslaughter.
- § 608. Aggravated Assault.
- § 609. Assault.
- § 610. Kidnapping.

SUBCHAPTER II
Trafficking in Persons

SECTIONS

- § 611. Citation.
- § 612. Definition.
- § 613. Offense of human smuggling.
- § 614. Offense of aggravated human smuggling.
- § 615. Offense of human trafficking.
- § 616. Offense of trafficking in children.
- § 617. Offense of exploiting a trafficked person.
- § 618. Consent of trafficked or smuggled person irrelevant.
- § 619. Immunity of trafficked person.
- § 620. Scope of application.
- § 621. Offense relating to fraudulent travel or identity document.
- § 622. Obligation of commercial carriers.

Editor's note: Former chapter 6 of this title on Offenses Against Government Property (§§ 601-604) was repealed in its entirety by PL 11-72 § 1. This new chapter 6 was enacted by PL 11-72 § 65 and is part of the Revised Criminal Code Act.

A new subchapter I on General Offenses was created by PL 17-38 § 1 and a new subchapter II on Trafficking in Persons was created by PL 17-38 § 2.

§ 601. Definitions.

As used in this chapter:

- (1) "Deprive" means:

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(a) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or

(b) to dispose of the property so as to make it unlikely that the owner will recover it.

(2) "Financial institution" means a bank, insurance company, credit union, building and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(3) "Government" means the Federated States of Micronesia, and any department, agency, or subdivision thereof, or any corporation or other association carrying out the functions of Government.

(4) "Movable property" means property, the location of which can be changed, including things growing on, affixed to, or found on land, and documents, although the rights represented thereby have no physical location. "Immovable property" is all other property.

(5) "Obtain" means:

(a) in relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or

(b) in relation to labor or service, to secure performance thereof.

(6) "Property" means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action, and other interests in or claims to wealth, admission, or transportation tickets, captured or domestic animals, food and drink, electric or other power.

(7) "Property of another" includes property in which any person other than the defendant has an interest which the actor is not privileged to infringe, regardless of the fact that the defendant also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the defendant shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(8) *Receiving stolen property.*

(a) A person commits theft if he purposely receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed of with the purpose to restore it to the owner.

(b) "Receiving" means acquiring possession, control, or title of the property.

(9) *Theft by deception.*

(a) A person commits theft if he purposely obtains property of another by deception. A person deceives if he purposely:

(i) creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind, but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

(ii) prevents another from acquiring information which would affect his judgment of a transaction;

(iii) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

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(iv) fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

(b) The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed.

(10) *Theft by extortion.*

(a) A person commits theft if he purposely obtains property of another by threatening to:

- (i) inflict bodily injury on anyone or commit any other crime;
- (ii) accuse anyone of a crime;
- (iii) expose any secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute;
- (iv) take or withhold action as an official, or cause an official to take or withhold action;
- (v) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (vi) inflict any other harm which would not benefit the defendant.

(b) It is an affirmative defense to prosecution based on subsection (10)(a)(ii), (iii), or (iv) of this section that the property obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful services.

(11) *Theft by failure to make required disposition of funds received.* A person who purposely obtains property upon agreement, or subject to a known legal obligation to make a specified payment or other disposition, whether from such property or its proceeds or from his own property in equivalent amount, commits theft if he deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition. An officer or employee of the Government or of a financial institution is presumed:

- (a) to know of any legal obligation relevant to his criminal liability under this section; and
- (b) to have dealt with the property as his own if he fails to pay or account for upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

(12) *Theft by unlawful taking or disposition.*

(a) A person commits theft if he unlawfully takes or exercises unlawful control over movable property of another with the purpose to deprive him thereof.

(b) A person commits theft if he unlawfully transfers immovable property of another or any interest therein, with the purpose to benefit himself or another not entitled thereto.

(13) *Theft of property lost, mislaid, or delivered by mistake.* A person who comes into control of the property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, commits theft if, with the purpose to

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deprive the owner thereof, he fails to take reasonable measures to restore the property to the person entitled to have it.

(14) *Theft of services.*

(a) A person commits theft if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. Services include labor, professional service, transportation, telephone or other public service, accommodation in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other movable property.

(b) A person commits theft if, having control over the disposition of the services of others to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

Source: PL 11-72 § 66.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

Case annotations: When a person makes statements calculated to create a false impression as to value in order to induce those who heard him to give him their money, and the statements did have that result, the person has purposely obtained property through deception within the meaning of 11 F.S.M.C. 932(6). *Wolfe v. FSM*, 2 FSM R. 115, 121 (App. 1985).

§ 602. Theft.

(1) A person commits the crime of theft if he or she commits theft of any property or service in which another person has any legal, equitable, or possessory interest.

(2) The amount involved in a theft shall be deemed to be the highest value, by any reasonable standard, of the property or service which the defendant stole or attempted to steal. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining whether a crime has been committed and the grade of such crime.

(3) It is an affirmative defense to prosecution for theft that the defendant:

- (a) was unaware that the property or service was that of another;
- (b) acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or
- (c) took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.

(4) A person convicted under this section shall be imprisoned:

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- (a) if the value of the property or service is \$5,000 or more, for not more than ten years;
- (b) if the value of the property or service is at least \$1,000 but less than \$5,000, for not more than five years;
- (c) if the value of the property or service is at least \$100 but less than \$1,000, for not more than one year;
- (d) if the value of the property or service is at least \$25 but less than \$100 for not more than six months; or
- (e) if the value of the property or service is less than \$25, for not more than thirty days.

Source: PL 11-72 § 67.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

Theft

When the government fails to notify defendant of its intention to rely upon 11 F.S.M.C. 931(3), allowing aggregation of amounts involved in the thefts, as its source of jurisdiction, such aggregation will not be allowed. *Fred v. FSM*, 3 FSM R. 141, 144 (App. 1987).

The crime of grand larceny requires proof beyond a reasonable doubt of the stealing, taking or carrying away of the personal property of another, in the value of \$50 or more, without the owner's knowledge or consent, and with the intent to convert it to one's own use. *Kosrae v. Tolenoa*, 4 FSM R. 201, 202 (Kos. S. Ct. Tr. 1990).

To prove larceny, the prosecution generally need not prove that the victim had an unassailable right to possession in the items stolen, only that the defendant had no greater right to possession of the stolen items. *Kosrae v. Tolenoa*, 4 FSM R. 201, 203 (Kos. S. Ct. Tr. 1990).

Where an obvious and unreasonable risk of loss was forced on investors, without their knowledge or consent, by defendant's intentional misstatement of facts, and the defendant thereby obtained money of the investors knowing that he was exposing the investors to risk beyond their knowledge, this is theft in violation of 11 F.S.M.C. 934. *Wolfe v. FSM*, 2 FSM R. 115, 120 (App. 1985).

When existing facts having a material bearing upon the desirability of a proposed investment are intentionally misrepresented, the investor has been defrauded, even if the person who has induced the investors by false statements fervently hopes that related promises of future actions, developments or profitability will be fulfilled. *Wolfe v. FSM*, 2 FSM R. 115, 120 (App. 1985).

§ 603. Criminal mischief.

- (1) A person commits the crime of criminal mischief if he or she intentionally or recklessly:
 - (a) causes any damage to property in which another person has any legal, equitable, or possessory interest; or
 - (b) causes another person by deception or threat to suffer any loss.
- (2) The amount involved in a crime of criminal mischief shall be deemed to be the highest value, by any reasonable standard, of the loss which the defendant caused or attempted to cause. Amounts involved in acts of criminal mischief, committed pursuant to one scheme or course of conduct, may be aggregated in determining the grade of such crime.

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(3) It is an affirmative defense to prosecution under subsection (1)(a) of this section that the defendant:

- (a) was unaware that the property was that of another; or
- (b) acted under an honest claim of right to dispose of the property as he or she did.

(4) A person convicted under this section shall be imprisoned:

- (a) if the value of the property or service is \$5,000 or more, for not more than ten years;
- (b) if the value of the property or service is at least \$1,000 but less than \$5,000, for not more than five years;
- (c) if the value of the property or service is at least \$100 but less than \$1,000, for not more than one year;
- (d) if the value of the property or service is at least \$25 but less than \$100, for not more than six months; or
- (e) if the value of the property or service is less than \$25, for not more than 30 days.

Source: PL 11-72 § 68, modified.

§ 604. Unauthorized possession or removal of property.

(1) A person commits a crime if, knowing he or she does not have proper authority, he or she has in his or her possession, or has removed from its location any property, wherever situated, in which another person has any legal, equitable, or possessory interest.

(2) The amount involved in a violation of subsection (1) of this section shall be deemed to be the highest value, by any reasonable standard, of either the loss to the Government or the fair rental value of the property involved. Amounts involved in acts of unauthorized possession or removal committed pursuant to one scheme or course of conduct may be aggregated in determining the grade of such crime.

(3) A person convicted under this section shall be imprisoned:

- (a) if the value of the property or service is \$5,000 or more, for not more than ten years;
- (b) if the value of the property or service is at least \$1,000 but less than \$5,000, for not more than five years;
- (c) if the value of the property or service is at least \$100 but less than \$1,000, for not more than one year;
- (d) if the value of the property or service is at least \$25 but less than \$100 for not more than six months; or
- (e) if the value of the property or service is less than \$25, for not more than 30 days.

Source: PL 11-72 § 69.

§ 605. Trespassing.

(1) A person commits the crime of trespassing if he or she knowingly enters or remains unlawfully on any property owned, operated, or controlled by another person.

(2) A person convicted under this section shall be punished:

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(a) by imprisonment for not more than three years if the defendant entered or remained in any building or structure, or in any area that is fenced or enclosed in such a manner as to exclude intruders:

- (i) at night;
 - (ii) while in possession of a dangerous weapon;
 - (iii) while any other person is lawfully present on the premises;
 - (iv) with the purpose to commit any crime therein; or
- (b) otherwise, by imprisonment for not more than one year.

Source: PL 11-72 § 70.

§ 606. Murder.

(1) Except as provided in section 607(1)(b) of this chapter, a person commits the crime of murder if he or she unlawfully causes the death of another human being:

- (a) intentionally or knowingly; or
- (b) recklessly under circumstances manifesting extreme indifference to the value of human life.

(2) A person convicted under this section shall be imprisoned for a minimum of ten years, and may be imprisoned for life.

Source: PL 11-72 § 71.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

It is not unreasonable for a trial court to conclude that a police officer, claiming to effect an arrest, who hits a person four times with a mangrove coconut husker and kills him was trying to kill him. *Loch v. FSM*, 1 FSM R. 566, 576 (App. 1984).

Death and cause of death can be shown by circumstantial evidence. *Loch v. FSM*, 1 FSM R. 566, 577 (App. 1984).

Where the defendant is fighting another person and uses a wrestling hold which causes the death of the other person, but where the court is unable to find that reasonable person would be aware that such a hold, as applied, would create a substantial risk of death, the defendant is not guilty of the crimes of manslaughter or negligent homicide. *FSM v. Raitoun*, 1 FSM R. 589, 590-92 (Truk 1984).

Under the law of the FSM, manslaughter is a lesser degree of homicide included within the charge of murder. *Runmar v. FSM*, 3 FSM R. 308, 318 (App. 1988).

In order for trier of fact to be free to choose between the lesser offense, manslaughter, or a greater degree of homicide, there must be a factual element, the resolution of which will determine whether the greater or lesser offense is applicable. *Runmar v. FSM*, 3 FSM R. 308, 318 (App. 1988).

Defendant who fails to request consideration of a lesser offense normally may not successfully appeal from a conviction arrived at without such consideration, but where all elements for murder exist but homicide was caused under extreme mental or emotional disturbance for which there is reasonable explanation or excuse, defendant is entitled to be convicted of manslaughter rather than murder, without regard to whether request for consideration of manslaughter was made by either counsel. *Runmar v. FSM*, 3 FSM R. 308, 319 (App. 1988).

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That a victim/aggressor scuffled with the defendant and chased the defendant with a rock in his hand before the defendant fatally stabbed the victim/aggressor is not such a mitigating factor as automatically to compel the reduction of a charge from murder to manslaughter. *Bernardo v. FSM*, 4 FSM R. 310, 315 (App. 1990).

A trial court must give specific consideration to the possibility of manslaughter where there is evidence suggesting that the person who caused a death was under the influence of mental or emotional disturbance and if the trial court then finds guilt for murder rather than manslaughter, it must make a specific finding, either orally or in writing, explaining why 11 F.S.M.C. 912 is not applicable. *Bernardo v. FSM*, 4 FSM R. 310, 315 (App. 1990).

If the acts which caused the death were in willful disregard of the attendant circumstances and unjustifiably created excessive risks, the acts need not have been done with the purpose of causing death or with substantial certainty that death would result. *Robert v. FSM*, 4 FSM R. 316, 319 (App. 1990).

A necessary element of proof in a prosecution for the homicide of an infant is that the infant was born alive. *Welson v. FSM*, 5 FSM R. 281, 285 (App. 1992).

In the absence of evidence as to how much alcohol the defendant drank and how it affected his conduct, the court need not determine whether the defendant's intoxication negated his ability to form the intent to kill. *Jonah v. FSM*, 5 FSM R. 308, 312 (App. 1992).

§ 607. Manslaughter.

- (1) A person commits a crime if he or she causes the death of another human being when:
 - (a) the person has acted recklessly; or
 - (b) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the defendant's situation under the circumstances as he believes them to be.
- (2) A person convicted under this section shall be imprisoned for not more than ten years.

Source: PL 11-72 § 72.

Case annotations: Death and cause of death can be shown by circumstantial evidence. *Loch v. FSM*, 1 FSM R. 566, 577 (App. 1984).

Where the defendant in fighting another person uses a wrestling hold which causes the death of the other person, but where the court is unable to find that reasonable persons would be aware that such a hold, as applied, would create a substantial risk of death, the defendant is not guilty of the crimes of manslaughter or negligent homicide. *FSM v. Raitoun*, 1 FSM R. 589, 590_92 (Truk 1984).

Under the law of the FSM, manslaughter is a lesser degree of homicide included within the charge of murder. *Runmar v. FSM*, 3 FSM R. 308, 318 (App. 1988).

In order for trier of fact to be free to choose between the lesser offense, manslaughter, or a greater degree of homicide, there must be a factual element, the resolution of which will determine whether the greater or lesser offense is applicable. *Runmar v. FSM*, 3 FSM R. 308, 318 (App. 1988).

A trial court must give specific consideration to the possibility of manslaughter where there is evidence suggesting that the person who caused a death was under the influence of mental or emotional disturbance and if the trial court then finds guilt for murder rather than manslaughter, it must make a specific finding, either orally or in writing, explaining why 11 F.S.M.C. 912 is not applicable. *Bernardo v. FSM*, 4 FSM R. 310, 315 (App. 1990).

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Manslaughter is committed if death is caused by one acting recklessly. *Robert v. FSM*, 4 FSM R. 316, 318 (App. 1990).

To act while disregarding something willfully or intentionally requires that the actor be aware of the information disregarded. Thus a conviction for reckless manslaughter may be upheld only if the circumstances known by the defendant at the time of acting created a substantial and unjustified risk of death and he nonetheless willfully and irresponsibly accepted this risk by acting in a manner considerably different from the conduct that might be expected of a well-meaning, law-abiding citizen. *Alouis v. FSM*, 6 FSM R. 83, 86 (App. 1993).

In assessing whether conduct which has caused death was reckless, courts must also determine whether the conduct was unjustifiable. *Alouis v. FSM*, 6 FSM R. 83, 88 (App. 1993).

Reckless manslaughter as defined in the FSM Code is intended to apply to willfully irresponsible, life-threatening behavior, actions which grossly deviate from the standards of conduct that a law-abiding person in the actor's situation would observe. *Alouis v. FSM*, 6 FSM R. 83, 88 (App. 1993).

§ 608. Aggravated Assault.

(1) A person commits a crime if he or she causes serious bodily injury to another intentionally, knowingly, or recklessly under circumstances showing extreme indifference to the value of human life.

(2) A person convicted under this section shall be imprisoned for not more than ten years.

Source: PL 11-72 § 73.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

A defendant is not unfairly prejudiced or incapable of preparing an intelligent defense, simply because the government insisted on each of 11 F.S.M.C. §§ 918 and 919's three adjectives, "intentionally, knowingly and recklessly," as possibly accurate descriptions of a defendant's frame of mind. *Laion v. FSM*, 1 FSM R. 503, 518 (App. 1983).

The requisite intent for aggravated assault cannot be found simply by determining that the defendant purposely engaged in conduct which caused serious bodily injury. The crime of aggravated assault assumes at the very least disregard by the defendant for the well-being of the victim, and more typically, requires desire on the part of the defendant to injure the victim seriously. *Laion v. FSM*, 1 FSM R. 503, 519-20 (App. 1983).

Causal connection between an act done purposely and serious bodily injury to another is not sufficient to establish the crime of aggravated assault, even when the act is coupled with an intention to cause bodily injury. Serious bodily injury, not just any injury, must have been intended in order to commit aggravated assault. *Laion v. FSM*, 1 FSM R. 503, 520 (App. 1983).

Where one person, encouraged by the defendant to commit an assault, carries out the assault and then proceeds to commit robbery by the taking of turtle meat from the possession of the assaulted person, the defendant is not guilty of robbery where: 1) he did not suggest taking of the turtle meat or anything of value; 2) there is no showing that he could have foreseen the assault would be followed by the taking of something of value; and 3) the defendant left the premises before the turtle meat was taken. *FSM v. Carl*, 1 FSM R. 1, 2 (Pon. 1981).

A simple assault, one without a weapon or the intent to inflict serious bodily injury, is punishable only by six months' imprisonment. Therefore, it is neither a major crime under the National Criminal Code, because it does not call for three years' imprisonment, nor a felony. *FSM v. Boaz (I)*, 1 FSM R. 22, 24 n.* (Pon. 1981).

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Because Congress defined a major crime under the National Criminal Code as one calling for imprisonment of three years or more and because assaults under Title 11 of the TTC are punishable by only six months' imprisonment, it is clear that the assault provisions of the TTC are left intact. *FSM v. Boaz (II)*, 1 FSM R. 28, 30 (Pon. 1981).

Crimes of assault, and assault and battery, undoubtedly are necessarily included within the charges of assault with a dangerous weapon and aggravated assault, because they all relate to protection of the same interests and are so related that in general nature of these crimes, though not necessarily invariably, proof of the lesser offense is necessarily presented as part of the showing of the commission of the greater offense. *Kosrae v. Tosie*, 4 FSM R. 61, 63 (Kos. 1989).

A person is guilty of acting recklessly with extreme indifference to the value of human life under the aggravated assault statute, 11 F.S.M.C. 916, if he voluntarily creates conditions or acts in such manner that a reasonable person would deem likely to result in serious injury to another. *Machuo v. FSM*, 6 FSM R. 40, 43 (App. 1993).

A defendant who holds a knife in his hands, engages in a fight while extremely drunk and knowing that at least one other person is in the immediate vicinity, and who strikes another with the knife causing serious physical harm is guilty of aggravated assault. *Machuo v. FSM*, 6 FSM R. 40, 44 (App. 1993).

§ 609. Assault.

- (1) A person commits a crime if he or she unlawfully and intentionally offers or attempts, with force or violence, to strike, beat, wound, or do bodily harm to another.
- (2) A person convicted under this section shall be imprisoned for not more than one year.

Source: PL 11-72 § 74.

§ 610. Kidnapping.

- (1) A person commits a crime if he or she unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he or she unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:
 - (a) to hold for ransom or reward, or as a shield or hostage;
 - (b) to facilitate commission of any felony or flight thereafter;
 - (c) to inflict bodily injury on or to terrorize the victim or another; or
 - (d) to interfere with the performance of any government or political function.
- (2) A removal or confinement is unlawful under this section if it is accomplished by force, threat, or deception, or, in the case of a person who is under the age of fourteen or incompetent, without the consent of a parent, guardian, or other person responsible for general supervision of the child or incompetent person's welfare.
- (3) A person convicted under this section shall be imprisoned for not more than ten years.

Source: PL 11-72 § 75.

Case annotations: The victims were confined in a "place of isolation" within the meaning of 11 F.S.M.C. 921(1), defining the offense of kidnapping, where they were moved from place to place but all locations were in the same vicinity, their captors were in complete control, and they could expect no assistance from anybody. *Teruo v. FSM*, 2 FSM R. 167, 170-171 (App. 1986).

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Confinement for four to six hours is a "substantial period" of confinement within the meaning of 11 F.S.M.C. 921(1), defining the offense of kidnapping, particularly where the victims were subjected to indignities and brutalities amounting to torture during that time. *Teruo v. FSM*, 2 FSM R. 167, 171 (App. 1986).

SUBCHAPTER II **Trafficking in Persons**

§ 611. Citation.

This Act shall be known and may be cited as "Trafficking in Persons Act of 2012."

Source: PL 17-38 § 3.

Editor's note: Former chapter 6 of this title on Offenses Against Government Property (§§ 601-604) was repealed in its entirety by PL 11-72 § 1.

The Trafficking in Persons Act of 2011 contained in PL 17-38 was signed into law on March 16, 2012, by President Emmanuel "Manny" Mori.

A new subchapter I on General Offenses was created by PL 17-38 § 1 and a new subchapter II on Trafficking in Persons was created by PL 17-38 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 612. Definitions.

- (1) "Child" means any person below the age of 18 at the time of the commission of an offense under this chapter.
- (2) "Commercial carrier" means a legal or a natural person that engages in international or interstate transportation of goods or people for commercial gain.
- (3) "Exploitation" means:
 - (a) the obtaining of financial or other material benefit from the prostitution of another person;
 - (b) the exaction of forced labor or services, or the obtaining of labor or services through deceit, fraud, or by means of a material misrepresentation;
 - (c) slavery or practices similar to slavery.
- (4) "Forced labor or services" means work or services, the solicitation of financial or material benefits, or the donation of body parts or organs, exacted under the threat of any penalty and for

which the person concerned has not offered himself or herself voluntarily. It does not include the performance of reasonable and lawful work or services by a child at the behest of a parent or legal guardian.

- (5) “Practices similar to slavery” include debt bondage, serfdom, and forced marriage.
- (6) “Prostitution” means illicit sexual services performed for financial or material benefit.

Source: PL 17-38 § 4.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 613. Offense of human smuggling.

A person who knowingly or recklessly arranges or assists another person’s illegal entry into any country, including the Federated States of Micronesia, of which the other person is not a citizen and has no lawful right to enter shall be guilty of human smuggling, regardless of whether the smuggled person successfully arrives in the receiving country. Upon conviction, a person guilty of this offense shall be imprisoned for not more than ten years, or fined not less than \$5,000 but not more than \$20,000, or both.

Source: PL 17-38 § 5.

§ 614. Offense of aggravated human smuggling.

A person who engages in human smuggling as defined under section 1303 of this chapter under circumstances in which the life or safety of smuggled person is, or is likely to be, endangered shall be guilty of aggravated human smuggling, regardless of whether the smuggled person successfully arrives in the receiving country. Upon conviction, a person guilty of this offense shall be imprisoned for not more than 15 years, or fined not less than \$5,000 but not more than \$25,000, or both.

Source: PL 17-38 § 6.

§ 615. Offense of human trafficking.

A person who knowingly recruits, transports, transfers, harbors or receives another person for the purpose of exploitation, by threat, use of force, abduction, fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person shall be guilty of human trafficking. Upon conviction, a person guilty of this offense shall be imprisoned for not more than 15 years, or fined not less than \$5,000 but not more than \$25,000, or both.

Source: PL 17-38 § 7.

§ 616. Offense of trafficking in children.

A person who knowingly recruits, transports, transfers, harbors, or receives a child by any means for the purpose of exploitation shall be guilty of child trafficking. Upon conviction, a person guilty of this offense shall be imprisoned for not more than 30 years, or fined not less than \$5,000 but not more than \$50,000, or both.

Source: PL 17-38 § 8.

§ 617. Offense of aggravated human trafficking.

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A person who engages in human trafficking as defined under section 615 of this chapter or trafficking in children as defined in section 616 of this chapter shall be guilty of aggravated human trafficking if any of the following circumstances are present:

- (1) the offense involves serious injury or death of the victim or another person;
- (2) the offense involves a victim who is particularly vulnerable, including a pregnant woman;
- (3) the offense exposed the victim to a life threatening illness, including HIV/AIDS;
- (4) the victim is physically or mentally handicapped;
- (5) the offense involves more than one victim;
- (6) the crime was committed as part of the activity of an organized criminal group;
- (7) drugs, medications or weapons were used in the commission of the crime;
- (8) a child was adopted for the purpose of trafficking;
- (9) the offender has been previously convicted for the same or similar offenses;
- (10) the offender is a public official;
- (11) the offender is a spouse or the conjugal partner of the victim;
- (12) the offender is in a position of responsibility or trust in relation to the victim;
- (13) the offender is in a position of authority concerning a child victim.

Upon conviction, a person guilty of this offense shall be imprisoned for not more than 30 years, or fined not less than \$5,000 but not more than \$50,000, or both.

Source: PL 17-38 § 9.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 618. Offense of exploiting a trafficked person.

A person who knowingly engages or participates in or profits from the exploitation of a trafficked person shall be guilty of an offense. Upon conviction, a person guilty of this offense shall be imprisoned for not more than ten years, or fined not less than \$5,000 but not more than \$20,000, or both.

Source: PL 17-38 § 10.

§ 619. Consent of trafficked or smuggled person irrelevant.

Consent to the act or acts constituting an offense on the part of a smuggled person under sections 613 and 614 of this chapter, or a trafficked person under sections 616, 617, and 618 of this chapter, is not a legal defense.

Source: PL 17-38 § 11.

§ 620. Rights of victims.

- (1) A trafficked person shall not be subject to criminal prosecution with respect to:
 - (a) the act of human trafficking;
 - (b) that person's entry into the receiving country;
 - (c) that person's unlawful residence in the receiving country; and
 - (d) that person's procurement or possession of any fraudulent travel or identity document.

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(2) The Secretary of the Department of Justice shall establish national guidelines and procedures for providing assistance to victims of trafficked persons and witnesses of trafficking in persons, including but not limited to:

(a) ensuring that victims, witnesses, and their families are provided adequate protection if their safety is at risk, including measures to protect them from intimidation and retaliation by traffickers and their associates;

(b) providing victims with the opportunity to present their views, needs, interests and concerns for consideration at appropriate stages of any judicial or administrative proceedings relating to the offense, either directly or through their representative, without prejudice to the rights of the defense;

(c) where the victim is an unaccompanied child, providing for the appointment of a legal guardian to represent the interests of the child, taking all necessary steps to establish his or her identity and nationality, and making every effort to locate his or her family when this is in the best interest of the child;

(d) where the victim is a national of the Federated States of Micronesia, facilitating and accepting the return of the victim without undue or unreasonable delay and with due regard for his or her rights and safety;

(e) where the victim is not a national of the Federated States of Micronesia and requests to return to his or her country of origin or the country in which he or she had the right of permanent residence at the time he or she was trafficked, facilitating such return, including arranging for the necessary travel documents, without undue delay and with due regard for his or her rights and safety;

(f) providing information to all victims on the nature of protection, assistance and support to which they are entitled and the possibilities of assistance and support by nongovernmental organizations and other victim agencies, as well as information on any legal proceedings related to them. Such information shall be provided in a language and form that the victim understands.

Source: PL 17-38 § 12.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 621. Scope of application.

The offenses defined in this chapter shall apply regardless of whether the conduct constituting an offense took place inside or outside the jurisdiction of the Federated States of Micronesia if:

(1) the Federated States of Micronesia is the receiving country, or if the exploitation occurs herein; or

(2) the acts or conduct constituting an offense under this chapter started, ended or occurred in part in the jurisdiction of the Federated States of Micronesia; or

(3) the offense is committed by a national of the Federated States of Micronesia or by a person who is not a citizen of any country but has his or her habitual residence in the Federated States of Micronesia at the time of the commission of the offense; or

(4) the offense is committed against a victim who is a national of the Federated States of Micronesia.

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Source: PL 17-38 § 13.

§ 622. Offense relating to fraudulent travel or identity documents.

A person who makes, obtains, gives, sells, or possesses fraudulent travel or identity document or supporting papers for the purpose of facilitating human smuggling or human trafficking or for the purpose of facilitating the continued presence of a smuggled or trafficked person in the receiving country shall be guilty of an offense. Upon conviction, a person guilty of this offense shall be imprisoned for not more than eight years, or fined not less than \$5,000 but not more than \$15,000, or both.

Source: PL 17-38 § 14.

§ 623. Obligation of commercial carriers.

(1) A commercial carrier shall verify that every passenger possesses the necessary travel documents, including passports, visas and other supporting papers, to enter the destination country and any transit countries.

(2) The requirement in subsection (1) of this section applies both to staff of the commercial carrier selling or issuing tickets, boarding passes or similar travel documents and to staff collecting or checking tickets prior to or subsequent to boarding.

(3) Commercial carriers, or persons referred to under subsection (2) of this section, which fail to comply with the requirements of this section shall be fined \$1,000 for every passenger. Repeated failure to comply may be sanctioned by revocation of license, permit, certificate or authority to operate.

Source: PL 17-38 § 15.

CHAPTER 7
Civil Rights

SECTIONS

§ 701. Deprivation of rights.

§ 702. Right to full and equal enjoyment of public accommodations.

Editor's note: Former chapter 7 of this title on Civil Rights was repealed in its entirety by PL 11-72 § 1. This new chapter 7 was enacted by PL 11-72 § 76 and is part of the Revised Criminal Code Act.

§ 701. Deprivation of rights.

(1) A person commits a crime if he or she willfully, whether or not acting under the color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his or her having so exercised any right, privilege, or immunity secured to him by the Constitution or laws of the Federated States of Micronesia, the laws of the Trust Territory of the Pacific Islands, or the Constitution or laws of the United States of America which are applicable to the Federated States of Micronesia.

(2) A person convicted under this section shall be imprisoned for not more than ten years.

(3) A person who deprives another of any right or privilege protected under this section shall be civilly liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, without regard to whether a criminal case has been brought or conviction obtained. In an action brought under this section, the court may award costs and reasonable attorney's fees to the prevailing party.

Source: PL 11-72 § 77.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

National civil rights claims under 11 F.S.M.C. 701 furnish a jurisdictional basis for the case to be heard by the FSM Supreme Court. *Panuelo v. Pohnpei*, 2 FSM R. 150, 153 (Pon. 1986).

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Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated. It was enacted to safeguard the rights guaranteed to all FSM citizens under Article IV of the FSM Constitution. *Ladore v. Panuel*, 17 FSM R. 271, 275 (Pon. 2010).

When a complaint alleges that the plaintiff was denied equal protection of the laws, the suit will be deemed a private cause of action under 11 F.S.M.C. 701 for violation of civil rights guaranteed under the FSM Constitution even though the statute is not expressly cited in the complaint. *Berman v. College of Micronesia-FSM*, 15 FSM R. 76, 78 (Pon. 2007).

When the only reasonably effective means by which to obtain payment of a civil rights judgment against the state is through an order of garnishment directed to the national government, the anti-garnishment statute is unconstitutional to the extent that it precludes a garnishment order to pay a judgment that is based in material part on civil rights claims under 11 F.S.M.C. 701. *Estate of Mori v. Chuuk*, 11 FSM R. 535, 541 (Chk. 2003).

The court has granted writs of garnishment against funds held by the national government for the benefit of the State of Chuuk only in one instance, and that is where a judgment was entered against the state for violations of 11 F.S.M.C. 701 *et seq.*, the national civil rights statute. *Barrett v. Chuuk*, 12 FSM R. 558, 560 (Chk. 2004).

The FSM Congress has specifically acted to confer a cause of action for violation of civil rights, 11 F.S.M.C. 701 *et seq.*, and it is for judgments based on such claims that the court has issued writs of garnishment against the state. *Barrett v. Chuuk*, 12 FSM R. 558, 561 (Chk. 2004).

When the trial court issued findings of guilt for the defendant's violation of both 11 F.S.M.C. 532 and 11 F.S.M.C. 701, but only entered a conviction for his violation of 11 F.S.M.C. 701 and thereafter, the defendant was sentenced to a term of one year in jail, again, only for his conviction of 11 F.S.M.C. 701, the trial court's finding of guilt for the defendant's violation of 11 F.S.M.C. 532 is not at issue in the appeal. *Wainit v. FSM*, 15 FSM R. 43, 46 n.2 (App. 2007).

When a canceled foreign investment permit was ultimately reinstated, it renders moot the cancellation itself and leaves no administrative remedy for the permit holder to pursue. What then remains as a live court issue is the arbitrary and grossly incorrect manner in which the permit was originally canceled. This conduct constitutes a violation of 11 F.S.M.C. 701 *et seq.*, and entitles the plaintiff to a summary judgment. *Wortel v. Bickett*, 12 FSM R. 223, 226 (Kos. 2003).

While a contingency fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action, neither is it a floor. A contingency fee may be used as a basis for an attorney fee award when there are no contemporaneous records of the time the attorney had spent on the case, but since the point of departure for determining a reasonable fee under 11 F.S.M.C. 701(3) is to look at the amount of time spent, counsel in civil rights litigation should maintain careful records of time actually spent, notwithstanding the existence of any contingency fee agreement. *Herman v. Municipality of Patta*, 12 FSM R. 130, 137 (Chk. 2003).

A contingency fee agreement in a civil rights case acts as neither a floor nor a ceiling on attorney's fees awarded under the statute. Such a rule serves the purpose of helping to insure that an attorney will not be undercompensated where important civil rights have been vindicated, and increases the likelihood that a plaintiff who has a meritorious claim will have access to the courts. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 524, 526 (Pon. 2005).

The prevailing party in civil rights actions under 11 F.S.M.C. 701(3) is entitled to reasonable attorney fees and costs of suit as part of compensatory damages. The court must first determine the reasonableness of any claim for attorney's fees and costs. The usual method of determining reasonable attorney's fees awards is based on an hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Walter v. Chuuk*, 14 FSM R. 336, 340-41 (Chk. 2006).

Any award of attorney's fees must be based upon a showing and a judicial finding, that the amount of fees is reasonable. The plaintiffs must therefore submit detailed supporting documentation showing the date, the work

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done, and the amount of time spent on each service for which a claim for compensation is made. *Walter v. Chuuk*, 14 FSM R. 336, 341 (Chk. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, if the pendent claims arise out of a common nucleus of operative fact as the civil rights claim. *Lippwe v. Weno Municipality*, 14 FSM R. 347, 354 (Chk. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. *Estate of Mori v. Chuuk*, 10 FSM R. 6, 14 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages, and liability for attorney's fees will be assessed among the defendants in proportion to their responsibility for the judgment. *Atesom v. Kukkun*, 10 FSM R. 19, 23 (Chk. 2001).

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unreal punishments and his due process rights. *Tolenoa v. Alokoa*, 2 FSM R. 247, 250 (Kos. 1986).

Because the social and economic situation in the FSM is radically different from that of the United States, rates for attorney's fees set by United States courts in connection with civil rights actions there are of little persuasive value for a court seeking to set an appropriate attorney's fee award in civil rights litigation within the FSM. *Tolenoa v. Alokoa*, 2 FSM R. 247, 255 (Kos. 1986).

Attorney's fee awards to prevailing parties in civil rights litigation should be sufficiently high at a minimum level to avoid discouraging attorneys from taking such cases and should enable an attorney who believes that a civil rights violation has occurred to bring a civil rights case without great financial sacrifice. *Tolenoa v. Alokoa*, 2 FSM R. 247, 255 (Kos. 1986).

A municipality which employs untrained persons as police officers, fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their unlawful acts, including abuse of a prisoner arrested without being advised of the charges or given an opportunity for bail, whose handcuffs were repeatedly tightened during his 14-hour detention in such a way that he was injured and unable to work for one month. *Moses v. Municipality of Polle*, 2 FSM R. 270, 271 (Truk 1986).

A municipality which employs untrained persons as police officers, fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their actions in stripping a prisoner, handcuffing his leg to a table and his arms behind his back, then kicking and abusing him. *Alaphen v. Municipality of Moen*, 2 FSM R. 279, 280 (Truk 1986).

There is no established market for legal services in Kosrae which could be used to determine a reasonable hourly rate for attorneys in civil rights cases. *Tolenoa v. Alokoa*, 2 FSM R. 247, 254 (Kos. 1986). [**Editor's note:** reversed by *Tolenoa v. Kosrae*, 3 FSM R. 147 (App. 1987).]

Despite the fact that some of the arguments made by plaintiff in successful civil rights litigation were rejected by the court, time devoted by counsel to these issues may be included in the civil rights legislation attorney's fee award to the plaintiff where all of the plaintiff's claims in the case involved a common core of related legal theories. *Tolenoa v. Alokoa*, 2 FSM R. 247, 259 (Kos. 1986).

Where an action is brought pursuant to 11 F.S.M.C. 701(3), allowing civil liability against any person who deprives another of his constitutional rights, the court may award reasonable attorney's fees to the prevailing party based on the customary fee in the locality in which the case is tried. *Tolenoa v. Kosrae*, 3 FSM R. 167, 173 (App. 1987).

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In an action brought under 11 F.S.M.C. 701(1) forbidding any person from depriving another of his civil rights, where it is shown that the attorney for the prevailing party customarily charges attorney's fees of \$100.00 per hour for legal services in the community in which the case is brought, and when this is at or near the hourly fee rate charged by other attorneys in the locality, the court may award the prevailing party an attorney's fee based upon the \$100.00 hourly rate. *Tolenoa v. Kosrae*, 3 FSM R. 167, 173 (App. 1987).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. *Meitou v. Uwera*, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

An injured victim is entitled to recover for mental anguish, including humiliation, resulting from unlawful conduct in violation of the victim's civil rights. *Meitou v. Uwera*, 5 FSM R. 139, 146 (Chk. S. Ct. Tr. 1991).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. *Plais v. Panuelo*, 5 FSM R. 179, 190 (Pon. 1991).

In a case where a convicted prisoner, who is also a pre-trial detainee, asserts civil rights claims arising out of ill-treatment after arrest, denial of access to family is a due process claim, and physical abuse involves due process as well as cruel and unusual punishment claims. *Plais v. Panuelo*, 5 FSM R. 179, 190 (Pon. 1991).

In providing for civil liability under 11 F.S.M.C. 701(3), Congress intended that the word person would include governmental bodies. *Plais v. Panuelo*, 5 FSM R. 179, 204-05 (Pon. 1991).

The doctrine of respondeat superior is not to be used to determine whether a governmental entity is liable under 11 F.S.M.C. 701(3) for civil rights violations inflicted by government employees. The government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the action chosen from various alternatives. *Plais v. Panuelo*, 5 FSM R. 179, 205-206 (Pon. 1991).

Where a prisoner is physically abused by an official with final policy-making authority, these acts are governmental and a statement of state policy concerning the prisoner. *Plais v. Panuelo*, 5 FSM R. 179, 207 (Pon. 1991).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should look to United States' court decisions under 42 U.S.C. § 1983 for assistance in determining the liability of a governmental body under 11 F.S.M.C. 701(3). *Plais v. Panuelo*, 5 FSM R. 179, 204 (Pon. 1991).

Refusing to permit the public defender or the prisoner's mother to see him are violations of civil rights guaranteed under 12 F.S.M.C. 218(1) and (2) and constitute official actions for which a state must be held responsible under 11 F.S.M.C. 701(3). *Plais v. Panuelo*, 5 FSM R. 179, 207 (Pon. 1991).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). *Plais v. Panuelo*, 5 FSM R. 179, 208 (Pon. 1991).

The government does not pay twice when it violates someone's civil rights and then is forced to pay attorney's fees. It pays only once - as a violator of civil rights. Its role as a provider of public services is distinct from its role as a defendant in a civil case. Thus an award of costs and reasonable attorney's fees should be made to a publicly funded legal services organization whose client prevailed in a civil rights action. *Plais v. Panuelo*, 5 FSM R. 319, 321 (Pon. 1992).

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11 F.S.M.C. 701(3) is comprehensive and contains no suggestion that publicly funded legal services are outside the clause or should be treated differently than other legal services. *Plais v. Panuelo*, 5 FSM R. 319, 320-21 (Pon. 1992).

The FSM Supreme Court is immune from an award of damages, pursuant to 11 F.S.M.C. 701(3), arising from the performance by the Chief Justice of his constitutionally granted rule-making powers. *Berman v. FSM Supreme Court (II)*, 5 FSM R. 371, 374 (Pon. 1992).

Where a plaintiff has alleged his due process rights were violated but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. *Nena v. Kosrae*, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

A corporation is a person who may recover damages for violation of its civil rights when it is deprived of its property interests, such as contract rights, without due process of law. *Ponape Constr. Co. v. Pohnpei*, 6 FSM R. 114, 127-28 (Pon. 1993).

The FSM civil rights statute has no retroactive effect. There is no liability under the FSM civil rights statute for events that took place prior to the effective date of the statute. *Alep v. United States*, 6 FSM R. 214, 219 (Chk. 1993).

Although a private person, not acting under color of law, may, under 11 F.S.M.C. 701, be held liable for civil rights violations if he injures, oppresses, threatens, or intimidates another in exercising or enjoying or having exercised or enjoyed one's civil rights, when the plaintiffs' complaint alleges no such actions and does not allege that the defendants were acting under color of law or were acting as agents of a government when committing the battery, the complaint does not allege a civil rights claim. *Harper v. William*, 14 FSM R. 279, 282 (Chk. 2006).

A battery or wrongful death, by itself, does not constitute a civil rights violation. *Harper v. William*, 14 FSM R. 279, 282 (Chk. 2006).

§ 702. Right to full and equal enjoyment of public accommodations.

(1) *Definitions.*

(a) "Equal access". All persons shall be entitled, without discrimination on the grounds of race, color, religion, language, place of origin, or gender, to the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of:

(i) any department, agency, or institution of, or acting on behalf of, the Federated States of Micronesia; or

(ii) any public accommodation which affects commerce, as defined in this section.

(b) "Public accommodation" means any establishment which provides lodging to transient guests for charge, or any establishment which is engaged in selling food, beverage, or gasoline to the public, or any place of recreation, amusement, exhibition, sightseeing, or entertainment which is open to members of the public, or any facility for the public transportation of persons or goods.

(c) A public accommodation affects commerce if:

(i) it is a place of lodging;

(ii) it serves or offers to serve interstate travelers; or

(iii) a substantial portion of the goods or entertainment it sells or provides has moved in commerce.

(d) "Commerce" means travel, trade, traffic, transportation, communication, and all other forms of commerce among the several States, or between any State and any foreign country

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or other area outside the Federated States of Micronesia, or between points in the same State but through any area outside the State.

(2) This section shall not apply to any private club or other establishment not in fact, open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (1) of this section.

(3) A person commits a crime if he or she:

(a) withholds, denies, deprives, or attempts to withhold, deny, or deprive any person of any right or privilege protected under this section;

(b) intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce any person for the purpose of interfering with any right or privilege protected under this section; or

(c) punishes or attempts to punish any person for exercising or attempting to exercise any right or privilege protected under this section.

(4) A person convicted under this section shall be imprisoned for not more than five years.

(5) A person who deprives another of any right or privilege protected under this section shall be civilly liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, without regard to whether a criminal case has been brought or conviction obtained. In an action brought under this subsection, the court may award costs and reasonable attorney's fees to the prevailing party.

Source: PL 11-72 § 78.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

CHAPTER 8
Emergency Proclamations

SECTIONS

- § 801. Proclamation of emergency.**
- § 802. Emergency restrictions.**
- § 803. Crime defined and penalty.**
- § 804. Powers not limited.**

Editor's note: Former chapter 8 of this title on Emergency Proclamations was repealed in its entirety by PL 11-72 § 1. This new chapter 8 was enacted by PL 11-72 § 79 and is part of the Revised Criminal Code Act.

§ 801. Proclamation of emergency.

When required to preserve public peace, health, or safety in any area, at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war, or insurrection, the President of the Federated States of Micronesia may declare a state of emergency and issue appropriate decrees.

Source: PL 11-72 § 80.

Cross-reference: FSM Const., art. X, § 9. The provisions of the Constitution are found in Part I of this code.

The Disaster Relief Fund provisions are in subchapter II of chapter 6 (Funds) of title 55 (Government Finance and Contracts) of this code. The Disaster Relief Assistance Act are in chapter 7 of title 41 (Public Health, Safety & Welfare) of this code. The provision on Emergency Account are found at 55 F.S.M.C. 109. The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code.

§ 802. Emergency restrictions.

- (1) During the existence of a state of emergency, the President may, by proclamation, prohibit:
- (a) any person being on the public roads or at any other public place during the hours proclaimed by the President to be a period of curfew;
 - (b) the manufacture, transfer, use, possession, or transportation of any device or object designed to explode or produce uncontained combustion;
 - (c) the transportation, possession, or use of combustible, flammable, or explosive materials in a container of any kind except in connection with the normal operation of motor vehicles, motor boats, normal home use, or legitimate commercial use;
 - (d) the possession of firearms or any other dangerous weapon by a person in any place other than his or her place of residence, work, or business;
 - (e) the sale, purchase, dispensing, importing, or exporting of alcoholic beverages or other commodities or goods designated by the President;
 - (f) the use of certain roads by the public; and
 - (g) other activities the President reasonably believes should be prohibited to help preserve public peace, health, or safety.
- (2) Any proclamation issued under this section becomes effective immediately upon being signed by the President, who shall immediately give public notice of its contents by the most effective

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means available. The restrictions may be imposed during times, upon conditions, with exceptions and in areas designated by proclamation of the President.

(3) Prohibitions imposed by proclamation issued under this section, shall automatically terminate at noon on the fifth day after it becomes effective unless sooner terminated by proclamation of the President

Source: PL 11-72 § 81.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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§ 803. Offense defined and penalty.

Any person who, during a state of emergency, fails to comply with restrictions imposed by proclamation of the President under section 802 of this chapter commits a crime, and upon conviction, shall be punished by imprisonment for not more than five years.

Source: PL 11-72 § 82.

§ 804. Powers not limited.

Nothing in this chapter shall limit any other power to maintain the public peace and safety which is vested in the President.

Source: PL 11-72 § 83.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code.

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CHAPTER 9
Money Laundering and Proceeds of Crime

Editor's note: Former chapter 9 of this title on Major Crimes (§§ 901-951) was repealed in its entirety by PL 11-72 § 1. This new chapter 9 was enacted by PL 11-72 § 84 and is part of the Revised Criminal Code Act.

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- § 902. Jurisdiction and application.
- § 903. Definition.
- § 904. Charge in relation to a serious offense.
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- § 906. Quashing of convictions.
- § 907. Value of property.
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- § 910. Deriving a benefit.
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- § 913. Financial institutions and cash dealers to verify customers identity.
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- § 917. Further preventive measures by financial institutions and cash dealers.
- § 918. Money laundering offenses.
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- § 923. Orders to enforce compliance with obligations under this subchapter.
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**SUBCHAPTER I
General Provisions**

§ 901. Purpose.

The purpose of this chapter is to provide for the confiscation of the proceeds of crime and property used in the commission of serious crime, and to prevent the use of the financial system to launder the proceeds of serious crime.

Source: PL 11-72 § 86.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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§ 902. Jurisdiction and application.

The provisions of this chapter shall extend and apply throughout all of the Federated States of Micronesia, including the land and waters and the airspace above such land and waters with respect to which the Federated States of Micronesia has legislative jurisdiction.

Source: PL 11-72 § 87.

§ 903. Definition.

Under this chapter, unless the context otherwise requires:

(1) "Account" means any facility or arrangement by which a financial institution or cash dealer does any one or more of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency or transfers into or out of the account;
- (c) pays checks or payment orders drawn on a financial institution or cash dealer or collects checks or payment orders, made by or on behalf of a person; or
- (d) supplies a facility or arrangement for a safety deposit box.

(2) "Appeal" includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for a stay of execution.

(3) "Authorized officer" means a person or class of persons designated or authorized by the Secretary pursuant to applicable law as an authorized officer or officers for the purposes of enforcing or implementing the provisions of this chapter and related laws.

(4) "Cash dealer" means:

- (a) a person who carries on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker;
- (b) a person who carries on a business of dealing in bullion, of issuing, selling or redeeming travelers checks, money orders or similar instruments, or of collecting, holding and delivering cash as part of a business providing payroll services;

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- (c) an operator of a gambling house, bingo parlor, casino or lottery; or
 - (d) a trustee, or manager of a unit trust.
- (5) "Covered property" means:
- (a) any property held by a defendant;
 - (b) any property in which a defendant has an interest; or
 - (c) any property held by a person to whom a defendant has directly or indirectly made a gift caught by this act.
- (6) "Currency" means the coin and paper money of the Federated States of Micronesia or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue.
- (7) "Defendant" means a person charged or about to be charged with a serious offense, whether or not he or she has been convicted of the offense, and includes, in the case of proceedings for a restraining order under section 957 of this title, a person who is about to be charged with a serious offense.
- (8) "Document" means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device, and any record of information, and includes:
- (a) anything on which there is writing;
 - (b) anything on which there are marks, figures, symbols, or perforations having a meaning for persons qualified to interpret them;
 - (c) anything from which sounds, images or writings can be produced, with or without the aid of anything else; or
 - (d) a map, plan, drawing, photograph or similar thing.
- (9) "Financial institution" means any person or entity which carries on a business of:
- (a) acceptance of deposits and other repayable funds from the public;
 - (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
 - (c) financial leasing;
 - (d) money transmission services;
 - (e) issuing and administering means of payment (such as credit cards, travelers checks and bankers drafts);
 - (f) guarantees and commitments;
 - (g) trading for their own account or for account of customers in money market instruments (such as checks, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;
 - (h) underwriting share issues and participation in such issues;
 - (i) advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings;
 - (j) money-brokering;
 - (k) portfolio management and advice;
 - (l) safekeeping and administration of securities;
 - (m) credit reference services; or
 - (n) safe custody services.
- (10) "Gift" includes any transfer of property by a person to another person directly or indirectly:

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- (a) after the commission of a serious crime by the first person;
 - (b) for a consideration the value of which is significantly less than the value of the property transferred; and
 - (c) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee.
- (11) "Interest", in relation to property, means:
- (a) a legal or equitable estate or interest in the property; or
 - (b) a right, power or privilege in connection with the property.
- (12) "Money laundering" means:
- (a) engaging, directly or indirectly, in a transaction that involves property which is a proceeds of crime;
 - (b) receiving, possessing, concealing, disguising, transferring, converting, disposing of, removing from or bringing into the country any property which is a proceeds of crime;
 - (c) knowing, or having reasonable grounds for suspecting that the property is derived or realized, directly or indirectly, from some form of unlawful activity;
 - (d) where the conduct is conduct of a natural person, without reasonable excuse, failing to take reasonable steps to ascertain whether or not the property is derived or realized directly or indirectly, from some form of unlawful activity; or
 - (e) where the conduct is a conduct of a financial institution, failing to implement or apply procedures and control to prevent or combat money laundering.
- (13) "Person" means any natural or legal person.
- (14) "Proceeding" or "proceedings" means any procedure conducted by or under the supervision of a judge or judicial officer, however described, in relation to any alleged or proven offense, or property derived from such offense, and includes an inquiry, investigation, or preliminary or final determination of facts.
- (15) "Proceeds of crime" means fruits of a crime, or any property derived or realized directly or indirectly from a serious offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offense.
- (16) "Property" means currency and all other real or personal property of every description, whether situated in the Federated States of Micronesia or elsewhere and whether tangible or intangible, and includes an interest in any such property.
- (17) "Property of or in the possession or control of any person" includes any gift made by that person.
- (18) "Realizable", with respect to "covered property" as defined by subsection (6) of this section, means:
- (a) capable of being acquired, obtained, taken, seized, confiscated, or procured, and is either cash or is capable of being liquidated and converted into cash; or
 - (b) capable of being detected, located, found, discovered, and converted into cash through payment of the amount or value of the defendant's interest therein.
- (19) "Secretary" means and is synonymous with the Secretary of the Department of Justice' of the Federated States of Micronesia, or with the chief law enforcement officer of the Federated States of Micronesia, whatever the title of such position is or in the future becomes.
- (20) "Serious offense" means a violation of:

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(a) any law of the Federated States of Micronesia or any of its States or political subdivisions, which is a criminal offense punishable by imprisonment for a term of more than one year; or

(b) a law of a foreign state, in relation to acts or omissions, which, had they occurred in the Federated States of Micronesia or any of its States or political subdivisions, would have constituted a criminal offense punishable by imprisonment for a term of more than one year.

(21) "Supreme Court" means the Supreme Court of the Federated States of Micronesia, and all its divisions, wherever or whenever constituted.

(22) "Tainted property" means:

(a) property used in, or in connection with, the commission of a serious offense; or

(b) proceeds of crime, as defined in subsection (16) of this section.

(23) "Unit trust" means any arrangement made for the purpose or having the effect of providing for a person to have the funds available for investment; facilitates for the participation by a person as a beneficiary under a trust, or in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust.

(24) A reference in this chapter to the law of:

(a) the Federated States of Micronesia;

(b) any State of the Federated States of Micronesia; or

(c) any foreign state, includes a reference to a written or unwritten law of, or in force in, any part of the Federated States of Micronesia (including its States and political subdivisions); any part of that State of the Federated States of Micronesia, or any part of that foreign state, as the case may be.

Source: PL 11-72 § 88.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 904. Charge in relation to a serious offense.

Any reference in this chapter to a person being charged, or about to be charged, with a serious offense is a reference to a procedure, however described, in the Federated States of Micronesia or elsewhere, by which criminal proceedings may be commenced.

Source: PL 11-72 § 89.

§ 905. Conviction in relation to a serious offense.

(1) For the purposes of this chapter, a person shall be taken to be convicted of a serious offense if:

(a) the person is convicted, whether upon a plea of guilty or no contest, or after trial, of the offense;

(b) the person is charged with, and found guilty of the offense but is discharged without any conviction being recorded; and

(c) the Supreme Court, with the consent of the convicted person, takes the offense, of which the person has not been found guilty, into account in passing sentence on the person for another serious offense.

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(2) For the purposes of subsection (1) of this section, judgment or sentence need not have been imposed.

Source: PL 11-72 § 90.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 906. Quashing of convictions.

For the purposes of this chapter, a person's conviction for a serious offense shall be taken to be quashed in any case:

- (1) where section 905(1)(a) of this chapter applies, if the conviction is reversed or set aside;
- (2) where section 905(1)(b) of this chapter applies, if the finding of guilt is reversed or set aside; or
- (3) where section 905(1)(c) of this chapter applies, if either:
 - (a) the person's conviction for the other offense referred to in that section is reversed or set aside; or
 - (b) the decision of Supreme Court to take the offense into account in passing sentence for the other offense is reversed or set aside.

Source: PL 11-72 § 91.

§ 907. Value of property.

(1) Subject to subsection (2) of this section, for the purposes of this chapter, the value of property (other than cash) in relation to any person holding the property is:

- (a) its market value; or
 - (b) where an innocent third party holds an interest in the property:
 - (i) the market value of the property, less the interest of the innocent third party; and
 - (ii) less the amount required to discharge any valid liens or encumbrances.
- (2) References in this chapter to the value of a gift, or the value of any payment or reward, means the value of the gift, payment or reward to the recipient when it was received, adjusted to account for any subsequent changes in the value of money.

Source: PL 11-72 § 92; PL 11-76 § 7.

§ 908. Dealing with property.

For the purposes of this chapter, dealing with property held by any person includes, without prejudice to the generality of the expression:

- (1) where the property is a debt owed to that person, making a payment to any person in reduction or full settlement of the amount of the debt;
- (2) making or receiving a gift of the property; or
- (3) removing the property from the Federated States of Micronesia.

Source: PL 11-72 § 93.

§ 909. Gift caught by this Act.

(1) A gift, including a gift made before the effective date of this Act, is caught by this Act where:

(a) it was made by a defendant charged with or convicted of a serious offense, at any time after the commission of the offense to which the proceedings relate (or where more than one offense was committed, at any time after commission of the earliest of the offenses to which the proceedings relate); and, the Supreme Court considers it appropriate, after consideration of all of the relevant circumstances, to take the gift into account; or where

(b) it was made by a defendant charged with or convicted of a serious offense and was a gift of property:

(i) received by the defendant in connection with the commission of a serious offense committed by the defendant or by another person; or

(ii) which (in whole or in part, directly or indirectly) represented (when in the defendant's hands) property received by the defendant in connection with the commission of a serious offense by the defendant or another person.

(2) For purposes of this Act:

(a) the circumstances in which a defendant must be treated as making a gift include those where the defendant transfers property to another person, directly or indirectly, for a consideration, the value of which is significantly less than the value of the property transferred by the defendant; and

(b) in those circumstances, the court shall apply the provisions of section 907 of this title, taking into account the difference between the value of the gift and the consideration, if any, provided to the defendant by the recipient.

Source: PL 11-72 § 94.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 910. Deriving a benefit.

A reference to a benefit derived or obtained by or otherwise accruing to a person, includes a reference to a benefit derived, or obtained by, or accruing to, a third party at the first person's request or direction.

Source: PL 11-72 § 95.

§ 911. Benefitting from the proceeds of a serious offense.

For the purposes of this Act:

(1) A person has benefitted from an offense if that person has at any time (whether before or after the commencement of this act) received any payment or other reward in connection with, or derived any pecuniary advantage from, the commission of a serious offense, whether committed by that person or someone else.

(2) A person's proceeds of a serious offense (whether received or derived before or after the commencement of this Act) are:

(a) any payments or other rewards received by the person at any time in connection with the offense; and/or

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(b) any pecuniary advantage derived by the person at any time from the commission of an offense.

(3) The value of a person's proceeds of a serious offense is the aggregate of the values of all payments, rewards or pecuniary advantages received by that person in connection with, or derived by the person from, the commission of the offense.

Source: PL 11-72 § 96.

SUBCHAPTER II Money Laundering

§ 912. Department of Justice to have authority over money laundering offenses.

The Federated States of Micronesia Department of Justice shall have primary enforcement authority with respect to the provisions of this chapter, and:

(1) shall receive and investigate reports of suspicious transactions issued by financial institutions and cash dealers pursuant to subsection 915(1) of this chapter;

(2) may enter the premises of any financial institution or cash dealer during ordinary business hours to inspect any records kept, pursuant to subsection 914(1) of this chapter, and ask any question relating to such records, make notes and take copies of the whole or any part of the records;

(3) may instruct any financial institution or cash dealer to take such steps as may be appropriate to facilitate any investigation;

(4) may compile statistics and records, disseminate information within the Federated States of Micronesia or elsewhere, make recommendations arising out of any information received, promulgate regulations to be followed by financial institutions and cash dealers, and advise the President;

(5) may provide lists of training facilities for any financial institution in respect of transaction record-keeping and reporting obligations provided for in subsections 914(1) and 915(1) of this chapter;

(6) may consult with any relevant person, institution or organization for the purpose of exercising its powers or duties; and

(7) may enter into joint law agreements with the States of the Federated States of Micronesia with respect to the enforcement and implementation of the provisions of this chapter, as deemed appropriate.

Source: PL 11-72 § 98.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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§ 913. Financial institutions and cash dealers to verify customer's identity.

(1) A financial institution or cash dealer shall take reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it, or to carry out a transaction or series of transactions with it, by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant, such as a birth certificate, passport or other official means of identification, and in the case of a corporation, a certificate of incorporation together with its latest tax return filed with the Government of the Federated States of Micronesia.

(2) Where an applicant requests a financial institution or cash dealer to enter into a continuing business relationship, or in the absence of such a relationship, any transaction, then the institution or cash dealer shall take reasonable measures to establish whether the person is acting on behalf of another person.

(3) If it appears to a financial institution or cash dealer that an applicant requesting to enter into any transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, then the institution or cash dealer shall take reasonable measures to establish the true identity of any person on whose behalf, or for whose ultimate benefit, the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.

(4) In determining what constitutes reasonable measures, for the purposes of subsections (1) or (3) of this section, regard shall be given to all circumstances of the case, and in particular:

(a) to whether the applicant is based or incorporated in a country in which applicable provisions are in force to prevent the use of the financial system for the purpose of money laundering; and

(b) to custom and practice, as may from time to time be current, in the relevant field of business.

(5) Nothing in this section shall require the production of any evidence of identity where:

(a) the applicant is itself a financial institution or a cash dealer to which this act applies; or

(b) there is a transaction or a series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

Source: PL 11-72 § 99.

§ 914. Financial institutions and cash dealers to establish and maintain customer records.

(1) A financial institution or cash dealer shall establish and maintain:

(a) records of all transactions exceeding \$10,000, or its equivalent in foreign currency, carried out by it, in accordance with the requirements of subsection (3) of this section; and

(b) where evidence of a person's identity is obtained in accordance with section 913 of this chapter, a record that indicates the nature of the evidence obtained, and which comprises either a copy of the evidence or such information as would enable a copy of it to be obtained.

(2) Customer accounts of a financial institution or cash dealer shall be kept in the true name of the account holder.

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(3) Records required under subsection (1)(a) of this section shall contain particulars sufficient to identify the:

- (a) name, address and occupation (or where appropriate, business or principal activity) of each person conducting the transaction, or if known, on whose behalf the transaction is being conducted, as well as the method used by the financial institution or cash dealer to verify the identity of each such person;
- (b) nature and date of the transaction;
- (c) type and amount of currency involved;
- (d) the type and identifying number of any account with the financial institution or cash dealer involved in the transaction;
- (e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument; and
- (f) the name and address of the financial institution or cash dealer, and of the officer, employee or agent of the financial institution or cash dealer who prepared the report.

(4) Records required under subsection (1) of this section shall be kept by the financial institution for a period of at least five years from the date the relevant business or transaction was completed.

Source: PL 11-72 § 100.

§ 915. Financial institutions and cash dealers to report suspicious transactions.

(1) Whenever a financial institution or cash dealer is a party to a transaction and has reasonable grounds to suspect that the information it has concerning the transaction may be relevant to an investigation or prosecution of a person for a serious offense, it shall as soon as possible, but no later than three working days after forming that suspicion, and wherever possible before the transaction is carried out:

- (a) take reasonable measures to ascertain the purpose of the transaction, the origin and ultimate destination of the funds involved, and the identity and address of any ultimate beneficiary;
- (b) prepare a report of the transaction in accordance with subsection (2) of this section; and
- (c) communicate the information contained therein to the Department of Justice in writing.

(2) A report required by subsection (1) of this section shall:

- (a) contain particulars of the matters specified in subsection (1)(a) of this section, and in section 913(1) of this chapter;
- (b) contain a statement of the grounds on which the financial institution or cash dealer holds the suspicion; and
- (c) be signed or otherwise authenticated by the financial institution or cash dealer.

(3) A financial institution or a cash dealer which has reported a suspicious transaction in accordance with this subchapter shall, if requested to do so by the Department of Justice, give such further information as it has in relation to the transaction.

Source: PL 11-72 § 101.

§ 916. Financial institutions and cash dealers to establish and maintain internal reporting procedures.

A financial institution or cash dealer shall establish and maintain internal reporting procedures to:

- (1) identify persons to whom an employee is to report any information which comes to the employee's attention in the course of employment, and which gives rise to knowledge or suspicion by the employee that another person is engaged in money laundering, and enables any person so identified to have reasonable access to any information relevant to determine if a sufficient basis exists to report the matter pursuant to subsection 915(1) of this chapter; and
- (2) require the identified person to report the matter pursuant to subsection 915(1) of this chapter, in the event that he or she determines that sufficient basis exists.

Source: PL 11-72 § 102.

§ 917. Further preventive measures by financial institutions and cash dealers.

A financial institution or cash dealer shall establish and maintain internal reporting procedures to:

- (1) take appropriate measures for the purpose of making employees aware of domestic laws relating to money laundering, and the procedures and related policies established and maintained by it pursuant to this act;
- (2) provide its employees with appropriate training in the recognition and handling of money laundering transactions.

Source: PL 11-72 § 103.

§ 918. Money laundering offenses.

- (1) A person commits the offense of money laundering if the person:
 - (a) acquires, possesses or uses property, knowing, or having reason to believe, that it is derived directly or indirectly from acts or omissions that would constitute a serious offense;
 - (b) renders assistance to another person for:
 - (i) the conversion or transfer of property derived directly or indirectly from the acts or omissions referred to in subsection (1)(a) of this section, with the intention of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of the offense to evade the legal consequences thereof; or
 - (ii) concealing or disguising the true nature, origin, location, disposition, movement or ownership of the property derived directly or indirectly from the acts or omissions referred to in subsection (1)(a) of this section.
- (2) The offense of money laundering, established under subsection (1) of this section, is a felony offense, punishable by imprisonment for a maximum term of ten years or a maximum fine of \$100,000, or both; PROVIDED, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$500,000.

Source: PL 11-72 § 104.

§ 919. Related offenses.

(1) A person who knowingly opens or operates an account with a financial institution or a cash dealer under a false name commits a felony offense, punishable by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both; PROVIDED, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000.

(2) A financial institution or cash dealer who fails to comply with any requirement of this subchapter for which no penalty is specified commits a felony offense, punishable by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both; PROVIDED, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person that is not also a natural person, the maximum fine shall be increased to \$250,000.

(3) In determining whether a person, or a financial institution or cash dealer has complied with or failed to comply with any requirement of this subchapter, the Supreme Court shall have regard to all the circumstances of the case, including such custom and practice as may, from time to time, be current in the relevant trade, business profession or employment, and may take into account any relevant regulations adopted and/or approved by a public authority, exercising public interest supervisory functions in relation to the financial institution or cash dealer, or any other body that regulates or is representative of any trade, business, profession or employment carried on by that person.

(4) Any person who knows or suspects that a report under subsection 915(1) of this chapter is being prepared or has been sent to the Department of Justice and discloses to another person information or other matters which are likely to prejudice any investigation of an offense, or possible offense of money laundering under section 918 of this chapter, commits a felony offense; such offense is punishable by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both; PROVIDED, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000.

(5) In proceedings for an offense against subsection (4) of this section, it is an affirmative defense that the person did not know, or have reasonable grounds to suspect, that the disclosure was likely to prejudice any investigation of an offense or possible offense of money laundering under section 918 of this chapter.

Source: PL 11-72 § 105.

§ 920. Seizure and detention of suspicious imports or exports of currency.

(1) An authorized officer may seize and, in accordance with this section, detain any currency which is being imported into or exported from the Federated States of Micronesia if the authorized officer has probable cause to believe that it was derived from a serious offense, or is intended by any person for use in the commission of a serious offense.

(2) Currency detained under subsection (1) of this section shall not be detained for more than 24 hours after seizure, unless a justice of the Supreme Court grants an order of continued detention for a period not exceeding three months from the date of seizure, upon being satisfied that:

(a) there is probable cause to believe that it was derived from a serious offense or is intended by any person for use in the commission of a serious offense; and

(b) its continued detention is justified while:

(i) its origin or derivation is further investigated; or

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(ii) consideration is given to the institution in the Federated States of Micronesia or elsewhere of criminal proceedings against any person for an offense with which the currency is connected; PROVIDED, however, upon request by the person from whom the currency was seized and detained, the court shall grant a hearing before entering an order of continued detention.

(3) A justice of the Supreme Court may subsequently order, after hearing, with notice to all parties concerned, the continued detention of the currency if satisfied of the matters mentioned in subsection (2) of this section, but the total period of detention shall not exceed two years from the date of the order.

(4) Subject to subsection (5) of this section, currency detained under this section may be released in whole or in part to the person on whose behalf it was imported or exported:

(a) by order of a justice of the Supreme Court that its continued detention is no longer justified, upon application by or on behalf of that person and after considering any views of the Secretary to the contrary; or

(b) by an authorized officer, if satisfied that its continued detention is no longer justified.

(5) No currency detained under this section shall be released where:

(a) an application is made under subchapter III of this chapter for the purpose of:

(i) the confiscation of the whole or any part of the currency; or

(ii) its restraint pending determination of its liability to confiscation; or

(b) proceedings are instituted in the Federated States of Micronesia or elsewhere against any person for an offense with which the currency is connected, unless and until the proceedings relating to the relevant application or the proceedings for the offense as the case may be have been concluded.

Source: PL 11-72 § 106.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 921. Power to obtain search warrant.

(1) The Department of Justice may apply to the Supreme Court for a warrant, under this section or title 12 of this code, to enter any premises belonging to or in the possession or control of a financial institution, cash dealer, or any officer or employee thereof, and to search the premises and remove any document, material or other thing therein for the purposes of the Department of Justice as ordered by the Supreme Court and specified in the warrant.

(2) The Supreme Court shall grant an application for a search warrant made pursuant to this act if it is satisfied that there is probable cause to believe that:

(a) the financial institution or cash dealer has failed to keep a transaction record, or report a suspicious transaction, as required by this act; or

(b) an officer or employee of a financial institution or cash dealer is committing, has committed or is about to commit an offense of money laundering or other violation of this Act.

Source: PL 11-72 § 107.

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Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. Title 12 of this code is on Criminal Procedure.

§ 922. Property tracking and monitoring orders.

For the purpose of determining whether any property belongs to, or is in the possession or under the control of any person, the Department of Justice may, upon application to the Supreme Court, obtain an order:

- (1) that any document relevant to:
 - (a) identifying, locating or quantifying any such property; or
 - (b) identifying or locating any document necessary for the transfer of any such property, belonging to, or in the possession or control of that person; be delivered forthwith to the Department of Justice; or
- (2) that the financial institution or cash dealer forthwith produce to the Department of Justice all information obtained about any transaction conducted by or for that person during such period before or after the order as the Supreme Court directs.

Source: PL 11-72 § 108.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 923. Orders to enforce compliance with obligations under this subchapter.

(1) The Department of Justice may, upon application to the Supreme Court, after satisfying the Court by a preponderance of the evidence, that a financial institution or cash dealer has failed to comply with any obligation provided for under sections 913, 914, 915, 916, or 917 of this chapter, obtain an order against all or any officers or employees of the institution or dealer in such terms as the Supreme Court deems necessary, in order to enforce compliance with such obligation.

(2) In granting the order pursuant to subsection (1) of this section, the Supreme Court may order that should the financial institution or cash dealer fail, without reasonable excuse, to comply with all or any provisions of the order, such institution, dealer, officer or employee shall pay a financial penalty in the sum and in the manner directed by the Supreme Court.

(3) Nothing in this section shall preclude the Department of Justice from instituting criminal charges and seeking other orders, warrants, remedies or penalties; and notwithstanding any other penalty which may be imposed under this Act, the Department of Justice may apply for an order directing compliance with any requirement of this Act or regulations.

Source: PL 11-72 § 109.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.

§ 924. Secrecy and confidentiality obligations overridden.

The provisions of this Act shall have effect notwithstanding any obligation as to secrecy, confidentiality, or other restriction on the disclosure of information imposed by law and regulations, including the policies, practices and regulations of any financial institution, cash dealer or other

commercial entity or person, with respect to secrecy and confidentiality of banking matters, in the Federated States of Micronesia.

Source: PL 11-72 § 110.

§ 925. Immunity where suspicious transaction reported.

No action, suit or other proceedings shall lie against any financial institution or cash dealer, or any officer, employee or other representative of the institution acting in the ordinary course of the person's employment or representation, in relation to any action taken in good faith by that institution or person pursuant to section 915(1) of this chapter.

Source: PL 11-72 § 111.

§ 926. Immunity where official powers or functions exercised in good faith.

No suit, prosecution or other legal proceedings shall lie against the Government of the Federated States of Micronesia, or any officer or other person in respect of anything done by or on behalf of that person, with due diligence and in good faith, in the exercise of any power or the performance of any function under this act or any regulation or order made pursuant to this Act.

Source: PL 11-72 § 112.

§ 927. Restitution of restrained property.

Where an investigation has begun against a person for a serious offense, or property was restrained under this Act in relation to that offense, and any of the following occurs:

- (1) the person is not charged in the Federated States of Micronesia with the serious offense;
- (2) the person is charged with a serious offense in the Federated States of Micronesia, but not convicted of that offense; or
- (3) a conviction for that serious offense in the Federated States of Micronesia is quashed or reversed and no subsequent complaint is filed within a reasonable time thereafter; the Supreme Court shall order restitution of the restrained property together with the interest, if any, which has actually accrued, if such property is held in a financial institution.

Source: PL 11-72 § 113.

§ 928. Damages.

Nothing in this Act affects the right of a person, whose property has been restrained, to seek redress for due process or civil rights violations pursuant to the laws of the Federated States of Micronesia.

Source: PL 11-72 § 114.

Cross-reference: The statutory provisions on Civil Rights are found in chapter 7 of this title.

**SUBCHAPTER III
Confiscation**

**PART 1: Application for Confiscation
and Pecuniary Penalty Orders**

§ 929. Application for confiscation order or pecuniary penalty order.

(1) Where a defendant is convicted of a serious offense, the Secretary may apply to the Supreme Court for one or both of the following orders:

(a) a confiscation order against property that is tainted property in respect of the offense; or

(b) a pecuniary penalty order against the defendant in respect of benefits derived by the defendant from the commission of the offense; provided, however, such application must be made within one year of the date the defendant was convicted for the serious offense.

(2) An application under subsection (1) of this section may be made in respect of one or more than one offense.

(3) Where an application under this section is finally determined, no further application for a confiscation order or a pecuniary penalty order may be made in respect of the offense for which the defendant was convicted without the leave of the Supreme Court. The Supreme Court shall not give such leave unless it is satisfied that:

(a) the property or benefit to which the new application relates, accrued or was identified after the previous application was determined;

(b) necessary evidence became available after the previous application was determined and could not reasonably have been discovered before such determination; or

(c) it is in the interest of justice that the new application be made.

Source: PL 11-72 § 117.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 930. Notice of application.

(1) Where the Secretary applies for a confiscation order against property in respect of the defendant's conviction of a serious offense:

(a) the Secretary must give no less than 14 days written notice of the application to the defendant and to any other person who the Secretary has reason to believe may have an interest in the property;

(b) the defendant and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application; and

(c) the Supreme Court may, at any time before the final determination of the application, direct the Secretary to:

(i) give notice of the application to any person who, in the opinion of the Supreme Court, appears to have an interest in the property; and

(ii) announce on public radio, post a notice at the main Post Office and all branch offices, and at the National Government headquarters in Palikir, and publish in a

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newspaper published and circulating in the Federated States of Micronesia, a notice of the application.

- (2) Where the Secretary applies for a pecuniary penalty order against a defendant:
 - (a) the Secretary shall give the defendant no less than 14 days' notice of the application; and
 - (b) the defendant may appear and adduce evidence at the hearing of the application.

Source: PL 11-72 § 118.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 931. Amendment of application.

(1) The Supreme Court, upon hearing the application under subsection 929(1) of this chapter, may, before the final determination of the application, and on the application of the Secretary, amend the application to include any other property or benefit, as the case may be, upon being satisfied that:

- (a) the property or benefit was not reasonably capable of identification when the application was made; or
- (b) necessary evidence became available only after the application was originally made.

(2) Where the Secretary applies to amend an application for a confiscation order and the amendment would have the effect of including additional property in the application for confiscation, the Secretary must give no less than 14 days written notice of the application to amend, to any person who the Secretary has a reason to believe may have an interest in the property to be included in the application for a confiscation order.

(3) Any person who claims an interest in the property to be included in the application of a confiscation order may appear and adduce evidence at the hearing of the application to amend.

(4) Where the Secretary applies to amend an application for a pecuniary penalty order against a defendant and the effect of the amendment would be to include an additional benefit in the application, the Secretary must give the defendant no less than 14 days written notice of the application to amend.

Source: PL 11-72 § 119.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 932. Procedure on application.

(1) Where an application is made to the Supreme Court for a confiscation order or a pecuniary penalty order in respect of a defendant's conviction of a serious offense, the Supreme Court may, in determining the application, have regard to the transcript of any proceedings against the defendant for the offense.

(2) Where an application is made for a confiscation order or a pecuniary penalty order to the Supreme Court before which the defendant was convicted, and the Supreme Court has not, when the

application is made, passed sentence on the defendant for the offense, the Supreme Court may, if it is satisfied that it is reasonable to do so in all circumstances, defer passing sentence until it has determined the application for the order.

Source: PL 11-72 § 120.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

PART 2: Confiscation Orders

§ 933. Procedure for *in rem* confiscation order where a person dies or absconds.

(1) Where an information or a complaint has been filed alleging the commission of a serious offense by a person and a warrant for the arrest of the person has been issued in relation to that information or complaint, the Secretary may apply to the Supreme Court for a confiscation order in respect of any tainted property if the defendant has died or absconded.

(2) For the purposes of subsection (1) of this section and section 934 of this chapter, the person is deemed to have absconded if reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during a period of six months commencing on the day the warrant was issued, and the person shall be deemed to have so absconded on the last day of that period.

(3) Where the Secretary applies under this section for a confiscation order against any tainted property, the Supreme Court shall, before hearing the application:

(a) require notice of the application to be given to any person who, in the opinion of the Supreme Court, appears to have an interest in the property; and

(b) direct that notice of the application be announced on public radio, posted at the main Post Office and all branch offices, and at the National Government headquarters in Palikir, and published in a newspaper published and circulating in the Federated States of Micronesia, containing such particulars and for so long as the Supreme Court may require.

Source: PL 11-72 § 122.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 934. Confiscation where a person dies or absconds.

(1) Subject to section 933(3) of this chapter, where an application is made to the Supreme Court under section 933(1) of this title, for a confiscation order against any tainted property by reason of a person having died, or absconded in connection with a serious offense, and the Court is satisfied that:

(a) any property is tainted property in respect of the offense;

(b) proceedings in respect of a serious offense committed in relation to that property were commenced; and

(c) the accused charged with the offense referred to in subsection (1)(b) of this section has died or absconded; the Supreme Court may order that the property or such property as is specified by the Supreme Court in the order be confiscated.

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(2) The provisions of section 933(2), 935, 936, 937 and 938 of this chapter shall apply with such modifications as are necessary to give effect to this section.

Source: PL 11-72 § 123.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 935. Confiscation order on conviction.

(1) Where, upon application by the Secretary, the Supreme Court is satisfied that property is tainted property in respect of a serious offense of which a person has been convicted, the Supreme Court may order that specified property be confiscated.

(2) In determining whether property is tainted property, the Supreme Court may presume, in the absence of evidence to the contrary:

(a) that the property was used in or in connection with, the commission of the offense if it was in the person's possession at the time of, or immediately after, the commission of the offense for which the person was convicted; and/or

(b) that the property was derived, obtained or realized as a result of the commission of the offense if it was acquired by the person before, during or within a reasonable time after the period of the commission of the offense of which the person was convicted, and the Supreme Court is satisfied that the income of that person, from sources unrelated to criminal activity of that person, cannot reasonably account for the acquisition of that property.

(3) Where the Supreme Court orders that property, other than money, be confiscated, the Supreme Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made, taking account of how such value is to be determined under section 907 of this act.

(4) In considering whether a confiscation order should be made under subsection (1) of this section the Supreme Court shall have regard to:

(a) the rights and interests, if any, of innocent third parties in the property;

(b) the gravity of the offense concerned;

(c) any hardship that may reasonably be expected to be caused to any innocent person by the operation of the order; and

(d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) Where the Supreme Court makes a confiscation order, the Supreme Court may give such directions as are necessary or convenient for giving effect to the order.

Source: PL 11-72 § 124.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 936. Effect of confiscation order.

(1) Subject to subsection (2) of this section, where a Court makes a confiscation order against any property, the property vests absolutely in the Federated States of Micronesia by virtue of the order, except with respect to real property, where any legislation then in force in any State of the

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Federated States of Micronesia prohibits the Federated States of Micronesia from taking title to such real property, in which case a lien shall be immediately attached to the property in favor of the Federated States of Micronesia, in the amount of the value of the property less any prior recorded encumbrances. In the case of such real property, the Secretary shall be authorized to make application to the Supreme Court, and the Supreme Court may grant an order forcing the sale of such property (unless the sale of such property is prohibited by legislation then in force in the State), with proceeds to be paid to the Federated States of Micronesia after sale, less prior recorded encumbrances.

(2) Where property ordered to be confiscated is recordable property, and where not prohibited under the laws of a State of the Federated States of Micronesia:

(a) the property vests in the Federated States of Micronesia in equity but does not vest in the Federated States of Micronesia at law until the applicable recordation requirements have been complied with;

(b) the Federated States of Micronesia is entitled to be recorded as owner of the property; and

(c) the Secretary has power, on behalf of the Federated States of Micronesia, to do or authorize the doing of anything necessary or convenient to obtain the recordation of the Federated States of Micronesia as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

(3) Where the Supreme Court makes a confiscation order against property:

(a) the property shall not, except with the leave of the Supreme Court, and in accordance with any directions of the Supreme Court, be disposed of, or otherwise dealt with, by or on behalf of the Federated States of Micronesia before the relevant appeal date; and

(b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the Secretary.

(4) In this section:

(a) "Recordable property" means real property, the title to which is passed by recordation in accordance with the provisions of the applicable state law;

(b) "Relevant appeal date" used in relation to a confiscation order made in consequence of a person's conviction of a serious offense means:

(i) the date on which the period allowed by rules of court for the lodging of an appeal against a person's conviction, or for the lodging of an appeal against the making of a confiscation order expires without an appeal having been lodged, whichever is the later; or

(ii) where an appeal against a person's conviction or against the making of a confiscation order is lodged, the date on which the appeal is finally determined.

Source: PL 11-72 § 125.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

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The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 937. Voidable transfers.

The Supreme Court may, before making a confiscation order and in the case of property in respect of which a restraining order was made, where the order was served in accordance with section 960 of this title, set aside any conveyance or transfer of the property that occurred after the seizure of the property, or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Source: PL 11-72 § 126.

§ 938. Protection of third parties.

(1) Where an application is made for a confiscation order against property, a person who claims an interest in the property may apply to the Supreme Court, before the confiscation order is made, for an order under subsection (2) of this section.

(2) If a person applies to the Supreme Court for an order under this section in respect of property and the Supreme Court is satisfied:

- (a) that the person was not in any way involved in the commission of the offense; and
- (b) where the person acquired the interest during or after the commission of the offense, that he or she acquired the interest:
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he or she acquired it, tainted property; the Supreme Court shall make an order declaring the nature, extent and value (at the time the order is made) of the person's interest.

(3) Subject to subsection (4) of this section, where a confiscation order has already been made directing the confiscation of property, a person who claims an interest in the property may, before the end of the period of 12 months, commencing on the day on which the confiscation order is made, apply to the Supreme Court for an order under subsection (2) of this section.

(4) A person who:

- (a) had knowledge of the application for the confiscation order before the order was made; or
- (b) appeared at the hearing of that application; shall not be permitted to make an application under subsection (3) of this section, except with leave of the Supreme Court.

(5) A person who makes an application under subsections (1) or (3) of this section must give no less than 14 days written notice of the making of the application to the Secretary, who shall be a party to any proceedings in the application.

(6) An applicant or the Secretary may, in accordance with the rules of court, appeal the Court's order made under subsection (2) of this section.

(7) Any person appointed by the Supreme Court under section 968 of this chapter shall, on application by any person who has obtained an order under subsection (2) of this section, and where the

period allowed by the rules of court with respect to the making of a claim has expired and any appeal from that order has been determined:

(a) direct that the property or part thereof to which the interest of the applicant relates, be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

Source: PL 11-72 § 127.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 939. Discharge of confiscation order on quashing or reversal of conviction.

(1) Where the Supreme Court makes a confiscation order against property in reliance on a person's conviction of a serious offense and the conviction is subsequently reversed by a court of final jurisdiction, the reversal of the conviction discharges the order. However, upon notice of intent by the Department of Justice to recharge the matter, the court may order continued detention of the property pursuant to section 935 of this chapter.

(2) Where a confiscation order against property is discharged as provided for in subsection (1) of this section or by the Supreme Court, hearing an appeal against the making of the confiscation order, any person who claims to have an interest in the property immediately before the making of the confiscation order may apply to the court in writing for the transfer of the interest to the person.

(3) On receipt of an application under subsection (2) of this section, the court shall conduct a hearing to determine, by a preponderance of the evidence, ownership of the property, and if satisfied that the applicant is lawfully entitled, and has no complicity with respect to the offense, shall:

(a) if the interest is vested in the Federated States of Micronesia, give directions that the property or part thereof to which the interest of the applicant relates, be transferred to the person; or

(b) in any other case, direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made.

Source: PL 11-72 § 128.

§ 940. Payment instead of a confiscation order.

Where the Supreme Court is satisfied that a confiscation order should be made in respect of the property of a person convicted of a serious offense, but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular:

(1) cannot, on the exercise of due diligence be located;

(2) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the confiscation of the property;

(3) is located outside the Federated States of Micronesia;

(4) has been substantially diminished in value or rendered worthless; or

(5) has been commingled with other property that cannot be divided without difficulty; the Supreme Court may, instead of ordering the property or part thereof or interest therein to be confiscated,

order the person to pay to the Federated States of Micronesia an amount equal to the value of the property, part or interest, taking into account section 907 of this chapter.

Source: PL 11-72 § 129; PL 11-76 § 8.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 941. Application of procedure for enforcing fines.

Where the Supreme Court orders a person to pay an amount under section 940 of this chapter, that amount shall be treated as if it were a fine imposed upon him or her in respect of a conviction for a serious offense, and the Supreme Court shall:

(1) notwithstanding anything contained in any other Act, or law, including the Code of the Federated States of Micronesia, impose, for contumacious default of the payment of that amount, a term of imprisonment:

- (a) of not more than 30 days, where the amount does not exceed \$1,000;
- (b) of not more than one year, where the amount does not exceed \$5,000;
- (c) of not more than five years, where the amount does not exceed \$50,000 dollars; or
- (d) of not more than ten years, where the amount exceeds \$50,000;

(2) direct that the term of imprisonment imposed, pursuant to subsection (1) of this section, be served consecutively to any other form of imprisonment imposed on that person, or that the person is then serving; or

(3) direct that other provisions of this code regarding the disposition of offenders serving a term of imprisonment, shall not apply in relation to a term of imprisonment, imposed on a person pursuant to subsection (1) of this section.

Source: PL 11-72 § 130.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

PART 3: Pecuniary Penalty Orders

§ 942. Pecuniary penalty order on conviction.

(1) Subject to this section, where the Secretary applies to the Supreme Court for a pecuniary penalty order against a defendant in respect of the defendant's conviction for a serious offense, the Court shall, if it is satisfied that the defendant has benefitted from that offense, order the defendant to pay to the Federated States of Micronesia an amount equal to the value of the defendant's benefit from the offense, or such lesser amount as the Court determines in accordance with section 945 of this chapter, to be the amount that might be recovered at the time the pecuniary penalty order is made.

(2) The Supreme Court shall assess the value of the benefits derived by a person from the commission of an offense in accordance with sections 943, 944, 945, and 946 of this chapter.

(3) The Supreme Court shall not make a pecuniary penalty order under this section:

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- (a) until the period allowed by the rules of court for the lodging of an appeal against the conviction has expired without such appeal having been lodged; or
- (b) where an appeal against the conviction has been lodged, until the appeal is dismissed in accordance with the rules of court or is finally determined; whichever is the later date.

Source: PL 11-72 § 132.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 943. Determination of benefit and assessment of value.

- (1) Where a defendant obtains property as the result of, or in connection with the commission of a serious offense, the defendant's benefit is the value of the property so obtained. Value means fair market value at the time the property was obtained or at the time of conviction, at whichever time the value is greater.
- (2) Where a defendant derived an advantage as a result of or in connection with the commission of a serious offense, the defendant's advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.
- (3) The Supreme Court, in determining whether a person has benefitted from the commission of a serious offense or from that offense taken together with other serious offenses shall, unless the contrary is proved by the defendant by satisfactory evidence, presume:
 - (a) all property appearing to the Supreme Court to be held by the person:
 - (i) on the day on which the application is made;
 - (ii) at any time within the period between the day the serious offense, or the earliest serious offense, was committed and the day on which the application is made; or
 - (iii) within the period of six years immediately before the day on which the application is made; whichever is the longer, to be property that came into the possession or under the control of the person by reason of the commission of that serious offense or those serious offenses for which the defendant was convicted;
 - (b) any expenditure by the defendant since the commission of the offense to be expenditure meted out of payments received by the defendant as a result of, or in connection with, the commission of that serious offense or those serious offenses; and
 - (c) any property received or deemed to have been received by the defendant at any time as a result of, or in connection with the commission by the defendant of that serious offense, or those serious offenses, to be property received by the defendant free of any interest therein.
- (4) Where a pecuniary penalty order has been previously made against a defendant, in assessing the value of any benefit derived by the defendant from the commission of the serious offense, the Supreme Court shall leave out of account any benefits that are shown to the Supreme Court to have been taken into account in determining the amount to be recovered under that order.
- (5) If evidence is given at the hearing of the application that the value of the defendant's property at any time after the commission of the serious offense exceeded the value of the defendant's property before the commission of the offense, then the Supreme Court shall, subject to subsection (6) of this section, treat the value of the benefit as being not less than the amount of that excess.

(6) If, after evidence of the kind referred to in subsection (5) of this section is given, the defendant proves to the Supreme Court by satisfactory evidence that the whole or part of the excess was due to causes unrelated to the commission of the serious offense, subsection (5) of this section does not apply to the excess or, as the case may be, that part.

Source: PL 11-72 § 133.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 944. Statements relating to benefits from the commission of serious offenses.

(1) Where:

(a) a defendant has been convicted of a serious offense and the Secretary tenders to the Supreme Court a statement as to any matters relevant to:

(i) determining whether the defendant has benefitted from the offense or from any other serious offense of which the defendant is convicted in the same proceedings or which is taken into account in determining his or her sentence; or

(ii) an assessment of the value of the defendant's benefit from the offense or any other serious offense of which the defendant is convicted in the same proceedings or which is taken into account; and

(b) the defendant admits to any extent an allegation in the statement; the Supreme Court may, for the purposes of so determining or making that assessment, treat the defendant's admission as conclusive of the matters to which it relates.

(2) Where:

(a) a statement is tendered under subsection (1)(a) of this section; and

(b) the Court is satisfied that a copy of that statement has been served on the defendant; the Supreme Court may require the defendant to indicate to what extent the defendant admits each allegation in the statement and, so far as the defendant does not admit any allegation, to indicate any matters the defendant proposes to deny or reply on.

(3) Where the defendant fails in any respect to comply with a requirement under subsection (2) of this section, the defendant may be treated, for the purposes of this section, as having admitted every allegation in the statement except for any allegation in respect of which the defendant complied with the requirements of subsection (2) of this section.

(4) Where:

(a) the defendant tenders to the Supreme Court a statement as to any matters relevant to determining the amount that might be recovered at the time the pecuniary penalty order is made; and

(b) the Secretary admits to any extent any allegation in the statement; the Supreme Court may, for the purposes of that determination, treat the admission of the Secretary as conclusive of the matters to which it relates.

(5) An allegation may be admitted, denied, or a matter indicated for the purposes of this section, either:

(a) orally before the Supreme Court; or

(b) in writing, in accordance with the rules of court.

(6) An admission by a defendant under this section that the defendant received any benefits from the commission of a serious offense is admissible in any proceedings for any offense.

Source: PL 11-72 § 134.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 945. Amount recovered under pecuniary penalty order.

(1) The amount to be recovered from the defendant under a pecuniary penalty order shall be the amount that the Supreme Court assesses to be the value of the defendant's benefit from the serious offense, or if more than one offense, the aggregate benefit of all the offenses.

(2) Where the amount of the benefit derived by the defendant from the serious offense(s) greatly exceeds the amount which might be recovered from the defendant at the time the pecuniary penalty order is made, the Supreme Court may order a pecuniary penalty in such amount as the court finds is realizable at the time of issuance of the pecuniary penalty order, but shall be required to issue findings of fact justifying such lesser amount.

Source: PL 11-72 § 135.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 946. Variation of pecuniary penalty order.

Where:

(1) the Supreme Court makes a pecuniary penalty order against a defendant in relation to a serious offense;

(2) in calculating the amount of the pecuniary penalty order, the Court took into account a confiscation order of property or a proposed confiscation order in respect of property; and

(3) an appeal against confiscation or a confiscation order is allowed, or the proceedings from the proposed confiscation order terminate without the proposed confiscation order being made; the Secretary may apply to the Supreme Court for a variation of the pecuniary penalty order to increase the amount of the order by the value of the property not so confiscated and the Supreme Court may, if it considers it appropriate to do so, vary the order accordingly.

Source: PL 11-72 § 136.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 947. Lifting the Corporate Veil.

(1) In assessing the value of benefits derived by a defendant from the commission of a serious offense, the Supreme Court may treat as property of the defendant, any property that, in the opinion of the Supreme Court, is subject to the effective control of the defendant, whether or not the defendant has:

- (a) any legal or equitable interest in the property; or

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(b) any right, power or privilege in connection with the property.

(2) Without prejudice to the generality of subsection (1) of this section, the Supreme Court may take into consideration:

(a) shareholdings in, debentures over or directorships in any company, corporation or commercial enterprise that has an interest, whether direct or indirect, in the property, and for this purpose the Supreme Court may order the investigation and inspection of the books and records of any named company, corporation or commercial enterprise;

(b) any trust that has any relationship to the property; or

(c) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in subsection (2)(a) of this section or trust of the kind referred to in subsection (2)(b) of this section, and any other persons.

(3) Where the Supreme Court, for the purposes of making a pecuniary penalty order against a defendant, treats particular property as the defendant's property pursuant to subsection (1) of this section, the Supreme Court may, on application by the Secretary, make an order declaring that the property is available to satisfy the order.

(4) Where the Supreme Court declares that property is available to satisfy a pecuniary penalty order:

(a) the order may be enforced against the property as if the property were the property of the defendant against whom the order is made; and

(b) a restraining order may be made in respect of the property as if the property were property of the defendant against whom the order is made.

(5) Where the Secretary makes an application for an order under subsection (3) of this section, that property is available to satisfy a pecuniary penalty order against a defendant:

(a) the Secretary shall give written notice of the application to the defendant and to any person who the Secretary has reason to believe may have an interest in the property; and

(b) the defendant and any person who claims an interest in the property may appear and adduce evidence at the hearing.

Source: PL 11-72 § 137.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 948. Enforcement of pecuniary penalty orders.

Where the Supreme Court orders a defendant to pay an amount under a pecuniary penalty order, the provisions of section 941 shall apply with such modifications as the Supreme Court may determine for the purpose of empowering the Supreme Court to impose a term of imprisonment on a defendant in contumacious default of compliance by the defendant with a pecuniary penalty order.

Source: PL 11-72 § 138.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 949. Discharge of pecuniary penalty orders.

A pecuniary penalty order is discharged:

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- (1) if the conviction of the serious offense or offenses in reliance on which the order was made is reversed and no conviction for the offense or offenses is substituted;
- (2) if the order is rescinded; or
- (3) on the satisfaction of the order by payment of the amount due under the order.

Source: PL 11-72 § 139.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

PART 4: Control of Property

§ 950. Powers to search for and seize tainted property.

- (1) In addition to any powers granted under title 12 of this code and other applicable laws, a police officer may:
 - (a) search a person for tainted property;
 - (b) enter upon land or upon or into premises and search the land or premises for tainted property; and
 - (c) in either case, seize any property found in the course of the search that the police officer believes, on reasonable grounds to be tainted property, provided that the search or seizure is made:
 - (i) with the consent of the person or the occupier of the land or premises as the case may be;
 - (ii) under a warrant issued under section 951 of this chapter; or
 - (iii) under section 953 of this chapter.
- (2) Where a police officer may search a person under this Act, the officer may also search:
 - (a) the clothing that is being worn by the person; and
 - (b) any property in, or apparently in, the person's immediate control.

Source: PL 11-72 § 141.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code. Title 12 of this code is on Criminal Procedure.

§ 951. Search warrants in relation to tainted property.

- (1) Where a police officer has probable cause to believe that there is, or may be within the next 72 hours, tainted property of a particular kind:
 - (a) on a person;
 - (b) in the clothing that is being worn by a person;
 - (c) otherwise in a person's immediate control; or
 - (d) upon land or upon or in any premises; the police officer may lay before a justice, a sworn affidavit setting out those grounds and apply for the issuance of a warrant under this act or under title 12 of this code, to search the person, the land or the premises as the case may be, for tainted property of that kind.

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(2) Where an application is made under subsection (1) of this section for a warrant to search a person, land or premises, the justice may, subject to subsection (4) of this section issue a warrant authorizing a police officer (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable:

- (a) to search the person for tainted property of that kind;
- (b) to enter upon the land or in or upon any premises and to search the land or premises for tainted property of that kind; and
- (c) to seize property found in the course of the search that the police officer has probable cause to believe to be tainted property of that kind.

(3) A warrant may be issued under subsection (2) of this section in relation to tainted property, whether or not information or a complaint has been filed in respect of the relevant offense.

(4) A justice shall not issue a warrant under subsection (2) of this section unless, where information or a complaint has not been filed in respect of the relevant offense at the time when the application for the warrant is made, the justice is satisfied that there is probable cause to believe a crime has been or is about to be committed and that tainted property or evidence of such crime is located at the place or on the person or thing to be searched.

(5) A warrant issued under this section shall state:

- (a) the purpose for which it is issued, including a reference to the nature of the relevant offense;
- (b) a description of the kind of property authorized to be seized;
- (c) a time at which the warrant ceases to be in force; and
- (d) whether entry is authorized to be made at any time of the day or night or during specified hours.

(6) If, during the course of searching under a warrant issued under this section, a police officer finds:

- (a) property that the police officer has probable cause to believe to be tainted property either of a type not specified in the warrant or tainted property in relation to another serious offense; or
- (b) anything the police officer has probable cause to believe will afford evidence as to the commission of a serious offense (whether or not such offense is the same as that described in the warrant); the police officer may seize that property or thing and the warrant shall be deemed to authorize such seizure.

Source: PL 11-72 § 142.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 952. Application for search warrants by telephone or other means of communication.

(1) Where by reason of urgency, a police officer considers it necessary to do so, the officer may make application for a search warrant under section 951 of this chapter by telephone, radio communication, facsimile or other means of communication by which identity of the requesting officer can be identified.

(2) A justice, to whom an application for the issuance of a warrant is made by telephone or other means of communication, may sign a warrant if the justice is satisfied that there is probable cause to do so, and shall inform the police officer of the terms of the warrant so signed.

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(3) The police officer executing the warrant shall inform any persons subject to and present at the time of the search of the terms of the warrant.

(4) The police officer to whom a warrant is granted by telephone or other means of communication shall, not later than three working days following issuance of the warrant, provide the justice with a duly sworn application for a warrant completed by the officer, together with the officer's sworn affidavit in support of the warrant.

Source: PL 11-72 § 143.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 953. Searches in emergencies.

(1) Where a police officer has probable cause to believe that:

- (a) particular property is tainted property;
- (b) it is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of the property; and
- (c) the circumstances are so urgent that they require immediate exercise of the power without the authority of a warrant or the order of a court; the police officer may:
 - (i) search a person;
 - (ii) enter upon land, or upon or into premises and search for the property; and
 - (iii) if property is found, seize the property.

(2) If during the course of a search conducted under this section, a police officer finds:

- (a) property that the police officer has probable cause to believe to be tainted property; or
- (b) any thing the police officer has probable cause to believe will afford evidence as to the commission of a serious offense; the police officer may seize that property or thing.

Source: PL 11-72 § 144.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 954. Record of property seized.

A police officer who seizes property under section 951 or section 953 of this chapter, shall retain the property seized, make a written record thereof, and take reasonable care to ensure that the property is preserved.

Source: PL 11-72 § 145.

§ 955. Return of seized property.

(1) Where property has been seized under section 951 or section 953 of this chapter, (otherwise than because it may afford evidence of the commission of an offense), a person who claims an interest in the property may apply to the Supreme Court for an order that the property be returned to the person.

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(2) Where a person makes an application under subsection (1) of this section and the Supreme Court is satisfied that:

- (a) the person making the application is entitled to possession of the property;
- (b) the property is not tainted property; and
- (c) the defendant has no interest in the property; the Supreme Court shall order the return of the property to the person making the application.

Source: PL 11-72 § 146.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 956. Search for and seizure of tainted property in relation to foreign offenses.

Where a foreign state requests assistance with the location or seizure of property suspected to be tainted property in respect of an offense within its jurisdiction, the provisions of sections 951, 952 and 953 of this chapter apply, with the necessary changes in points of detail, provided that the Secretary has, pursuant to applicable law, authorized the giving of assistance to the foreign state.

Source: PL 11-72 § 147.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

PART 5: Restraining Orders

§ 957. Application for restraining order.

(1) The Secretary may apply to the Supreme Court for a restraining order against any covered property whether held by a defendant or held by a person other than a defendant.

(2) An application for a restraining order may be made ex parte and shall be in writing and be accompanied by an affidavit stating:

(a) where a defendant has been convicted of a serious offense, the serious offense for which the defendant was convicted, the date of the conviction, the court before which the conviction was obtained and whether an appeal has been lodged against the conviction;

(b) where a defendant has not been convicted of a serious offense, the serious offense with which the defendant is charged or about to be charged and the grounds for believing that the defendant committed the offense;

(c) a description of the property sought to be restrained;

(d) the name and address of the person who is believed to be in possession of the property;

(e) the grounds for the belief that the property is tainted property in relation to the offense;

(f) the grounds for the belief that the defendant derived a benefit directly or indirectly from the commission of the offense;

(g) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property in relation to the offense and is subject to the effective control of the defendant; and

(h) the grounds for the belief that a confiscation order or a pecuniary penalty order may be or is likely to be made under this subchapter in respect of the property.

Source: PL 11-72 § 149.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 958. Restraining orders.

(1) Subject to this section, where the Secretary applies to the Supreme Court for a restraining order against property and the Supreme Court is satisfied that:

(a) the defendant has been convicted of a serious offense, or has been charged or is about to be charged with a serious offense;

(b) where the defendant has not been convicted of a serious offense, there are reasonable grounds for believing that the defendant committed the offense;

(c) there is reasonable cause to believe that the property is tainted property in relation to an offense, or that the defendant derived a benefit directly or indirectly from the commission of the offense;

(d) where the application seeks a restraining order against property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property in relation to an offense, and that the property is subject to the effective control of the defendant; and

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(e) there are reasonable grounds for believing that a confiscation order or a pecuniary penalty order is likely to be made under this subchapter in respect of the property; the Supreme Court may make an order prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order and at the request of the Secretary, or upon its own motion, where the Supreme Court is satisfied that the circumstances so require:

(i) the court is authorized to appoint a receiver or fiduciary to take custody of the property or such part thereof as is specified in the order, and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Supreme Court; and

(ii) require any person having possession of the property to give possession thereof to the receiver or fiduciary.

(2) In extreme cases, where undue hardship to innocent parties would otherwise occur, an order under subsection (1) of this section may be made subject to such conditions as the Supreme Court deems fit providing for meting out of the property, or a specified part of the property, the reasonable living expenses of defendant's immediate family.

(3) In determining whether there are reasonable grounds for believing that the property is subject to the effective control of the defendant, the Supreme Court may take into account the matters referred to in section 947 of this chapter.

(4) Where the court appointed receiver or fiduciary is given a direction in relation to any property, he or she may apply to the Supreme Court for directions or any question respecting the management or preservation of the property under his or her control.

(5) An application under section 957 of this chapter, shall be served on all persons interested in the application or such of them as the Court deems expedient and all such persons shall have the right to appear at the hearing and be heard.

(6) When the application is made under section 957 of this chapter on the basis that a person is about to be charged, any order made by the Supreme Court shall lapse if the person is not charged:

(a) where the offense is an offense against the law of the Federated States of Micronesia, within five working days; and

(b) where the offense is an offense against the law of a foreign state, within 150 working days.

Source: PL 11-72 § 150.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 959. Notice of application for restraining order.

Before entering a restraining order the Supreme Court may require notice to be given to, and may hear, any person who, in the opinion of the Supreme Court, appears to have an interest in the property, unless the Supreme Court is of the opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in value of the property.

Source: PL 11-72 § 151.

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Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 960. Service of restraining order.

A copy of a restraining order shall be served on a person affected by the order in such manner as the Supreme Court directs or as may be prescribed by rules of court.

Source: PL 11-72 § 152.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 961. Recording of restraining order.

(1) A copy of a restraining order which affects land in the Federated States of Micronesia shall be recorded with the relevant state authority in the state where the land is situated.

(2) A restraining order is of no effect with respect to recorded land unless it is recorded as an encumbrance under the applicable state law.

(3) Where particulars of a restraining order are recorded under the applicable state law, a person who subsequently deals with the property shall, for the purposes of section 962 of this chapter, be deemed to have notice of the order at the time of the dealing.

Source: PL 11-72 § 153.

§ 962. Violation of restraining order.

(1) A person who knowingly violates a restraining order by disposing of or otherwise dealing with property that is subject to the restraining order, commits a felony offense, punishable upon conviction by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both; provided, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000.

(2) Where a restraining order is entered against property and the property is disposed of, or otherwise dealt with, in violation of the restraining order, and the disposition or dealing was not for sufficient consideration or not in favor of a person who acted in good faith and without notice, the Secretary may apply to the Supreme Court that entered the restraining order for an order that the disposition or dealing be set aside.

(3) Where the Secretary makes an application under subsection (2) of this section in relation to a disposition or dealing, the Supreme Court may:

(a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or

(b) set aside the disposition or dealing as from the day of the order under this section and declare the respective rights of any persons who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this section.

Source: PL 11-72 § 154.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 963. Duration of restraining order.

A restraining order issued under this Act remains in force until:

- (1) it is discharged, revoked or varied;
- (2) the period of six months from the date on which it is made or such later time as the Supreme Court may determine; or
- (3) a confiscation order or a pecuniary penalty order, as the case may be, is made in respect of property which is the subject of the order.

Source: PL 11-72 § 155.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 964. Review of restraining orders.

(1) A person, other than the defendant, who has an interest in property in respect of which a restraining order was entered may, at any time, apply to the Supreme Court for an order under subsection (4) of this section.

(2) An application made under subsection (1) of this section shall not be heard by the Supreme Court unless the applicant has given the Secretary at least five working days' notice in writing of the application.

(3) The Supreme Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Supreme Court, appears to have an interest in the property.

(4) On an application under subsection (1) of this section the Supreme Court may revoke or vary the order or make the order subject to such conditions as the Supreme Court deems appropriate. For the purposes of this subsection the Supreme Court may:

- (a) impose conditions on the applicant; or
- (b) vary the order to permit the payment of reasonable living expenses of the applicant, including his or her dependents, if any, and reasonable legal or business expenses of the applicant.

(5) An order under subsection (4) of this section may only be made if the Supreme Court is satisfied that the:

- (a) applicant is the lawful owner of the property or is entitled to lawful possession thereof, and appears to be innocent of any complicity in the commission of a serious offense or of any collusion in relation to such offense; and
- (b) that the property will no longer be required for the purposes of any investigation or as evidence in any proceedings.

Source: PL 11-72 § 156.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 965. Extension of restraining orders.

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(1) The Secretary may apply to the judge of the Supreme Court that entered a restraining order for an extension of the period of the operation of the order.

(2) Where the Secretary makes an application under subsection (1) of this section, the Supreme Court may extend the operation of a restraining order for a specified period, if it is satisfied that a confiscation order may be made in respect of the property or part thereof or that a pecuniary penalty order may be made against the person.

Source: PL 11-72 § 157.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

PART 6: Realization of Covered Property

§ 966. Realization of covered property.

(1) Where:

(a) a pecuniary penalty order is made;

(b) all conditions of the order have been met; and

(c) the order is not discharged; the Supreme Court may, on an application by the

Secretary, exercise the powers conferred upon the Supreme Court by this section with respect to covered property (as defined by section 903(1)(f)) of this chapter.

(2) The Supreme Court may appoint a receiver in respect of covered property.

(3) The Supreme Court may empower a receiver appointed under subsection (2) of this section to take possession of any covered property subject to such conditions or exceptions as may be specified by the Supreme Court.

(4) The Supreme Court may order any person having possession of covered property to give possession of it to any such receiver.

(5) The Supreme Court may empower any such receiver to realize (liquidate and convert into cash and/or obtain payment of the value of defendant's interest) any covered property in such manner as the Supreme Court may direct.

(6) The Supreme Court may order any person holding an interest in covered property to make such payment to the receiver in respect of any interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the Supreme Court may direct, and the Supreme Court may, on the payment being made by order, transfer, grant or extinguish any interest in the property.

(7) The Supreme Court shall not, in respect of any property, exercise the powers conferred by subsections (3), (4), (5) or (6) of this section, unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Supreme Court.

Source: PL 11-72 § 159.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

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The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 967. Application of proceeds of realization and other sums.

(1) Subject to subsection (2) of this section, the following property in the hands of a receiver appointed under this Act, being:

(a) the proceeds of the realization of any property under section 966 of this chapter; and

(b) any other sums, being property held by the defendant; shall, after such payments, if any, as the Supreme Court may direct have been made out of those sums, be payable to the Clerk of the Supreme Court and be applied on the defendant's behalf towards the satisfaction of the pecuniary penalty order in the manner provided by subsection (3) of this section.

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums:

(a) among such of those innocent third persons who held covered property which has been recovered under this subchapter (either through seizure and liquidation or by payment of defendant's interest therein by the holder) who have come forward and made application to the Court for return of the property; and

(b) in such proportions, as the Supreme Court may direct, after giving a reasonable opportunity for those persons to make representations to the Supreme Court.

(3) Property received by the Clerk of the Supreme Court on account of an amount payable under a confiscation order shall be applied as follows:

(a) if received by the Clerk of the Supreme Court from a receiver under subsection (1) of this section, it shall first be applied in payment of the receiver's remuneration and expenses; and

(b) the balance shall be paid or, as the case may be, transferred, to the General Fund of the Federated States of Micronesia, until such time that a Federated States of Micronesia Fund For Drug Abuse Prevention And Control is established pursuant to law, at which time, any balance then accrued, shall be paid, or as the case may be, transferred, to said Fund.

Source: PL 11-72 § 160.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 968. Exercise of powers of receiver or fiduciary.

(1) The following provisions of this section apply to the powers conferred on the Supreme Court by sections 958, 964, 965 and 966 of this chapter, or on a receiver or fiduciary appointed under subsection 958(1)(e) or subsection 966(2) of this chapter.

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(2) The position of receiver or fiduciary shall be one of confidence and trust, and the powers of a receiver or fiduciary shall be exercised by him or her with the highest degree of competence, honesty, good faith and fair dealing.

(3) Subject to the following provisions of this section, the powers of a receiver or fiduciary shall be exercised first so as to satisfy any pecuniary penalty order, which order shall be satisfied first from the present value of covered property of the defendant.

(4) In the case of covered property held by a person to whom the defendant has directly or indirectly made a gift caught by this act, the receiver or fiduciary shall endeavor to realize the present value of the gift.

(5) The powers shall be exercised with a view to allowing any innocent person or the innocent recipient of any such gift to retain or recover the value of any property held by him or her.

(6) An order may be made or other action taken in respect of costs arising from the case.

(7) In exercising the powers granted under this section, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the pecuniary penalty order or any confiscation order issued in the case.

Source: PL 11-72 § 161.

§ 969. Supremacy of this subchapter in bankruptcy or winding up.

(1) Where a person who holds covered property is adjudged bankrupt in any proceeding wherever held, the Federated States of Micronesia shall stand as first lienholder to the extent of any amount owed by the bankrupt person in the Federated States of Micronesia as a pecuniary penalty or under a confiscation order; and

(a) property located in the Federated States of Micronesia which is subject to a restraining order made before the order adjudging the person bankrupt; and

(b) any proceeds of property confiscated under this act, or recovered by virtue of subsections 966(5) or (6) of this chapter, and held by a person appointed under subsection 958(1)(e) or 966(2) of this chapter; shall not be considered as property of the bankrupt person or the estate for the purposes of the applicable bankruptcy Act or any civil attachment proceedings.

(2) Subject to subsection (1) of this section, where a person has been adjudged bankrupt, the powers conferred on the Supreme Court by sections 958 and 966 of this chapter, or on a person appointed under subsection 958(1)(g) or 966(2) of this chapter, shall not be exercised in relation to property comprised as property of the bankrupt person for the purposes of the applicable bankruptcy Act.

(3) Where a receiver stands appointed under an applicable bankruptcy Act, and property of the debtor is subject to a restraining order under or for the purposes of the bankruptcy Act, the powers conferred on the receiver by virtue of the bankruptcy Act do not apply to tainted property or proceeds of crime which are subject to forfeiture or confiscation under this Act until such time as the period of time for bringing an action for forfeiture or confiscation under this Act is exhausted.

(4) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act:

(a) no order shall be made under the applicable bankruptcy act relating to such gift where:

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- (i) the bankrupt person has been charged with a serious offense and the proceedings have not been concluded, either by the acquittal of the defendant or final dismissal of the proceedings; or where
- (ii) property of the person to whom the gift was made is subject to a restraining order or confiscation order under this Act; and
- (b) any order made under the applicable bankruptcy Act, shall take into account any recovery under this act of property held by the person to whom the gift was made.

Source: PL 11-72 § 162.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 970. Winding up of corporation, company, or other commercial enterprise or entity holding covered property.

(1) Where covered property is held by a corporation, company, or other commercial enterprise or entity and an order for the winding up has been made, or a resolution has been passed by the corporation, company, or other commercial enterprise or entity for its voluntary winding up, the functions of the liquidator or receiver appointed for the winding up shall not be exercisable in relation to:

- (a) property subject to a restraining order or confiscation order made before such winding up; or

- (b) any proceeds of property recovered by virtue of subsections 966(5) or (6) of this chapter, and in the hands of a person appointed under subsection 958(1)(e) or 966(2) of this chapter; but there shall be payable out of such property any expenses (including the remuneration of the liquidator or receiver) properly incurred in the winding up of the corporation, company, or other commercial enterprise or entity.

(2) Where, in the case of a corporation, company, or other commercial enterprise or entity, an order for winding up has been made or a resolution for winding up has been passed, the powers conferred on the Supreme Court by section 958 or 966 of this chapter shall not be exercised in relation to any covered property held by the corporation, company, or other commercial enterprise or entity:

- (a) which will unfairly inhibit the liquidator or receiver from exercising his or her proper functions for the purpose of distributing any property held by the company to the company's legitimate creditors; or

- (b) which will prevent the payment out of any property the corporation, company, or other commercial enterprise or entity, of expenses (including the remuneration of the liquidator or receiver) properly incurred in the winding up.

(3) Subsection (2) of this section does not affect the enforcement of a restraining order or confiscation order made before the order or resolution for winding up.

(4) Nothing in other laws of the Federated States of Micronesia or its states relating to corporations, companies, or other commercial enterprises or entities shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Supreme Court by section 958 or 966 of this chapter, and in case of conflict, this Act shall take precedence.

Source: PL 11-72 § 163.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

PART 7: Production Orders and Other Information Gathering Powers

§ 971. Production orders.

(1) Where a defendant has been charged with or convicted of a serious offense, and a police officer has probable cause to believe that any person has possession or control of:

(a) a document relevant to identifying, locating or quantifying property of the defendant, or to identifying or locating a document necessary for the transfer of property of the defendant; or

(b) a document relevant to identifying, locating or quantifying tainted property in relation to the offense, or to identifying or locating a document necessary for the transfer of tainted property in relation to the offense; the police officer may apply, *ex parte* and in writing, to a justice for an order against the person suspected of having possession or control of a document of the kind referred. The application shall be supported by an affidavit.

(2) The justice may, if he or she considers there is probable cause for so doing, make an order under this act, that the person produce to a police officer, at a time and place specified in the order, any documents of the kind referred to in subsection (1) of this section.

(3) A police officer to whom documents are produced may:

(a) inspect the documents;

(b) make copies of the documents; or

(c) retain the documents for so long as is reasonably necessary for the purposes of this act.

(4) Where a police officer retains the documents produced, the officer shall make a copy of the documents available to the person who produced them.

(5) A person is not entitled to refuse to produce documents ordered to be produced under this section on the grounds that the document might tend to incriminate that person or make such person liable to a penalty.

Source: PL 11-72 § 165.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 972. Evidential value of information.

(1) Where a person produces a document pursuant to an order issued under this Act, the production of the document, or any information, document, or thing obtained as a direct or indirect consequence of the production of the document, is not admissible against that person in any criminal proceedings except proceedings under section 973 of this chapter.

(2) For the purposes of subsection (1) of this section, proceedings on an application for a restraining order, a confiscation order or a pecuniary penalty order are not criminal proceedings.

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Source: PL 11-72 § 166.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 973. Failure to comply with a production order.

(1) Where a person is required by a production order issued under this Act, to produce a document to a police officer, the person is guilty of a felony offense if the person knowingly:

- (a) violates the order without reasonable cause; or
- (b) in purported compliance with the order, produces or makes available a document known to the person to be false or misleading in a material way, and does not so indicate to the police officer and provide to the police officer any correct information of which the person is in possession.

(2) The offense established by subsection (1) of this section is a felony offense, punishable by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both; provided, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000.

Source: PL 11-72 § 167.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 974. Production orders in relation to foreign offenses.

Where a foreign state requests assistance to locate or seize property suspected to be tainted property in respect of an offense within its jurisdiction, the provisions of section 971 of this chapter apply, with the necessary changes in points of detail, provided that the Secretary has, pursuant to applicable law, authorized the giving of assistance to the foreign state.

Source: PL 11-72 § 168.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code.

§ 975. Power to search for and seize documents relevant to locating property.

A police officer may:

- (1) enter upon land or upon or into premises;
- (2) search the land or premises for any document of the type described in subsection 971(1) of this chapter; and
- (3) seize any document found in the course of that search that the police officer has probable cause to believe to be a relevant document in relation to a serious offense, provided that the entry, search and seizure is made:
 - (a) with the consent of the occupier of the land or the premises; or
 - (b) under a warrant issued under section 976 or 951 of this chapter, or under title 12 of this code.

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Source: PL 11-72 § 169.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. Title 12 of this code is on Criminal Procedure.

§ 976. Search warrant for location of documents relevant to locating property.

(1) Where:

- (a) a defendant has been charged or convicted of a serious offense; or
- (b) the police officer has probable cause to believe that there is, or may be within the next 72 hours, upon any land or upon or in any premises, a document of the type described in subsection 971(1) of this chapter in relation to the offense; the police officer may make application supported by sworn affidavit to a justice for a search warrant in respect of that land or those premises.

(2) Where an application is made under subsection (1) of this section for a warrant to search land or premises, the justice may, subject to subsection (4) of this section issue a warrant authorizing a police officer (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:

- (a) to enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and
- (b) to seize property found in the course of the search that the police officer has probable cause to believe to be property of that kind.

(3) A justice shall not issue a warrant under subsection (2) of this section unless the justice is satisfied that:

- (a) a production order has been issued in respect of the document and has not been complied with;
- (b) a production order in respect of the document would be unlikely to be effective;
- (c) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without any notice to any person; or
- (d) the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.

(4) A warrant issued under this section shall state:

- (a) the purpose for which it is issued, including a reference to the nature of the relevant offense;
- (b) a description of the kind of documents authorized to be seized;
- (c) a time at which the warrant ceases to be in force; and
- (d) whether entry is authorized to be made at any time of the day or night or during specified hours.

(5) If during the course of searching under a warrant issued under this section, a police officer finds:

- (a) a document of the type described in subsection 971(1) of this chapter, that the police officer believes on probable cause to relate to the relevant offense, or to another serious offense; or

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(b) any thing the police officer believes on probable cause will afford evidence as to the commission of a serious offense; the police officer may seize that property or thing and the warrant shall be deemed to authorize such seizure.

Source: PL 11-72 § 170.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 977. Search warrants in relation to foreign offenses.

Where a foreign state requests assistance to locate or seize documents of a type described in subsection 971(1) of this chapter relating to an offense within its jurisdiction, the provisions of section 976 of this chapter apply, with the necessary changes in points in detail, provided that the Secretary has, pursuant to applicable law, authorized the giving of assistance to the foreign state.

Source: PL 11-72 § 171.

§ 978. Monitoring orders.

(1) A police officer may apply, *ex parte* and in writing, to a justice for a monitoring order directing a financial institution to give information to a police officer. An application under this section shall be supported by an affidavit.

(2) A monitoring order:

(a) may direct the financial institution to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institution;

(b) shall not have retrospective effect; and

(c) shall only apply for a period of a maximum of three (3) months from the date of making.

(3) A justice shall not issue a monitoring order unless the justice is satisfied that there is probable cause to believe that the person in respect of whose account the order is sought:

(a) has committed or was involved in the commission, or is about to commit or be involved in the commission of a serious offense; or

(b) has benefitted directly or indirectly, or is about to benefit directly or indirectly from the commission of a serious offense.

(4) A monitoring order shall specify:

(a) the name or names in which the account is believed to be held; and

(b) the type of information that the institution is required to give.

(5) Where a financial institution, which has been given notice of a monitoring order, knowingly:

(a) violates the order; or

(b) provides false or misleading information in purported compliance with the order; the institution commits a felony offense, punishable by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both; provided, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000.

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Source: PL 11-72 § 172.

§ 979. Monitoring orders not to be disclosed.

(1) A financial institution that is, or has been subject to a monitoring order shall not knowingly disclose the existence or operation of the order to any person except:

(a) an officer or agent of the institution for the purpose of ensuring compliance with the order;

(b) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order; or

(c) a police officer authorized in writing to receive the information.

(2) A person described in subsections (1)(a), (b) or (c) of this section shall not knowingly disclose the existence or operation of a monitoring order except to another such person, and may do so only for the purposes of the performance of the person's duties or functions.

(3) Violation of this section is a felony offense, punishable by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both; provided, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000.

(4) Nothing in this section prevents the disclosure of information concerning a monitoring order for the purposes of, or in connection with, legal proceedings or in the course of proceedings before a court, provided that nothing in this section shall be construed as requiring a legal adviser to disclose to any court the existence or operation of a monitoring order.

Source: PL 11-72 § 173.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

CHAPTER 10
FSM Weapons Control

SECTIONS

- § 1001. Short title.
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- § 1006. Identification cards required; *Prima facie* evidence of possession.
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- § 1028. Local laws.
- § 1029. Regulations.
- § 1030. Fees for licenses and identification cards.
- § 1031. Penalties for violation of chapter.

Editor's note: Former chapter 10 of this title on Sentencing was repealed in its entirety by PL 11-72 § 1. This new chapter 10 was enacted by PL 11-72 § 174 and is part of the Revised Criminal Code Act.

§ 1001. Short title.

This chapter is known and may be cited as the "Federated States of Micronesia Weapons Control Act."

Source: PL 11-76 § 9.

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Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

Editor's note: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

Case annotations: There is no automatic prohibition against use of a dangerous weapon to protect oneself and family against an intruder, even against an intruder without a weapon, so long as the weapon is not used in deadly fashion and the actual force employed is not more than would be reasonably necessary for purposes of protection. *FSM v. Ruben*, 1 FSM R. 34, 38 (Truk 1981).

TT Weapons Control Act is not inconsistent with any provision of the Constitution. It therefore continued in effect. When the National Criminal Code was enacted, and major crimes were defined, the TT Weapons Control Act became national law and trials for violations thereof were within the jurisdiction of the FSM Supreme Court. 11 F.S.M.C. 1201-1231. *FSM v. Nota*, 1 FSM R. 299, 302-03 (Truk 1983).

National court jurisdiction over TT Weapons Control Act is consistent with 12 F.S.M.C. 102 which states in part that criminal prosecutions shall be conducted in the name of the Federated States of Micronesia for violations of the statutes of the Trust Territory which continued in effect by virtue of the transition article of the Constitution and which are within the jurisdiction of the National Government of the FSM. 11 F.S.M.C. 1201-1231. *FSM v. Nota*, 1 FSM R. 299, 303 (Truk 1983).

8 F.S.M.C. 206 authorizes the transfer of authority from the Trust Territory and its officials to the Government of the FSM and its officials. Thus the reference in the TT Weapons Control Act to the High Commissioner and the Attorney General of the Trust Territory does not prevent its effectiveness as national law of the FSM. 11 F.S.M.C. 1201-1231. *FSM v. Nota*, 1 FSM R. 299, 303 (Truk 1983).

The Weapons Control Act is clear as to its intent in its definition of "dangerous device," that is, to proscribe weapons of violence; its terms become clear in the light of that intent. 11 F.S.M.C. 1204(3). *FSM v. Nota*, 1 FSM R. 299, 304 (Truk 1983).

The Government has a serious interest, and Congress deserves the support of the FSM Supreme Court, in carrying out policy established to control firearm use. Open violations, without punitive results, weaken the congressional policy and thwart efforts to assure that firearms will be available only to responsible people. Courts must assure that the policy is carried out against those convicted. *FSM v. Nena*, 1 FSM R. 331, 336 (Kos. 1983).

Whether a particular item is dangerous often depends upon the use to which it is being put. *Laion v. FSM*, 1 FSM R. 503, 511 (App. 1984).

A "dangerous weapon" under 11 F.S.M.C. 919(1) is an object which, as used, may be anticipated to produce death or great bodily harm. *Laion v. FSM*, 1 FSM R. 503, 512 (App. 1984).

In considering whether the term "dangerous weapon" is so vague as to render 11 F.S.M.C. 919 unconstitutional, it is relevant that a court in the United States has held that term sufficiently definite to meet United States constitutional standards. *Laion v. FSM*, 1 FSM R. 503, 513 (App. 1984).

A gun with a defective trigger is a firearm under 11 F.S.M.C. 1204(4). The statute's purpose may not be evaded by such simple expedients as dismantling the weapon, maintaining weapons and ammunition in separate places, removing one easily replaceable part, or other similar ploys. Under the statute, current operability is not an essential element of the crime of possession of a firearm. *Ludwig v. FSM*, 2 FSM R. 27, 34 (App. 1985).

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While proof of current operability is not essential to a finding of guilt for illegal possession of a firearm, the design and the capacity of the instrument to fire are at the very heart of the Weapons Control Act's definition of a firearm. To prove its case, the government must show that the device "is designed or may be converted to expel . . . projectiles." *Ludwig v. FSM*, 2 FSM R. 27, 37 (App. 1985).

Although not always essential, current operability of a firearm should be shown by the government, where possible, as standard procedure. *Ludwig v. FSM*, 2 FSM R. 27, 37 (App. 1985).

A trial court may not simply presume that a person who possesses a firearm is not keeping it as a curio, ornament or for historical significance. This would be an irrational or arbitrary, hence unconstitutional, presumption or inference because one cannot determine from mere possession of a firearm alone the purpose or nature of that possession. *Ludwig v. FSM*, 2 FSM R. 27, 37 (App. 1985).

The Weapons Control Act violations punishable by imprisonment of three or more years are national crimes. *Joker v. FSM*, 2 FSM R. 38, 41 (App. 1985).

The Transition Clause of the FSM Constitution effectively adopts statutes of the Trust Territory, including the Weapons Control Act, and serves as the original enactment of a body of law, criminal as well as civil, for the new constitutional government. Further action of the FSM Congress is not necessary to establish that violations of the Weapons Control Act are prohibited within the FSM. *Joker v. FSM*, 2 FSM R. 38, 43 (App. 1985).

In light of the Constitution's Transition Clause, action by the FSM Congress is not necessary in order to establish that violations of the Weapons Control Act are prohibited within the FSM. The only question is whether those are state or national law prohibitions or both. If the definition of major crimes in the National Criminal Code bears upon the Weapons Control Act at all, it is only for that purpose of allocating between state and national law. *Joker v. FSM*, 2 FSM R. 38, 43 (App. 1985).

Three categories of devices are identified in the definition of "dangerous device" under the Weapons Control Act and the standards of proof for each differ slightly. *Joker v. FSM*, 2 FSM R. 38, 45 (App. 1985).

The second category of "dangerous device" under the Weapons Control Act requires demonstration by the government that the item in question was designed or redesigned as a weapon and that the person whose possession is at issue is aware that the instrument was created or modified for that purpose. The intent and knowledge normally might be inferred from the nature of the instrument itself. It does not appear necessary that the possessor be shown to have actually intended to use the instrument as a weapon or for a wrongful purpose. *Joker v. FSM*, 2 FSM R. 38, 45 (App. 1985).

For the last category of "dangerous device" under the Weapons Control Act, the forbidden instrument in question must not only be capable of causing bodily injury but it must also be possessed without any "lawful purpose." A violation occurs only when the possession is coupled with a wrongful purpose, that is, a purpose to use the instrument to cause bodily injury, or a complete absence of any lawful purpose, shown through statements or overt conduct of the possessor manifesting wrongful purpose. *Joker v. FSM*, 2 FSM R. 38, 45 (App. 1985).

Dangerous device is defined in three categories, 1) explosive, etc., 2) an instrument designed or redesigned as a weapon, and 3) an instrument which can be used to inflict bodily harm and which under the circumstances of its possession serves no lawful purpose. *Este v. FSM*, 4 FSM R. 132, 136 (App. 1989).

In requiring an identification card in order to possess a dangerous device there was not an intent to require such a card for that category of dangerous devices which can be used to inflict bodily harm and which under the circumstances of its possession serves no lawful purpose. 11 F.S.M.C. 1204(3). *Este v. FSM*, 4 FSM R. 132, 136-37 (App. 1989).

§ 1002. General prohibition.

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No person shall manufacture, purchase, sell, possess or carry any firearm, dangerous device, or ammunition other than as hereinafter provided.

Source: PL 11-72 § 175.

Case annotations: The 1991 constitutional amendment that removed national government jurisdiction over major crimes did not remove national government jurisdiction over firearms and ammunition possession under the Weapons Control Act since there was an independent jurisdictional basis for it under the Constitution's foreign and interstate commerce and national defense clauses and Congress has always had the power to define national crimes. *Jano v. FSM*, 12 FSM R. 569, 574 (App. 2004).

In an examination to determine whether it is a national crime, the focus is: Does the regulation of the possession of firearms and ammunition involve a national activity or function, or is it one of an indisputably national character? *Jano v. FSM*, 12 FSM R. 569, 575 (App. 2004).

Congress's power to define national crimes is generally restricted to three areas: 1) actions occurring in places where the national government has jurisdiction; 2) actions involving an instrumentality of the national government; and 3) actions involving an activity or function that the national government has the power to regulate. *Jano v. FSM*, 12 FSM R. 569, 575 (App. 2004).

The national government can regulate firearms and ammunition possession since there is an international commerce aspect to the regulation of possession of firearms and ammunition that is related to its manufacture outside of the FSM and to its movement through the nation's customs and immigration borders and on the additional jurisdictional basis rooted in the national defense clause. *Jano v. FSM*, 12 FSM R. 569, 576 (App. 2004).

There is a national government interest in regulating the possession of firearms and ammunition in order to provide for the national security, which furthers the nation's interest in its defense, and this, in combination with the international commerce aspects, provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition. *Jano v. FSM*, 12 FSM R. 569, 576 (App. 2004).

The regulation of possession of firearms and ammunition involves a national activity or function because of the international commerce aspects of its manufacture and movement, together with the national government interest in protecting the national security under the national defense clause. In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. *Jano v. FSM*, 12 FSM R. 569, 576 (App. 2004).

The 1991 constitutional amendment did not proscribe Congress's authority to enact legislation pursuant to its independent authority under the national defense and foreign and interstate commerce clauses. Thus, the 1991 amendment did nothing to curtail Congress's authority to regulate the possession of firearms. *FSM v. Louis*, 15 FSM R. 206, 212 (Pon. 2007).

Congress does not lack the authority to regulate possession of firearms because it was the framers' clear intent that commerce within a particular state should be regulated locally since there is an international commerce aspect to the regulation of possession of firearms and ammunition that is related to its manufacture outside of the FSM and to its movement through the nation's customs and immigration borders. *FSM v. Louis*, 15 FSM R. 206, 212 (Pon. 2007).

In concluding that Congress has the authority to regulate the possession of firearms as part of its power to provide for the national defense, the court does not focus on the defendant's intended use of the firearm at issue, but instead focuses on the potential uses of firearms in general. *FSM v. Louis*, 15 FSM R. 206, 212 (Pon. 2007).

Congress's authority to regulate firearms is not dependent on the defendant's subjective intent because the national government interest in regulating the possession of firearms and ammunition in order to provide for the national security in combination with the international commerce aspects provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition. Congress's jurisdiction over the possession of firearms is not tied to the intent of a particular defendant. *FSM v. Louis*, 15 FSM R. 206, 212 (Pon. 2007).

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The national government's power to regulate firearms is derived from both its ability to protect the national security under its power to provide for the national defense and its power to regulate international commerce aspects because of the international commerce aspect of firearms manufacture and movement. In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. *FSM v. Tosy*, 15 FSM R. 238, 239 (Chk. 2007).

The national government's jurisdiction over firearms is not limited to only certain circumstances or certain quantities. What the national government can regulate in aggregate, it is able to regulate piece by piece; otherwise it would not be able to regulate it at all, and that, is clearly not the case. *FSM v. Tosy*, 15 FSM R. 238, 239 (Chk. 2007).

§ 1003. Exemptions from provisions of chapter.

This chapter shall not apply to:

- (1) law enforcement officers while engaged in official duty except to the extent that particular provisions of this chapter are expressly made applicable to them;
- (2) firearms which are in unserviceable condition and which are incapable of being fired or discharged and which are kept as curios, ornaments or for their historical significance or value;

Case annotations: Some exceptions under 11 F.S.M.C. 1203, whereunder possession of a firearm is permissible, relate to considerations separate from the essential elements of the crime and require the defendant to place them in issue. A defendant claiming exemption as a law enforcement officer or United States military person engaged in official duty, §§ 1203(1), (4), or as a designated crocodile hunter, § 1203(5), is not disputing any element of the government's basic case. Instead, these exemption claims bring into play new facts, uniquely within the knowledge of the defendant, which the government could overlook by focusing on whether the conduct prohibited by the Weapons Control Act has occurred. The defendant is in a far better position to place these exemptions in issue and it is fair to require that he do so. *Ludwig v. FSM*, 2 FSM R. 27, 36 (App. 1985).

Inapplicability of the 11 F.S.M.C. 1203(2) exemption whereunder possession of a firearm is permissible because it is in unserviceable condition, is incapable of being fired or discharged and is being kept as a curio, ornament or historical piece is an essential element of the government's case in prosecution for unlawful possession of a firearm under 11 F.S.M.C. 1202. *Ludwig v. FSM*, 2 FSM R. 27, 37 (App. 1985).

Although not always essential, current operability of a firearm should be shown by the government, where possible, as standard procedure. *Ludwig v. FSM*, 2 FSM R. 27, 37 (App. 1985).

The 11 F.S.M.C. 1203(2) exemption for curios, ornaments and historical pieces whereunder possession of a firearm is permissible requires findings that the firearm be in "unserviceable condition" and "incapable of being fired or discharged." *Ludwig v. FSM*, 2 FSM R. 27, 37 (App. 1985).

A trial court may not simply presume that a person who possesses a firearm is not keeping it as a curio, ornament or for historical significance. This would be an irrational or arbitrary, hence unconstitutional, presumption or inference because one cannot determine from mere possession of a firearm alone the purpose or nature of that possession. *Ludwig v. FSM*, 2 FSM R. 27, 37 (App. 1985).

Inapplicability of the 11 F.S.M.C. 1203(2) exemption where under possession of a firearm is permissible because it is in unserviceable condition, is incapable of being fired or discharged and is being kept as a curio, ornament or historical piece is an essential element of the Government's case in prosecution for unlawful possession of a firearm under 11 F.S.M.C. 1202. *Ludwig v. FSM*, 2 FSM R. 27, 37 (App. 1985).

The 11 F.S.M.C. 1203(2) exemption whereunder possession of a firearm is permissible applies only if the firearm is: (1) unserviceable; (2) incapable of being fired or discharged; and (3) being kept as a curio, ornament or for its historical significance. *Ludwig v. FSM*, 2 FSM R. 27, 37-38 (App. 1985).

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The Weapons Control Act seems well-attuned to the recognition of shared national-state interest in maintaining an orderly society and the goal of cooperation in law enforcement as reflected in the major crimes clause, art. IX, § 2(p) of the Constitution as well as the Joint Law Enforcement Act, 12 F.S.M.C. 1201. *Joker v. FSM*, 2 FSM R. 38, 44 (App. 1985).

(3) weapons or other dangerous devices which are not firearms and which are kept as ornaments, curios, or objects of historical or archeological interest; provided, that the article or articles referred to herein are kept or displayed only in private homes, museums, or in connection with public exhibitions;

(4) persons in the Armed Forces of the United States, whenever such persons are engaged on official duty except to the extent that particular provisions of this chapter are expressly made applicable to them;

(5) persons designated from time to time by the Secretary of the Department of Justice (hereinafter referred to as the "Secretary" in this Act), where such exemption is in the best interest of the National Government; provided, however, that the Secretary shall define the time, manner and purpose of the exemption, and limit the size and type of weapons which may be used by such persons.

Source: PL 11-72 § 176.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

Case annotations: The government ultimately bears the burden of disproving the applicability of a statutory exception when it is properly presented as a defense. *Ludwig v. FSM*, 2 FSM 27, 35 (App. 1985).

Some exceptions under 11 F.S.M.C. 1203 where possession of a firearm is permissible relate to considerations separate from the essential elements of the crime and require the defendant to place them in issue. A defendant claiming exemption as a law enforcement officer or United States military person engaged in official duty, §§ 1203(1) and (4), or as a designated crocodile hunter, § 1203(5), is not disputing any element of the government's basic case. Instead, these exemption claims bring into play new facts, uniquely within the knowledge of the defendant, which the government could overlook by focusing on whether the conduct prohibited by the Weapons Control Act has occurred. The defendant is in a far better position to place these exemptions in issue and it is fair to require that he do so. *Ludwig v. FSM*, 2 FSM R. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(1), (4) and (5) exemptions where possession of a firearm is permissible are defenses within the meaning of 11 F.S.M.C. 107, although they are not affirmative defenses for they are not so designated. The ultimate burden of persuasion remains with the government, but the defendant has the burden of going forward with sufficient evidence to raise these exemptions as issues. *Ludwig v. FSM*, 2 FSM R. 27, 36 (App. 1985).

§ 1004. Definitions.

(1) "Automatic weapon" means a weapon of any description irrespective of size, by whatever name designated or known, loaded or unloaded, from which may be repeatedly or automatically discharged a number of bullets contained in a magazine, ribbon or other receptacle, by one continuous movement of the trigger or firing mechanism.

(2) "Carry" means having on one's person or in a motor vehicle or other conveyance.

(3) "Dangerous device" means any explosive, incendiary or poison gas bomb, grenade, mine or similar device, switch or gravity blade knife, blackjack, sandbag, metal, wooden or shark's tooth knuckles, dagger, any instrument designed or redesigned for use as a weapon, or any other instrument

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which can be used for the purpose of inflicting bodily harm and which under the circumstances of its possession serves no lawful purpose.

Case annotations: "Dangerous device" as defined under the Weapons Control Act is not unconstitutionally vague. The language, properly interpreted, affords sufficient notice so that conscientious citizens may avoid inadvertent violations, and constructs sufficiently definite standards to prevent arbitrary law enforcement. *Joker v. FSM*, 2 FSM R. 38, 45 (App. 1985).

Three categories of devices are identified in the definition of "dangerous device" under the Weapons Control Act and the standards of proof for each differ slightly. *Joker v. FSM*, 2 FSM R. 38, 45 (App. 1985).

The second category of "dangerous device" under the Weapons Control Act requires demonstration by the government that the item in question was designed or redesigned as a weapon and that the person whose possession is at issue is aware that the instrument was created or modified for that purpose. The intent and knowledge normally might be inferred from the nature of the instrument itself. It does not appear necessary that the possessor be shown to have actually intended to use the instrument as a weapon or for a wrongful purpose. *Joker v. FSM*, 2 FSM R. 38, 45 (App. 1985).

The Weapons Control Act is clear as to its intent in its definition of "dangerous device," that is, to proscribe weapons of violence; its terms become clear in the light of that intent. 11 F.S.M.C. 1204(3). *FSM v. Nota*, 1 FSM R. 299, 304 (Truk 1983).

For the last category of "dangerous device" under the Weapons Control Act, the forbidden instrument in question must not only be capable of causing bodily injury but it must also be possessed without any "lawful purpose". A violation occurs only when the possession is coupled with a wrongful purpose, that is, a purpose to use the instrument to cause bodily injury, or a complete absence of any lawful purpose, shown through statements or overt conduct of the possessor manifesting wrongful purpose. *Joker v. FSM*, 2 FSM R. 38, 45 (App. 1985).

(4) "Department of Justice" means the Federated States of Micronesia Department of Justice.

(5) "Firearm" means any device, by whatever name known, which is designed or may be converted to expel or hurl a projectile or projectiles by the action of an explosion, a release, or an expansion of gas, including but not limited to guns, except a device designed or redesigned for use solely as a signaling, line throwing, spearfishing, or industrial device, or a device which hurls a projectile by means of the release or expansion of carbon dioxide or air.

Case annotations: A gun with a defective trigger is a firearm under 11 F.S.M.C. 1204(4). The statute's purpose may not be evaded by such simple expedients as dismantling the weapon, maintaining weapons and ammunition in separate places, removing one easily replaceable part, or other similar ploys. Under the statute, current operability is not an essential element of the crime of possession of a firearm. *Ludwig v. FSM*, 2 FSM R. 27, 34 (App. 1985).

While proof of current operability is not essential to a finding of guilt for illegal possession of a firearm, the design and the capacity of the instrument to fire are at the very heart of the Weapons Control Act's definition of a firearm. To prove its case, the government must show that the device "is designed or may be converted to expel . . . projectiles." *Ludwig v. FSM*, 2 FSM R. 27, 37 (App. 1985).

(6) "Gun" means a handgun or long gun.

(7) "Handgun" means a pistol or revolver with an overall length of less than twenty-six inches.

(8) "Law Enforcement Officer" means an employee of a national or state law enforcement agency authorized to enforce the laws of the National or State Governments. Employees of municipal law enforcement agencies may be included for the purposes of this chapter, at the discretion of the

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Secretary, upon a showing that municipal law enforcement officers meet the training requirements for National or State law enforcement officers.

(9) "Long gun" means a rifle with one or more barrels more than eighteen inches in length.

(10) "Person" means any natural person, corporation, partnership, or other business entity.

(11) "Semi-automatic weapon" means a weapon of any description irrespective of size, by whatever name designated or known, loaded or unloaded, from which may be repeatedly or automatically discharged a number of bullets contained in a magazine, ribbon or other receptacle by a like number of movements of the trigger or firing mechanism without recocking or resetting the trigger or firing mechanism.

(12) "Transfer" means sale, gift, purchase or any other means by which ownership or temporary rights of use and control are conveyed or shifted from one person to another.

Source: PL 11-72 § 177.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 1005. Identification cards required; Issuance.

(1) No person shall acquire or possess any firearm, dangerous device, or ammunition unless he or she holds an identification card issued pursuant to this chapter. The identification card is evidence of the holder's eligibility to possess and use or carry firearms, dangerous devices, or ammunition. A person need not own or possess any firearm, dangerous device, or ammunition to apply for and have issued to him an identification card.

(2) Identification cards shall be issued only by the Department of Justice pursuant to regulations made by the Department of Justice in the manner which is or may be provided by law. The identification card shall have on its face all of the following:

- (a) the name and address of the holder;
- (b) the sex, height, and weight of the holder;
- (c) the birth date of the holder;
- (d) the date of expiration for the card, which shall be two years from the date of issue;
- (e) a photograph of the holder taken within ten days prior to issuance;
- (f) an endorsement setting forth the extent of the holder's eligibility to possess, use, and carry firearms, dangerous devices, or ammunition; and
- (g) the number of the identification card.

(3) An applicant for the issuance or renewal of an identification card shall make application therefor on a form approved by the Department of Justice and shall supply such information as may be necessary to afford the issuing agency reasonable opportunity to ascertain the facts required to appear on the face of the identification card, and to determine whether the applicant complies with all requirements of this chapter to possess and use, or carry firearms, dangerous devices, or ammunition, as the case may be. Such information shall include a complete description and serial number, if any, of any firearm or dangerous device the applicant owns or possesses.

(4) No identification cards shall be issued until 15 days after application therefor, and unless the issuing agency is satisfied that the applicant may lawfully possess and use, or carry firearms, dangerous devices, or ammunition of the type or types enumerated on the identification card; provided, however, that the Secretary may issue an identification card prior to the expiration of 15 days where

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such issuance is in the best interest of the National Government. Unless the application for use and possession is denied, the identification card shall be issued within 60 days from the date of application. An identification card issued pursuant to this section shall be valid for two years from the date of its issuance unless it has been revoked. A valid identification card issued pursuant to this section may be renewed biannually upon application by the holder made on the form approved by the Department of Justice.

- (5) No person shall be issued an identification card if he or she has been:
 - (a) acquitted of any criminal charge by reason of insanity;
 - (b) adjudicated mentally incompetent;
 - (c) treated in a hospital for mental illness, drug addiction, or alcoholism;
 - (d) convicted of a crime of which actual or attempted personal injury or death is an element;
 - (e) convicted of a crime in connection with which firearms or dangerous devices were used or found in his or her possession; or
 - (f) convicted of a crime of which the use, possession, or sale of narcotics or dangerous drugs is an element.

(6) No person shall be issued an identification card unless that person is at least 21 years of age at the time of application therefor.

(7) No person shall be issued an identification card if he or she has a physical condition or impairment which makes him unable to use a firearm or dangerous device with proper control.

(8) Any person suffering from a physical or mental defect, condition, illness, or impairment which would make him ineligible for an identification card pursuant to this section may submit the certificate of a physician licensed to practice in the Federated States of Micronesia to the issuing agency or officer. If the certificate states that it is the subscribing physician's best opinion that the defect, condition, illness, or impairment does not make the applicant incapable of possessing and using a firearm or dangerous device without danger to the public safety, the identification card may be issued. But no such card shall be valid for a period longer than six months.

(9) Any person who is ineligible for an identification card by reason of conviction of a crime may be issued such a card if his or her most recent discharge from probation or parole or the termination of his or her most recent sentence, whichever is later, is more than ten years prior to the time of application for the identification card and if the issuing agency finds that his or her record, taken as a whole, does not indicate that his or her possessing and using, or carrying, a firearm or dangerous device, as the case may be, are not likely to constitute a special danger to the public safety; provided, that if the crime which renders him ineligible for an identification card is solely the failure to have an identification card issued to him, then the reinstatement to eligibility pursuant to this subsection shall occur five years after the date of his or her sentencing.

(10) A duplicate identification card may be issued to the holder of a lost, destroyed, or defaced identification card upon proof of such loss, destruction, or defacement as the Department of Justice may require, upon payment of the fee required by section 1030 of this chapter, and upon surrender of any remaining portion of the original card. Notice shall be given to the Department of Justice by the holder within 48 hours of his or her discovery of such loss, defacement, or destruction. The holder shall notify the Department of Justice of any change of name or address from those appearing upon the identification card within 48 hours of such change.

(11) A person who is neither a citizen nor resident of the Federated States of Micronesia shall not be eligible for an identification card, except upon receiving special permission from the Secretary.

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Source: PL 11-72 § 178.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

Case annotations: The National Government has an interest in controlling the proliferation and use of firearms throughout Micronesia; the classifications singled out for a ten-year prohibition on possession appear reasonable. 11 F.S.M.C. 1205. *FSM v. Nena*, 1 FSM R. 331, 335 (Kos. 1983).

§ 1006. Identification cards required; *Prima facie* evidence of possession.

(1) No person shall purchase, possess, or use a firearm, dangerous device, or ammunition unless he or she is the holder of an identification card issued pursuant to this chapter evidencing the eligibility of such person to purchase, possess, and use a firearm, dangerous device or ammunition. Such person shall be at least 21 years of age.

(2) Where a firearm, dangerous device, or ammunition is found in a vehicle or vessel, it shall be prima facie evidence that such firearm, dangerous device, or ammunition is in the possession of the occupant if there is but one. If there is more than one occupant, it shall be prima facie evidence that it is in the possession of all, except under the following circumstances:

(a) where it is found upon the person of one of the occupants;

(b) where the vehicle or vessel is not a stolen one and the firearm, dangerous device, or ammunition is out of view in a glove compartment, automobile trunk, or other enclosed customary depository, in which case it is prima facie evidence that such firearm, dangerous device, or ammunition is in the possession of the occupant or occupants who own or have authority to operate the vehicle or vessel;

(c) where, in the case of a taxicab, the firearm, dangerous device, or ammunition is found in the passengers' portion of the vehicle, it shall be prima facie evidence that it is in the possession of all the passengers, if there are any, and, if not, that it is in the possession of the driver.

Source: PL 11-72 § 179.

§ 1007. Carrying firearms.

No person shall carry a firearm unless he or she has a valid identification card and is carrying the firearm unloaded in a closed case or other securely wrapped or closed package or container, or locked in the trunk of his or her vehicle while en route to or from a target range or area where he or she hunts or takes part in other sports involving firearms, or carries the firearm in plain sight on his or her person while actively engaged in hunting or sports involving the use of firearms.

Source: PL 11-72 § 180.

§ 1008. New residents, temporary residents, and visitors in the FSM.

Visitors, new residents, and temporary residents in the Federated States of Micronesia shall not import, transport, purchase, use, or possess any firearm, dangerous device or ammunition in the Federated States of Micronesia without an identification card issued pursuant to this chapter. Any person who possesses any firearms, dangerous devices, or ammunition shall, before or immediately

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upon his or her entrance into the Federated States of Micronesia, turn it in to the Secretary, or his or her duly designated representative. Such firearm, dangerous device, or ammunition shall be returned to such person upon his or her being issued an identification card pursuant to the provisions of this chapter or upon his or her departure from the Federated States of Micronesia.

Source: PL 11-72 § 181.

§ 1009. Law enforcement officers.

(1) Possession, use, and carriage of firearms, ammunition and dangerous devices by law enforcement officers derives from the laws governing the powers, functions and organization of the police and other organized forces of peace officers. Eligibility of law enforcement officers to possess, use, and carry firearms, ammunition or dangerous devices while on duty is not subject to the holding of identification cards or any other qualifications prescribed in this chapter. Regulations issued pursuant to section 1029 of this chapter may include minimum qualifications for any law enforcement officer authorized to carry firearms, ammunition or dangerous devices while on duty.

(2) Transfer of any firearm from or to a law enforcement officer or agency shall, except as provided in subsection (1) of this section, be subject to the provisions of this chapter and regulations made pursuant thereto.

(3) The head of any national, state, or municipal law enforcement agency of the Federated States of Micronesia shall furnish to the Department of Justice the names, addresses, ranks, and badge numbers or similar identification of each person on his or her force who is authorized to possess, use, and carry firearms in the course of his or her official duty. Upon the occurrence of any changes in personnel to whom this subsection applies, the head of the law enforcement agency shall inform the Department of Justice promptly of the change.

(4) Whenever a law enforcement officer is not engaged in official duties, this chapter shall be applicable to him in the same manner and to the same extent as to any other person.

Source: PL 11-72 § 182.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code.

§ 1010. Licenses for transfer—Requirements.

(1) No dealer, manufacturer or wholesaler shall transfer firearms, dangerous devices or ammunition except pursuant to a license therefor as provided in this section.

(2) Any person, firm, corporation, association, or other entity proposing to engage in the business of selling firearms, ammunition, and dangerous devices at retail shall apply for a dealer's license. The application shall be on a form approved by the Department of Justice and shall contain the following information:

(a) the name and address of the applicant, including the address of each separate location within the Federated States of Micronesia at which the applicant proposes to do business pursuant to the license;

(b) if the applicant is a partnership or association, the names and addresses of the partners or associates, or if the applicant is a corporation, the names and addresses of the officers and directors; and

(c) such other information bearing on the applicant's ability to operate the business in a manner consonant with the public safety as the Department of Justice may require.

Source: PL 11-72 § 183.

§ 1011. Dealer's license—Issuance and renewal.

(1) Upon receipt of a proper application and payment of the prescribed fee, the Department of Justice shall, within 60 days, issue a dealer's license to an applicant, if he or she is found to be eligible therefor pursuant to this chapter and any applicable regulations of the Department of Justice. Such regulations shall place a reasonable limit on the number of dealer's licenses available. The license shall list the types of firearms, ammunition, and dangerous devices which the dealer has been authorized to offer for sale.

(2) A license issued pursuant to this section shall be valid for one year from the date of its issuance, unless cancelled sooner, suspended, or revoked. A license shall bear the expiration date thereof on its face.

(3) A license issued pursuant to this section may be renewed annually upon application by the holder made on a form approved by the Department of Justice. Eligibility for renewal shall be on the same terms and conditions as for an original license, except that renewal also may be denied on account of violation of this chapter or regulations of the Department of Justice made pursuant thereto or for any conduct in the operation of the applicant's business which gives the Department of Justice grounds to believe that the applicant will no longer operate in a manner consonant with the public safety.

Source: PL 11-72 § 184.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 1012. Dealer's license—Conduct of dealer's business.

The holder of a dealer's license shall:

(1) display his or her license in a conspicuous place at all times at the establishment described in the license. If a dealer has more than one place of business at which he or she sells firearms, dangerous devices, and ammunition or any of them, he or she shall display in the same manner a certified copy of his or her license at each such additional place of business;

(2) keep the records and file the reports required by this chapter and regulations made pursuant thereto;

(3) display no firearms, dangerous devices or ammunition in any place where they can be seen from outside the premises;

(4) keep all firearms, dangerous devices and ammunition in a securely locked place at all times except when they are actually being shown to a customer or prospective customer or when actually being repaired or otherwise worked on;

(5) permit only employees who are holders of identification cards making them eligible to purchase, possess and use firearms, ammunition, or dangerous devices, to have access to firearms, dangerous devices, or ammunition.

Source: PL 11-72 § 185.

§ 1013. Records and reports by dealers.

(1) Every licensed dealer shall maintain records containing an inventory of firearms, dangerous devices, and ammunition or any of them received, together with the name and address of the person from whom they were received, and the manufacturer, type and serial number of each firearm and dangerous device, the name and address of the person to whom it was transferred, the identification card number of such person, the manufacturer, type and serial number of the gun or dangerous device transferred and the date of transfer. Such records shall be available for inspection at all reasonable times by the Secretary, and his or her duly designated representatives. Such records shall be retained for at least five years.

(2) Every dealer, at the time of any transfer of any firearm or dangerous device to any person other than a licensed dealer shall, within 24 hours of the transfer, supply the following information to the Department of Justice on a form approved by it:

- (a) the name, address and license number of the dealer;
- (b) the manufacturer, type, and serial number of firearm or dangerous device transferred. No firearm shall be transferred which does not have a serial number or from which the serial number has been removed, defaced, or altered;
- (c) the name, address and identification card number of the transferee.

Source: PL 11-72 § 186.

§ 1014. Repair of firearms.

(1) No person, other than a dealer or manufacturer licensed pursuant to this chapter shall repair firearms or accept the same for repair.

(2) No person shall accept any firearms for repair unless he or she is shown an identification card evidencing eligibility of the holder to possess and use a firearm of the type offered for repair. Prior to returning any such firearm, the manufacturer or dealer shall make and keep a record identical with that required for the purchase of a firearm pursuant to section 1013 of this chapter, and shall maintain such record for at least one year.

(3) Nothing in this section shall be construed to prohibit the repair or maintenance of a firearm by the owner thereof.

Source: PL 11-72 § 187.

§ 1015. Transfer of ammunition.

(1) No person may transfer ammunition, unless he or she is a manufacturer, wholesaler or dealer licensed pursuant to this chapter. If the transfer is other than to another manufacturer, wholesaler, or dealer, the transfer shall not be made until the transferor has ascertained that the transferee is the holder of an identification card evidencing eligibility to possess and use a firearm of the type for which the ammunition is suited. Upon transfer the transferor shall record the quantity, type and caliber or gauge transferred, the name and address of the transferee and the number of the transferee's identification card.

(2) No transferee of ammunition shall transfer it to any person other than a dealer licensed pursuant to this chapter. Upon receipt of ammunition, the dealer shall make and keep all records with respect to the ammunition in the manner required by this section for ammunition sold by him.

Source: PL 11-72 § 188.

§ 1016. Transfer of firearms and dangerous devices.

No person other than a manufacturer, wholesaler, or dealer licensed pursuant to this chapter shall transfer a firearm or dangerous device to any person other than a manufacturer, wholesaler, or dealer without first ascertaining that the transferee is the holder of an identification card issued pursuant to this chapter. Prior to any such transfer, the transferor shall furnish to the Department of Justice in person or by registered or certified mail, return receipt requested, a properly completed form approved by the Department of Justice providing information equivalent to that required to be furnished by a dealer upon the transfer by him of a firearm or dangerous device.

Source: PL 11-72 § 189.

§ 1017. Secured transactions in firearms.

(1) No person, other than a licensed dealer, shall receive a firearm as a pledge or pawn, or in any other manner as security.

(2) A dealer receiving a firearm as a pledge, pawn or otherwise as security, shall record promptly:

- (a) the date of receipt;
- (b) the full description of the item or items received, including the manufacturer, type, and serial number or numbers, if any;
- (c) the name and address of the person making the pledge, pawn, or other deposit as security; and
- (d) the number of said person's identification card.

(3) No dealer shall accept the pledge, pawn, or other deposit as security unless the person making the same exhibits an identification card evidencing his or her entitlement to possess and use a gun of the type involved.

(4) Upon the return or other disposition of the firearm in his or her possession pursuant to this section, the dealer shall make a record of the return or other disposition, including the date thereof and the name and address of the person to whom the firearm was returned or disposed. No firearm shall be returned or disposed of to any person who, at the time of such return or disposition, does not exhibit a valid identification card issued in his or her own name and entitling him to possess and use the firearm involved.

Source: PL 11-72 § 190.

§ 1018. Manufacturer's and wholesaler's license.

(1) No person shall manufacture or deal in firearms, dangerous devices, or ammunition at wholesale unless:

- (a) he or she is the holder of a dealer's license issued pursuant to section 1011 of this chapter; or
- (b) he or she is the holder of a license issued pursuant to this section.

(2) Any person proposing to manufacture or deal at wholesale in firearms, dangerous devices, or ammunition, which person is not the holder of a dealer's license, shall make application for a manufacturer's or wholesaler's license. Such application shall contain the same information required for

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a dealer's license and any additional information required by the Secretary, as may be appropriate to administer this chapter. No manufacturer's license or wholesaler's license shall authorize transfer or delivery within the Federated States of Micronesia except to a licensed dealer, manufacturer, or wholesaler or to an authorized law enforcement agency in the Federated States of Micronesia or, subject to applicable laws of the Federated States of Micronesia, for export.

(3) The Department of Justice shall issue, renew, cancel, deny, suspend, or revoke manufacturers' and wholesalers' licenses on the same terms and subject to the same conditions as provided for dealers' licenses.

(4) Every manufacturer shall assign a unique serial number to each firearm he or she manufactures and shall inscribe such number in or on the firearm in such manner as will resist removal, alteration, defacement or obliteration. The Department of Justice may make regulations for the style of such serial numbers and for the manner of their inscription.

Source: PL 11-72 § 191.

§ 1019. Registry of firearms and ammunition.

(1) The Department of Justice shall maintain a registry of firearms. The records in the registry shall be kept permanently unless there is a record of the destruction of the gun.

(2) Records kept in the registry shall include all records required to be filed with the Department of Justice pursuant to this chapter, copies of all records filed with an agency or officer of local government pursuant to this chapter, and any records deposited with the Department of Justice pursuant to subsection (3) of this section.

(3) Any dealer, manufacturer, or wholesaler licensed pursuant to this chapter, upon his or her discontinuance of the licensed business or activity, shall transmit all records kept by him pursuant to this chapter to the Department of Justice.

(4) Records relating to the transfer or repair of firearms shall be kept by the Department of Justice for a period of at least five years after transmittal.

(5) Records in the registry shall not be public records. They shall be made available only to law enforcement officers of the national, state and municipal governments of the Federated States of Micronesia, or at the discretion of the Department of Justice, to law enforcement officers and agencies of foreign governments.

Source: PL 11-72 § 192.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code.

§ 1020. Cancellation, denial, suspension and revocation of licenses.

(1) Any license issued pursuant to this chapter shall be surrendered for cancellation immediately on the discontinuance or termination of business or upon the holder's discontinuing the manufacturing, selling, acquisition for sale or repair of firearms, and the sale of ammunition.

(2) The issuing officer or agency may deny, suspend or revoke an identification card or a license issued pursuant to this chapter for failure of the applicant or holder to meet or continue to meet any of the requirements for eligibility therefor, or for any violation of this chapter or regulations in force pursuant thereto.

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(3) The Department of Justice by regulation shall make classifications of crimes and other violations of this chapter or regulations in force thereunder. Regulations made pursuant to this subsection shall set forth those crimes and violations for which identification cards and licenses may be suspended or revoked, and those for which the penalty must be revocation. Such regulations shall be of general application.

(4) Any person who, by reason of the suspension or revocation of his or her identification card, is no longer eligible to continue in possession of a firearm, dangerous device, or ammunition shall surrender any and all firearms, dangerous devices, and ammunition to the Secretary, or his or her duly designated representative, or shall dispose of the firearms, dangerous devices, and ammunition forthwith under the direction and supervision of the Secretary, or his or her duly designated representative. In the case of suspension of an identification card, the owner of the firearm, dangerous device, or ammunition may request that the Department of Justice keep same during the period of suspension and, except as herein provided, the firearm, dangerous device, or ammunition shall be restored to the owner when he or she again becomes eligible to possess same and requests return. Any firearm, dangerous device, or ammunition in the possession of the Secretary, or his or her duly designated representative, pursuant to this subsection may be disposed of, without compensation to the owner, upon revocation of the suspended identification card or at the end of 60 days after receipt or the date of termination of the suspension, whichever is later. However, if proceedings in connection with the suspension or revocation are not yet finally determined, disposal shall not be until such final determination has been made.

(5) Any denial, suspension, or revocation of an identification card or a license shall be subject to review by the Trial Division of the FSM Supreme Court upon petition by the aggrieved person.

Source: PL 11-72 § 193.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the FSM Supreme Court and the Judicial are found in title 4 of this code.

§ 1021. Shipment and delivery of firearms, dangerous devices, and ammunition.

(1) No person shall ship, transport or deliver any firearm, dangerous device, or ammunition to anyone other than a licensed manufacturer, wholesaler, dealer, or person who possesses a valid identification card.

(2) Any person who ships, transports or delivers firearms or dangerous devices to a manufacturer, wholesaler, dealer, or person possessing an identification card in the Federated States of Micronesia shall, before delivery, furnish to the Department of Justice an invoice listing his or her name and address, the name and address of the manufacturer, wholesaler, dealer, or person possessing the identification card to whom such firearms or dangerous devices are to be delivered, the place of origin of the shipment, the number of firearms and dangerous devices of each type, and the manufacturer and serial number of each firearm and dangerous device in the shipment.

(3) Any person who ships, transports or delivers ammunition to a manufacturer, wholesaler, dealer or person possessing an identification card in the Federated States of Micronesia shall, before delivery, furnish to the Department of Justice an invoice listing his or her name and address, the name and address of the manufacturer, wholesaler, dealer, or person possessing an identification card to whom the ammunition is to be delivered, the place of origin of the shipment, and the quantity of ammunition of each type in the shipment.

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(4) If shipment is by common carrier, a copy of the invoice required by subsections (2) and (3) of this section shall also be delivered to the common carrier. The common carrier shall deliver the invoice and any said shipment to local law enforcement authorities who will verify the accuracy of the shipment, and compliance with this chapter, before delivery to the manufacturer, wholesaler, dealer, or person possessing an identification card. A copy of the invoice shall be left with the manufacturer, wholesaler, dealer, or person possessing an identification card at the time of delivery.

(5) If shipment is by other than common carrier, a copy of the invoice shall be furnished to the manufacturer, wholesaler, dealer, or person possessing an identification card at the time of delivery.

(6) No person shall ship, transport, or deliver firearms, dangerous devices, or ammunition via air without first complying with international regulations pertaining to air shipment of firearms, dangerous devices, or ammunition.

Source: PL 11-72 § 194.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code.

§ 1022. Loss, destruction or theft of firearms or dangerous devices.

Whoever owns or possesses a firearm, dangerous device, or ammunition shall, within 24 hours of discovery, notify the Department of Justice of the loss, theft, or destruction of any such firearm, dangerous device or ammunition, and, after such notice, of any subsequent recovery thereof.

Source: PL 11-72 § 195.

§ 1023. Prohibited acts.

No person shall:

(1) knowingly remove, obliterate, or alter the importer's or manufacturer's serial number of any firearm;

(2) knowingly deface, alter, or destroy an identification card;

(3) acquire, possess, or use any firearm silencer or muffler;

(4) carry any gun or dangerous device while under the influence of alcohol or narcotic or other disabling drug;

(5) import, sell, transfer, give away, purchase, possess or use any handgun, automatic weapon, rifle larger than .22 caliber, shotgun larger than .410 gauge, or any other firearm;

(6) board or attempt to board any commercial aircraft while carrying any firearm, dangerous device, or ammunition, either on his or her person or in his or her luggage. Such firearm, dangerous device, or ammunition shall be turned in prior to departure to an appropriate official or to the pilot of the airline or aircraft concerned, who shall keep a record of the name of the person turning in such firearm, dangerous device, or ammunition, and the type and quantity turned in. Upon completion of such person's travel, the official of the airline or pilot of the aircraft shall personally deliver the article or articles turned in to the Secretary, or his or her duly designated representative, or another authorized law enforcement officer, at the point of disembarkation. If the point of disembarkation is in the Federated States of Micronesia, such person may recover the article or articles turned in upon either:

(a) presentation of a valid identification card or license for such article or articles to the police officer having custody thereof, or

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(b) departure from the Federated States of Micronesia; provided, however, that persons departing the Federated States of Micronesia via commercial aircraft shall be subject to the provisions of this section;

(7) use or attempt to use any firearm, dangerous device, or ammunition in connection with or in aid of the commission of any crime against the laws of the Federated States of Micronesia, except those set forth under other provisions of this chapter.

Source: PL 11-72 § 196.

Case annotation: Since, under 11 F.S.M.C. 1023(7), the government must prove beyond a reasonable doubt that the firearm was used to commit a crime, when the amended information does not allege what crime or crimes, the firearm was used to commit, or even that it was used to commit any crime, it therefore fails to allege an essential element of 11 F.S.M.C. 1023(7), and that count of the amended information will be dismissed for failure to state an offense. *FSM v. Sam*, 14 FSM R. 328, 334 (Chk. 2006).

The absence of an intent element in 11 F.S.M.C. 1223(6) (which prohibits any person from boarding or attempting to board a commercial airliner while carrying a firearm either on his person or in his luggage) evinces a legislative intent to dispense with the mens rea element and make the proscribed conduct a strict liability crime. The court can properly infer from Congress's silence in subsection (6) and lack of silence in subsections (1) and (2) that Congress intended that subsection (6) constitute a strict liability offense, whereas subsections (1) and (2) do not. *Sander v. FSM*, 9 FSM R. 442, 447 (App. 2000).

Although 11 F.S.M.C. 1223(6) does not dispense with the mental element that the defendant must know or be aware that he had the shotgun in his possession, the statute does dispense with the specific intent to board the aircraft knowing that it was illegal to do so with a shotgun. *Sander v. FSM*, 9 FSM R. 442, 447 (App. 2000).

A heavy maximum penalty of a \$2000 fine and five years imprisonment is not dispositive in determining whether a crime is a strict liability offense. *Sander v. FSM*, 9 FSM R. 442, 448 (App. 2000).

Because violation of 11 F.S.M.C. 1223(6) is not a case of an attempt to commit a crime but a case where "attempt to board" is an element of the offense, 11 F.S.M.C. 201 (the attempt statute) does not apply to the crime of attempting to board a commercial aircraft with a firearm. *Sander v. FSM*, 9 FSM R. 442, 448 (App. 2000).

Because conduct alone without regard to the doer's intent is often sufficient to convict someone of a crime, because there is wide latitude to declare an offense and to exclude elements of knowledge and diligence from its definition, and because the defendant knew, by his own admission, that he was not permitted to take a weapon on board the plane, the strict criminal liability imposed by 11 F.S.M.C. 1223(6) for boarding or attempting to board a commercial aircraft while carrying a firearm or dangerous device does not violate due process. *Sander v. FSM*, 9 FSM R. 442, 449-50 (App. 2000).

§ 1024. Forfeiture.

All firearms, dangerous devices, or ammunition unlawfully possessed, carried, used, shipped, transported or delivered into the Federated States of Micronesia are declared to be inimical to the public safety and are forfeited to the Federated States of Micronesia. When such forfeited articles are taken from any person, they shall be surrendered to the Department of Justice.

Source: PL 11-72 § 197.

§ 1025. Closing of establishments during emergencies.

In case of emergency concerning the public safety declared by the President, pursuant to chapter 8 of this title, all establishments dealing in guns, dangerous devices, or ammunition may be ordered

closed and required to remain closed during the continuance of the emergency. During any such closure, any and all guns, dangerous devices, and ammunition belonging to or in the keeping of a closed establishment may be impounded.

Source: PL 11-72 § 198.

§ 1026. Registration of weapons possessed on effective date of chapter.

(1) Any person having in his or her possession a firearm or dangerous device on the effective date of this chapter shall, within 90 days of such effective date, furnish, on a form approved by the Department of Justice, to the agency or officer authorized to receive information concerning the transfer of firearms or dangerous devices pursuant to this chapter, equivalent information concerning any firearm or dangerous device in his or her possession.

(2) If, prior to the expiration of the 90 day period provided in subsection (1) of this section, the firearm is transferred, the transferor shall comply with the provisions of this chapter for furnishing of information on transfer and need not comply with subsection (1) of this section.

Source: PL 11-72 § 199.

§ 1027. Surrender of and compensation for weapons held on effective date by ineligible persons.

Any person who possessed any firearm or dangerous device in the Federated States of Micronesia prior to the effective date of this chapter, and who is determined to be ineligible to possess or is prohibited from possessing such firearm or dangerous device under this chapter, shall tender such firearm or dangerous device to the Secretary or his or her duly designated representative within 90 days of the effective date of this chapter and be reasonably compensated therefor.

Source: PL 11-72 § 200.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code.

§ 1028. Local laws.

Nothing in this chapter shall be deemed to prevent any state or municipal government from further restricting, by local law or ordinance, the transfer, possession, use, or carriage of firearms, ammunition, or dangerous devices. This chapter shall supersede all state laws and municipal ordinances in conflict with this act.

Source: PL 11-72 § 201.

§ 1029. Regulations.

The Secretary shall have power to issue, amend, and repeal regulations implementing this chapter in the manner which is or may be provided by law, as may be required by the public interest, safety, and welfare.

Source: PL 11-72 § 202.

§ 1030. Fees for licenses and identification cards.

(1) The fees for issuance and renewal of licenses and identification cards as required by this chapter shall be as follows:

- (a) for an identification card, \$5;
- (b) for a dealer's license, \$150;
- (c) for a manufacturer's license, \$500;
- (d) for a wholesaler's license, \$500;
- (e) for replacement of lost, destroyed, or defaced identification card, \$5.

(2) Fees collected pursuant to the provisions of this chapter shall be paid to the General Fund of the Federated States of Micronesia.

Source: PL 11-72 § 203.

§ 1031. Penalties for violation of chapter.

(1) Any person convicted of a violation of section 1007 or section 1022 of this Act shall be imprisoned for not more than one year.

(2) Any person convicted of a violation of any other provision of this chapter or any regulations issued pursuant thereto shall be imprisoned for not more than ten years, and shall be subject to confiscation of any firearm, dangerous device, or ammunition, without compensation, involved in a violation of this act. The holder of any dealer's license, or the manager or supervisor of employees of any establishment so licensed, or both, shall be liable for any violation of this act by his or her employee or agent committed in the course of the dealer's business, to the same extent as such employee or agent.

(3) It shall be an affirmative defense under subsection (1) of this section, that the defendant was issued a valid identification card before the time of his or her arrest, but neglected to have it upon his or her person.

Source: PL 11-72 § 204.

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CHAPTER 11
Controlled Substances

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**SUBCHAPTER I
General Provisions**

§ 1111. Short title.

This chapter may be cited as the "Trust Territory Controlled Substances Act."

Source: COM PL 5-110 § 251; TT Code 1980, 63 TTC 251.

Case annotations:

Controlled Substances

The Trust Territory Controlled Substance Act is based on the United States Uniform Controlled Substance Act, therefore United States Cases construing the law are examined because it is presumed that the law adopted from the U.S. will be given the same construction in the FSM. *Kallop v. FSM*, 4 FSM R. 170, 174 (App. 1989).

§ 1112. Definitions.

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by:
 - (a) a practitioner (or, in his presence, by his authorized agent), or
 - (b) the patient or research subject at the direction and in the presence of the practitioner.
- (2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not include a common or contract carrier, public warehouseman, or employee thereof.
- (3) "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V of subchapter II of this chapter.
- (4) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

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(5) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled substance whether or not there exists an agency relationship.

(6) "Director" means the director of the Department of Health Services of the Government of the Trust Territory.

(7) "Dispense" means to deliver a controlled substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including prescribing, administering, packaging, labeling, and compounding necessary to prepare the substance for such delivery.

(8) "Dispenser" is a practitioner who dispenses.

(9) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(10) "Distributor" means a person who distributes.

(11) "Drug" means:

(a) substances recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and

(c) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and

(d) substances intended for use as a component of any article specified in paragraphs (a), (b), or (c) of this subsection, but does not include devices or their components, parts, or accessories.

(12) "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

(13) "Federal law" means a law enacted by the Congress of the United States.

(14) "Immediate precursor" means a substance which the director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(a) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to research, teaching, or chemical analysis and not for sale.

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(16) "Marihuana" means all parts of the plant *cannabis sativa L.*, whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(17) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (a) of this subsection, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(18) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 1113 of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species *papaver somniferum L.*, except the seeds thereof.

(20) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds of the opium poppy, after mowing.

(22) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise authorized by the director to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this territory;

(b) a pharmacy, hospital or other institution licensed, registered, or otherwise authorized by the director to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in the Trust Territory.

(23) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(24) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

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Source: COM PL 5-110 § 252; TT Code 1980, 63 TTC 252.

Editor's note: Subsections rearranged in alphabetical order in this 1995 edition of this code.

Case annotations: Because the legislative intent in defining *cannabis sativa L.* in 11 F.S.M.C. 1112(14) [now subsection 1112(16)] has to embrace all species of marijuana, the government need not prove a defendant guilty of dealing in *cannabis sativa L.*, but only in marijuana. *Kallop v. FSM*, 4 FSM R. 170, 174 (App. 1989).

SUBCHAPTER II Standards and Schedules

§ 1116. Reports and recommendations by director to Congress; Amendment of schedule by Congress.

(1) Annually, upon the convening of each annual session of the Congress of Micronesia, the director shall report to the Congress of Micronesia the effects of the implementation of this chapter in relation to the problems of drug abuse in the Trust Territory, and shall recommend to the Congress of Micronesia any additions, deletions or revisions in the schedules of substances enumerated in sections 1119, 1121, 1123, 1125, and 1127 of this chapter, and any other recommendations which he deems necessary. The director shall not recommend any additions, deletions or revisions in such schedules until after notice and an opportunity for a hearing is afforded all interested parties, except such hearing shall not be required if official notice has been received that the substance has been added, deleted, or rescheduled as a controlled substance under Federal law. In making a determination regarding a substance, the director shall assess the degree of danger or probable danger of the substance by considering the following:

- (a) the actual or probable abuse of the substance including:
 - (i) its history and current pattern of abuse;
 - (ii) the scope, duration and significance of abuse; and
 - (iii) a judgment of the degree of actual or probable detriment which may result from the abuse of the substance.
- (b) The biomedical hazard of the substance including:
 - (i) its pharmacology: the effects and modifiers of effects of the substance;
 - (ii) its toxicology: the acute and chronic toxicity, interaction with other substances whether controlled or not, and liability to psychic or physiological dependence;
 - (iii) risk to public health and particular susceptibility of segments of the population; and
 - (iv) existence of therapeutic alternatives for substances which are or may be used for medical purposes.
- (c) a judgment of the probable physical and social impact of widespread abuse of the substance.
- (d) whether the substance is an immediate precursor of a substance already controlled under this chapter.
- (e) the current state of scientific knowledge regarding the substance.

(2) After considering the factors enumerated above, the director shall make a recommendation to the Congress of Micronesia, specifying to what schedule the substance shall be

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added, deleted or rescheduled if it finds that the substance has a degree of danger or probable danger. The director may make such recommendation to the Congress of Micronesia prior to the submission of its annual report in which case the director shall publish and give notice to the public of such recommendation.

(3) The Congress of Micronesia has the sole authority to add, delete, or reschedule all substances enumerated in the schedules in sections 1119, 1121, 1123, 1125, and 1127 of this chapter.

(4) If the Congress of Micronesia designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(5) If a substance is added, deleted or rescheduled as a controlled substance under Federal law and notice of the designation is given to the director, the director shall recommend that a corresponding change in Trust Territory law be made by the Congress of Micronesia, unless the director objects to the change. In that case, the director shall publish the reasons for objection and afford all interested parties an opportunity to be heard. Following the hearing, the director shall announce his decision and shall notify the Congress of Micronesia in writing of the change in Federal law or regulations and of the director's recommendations.

Source: COM PL 5-110 § 256; TT Code 1980, 63 TTC 256.

§ 1117. Nomenclature.

The following schedules include the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

Source: COM PL 5-110 § 257; TT Code 1980, 63 TTC 257.

§ 1118. Schedule I—Criteria for classification.

The director in his recommendation shall place a substance in schedule I if he finds that the substance:

- (1) has a high potential for abuse; and
- (2) has no accepted medical use in treatment in the United States, or lacks accepted safety for use in treatment under medical supervision.

Source: COM PL 5-110 § 258; TT Code 1980, 63 TTC 258.

§ 1119. Schedule I—Designated.

The controlled substances listed in this section are included in schedule I:

- (1) any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (a) acetylmethadol,
- (b) allylprodine,
- (c) alphacetylmethadol,
- (d) alphameprodine,
- (e) alphamethadol,
- (f) bensethidine,
- (g) betacetylmethadol,

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- (h) betameprodine,
- (i) betamethadol,
- (j) betaprodine,
- (k) clonitazene,
- (l) dextromoramide,
- (m) dextrorphan,
- (n) diampromide,
- (o) diethylambutene,
- (p) dimenoxadol,
- (q) dimepheptanol,
- (r) dimethylthiambutene,
- (s) dioxaphetylbutyrate,
- (t) dipipanone,
- (u) ethylmethylthiambutene,
- (v) etonitazene,
- (w) etoxeridine,
- (x) furethidine,
- (y) hydroxypethidine,
- (z) ketobemidone,
- (aa) lavomoramide,
- (bb) levophenacylmorphan,
- (cc) morpheridine,
- (dd) noracymethadol,
- (ee) norlevorphanol,
- (ff) normethadone,
- (gg) norpipanone,
- (hh) phenadoxone,
- (ii) phenampromide,
- (jj) phenomorphan,
- (kk) phenoperidine,
- (ll) piritramide,
- (mm) proheptazine,
- (nn) properidine,
- (oo) propiram,
- (pp) racemoramide, and
- (qq) trimeperidine;

(2) any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) acetorphine,
- (b) acetyldihydrocodeine,
- (c) benzylmorphine,
- (d) codeine methylbromide,
- (e) codeine-N-Oxide,
- (f) cyprenorphine,

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- (g) desoporphine,
- (h) dihydromorphine,
- (i) drotebanol,
- (j) etorphine (except hydrochloride salt),
- (k) heroin,
- (l) hydromorphanol,
- (m) methyl-desoporphine,
- (n) methyldihydromorphine,
- (o) morphine methylbromide,
- (p) morphine methylsulfonate,
- (q) morphine-N-Oxide,
- (r) myorphine,
- (s) nicocodeine,
- (t) nicomorphine,
- (u) normorphine,
- (v) phoclo-dine, and
- (w) thebacon;

(3) any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) 2, 5 dimethoxyamphetamine (2, 5-DMA),
- (b) 3, 4-methylenedioxyamphetamine,
- (c) 5-methoxy-3, 4-methylenedioxyamphetamine,
- (d) 4-bromo-2, 5 dimethoxyamphetamine (4-bromo-2, 5-DMA),
- (e) 3, 4, 5-trimethoxyamphetamine,
- (f) bufotenine,
- (g) 4-methoxyamphetamine (PMA),
- (h) diethyltryptamine,
- (i) dimethyltryptamine,
- (j) 4-methyl-2, 5-dimethoxylamphetamine,
- (k) ibogaine,
- (l) lysergic acid diethylamide,
- (m) marihuana,
- (n) mescaline,
- (o) peyote,
- (p) N-ethyl-3-piperidyl benzilate,
- (q) N-methyl-3-piperidyl benzilate,
- (r) psilocyn,
- (s) psilocybin, and
- (t) tetrahydrocannabinol.

Source: COM PL 5-110 § 259; TT Code 1980, 63 TTC 259.

Editor's note: Section 1119(1)(bb) contains a typographical error that has been corrected in this 1995 edition of this code. PL 5-110 shows "levophenacylmorphane"; the typographical error is in the 1982 code.

§ 1120. Schedule II—Criteria for classification.

The director in his recommendation shall place a substance in schedule II if he finds that:

- (1) the substance has a high potential for abuse;
- (2) the substance has currently accepted medical use with severe restrictions; and
- (3) abuse of the substance may lead to severe psychic or physical dependence.

Source: COM PL 5-110 § 260; TT Code 1980, 63 TTC 260.

§ 1121. Schedule II—Designated.

The controlled substances listed in this section are included in schedule II:

(1) any of the following substances except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
- (b) any salt, compound, isomers, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
- (c) opium poppy and poppy straw;
- (d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not include cocaine or ecgonine.

(2) any of the following opiates, including their immediate isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (a) alphaprodine,
- (b) anileridine,
- (c) apomorphine,
- (d) bezitramide,
- (e) dihydrocodeine,
- (f) diphenoxylate,
- (g) fentanyl,
- (h) isomethadone,
- (i) levomethorphan,
- (j) levorphanol,
- (k) metazocine,
- (l) methadone,
- (m) methadone, intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane,
- (n) methaqualone,
- (o) moramide, intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid,
- (p) pethidine,
- (q) pethidine, intermediate, A, 4-cyano-1-methyl-4-phenylpiperidine,

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- (r) pethidine, intermediate, B, ethyl-4-phenylpiperidine; 4-carboxylate,
- (s) pethidine, intermediate, C, 1-methyl-4-phenylpiperidine-4-carboxylic acid,
- (t) phenazocine,
- (u) piminodine,
- (v) racemethorphan, and
- (w) racemorphan;

(3) any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (a) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (b) any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
- (c) any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
 - (i) phenmetrazine and its salts;
 - (ii) methylphenidate.

Source: COM PL 5-110 § 261; TT Code 1980, 63 TTC 261.

§ 1122. Schedule III—Criteria for classification.

The director in his recommendation shall place a substance in schedule III if he finds that:

- (1) the substance has a potential for abuse less than the substances listed in schedules I and II;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

Source: COM PL 5-110 § 262; TT Code 1980, 63 TTC 262.

§ 1123. Schedule III—Designated.

The controlled substances listed in this section are included in schedule III:

- (1) unless listed in another schedule any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:
 - (a) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules,
 - (b) benzphetamine,
 - (c) chlorhexadol,
 - (d) chlorphentermine,
 - (e) chlortermine,
 - (f) clutethimide,
 - (g) diethylpropion,
 - (h) lysergic acid,

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- (i) lysergic acid amide,
 - (j) mazindol,
 - (k) methyproylon,
 - (l) phencyclidine,
 - (m) phendimetrazine,
 - (n) phentermine,
 - (o) sulfondiethylmethane,
 - (p) sulfonethylmethane, and
 - (q) sulfonmethane;
- (2) nalorphine;
- (3) any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
- (a) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
 - (b) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
 - (c) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
 - (d) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
 - (e) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
 - (f) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
 - (g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;
 - (h) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.
- (4) The director may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (2) and (3) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.

Source: COM PL 5-110 § 263; TT Code 1980, 63 TTC 263.

§ 1124. Schedule IV—Criteria for classification.

The director in his recommendation shall place a substance in schedule IV if he finds that:

- (1) the substance has a low potential for abuse relative to substances in schedule III;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in schedule III.

Source: COM PL 5-110 § 264; TT Code 1980, 63 TTC 264.

§ 1125. Schedule IV—Designated.

The controlled substances listed in this section are included in schedule IV:

(1) any material, compound, mixture, or preparation which contains any quantity of the following substances or salts thereof having a potential for abuse associated with a depressant effect on the central nervous system:

- (a) barbital,
- (b) chloral betaine,
- (c) chloral hydrate,
- (d) diethylpropion,
- (e) ethchlorvynol,
- (f) ethinamate,
- (g) fenfluramine,
- (h) methohexital,
- (i) meprobamate,
- (j) methylphenobarbital,
- (k) paraldehyde,
- (l) petrichloral, and
- (m) phenobarbital;

(2) The director may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (1) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

Source: COM PL 5-110 § 265; TT Code 1980, 63 TTC 265.

§ 1126. Schedule V—Criteria for classification.

The director in his recommendation shall place a substance in schedule V if he finds that:

- (1) the substance has a low potential for abuse relative to the controlled substances listed in schedule IV;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

Source: COM PL 5-110 § 266; TT Code 1980, 63 TTC 266.

§ 1127. Schedule V—Designated.

The controlled substances listed in this section are included in schedule V:

(1) any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams,

(b) not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams,

(c) not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams,

(d) not more than 2.5 milligrams of dephenoxylate, and not less than 25 micrograms of atropine sulfate per dosage unit,

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams, or not more than five milligrams per dosage unit.

Source: COM PL 5-110 § 267; TT Code 1980, 63 TTC 267.

§ 1128. Annual revision and republication of schedules.

The director shall revise and republish the schedules annually and make them available to any registrant, law enforcement agency, or any member of the public desiring such list.

Source: COM PL 5-110 § 268; TT Code 1980, 63 TTC 268.

SUBCHAPTER III
Manufacture, Distribution, and Dispensing

§ 1131. Authority of director to promulgate rules and regulations.

The director is authorized to promulgate rules in accordance with chapter 2 of title 17 of this code and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within the Trust Territory.

Source: COM PL 5-110 § 271; TT Code 1980, 63 TTC 271.

Editor's note: PL 5-34 repealed chapter 2 (Trust Territory Administrative Procedure) of title 17 of this code in its entirety. Chapter 1 of title 17 of this code is on Administrative Procedures of the FSM. See 17 F.S.M.C. 102.

§ 1132. Registration—Required; Exceptions.

(1) Every person who manufactures, distributes, or dispenses any controlled substance within the Trust Territory or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within the Trust Territory shall obtain annually a registration issued by the director in accordance with the rules made by him.

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(2) Persons registered by the director under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this subchapter.

(3) The following persons need not register and may lawfully possess controlled substances under the provision of this chapter:

(a) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of his business or employment;

(b) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(4) The director may, by rule, waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.

(5) A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(6) The director or his designee may inspect the establishment of a registrant or applicant for registration in accordance with the rules promulgated by him.

Source: COM PL 5-110 § 272; TT Code 1980, 63 TTC 272.

§ 1133. Registration—Criteria for granting; Effect; Compliance with federal law.

(1) The director shall register an applicant to manufacture or distribute controlled substances included in schedules I through V of subchapter II of this chapter unless he determines that the issuance of that registration is inconsistent with the public interest. In determining the public interest, the director shall consider the following factors:

(a) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(b) compliance with applicable law;

(c) prior conviction record of applicant under Federal, State and local laws relating to controlled substances;

(d) past experience in the manufacture or distribution of controlled substances, and the existence in the establishment of effective controls against diversion;

(e) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(f) suspension or revocation of the applicant's Federal registration to manufacture, distribute, or dispense controlled substances as authorized by Federal law; and

(g) any other factors relevant to and consistent with the public health and safety.

(2) Registration granted under subsection (1) of this section shall not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.

(3) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the law of the Trust Territory. The director need not require separate registration under this subchapter for practitioners engaging in research with non-narcotic controlled substances in schedules II through V where the registrant is already registered under this subchapter in another capacity. Practitioners registered under Federal law to conduct research with schedule I substances may

conduct research with schedule I substances within the Trust Territory upon furnishing evidence of that Federal registration.

(4) Compliance by manufacturers and distributors with the provisions of the Federal law respecting registration (excluding fees) shall be deemed compliance with this section.

Source: COM PL 5-110 § 273; TT Code 1980, 63 TTC 273.

§ 1134. Registration—Revocation or suspension—Grounds; Limitation of effect; Sealing of substances; Notice to bureau.

(1) A registration pursuant to section 1133 of this chapter to manufacture, distribute, or dispense a controlled substance, may be suspended or revoked by the director upon a finding that the registrant:

(a) has materially falsified any application filed pursuant to this chapter or required by this chapter;

(b) has been convicted of any violation under this chapter or any law of the United States, or of any state or territory, relating to any substance defined herein as a controlled substance; or

(c) has had his Federal registration suspended or revoked by competent Federal authority and is no longer authorized by Federal law to engage in the manufacture, distribution, or dispensing of controlled substances; or

(d) has violated any regulation promulgated by the director relating to subchapter III of this chapter;

(e) will abuse or unlawfully transfer such substances or that the registrant will fail to safeguard adequately his supply of such substances against diversion into other than legitimate channels of distribution.

(2) The director may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exists.

(3) In the event the director suspends or revokes a registration granted under section 1133 of this chapter, controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the director be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances shall be forfeited.

(4) The bureau shall promptly be notified of all orders suspending or revoking registration and all forfeitures of controlled substances.

Source: COM PL 5-110 § 274; TT Code 1980, 63 TTC 274.

§ 1135. Registration—Revocation or suspension—Notice and hearing.

(1) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the director shall serve upon the applicant or registrant in accordance with chapter 2 of title 17 of this code notice to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The notice to show cause shall contain a statement of the basis

therefor and shall call upon the applicant or registrant to appear before the director at a time and place not less than thirty days after the date of service of the notice, but in the case of a denial or renewal of registration the show cause notice shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted in accordance with chapter 2 of title 17 of this code without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(2) The director may suspend, without a notice to show cause, any registration simultaneously with the institution of proceedings under section 1134 of this chapter, or where renewal of registration is refused, if he finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the director or dissolved by a court of competent jurisdiction.

Source: COM PL 5-110 § 275; TT Code 1980, 63 TTC 275.

Editor's note: PL 5-34 repealed chapter 2 (Trust Territory Administrative Procedure) of title 17 of this code in its entirety. Chapter 1 of title 17 of this code is on Administrative Procedures of the FSM. See 17 F.S.M.C. 102.

§ 1136. Registration—Records.

Persons registered to manufacture, distribute, or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of Federal law and in accordance with any rules or regulations adopted by the director pursuant to the provisions of this chapter.

Source: COM PL 5-110 § 276; TT Code 1980, 63 TTC 276.

§ 1137. Order forms for substances on schedules I or II.

Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of Federal law respecting order forms shall be deemed compliance with this section.

Source: COM PL 5-110 § 277; TT Code 1980, 63 TTC 276.

§ 1138. Prescriptions.

(1) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the director, schedule II drugs may be dispensed upon oral prescription of a practitioner reduced promptly to writing and filled by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 1136 of this chapter. No prescription for a schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedules III or IV which is a prescription drug, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or

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refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(4) A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

(5) No prescription for a controlled substance shall be filled or refilled with more than a 30-day supply, based upon the dosage units contained in the prescription.

Source: COM PL 5-110 § 278; TT Code 1980, 63 TTC 278.

SUBCHAPTER IV Offenses and Penalties

§ 1141. Trafficking.

(1) Except as authorized by this chapter, it shall be unlawful for any person knowingly or intentionally:

(a) to manufacture, deliver, or possess with intent to manufacture, deliver, or dispense, a controlled substance; or

(b) to create, distribute, or possess with intent to deliver, a counterfeit controlled substance.

(2) Any person who violates subsection (1) of this section with respect to:

(a) a substance classified in schedules I or II which is a narcotic drug shall be sentenced to a term of imprisonment for not more than ten years, a fine of not more than \$10,000, or both;

(b) any other controlled substance classified in schedules I, II or III shall be sentenced to a term of imprisonment of not more than five years, a fine of not more than \$5,000, or both;

(c) a substance classified in schedule IV shall be sentenced to a term of imprisonment for not more than two years, a fine of not more than \$1,000, or both;

(d) a substance classified in schedule V shall be sentenced to a term of imprisonment for not more than one year, a fine of not more than \$1,000, or both.

(3) Notwithstanding subsection (2)(b) of this section, any person who violates subsection (1)(a) of this section by distributing not more than one ounce of marihuana for no remuneration shall be treated as provided in subsection (3)(a) of section 1142 of this chapter.

Source: COM PL 5-110 § 291; TT Code 1980, 63 TTC 291.

Case annotations: A trial court may properly infer from the quantity of marijuana possessed that the requisite intent existed to support a conviction of trafficking. *Kallop v. FSM*, 4 FSM R. 170, 177 (App. 1989).

§ 1142. Possession.

(1) It is unlawful for any person knowingly or intentionally to possess a controlled substance, unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter.

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(2) Any person who violates subsection (1) of this section with respect to any controlled substance except marihuana shall be sentenced to a term of imprisonment for not more than one year, a fine of not more than \$1,000, or both.

(3) Any person who violates subsection (1) of this section with respect to marihuana shall be penalized as follows:

(a) any person who possesses one ounce or less shall be fined not more than \$50;

(b) any person possessing more than one ounce but less than two and two-tenths pounds shall be sentenced to a term of imprisonment of not more than three months, a fine of not more than \$500, or both;

(c) any person possessing two and two-tenths pounds or more of marihuana shall be sentenced to a term of not more than one year, a fine of not more than \$1,000, or both. The possession of two and two-tenths pounds or more of marihuana by any person shall constitute a rebuttable presumption of the crime of trafficking under subsection (2)(b) of section 1141 of this chapter.

Source: COM PL 5-110 § 292; TT Code 1980, 63 TTC 292.

§ 1143. Commercial offenses.

(1) It shall be unlawful for any person who is subject to the requirements of subchapter III of this chapter:

(a) to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(b) to manufacture, distribute, or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(c) to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice or information required under this chapter;

(d) to refuse an entry into any premises for any inspection authorized by this chapter;
or

(e) to knowingly keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any other structure or place whatever, which is resorted to by persons using controlled substances, or which is used for the keeping or selling of the same in violation of this chapter.

(2) Any person who violates this section is punishable by imprisonment for not more than five years, or a fine of not more than \$1,000, or both.

Source: COM PL 5-110 § 293; TT Code 1980, 63 TTC 293.

§ 1144. Fraudulent practices.

(1) It shall be unlawful for any person knowingly or intentionally:

(a) to distribute a controlled substance classified in schedules I or II, in the course of his legitimate business, if that person is a registrant, except pursuant to an order form as required by section 1137 of this chapter;

(b) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;

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(c) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(d) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;

(e) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container of labeling thereof so as to render such drug a counterfeit controlled substance.

(2) Any person who violates this section is punishable by imprisonment for not more than five years, a fine of not more than \$1,000, or both.

Source: COM PL 5-110 § 294; TT Code 1980, 63 TTC 294.

§ 1145. Attempts and conspiracies.

Any person who attempts, endeavors or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt, endeavor or conspiracy.

Source: COM PL 5-110 § 295; TT Code 1980, 63 TTC 295.

§ 1146. Penalties for violation of chapter to be in addition to civil or administrative penalties.

Any penalty imposed for violation of this chapter shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

Source: COM PL 5-110 § 296; TT Code 1980, 63 TTC 296.

§ 1147. Distribution to persons under eighteen.

Any person who is at least 18 years of age who violates subsection (1)(a) of section 1141 of this chapter by distributing a substance listed in schedules I and II which is a narcotic drug to a person under 18 years of age who is at least three years his junior is punishable by a term of imprisonment of up to twice that authorized by subsection (1)(a) of section 1141 of this chapter, by the fine authorized by subsection (1)(a) of section 1141 of this chapter, or both. Any person who is at least 18 years of age who violates subsection (1)(a) of section 1141 of this chapter by distributing any other controlled substance listed in schedules I, II, III and IV to a person under 18 years of age who is at least three years his junior is punishable by a term of imprisonment up to twice that authorized in subsections (2)(b) or (c) of section 1141 of this chapter, by the fine authorized by subsection (2)(b) or (c) of section 1141 of this chapter, or both.

Source: COM PL 5-110 § 297; TT Code 1980, 63 TTC 297.

§ 1148. Conditional discharge for first offense possession.

(1) Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state or territory relating to narcotic drugs,

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marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under subsection (1) of section 1142 of this chapter the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under section 1149 of this chapter. Discharge and dismissal under this section may occur only once with respect to any person.

(2) Upon the dismissal of such person and discharge of the proceedings against him under subsection (1) of this section, such person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the court solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this section) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines after hearing that such person was dismissed and the proceedings against him discharged, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held hereafter under any provisions of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

Source: COM PL 5-110 § 298; TT Code 1980, 63 TTC 298.

§ 1149. Conviction by another jurisdiction not bar to prosecution.

If a violation of this chapter is a violation of a Federal law or the law of another State, a conviction or acquittal under Federal law or the law of another State for the same act is not a bar to prosecution in the Trust Territory.

Source: COM PL 5-110 § 299; TT Code 1980, 63 TTC 299.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

CHAPTER 12
Sentencing

SECTIONS

- § 1201. Fines.**
§ 1202. Authorized sentences.
§ 1203. Custom in sentencing.
§ 1204. Parole authorization.

Editor's note: Former chapter 12 of this title on Weapons Control (§§1201-1232) was repealed in its entirety by PL 11-72 § 1. This new chapter 12 was enacted by PL 11-72 § 205.

§ 1201. Fines.

A person who has been convicted of a national crime, in addition to any other punishment authorized by law, may be ordered to pay a fine not exceeding:

- (1) \$100,000, when the conviction is for a crime punishable by a maximum of ten years imprisonment;
- (2) \$50,000, when the conviction is for a crime punishable by a maximum of five years imprisonment;
- (3) \$25,000, when the conviction is for a crime punishable by a maximum of three years imprisonment;
- (4) \$5,000, when the conviction is for a crime punishable by a maximum of one year imprisonment;
- (5) \$1,000, when the conviction is for a crime punishable by a maximum of six months imprisonment;
- (6) \$500, when the conviction is for a crime punishable by a maximum of 30 days imprisonment;
- (7) any higher amount equal to a maximum of double the value of the loss suffered by the National Government or double the pecuniary gain obtained from the crime by the defendant; or
- (8) any higher or lower amount specifically authorized by statute.

Source: PL 11-72 § 206.

§ 1202. Authorized sentences.

In any case where the court finds that the ends of justice and the best interests of the public and the defendant do not require that the maximum sentence permitted by law be imposed on a person convicted of a crime, the court may impose a sentence consisting of any one or any combination of the following; provided, however, that where a mandatory minimum sentence is imposed by statute, the court may not impose a term of imprisonment less than that minimum:

- (1) imprisonment for a term less than the maximum allowed by law;
- (2) imposition of a fine as prescribed by law;
- (3) suspension of a term of imprisonment and/or fine upon such reasonable conditions as shall be set by the court;
- (4) suspension of imposition of sentence on such reasonable conditions as shall be set by the court;

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- (5) probation for a period not exceeding the maximum term of imprisonment to which the convicted person could have been sentenced upon such reasonable conditions as shall be set by the court;
- (6) appropriate restitution, reparation, or service to the victim of the crime or to his or her family;
- (7) confinement to a particular geographical area; and
- (8) a period of community service.

Source: PL 11-72 § 207.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

A criminal sentence may be affirmed on appeal when a review of the record reveals that the sentence is appropriate. *Malakai v. FSM*, 1 FSM R. 338, 338 (App. 1983).

The statutory construction rule of lenity reflects reluctance of courts to increase or multiply punishments absent a clear and definite legislative direction. *Laion v. FSM*, 1 FSM R. 503, 528 (App. 1984).

Although the internal management of a jail or prison is, subject to compliance with constitutional requirements, a function of the executive branch, the legislature controls the overall sentencing scheme through statute. *Soares v. FSM*, 4 FSM R. 78, 82 (App. 1989).

The authority to impose consecutive punishments for different crimes can be understood to be within the powers which the legislature has implicitly granted to the court in its overall scheme of criminal law; since each crime in the criminal code carries with it a separate and distinct punishment, it is logical to infer that when a person commits multiple crimes arising from more than one act, Congress intended that person to be punished separately for each offense. *Plais v. FSM*, 4 FSM R. 153, 155 (App. 1989).

If a defendant himself is incapable of paying restitution and he has made a request for assistance to his family, the family's bad faith in not paying cannot be imputed to the defendant and result in increased imprisonment. *Gilmete v. FSM*, 4 FSM R. 165, 166 (App. 1989).

The sentencing judge has authority to make a broad inquiry into the background of a defendant; specifically, the court may consider even cases in which the defendant was accused but not convicted. *Kallop v. FSM*, 4 FSM R. 170, 178 (App. 1989).

A sentencing judge may properly consider factors which would show trafficking of a controlled substance in a previous case, even though in the earlier case the defendant had pled guilty to possession and the trafficking charge had been dismissed. *Kallop v. FSM*, 4 FSM R. 170, 178 (App. 1989).

In the absence of authority derived from the Constitution, statutes or court rules, judges of the FSM Supreme Court are bound by their own sentencing orders arrived at through the normal exercise of criminal jurisdiction. *FSM v. Likitimus*, 4 FSM R. 180, 181 (Pon. 1990).

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Trial division of FSM Supreme Ct. has no power to amend its sentences at will. *FSM v. Likitimus*, 4 FSM R. 180, 181 (Pon. 1990).

National Criminal Code does not contemplate routine application of the maximum or any other specific punishment but instead requires individualized sentencing, that is, court consideration of a broad range of alternatives, with the court's focus at all times on the defendant, the defendant's background and potential, and the nature of the offense, with the "overall objective" of the exercise of discretion being to "make the punishment fit the offender as well as the offense." *Tammed v. FSM*, 4 FSM R. 266, 272-73 (App. 1990).

In reviewing a sentencing decision of a trial court, an appellate court should follow the standards generally applied in criminal appeals, upholding findings of fact supported by credible evidence but overruling those legal rulings with which the appellate court disagrees. *Tammed v. FSM*, 4 FSM R. 266, 274 (App. 1990).

Both cumulative and concurrent sentencing are logically not mentioned in 11 F.S.M.C. 1002, because they are not alternatives to the punishments specified by the separate criminal statutes, but rather the standards from which the "authorized sentences" of 11 F.S.M.C. 1002 deviate. *Plais v. FSM*, 4 FSM R. 153, 155 (App. 1989).

Sentencing is to be individualized, and the overall objective must be to make the sentence fit the offender as well as the offense. The sentencing court's focus must be the defendant, the defendant's background and potential, and the nature of the offense. The term of imprisonment fixed in the sentence must be the time which the sentencing judge believes the convicted person justly should be required to serve. There is no justification for the sentence to include an additional factor in recognition of the possibility of parole. *Kimoul v. FSM*, 5 FSM R. 53, 60-61 (App. 1991).

Because the defendants were convicted of the crime of aggravated sexual assault, which by nature is a violent crime, especially in this case where it was random, if released there is a likelihood they would pose a danger to others in the community. But because the defendants have committed one wrongdoing in the three years since their conviction other factors are needed to require denial of stay of sentence. *FSM v. Hartman (II)*, 5 FSM R. 368, 369-70 (Pon. 1992).

Where defendants have willfully violated the court's previous order to remain confined to the Municipality of U, thus indicating a risk of flight, and where there is no substantial question of law or fact, defendants' motion for a stay of sentence pending appeal will not be granted. *FSM v. Hartman (II)*, 5 FSM R. 368, 370-71 (Pon. 1992).

Where a statute imposes a mandatory minimum fine and does not permit probation, a court cannot impose probation without violating the statute. *FSM v. Cheng Chia-W (II)*, 7 FSM R. 205, 219-20 (Pon. 1995).

Mitigating evidence cannot be used to depart below mandatory minimum penalty required by statute. A court may only consider that evidence in deciding whether minimum sentence should be enhanced. *FSM v. Cheng Chia-W (II)*, 7 FSM R. 205, 220 (Pon. 1995).

Sentencing—Pardon

The only power given to the executive to modify a sentence is the power to grant pardons and reprieves. *FSM v. Finey*, 3 FSM R. 82, 84 (Truk 1986).

Sentencing—Probation

Courts have uniformly held that sound policy requires that they be able to revoke probation for a defendant's offense committed before the sentence commences. *FSM v. Dores*, 1 FSM R. 580, 587 (Pon. 1984).

Revocation of probation of an alcohol dependent person because he consumed alcohol or because of alcohol related offenses for which he was convicted does not constitute cruel and unusual punishment in violation of the Constitution. *FSM v. Phillip*, 5 FSM R. 298, 300 (Kos. 1992).

Even if the defendant had been arrested merely for drinking alcohol the court would be compelled to return him to prison because the no-drinking condition had been imposed before the court became aware of the defendant's

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alcohol dependent condition and because compliance with that condition is fundamental to a proper probation. *FSM v. Phillip*, 5 FSM R. 298, 300-01 (Kos. 1992).

While the court is interested in the rehabilitation of a defendant, its greater interest is in protecting society at large from illegal conduct. When a court releases a convicted person on probation, it does so at its own discretion. Probation is a leniency granted by the court. It is not a right and revocation of probation should not be thought of as additional punishment. *FSM v. Phillip*, 5 FSM R. 298, 301-02 (Kos. 1992).

The issue of whether a defendant actually broke the law or that his arrest was unconstitutional is beyond the scope of a probation revocation hearing. The issues of whether a conviction is valid and constitutional should be taken to the appropriate court of appeals. *FSM v. Phillip*, 5 FSM R. 298, 302 (Kos. 1992).

A parole revocation hearing is significantly different than a trial. Although a court may not act capriciously in revoking probation, there is no need to establish beyond a reasonable doubt that the terms of the probation have been violated. A court may revoke probation if it is reasonably satisfied that the terms of the probation were violated. *FSM v. Phillip*, 5 FSM R. 298, 302-03 (Kos. 1992).

Prisons and Prisoners

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. *Tolenoa v. Alokoa*, 2 FSM R. 247, 250 (Kos. 1986).

No authority exists for the court to grant home visits. *FSM v. Finey*, 3 FSM R. 82, 84 (Truk 1986).

Except in grave emergencies, the Director of Public Safety or any other executive branch official responsible for the administration of the jail has no inherent or implied power to exercise his own discretion, or to carry out instructions from other nonjudicial officials, in determining whether to release from jail persons ordered to be confined there. *Soares v. FSM*, 4 FSM R. 78, 79-80 (App. 1989).

There is necessarily some limited power for a jailer to release prisoners in the case of a grave emergency to protect lives or property, but the emergency power is narrow, to be exercised only when there is no opportunity to contact the proper authorities. *Soares v. FSM*, 4 FSM R. 78, 81 (App. 1989).

Although the internal management of a jail or prison is, subject to compliance with constitutional requirements, a function of the executive branch, the legislature controls the overall sentencing scheme through statute. *Soares v. FSM*, 4 FSM R. 78, 82 (App. 1989).

In the absence of legislative action saying otherwise, it is the sentencing order, not the jailer or any member of the executive branch, which determines whether the prisoner is to be confined, and for how long. *Soares v. FSM*, 4 FSM R. 78, 82 (App. 1989).

A national senator has no power to release national prisoners confined for violation of laws enacted by the national Congress. *Soares v. FSM*, 4 FSM R. 78, 83 (App. 1989).

The Joint Law Enforcement Agreement between the State of Truk and the national government in no way affects the ability of a national court to require a jailer who has accepted custody of a prisoner to act in conformity with the sentencing order governing the confinement of the prisoner. *Soares v. FSM*, 4 FSM R. 78, 84 (App. 1989).

The serious illness of a prisoner's child does not constitute an emergency necessitating the defendant's release from prison, where the child will receive the treatment she requires whether the prisoner is released or not. *FSM v. Engichy*, 4 FSM R. 177, 180 (Truk 1989).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted

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prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. *Plais v. Panuelo*, 5 FSM R. 179, 190 (Pon. 1991).

In a case where a convicted prisoner, who is also a pre-trial detainee, asserts civil rights claims arising out of ill-treatment after arrest, denial of access to family is a due process claim, and physical abuse involves due process as well as cruel and unusual punishment claims. *Plais v. Panuelo*, 5 FSM R. 179, 190 (Pon. 1991).

Deliberate indifference to an inmate's medical needs can amount to cruel and unusual punishment. *Plais v. Panuelo*, 5 FSM R. 179, 199-200 (Pon. 1991).

Where a prisoner is physically abused by an official with final policy-making authority, these acts are governmental and a statement of state policy concerning the prisoner. *Plais v. Panuelo*, 5 FSM R. 179, 207 (Pon. 1991).

Refusing to permit the public defender or the prisoner's mother to see him are violations of civil rights guaranteed under 12 F.S.M.C. 218(1) and (2) and constitute official actions for which a state must be held responsible under 11 F.S.M.C. 701(3). *Plais v. Panuelo*, 5 FSM R. 179, 207 (Pon. 1991).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). *Plais v. Panuelo*, 5 FSM R. 179, 208 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its responsibility toward national prisoners. *Plais v. Panuelo*, 5 FSM R. 179, 210-11 (Pon. 1991).

A prisoner's rights to procedural due process have been violated when he received neither notice of the charges against him nor an opportunity to respond to those charges before or during confinement. *Plais v. Panuelo*, 5 FSM R. 179, 212 (Pon. 1991).

§ 1203. Custom in sentencing.

In determining the sentence to be imposed, the court shall apply subsection (6) of section 1202 of this chapter wherever appropriate, and shall otherwise give due recognition to the generally accepted customs prevailing in the Federated States of Micronesia.

Source: PL 11-72 § 208.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

Familial relationships are an important segment, perhaps the most important component, of the custom and tradition referred to generally in the Constitution and more specifically in the National Criminal Code. FSM Const. art. V; 11 F.S.M.C. 108, 1003. *FSM v Ruben*, 1 FSM R. 34, 40 (Truk 1981).

Custom is more properly considered during sentencing than at other stages of a criminal prosecution. *FSM v. Mudong*, 1 FSM R. 135, 147-48 (Pon. 1982).

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Where two statutory provisions aimed at similar types of wrongdoing and upholding citizen and public interests of the same nature would apply to a solitary illegal act, which caused only one injury, the statutes will be construed not to authorize cumulative convictions in absence of a clear indication of legislative intent. However, the government is not denied the right to charge separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. *Laion v. FSM*, 1 FSM R. 503, 529 (App. 1984).

There is no provision in the National Criminal Code of the FSM permitting the court to modify a sentence after judgment. The rules only permit the court to reduce a sentence within 120 days after the sentence has been imposed. *FSM v. Finey*, 3 FSM R. 82, 84 (Truk 1986).

The only power given to the executive to modify a sentence is the power to grant pardons and reprieves. *FSM v. Finey*, 3 FSM R. 82, 84 (Truk 1986).

Sentencing courts are not free to bar from consideration beatings that were grounded upon, or were products of custom and tradition when considering sentencing, and failure to consider the customary implications of those beatings violates not only the implicit statutory requirement of individualized sentencing, but also mandate of 11 F.S.M.C. 1003, enacted pursuant to article V, section 2 of the Constitution, as well as the judicial guidance clause. *Tammed v. FSM*, 4 FSM R. 266, 278 (App. 1990).

In the absence of legislative action saying otherwise, it is the sentencing order, not the jailer or any member of the executive branch, which determines whether the prisoner is to be confined, and for how long. *Soares v. FSM*, 4 FSM R. 78, 82 (App. 1989).

A national senator has no power to release national prisoners confined for violation of laws enacted by the national Congress. *Soares v. FSM*, 4 FSM R. 78, 83 (App. 1989).

The Joint Law Enforcement Agreement between the State of Truk and the national government in no way affects the ability of a national court to require a jailer who has accepted custody of a prisoner to act in conformity with the sentencing order governing the confinement of the prisoner. *Soares v. FSM*, 4 FSM R. 78, 84 (App. 1989).

When, before sentencing, a beating has been administered to a defendant by family and friends of the victim to punish the defendant for the crime for which he is to be sentenced, the sentencing court's refusal to consider the beatings is an inappropriate attempt to achieve a larger social purpose and an unacceptable diversion of the sentencing process when the refusal is not motivated by defendant's guilt or status but instead is an attempt to influence the future conduct of people who were not before the court and who had not committed crimes similar to those committed by defendants. *Tammed v. FSM*, 4 FSM R. 266, 276-277 (App. 1990).

When trial court is asked to give special mitigative effect to customary punishment during its sentencing proceedings, court must first consider whether these customary activities have become so imbued with official state action so that the actions of the assailants are seen as actions of the state itself; if so the punishments must be tested by the same standards that would be applied if state officials carried out these punishments directly. *Tammed v. FSM*, 4 FSM R. 266, 283 (App. 1990).

The judicial guidance clause prohibits a sentencing court from giving special effect to customary beatings administered to the defendant, unless the court finds that such recognition would be consistent with the protections guaranteed to individuals in the Declaration of Rights. *Tammed v. FSM*, 4 FSM R. 266, 284 (App. 1990).

In considering the mitigation in sentencing to be given without regard to custom because of the beatings received by the defendants, the severity of the beating is the primary consideration. *FSM v. Tammed*, 5 FSM R. 426, 428 (Yap 1990).

The court cannot give further mitigative effect in sentencing to reflect the customary nature of the beatings if the court cannot find from the evidence presented that the beatings were customary. *FSM v. Tammed*, 5 FSM R. 426, 429 (Yap 1990).

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Even when mitigative effect cannot be given due to the beatings suffered by the defendants the court may consider a reduction of sentence pursuant to FSM Crim. R. 35. *FSM v. Tammed*, 5 FSM R. 426, 430 (Yap 1990).

§ 1204. Parole authorization.

Any trial justice of the National courts, or any duly appointed temporary justice thereof, is hereby authorized to review a sentence he or she imposed on a prisoner, after the prisoner has served one third of his or her sentence, and, in the case of any prisoner serving a life sentence or a sentence of 30 or more years, after said prisoner has served ten years of his or her sentence, for the purpose of determining the eligibility for parole of said prisoner. If the justice who sentenced a prisoner is not available to review the sentence, the Chief Justice may designate another justice for the review. The justice, in doing so, shall request and consider the views of the prosecution, the prisoner and his or her counsel, the victim or head of the victim's family, and, when requested by the prosecution or the prisoner, such community leaders as clergy and municipal and village leaders. The justice shall base his or her determination upon the prisoner's behavior in prison and any factors indicative of the prisoner's chances for a successful adaptation to community life after release. The determination of the justice may be appealed only on the grounds of abuse of discretion resulting from the justice exceeding constraints imposed by this statute, rules made pursuant thereto, or the Constitution of the Federated States of Micronesia. The Chief Justice may make rules to implement this section, and in these rules may provide for a reasonable minimum waiting period between successive reviews of the same sentence.

Source: PL 11-72 § 209.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

Case annotations:

Sentencing—Parole

The National Criminal Code preserves the President's parole powers for offenses committed before the Code's effective date; the repeal of parole powers applies only to offenses committed thereafter. *Tosie v. Tosie*, 1 FSM R. 149, 151, 158 (Kos. 1982).

The parole statute, Pub. L. No. 5-24 (5th Cong., 1st Spec. Sess. 1987), does not mandate, but merely authorizes, review of sentences for the purpose of determining parole eligibility. *Yalmad v. FSM*, 5 FSM R. 32, 33 (App. 1991).

When considering parole a justice shall request and consider the views of the prosecution, the prisoner and his counsel, the victim or head of the victim's family, and, when requested by the prosecution of the prisoner, such community leaders as clergy and municipal and village leaders when determining a prisoner's eligibility for parole. The justice shall also base his determination upon the prisoner's behavior in prison and any factors indicative of the prisoner's chance for successful adaptation to community life after release. *Yalmad v. FSM*, 5 FSM R. 32, 33-34 (App. 1991).

An appeal from the decision of the trial judge may be only on grounds of abuse of discretion resulting from the justice exceeding constraints imposed by the parole statute, Pub. L. No. 5-24 (5th Cong., 1st Spec. Sess. 1987). *Yalmad v. FSM*, 5 FSM R. 32, 34 (App. 1991).

Sentencing is to be individualized, and the overall objective must be to make the sentence fit the offender as well as the offense. The sentencing court's focus must be the defendant, the defendant's background and potential, and the nature of the offense. The term of imprisonment fixed in the sentence must be the time which the sentencing judge

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believes the convicted person justly should be required to serve. There is no justification for the sentence to include an additional factor in recognition of the possibility of parole. *Kimoul v. FSM*, 5 FSM R. 53, 60-61 (App. 1991).

Editor's note: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.