

**CHAPTER 15****Criminal Extradition Procedures****SECTIONS**

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**§ 1501. Scope and limitation of chapter.**

(1) The provisions of this chapter relating to the transfer of offenders shall be applicable only when an international agreement providing for such a transfer is in force, and shall only be applicable to transfers of offenders to and from a foreign country pursuant to such an agreement. The provisions of this chapter shall be read in light of and consistent with the international agreement pursuant to which a request for transfer is made. A sentence imposed by a foreign country upon an offender who is subsequently transferred to the Federated States of Micronesia pursuant to an international agreement shall be subject to being fully executed in the Federated States of Micronesia even though the international agreement under which the offender was transferred is no longer in force.

(2) An offender may be transferred from the Federated States of Micronesia pursuant to this chapter only to a country of which the offender is a citizen or national. Only an offender who is a citizen or national of the Federated States of Micronesia may be transferred to the Federated States of Micronesia. An offender may be transferred to or

from the Federated States of Micronesia only with the offender's consent, and only if the offense for which the offender was sentenced satisfies the requirement of double criminality as defined in section 1502 of this chapter. Once an offender's consent to transfer has been verified by a verifying officer, that consent shall be irrevocable. If at the time of transfer the offender is under 18 years of age the transfer shall not be accomplished unless consent to the transfer is given by a parent or guardian or by an appropriate court of the sentencing country.

(3) An offender shall not be transferred to or from the Federated States of Micronesia if a proceeding by way of appeal or of collateral attack upon the conviction or sentence is pending.

(4) The Federated States of Micronesia upon receiving notice from the country which imposed the sentence that the offender has been granted a pardon, commutation, or amnesty, or that there has been an ameliorating modification or a revocation of the sentence shall give the offender the benefit of the action taken by the sentencing country.

**Source:** PL 5-22 § 12, modified.

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

For other rights of defendants see Bill of Rights in chapter 1 of title 1 (General Provisions) of this code. For statutory provisions on Crimes see title 11 of this code. For statutory provisions on Foreign Affairs Responsibilities and Procedures see chapter 5 of title 10 (Foreign Relations) of this code.

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:** Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. *In re Extradition of Jano*, 6 FSM R. 93, 103 (App. 1993).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. *In re Extradition of Jano*, 6 FSM R. 23, 25 (App. 1993).

Where the FSM statute governing extradition proceeding is silent on the appealability of extradition proceedings and where the statute has been borrowed from another jurisdiction where extradition proceedings are not appealable it is presumed that the meaning and application of the statute is as it was interpreted by the courts of the source. *In re Extradition of Jano*, 6 FSM R. 23, 25 (App. 1993).

## **§ 1502. Definitions.**

As used in this chapter:

(1) “Double criminality” means that at the time of transfer of an offender the offense for which he has been sentenced is still an offense in the transferring country and is also an offense in the receiving country. With regard to a country which has a federal form of government, an act shall be deemed to be an offense in that country if it is an offense under the federal laws or the laws of any State or province thereof;

**Case annotations:** To satisfy the dual criminality test in extradition matters either national or state law may be used. An exact matching of the offense or elements is not required, but the acts charged must be criminal in both jurisdictions. *In re Extradition of Jano*, 6 FSM R. 93, 105 (App. 1993).

By the terms of the Compact and its subsidiary extradition agreement the term “Signatory Government” includes not only the national, but also the state governments of the two nations. Therefore state as well as national law may be used to determine if the offense for which extradition is sought satisfies the dual criminality test of whether it is criminal under the laws of both signatory governments. *In re Extradition of Jano*, 6 FSM R. 93, 102-103 (App. 1993).

(2) “Imprisonment” means a penalty imposed by a court under which the individual is confined to an institution;

(3) “International agreement” means an agreement concluded by the Federated States of Micronesia with another nation or nations pursuant to which an offender sentenced in the courts of one country may be transferred to the country of which he is a citizen or national for the purpose of serving the sentence;

**Case annotations:** Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. *In re Extradition of Jano*, 6 FSM R. 93, 103 (App. 1993).

(4) “Juvenile” means a person who is under 18 years of age;

(5) “Juvenile delinquency” means:

(a) A violation of the laws of the Federated States of Micronesia or a State thereof or of a foreign country or a State or province thereof committed by a juvenile which would have been a crime if committed by an adult; or

(b) Noncriminal acts committed by a juvenile for which supervision or treatment by juvenile authorities of the Federated States of Micronesia, a State thereof, or of the foreign country concerned, or a State

or province thereof, is authorized;

(6) “Offender” means a person who has been convicted of an offense or who has been adjudged to have committed an act of juvenile delinquency;

(7) “Parole” means any form of release of an offender from imprisonment to the community by a releasing authority prior to the expiration of his sentence, subject to conditions imposed by the releasing authority and to its supervision;

(8) “Probation” means any form of sentence to a penalty of imprisonment the execution of which is suspended and the offender is permitted to remain at liberty under supervision and subject to conditions for the breach of which the suspended penalty of imprisonment may be ordered executed;

(9) “Sentence” means not only the penalty imposed but also the judgment of conviction in a criminal case or a judgment of acquittal in the same proceeding, or the adjudication of delinquency in a juvenile delinquency proceeding or dismissal of allegations of delinquency in the same proceedings;

(10) “State” means any State of the Federated States of Micronesia; and

(11) “Transfer” means a transfer of an individual for the purpose of the execution in one country of a sentence imposed by the courts of another country.

**Source:** PL 5-22 § 13.

### **§ 1503. Authority of the Attorney General.**

The Attorney General is authorized:

(1) To act on behalf of the Federated States of Micronesia as the authority referred to in an international agreement;

(2) To receive custody of offenders under a sentence of imprisonment, on parole, or on probation who are citizens or nationals of the Federated States of Micronesia transferred from foreign countries and as appropriate confine them in penal or correctional institutions, or assign them to the probation authorities for supervision;

(3) To transfer offenders under a sentence of imprisonment or on probation to the foreign countries of which they are citizens or nationals;

(4) To make regulations, in accordance with chapter 1 of title 17 of this code, for the proper implementation of such treaties in accordance with this chapter and to make regulations to implement this chapter;

(5) To render to foreign countries and to receive from them the certifications and reports required to be made under such treaties;

(6) To make arrangements by agreement with the States for the transfer of offenders in their custody who are citizens or nationals of foreign countries to the foreign countries of which they are citizens or nationals and for the confinement, where appropriate, in State institutions of offenders transferred to the Federated States of Micronesia;

(7) To make agreements and establish regulations for the transportation through the territory of the Federated States of Micronesia of offenders convicted in a foreign country who are being transported to a third country for the execution of their sentences, the expenses of which shall be paid by the country requesting the transportation;

(8) To make agreements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of juveniles who are transferred pursuant to an international agreement, the expenses of which shall be paid by the country of which the juvenile is a citizen or national;

(9) In concert with the Director of the Office of Health Services, to make arrangements with the appropriate authorities of a foreign country and to issue regulations, in accordance with chapter 1 of title 17 of this code, for the transfer and treatment of individuals who are accused of an offense but who have been determined to be mentally ill, the expenses of which shall be paid by the country of which such person is a citizen or national;

(10) To receive, on behalf of the Federated States of Micronesia, the delivery by a foreign government of any citizen or national of the Federated States of Micronesia being transferred to the Federated States of Micronesia for the purpose of serving a sentence imposed by the courts of the foreign country, and to convey him within the Federated States of Micronesia.

**Source:** PL 5-22 § 14, modified.

**Cross-reference:** The statutory provisions on Foreign Affairs Responsibilities and Procedures are found in chapter 5 of title 10 (Foreign Relations) of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code. The statutory provisions on Crimes are found in title 11 of this code. Chapter 1 of title 17 of this code is on Administrative Procedures.

**Case annotations:** FSM Attorney General's Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General's office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and the discretion of whether to extradite a citizen does not repose in the Attorney General's Office. In re Extradition of Jano, 6 FSM R. 12, 13-14 (App. 1993).

#### **§ 1504. Applicability of FSM laws.**

All laws of the Federated States of Micronesia, as appropriate, pertaining to prisoners, probationers, and juvenile offenders shall be applicable to offenders transferred to the Federated States of Micronesia, unless an international agreement or this chapter provides otherwise.

**Source:** PL 5-22 § 15.

**Cross-reference:** The statutory provisions on Judicial Procedure are found in title 6 of this code. The statutory provisions on Crimes are found in title 11 of this code.

#### **§ 1505. Transfer of offenders on probation.**

(1) Prior to consenting to the transfer to the Federated States of Micronesia of an offender who is on probation, the Attorney General shall determine that the appropriate Federated States of Micronesia court is willing to undertake the supervision of the offender.

(2) Upon the receipt of an offender on probation from the authorities of a foreign country, the Attorney General shall cause the offender to be brought before the Federated States of Micronesia court which is to exercise supervision over the offender.

(3) The court shall place the offender under the supervision of a justice ombudsman of the court. The offender shall be supervised by a justice ombudsman, under such conditions as are deemed appropriate by the court as though probation had been imposed by the Federated States of Micronesia court.

(4) The probation may be revoked in accordance with the Rules of Criminal Procedure for the Trial Division of the Supreme Court of the Federated States of Micronesia. A violation of the conditions of probation shall constitute grounds for revocation. If probation is revoked the suspended sentence imposed by the sentencing court shall be executed.

(5) The provisions of section 1506 of this chapter shall be applicable following a revocation of probation.

(6) Prior to consenting to the transfer from the Federated States of Micronesia of an offender who is on probation, the Attorney General shall obtain the assent of the court exercising jurisdiction over the probationer.

**Source:** PL 5-22 § 16, modified.

#### **§ 1506. Transfer of offenders serving sentence of imprisonment.**

(1) Except as provided elsewhere in this section, an offender serving a sentence of imprisonment in a foreign country transferred to the custody of the Attorney General shall remain in the custody of the Attorney General under the same conditions and for the same period of time as an offender who had been committed to the custody of the Attorney General by a court of the Federated States of Micronesia for the period of time imposed by the sentencing court.

(2) The transferred offender shall be entitled to all credits toward the service of the sentence which had been given by the transferring country for time served as of the time of the transfer.

(3) Any sentence for an offense against the Federated States of Micronesia, imposed while the transferred offender is serving the sentence of imprisonment imposed in a foreign country, shall be aggregated with the foreign sentence, in the same manner as if the foreign sentence was one imposed by a Federated States of Micronesia court for an offense against the Federated States of Micronesia.

**Source:** PL 5-22 § 17.

#### **§ 1507. Transfer of offenders on parole.**

Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to a justice ombudsman of the appropriate Federated States of Micronesia court for supervision.

**Source:** PL 5-22 § 18.

**Cross-reference:** The statutory provisions on Judicial Procedure are found in title 6 of this code. The statutory provisions on Crimes are found in title 11 of this code.

### **§ 1508. Verification of consent of offender to transfer from FSM.**

(1) Prior to the transfer of an offender from the Federated States of Micronesia, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof shall be verified by a Federated States of Micronesia justice or a judge authorized to do so by a Federated States of Micronesia court.

(2) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(a) Only the appropriate courts in the Federated States of Micronesia may modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in such courts;

(b) The sentence shall be carried out according to the laws of the country to which he is to be transferred and that those laws are subject to change;

(c) If a court in the country to which he is transferred should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the international agreement or laws of that country, he may be returned to the Federated States of Micronesia for the purpose of completing the sentence if the Federated States of Micronesia requests his return; and

(d) His consent to transfer, once verified by the verifying officer, is irrevocable.

(3) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of his right to consult with counsel as provided by this chapter. If the offender wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.

(4) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (2) of this section. The consent and acceptance shall be on an appropriate form prescribed by the Attorney General.

(5) The proceedings shall be taken down by a reporter or recorded by suitable recording equipment. The Attorney General shall maintain custody of the records.

**Source:** PL 5-22 § 19.

**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.

### **§ 1509. Verification of consent of offender to transfer to FSM.**

(1) Prior to the transfer of an offender to the Federated States of Micronesia, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof shall be verified in the country in which the sentence was imposed by a Federated States of Micronesia justice, a judge authorized to do so by a Federated States of Micronesia court, or a person specifically designated by a Federated States of Micronesia justice. The designation of a citizen who is an employee or officer of a department or agency of the Federated States of Micronesia shall be with the approval of the head of that department or agency.

(2) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(a) Only the country in which he was convicted and sentenced can modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in that country;

(b) The sentence shall be carried out according to the laws of the Federated States of Micronesia and that those laws are subject to change;

(c) If a Federated States of Micronesia court should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the international agreement or laws of the Federated States of Micronesia, he may be returned to the country which imposed the sentence for the purpose of completing the sentence if that country requests his return; and

(d) His consent to transfer, once verified by the verifying officer, is irrevocable.

(3) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of his right to consult with counsel as provided by this chapter. If the offender wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.

(4) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (2) of this section. The consent and acceptance shall be on an appropriate form prescribed by the Attorney General.

(5) The proceedings shall be taken down by a reporter or recorded by suitable recording equipment. The Attorney General shall maintain custody of the records.

**Source:** PL 5-22 § 20.

**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.

### **§ 1510. Right to counsel; Appointment of counsel.**

In proceedings to verify consent of an offender for transfer, the offender shall have the right to advice of counsel. If the offender is financially unable to obtain counsel:

(1) Counsel for proceedings conducted under section 1508 of this chapter shall be provided in the same manner as provided to any person accused of any offense; and

(2) Counsel for proceedings conducted under section 1509 of this chapter shall be appointed by the verifying

officer pursuant to such rules as may be prescribed by the Chief Justice of the Supreme Court of the Federated States of Micronesia. The Attorney General shall make payments of fees and expenses of the appointed counsel, in amounts approved by the verifying officer, which shall not exceed the amounts authorized under the rules promulgated by the Chief Justice. Payment in excess of the maximum amount authorized may be made for extended or complex representation whenever the verifying officer certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the Chief Justice of the Supreme Court of the Federated States of Micronesia. If counsel from other agencies in any branch of the Government are appointed, the Attorney General shall make advance payments of travel and transportation expenses to appointed counsel or reimburse the employing agency for travel and transportation expenses.

**Source:** PL 5-22 § 21, modified.

**Cross-reference:** FSM Const., art. IV, § 6. The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found title 6 of this code. The statutory provisions on Crimes are found in title 11 of this code.

### **§ 1511. Transfer of juveniles.**

An offender transferred to the Federated States of Micronesia because of an act which would have been an act of juvenile delinquency had it been committed in the Federated States of Micronesia or any State thereof shall be subject to the provisions of this chapter except as otherwise provided in the relevant international agreement or in an agreement between the Attorney General and the authority of the foreign country concluded pursuant to an international agreement.

**Source:** PL 5-22 § 22.

### **§ 1512. Prosecution barred by foreign conviction.**

An offender transferred to the Federated States of Micronesia shall not be detained, prosecuted, tried, or sentenced by the Federated States of Micronesia, or any State thereof for any offense the prosecution of which would have been barred if the sentence upon which the transfer was based had been by a court of the jurisdiction seeking to prosecute the transferred offender, or if prosecution would have been barred by the laws of the jurisdiction seeking to prosecute the transferred offender if the sentence on which the transfer was based had been issued by a Federated States of Micronesia court or by a court of a State of the Federated States of Micronesia.

**Source:** PL 5-22 § 23.

### **§ 1513. Loss of rights; Disqualification.**

An offender transferred to the Federated States of Micronesia to serve a sentence imposed by a foreign court shall not incur any loss of civil, political, or civic rights nor incur any disqualification other than those which under the laws of the Federated States of Micronesia or of the State in which the issue arises would result from the fact of the conviction in the foreign country.

**Source:** PL 5-22 § 24.

**§ 1514. Status of alien offender transferred to a foreign country.**

(1) An alien who is the subject of an order of deportation from the Federated States of Micronesia pursuant to chapter 1 of title 50 of this code, who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been deported from this country.

(2) An alien who is the subject of an order of exclusion and deportation from the Federated States of Micronesia pursuant to chapter 1 of title 50 of this code, who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been excluded from admission and deported from the Federated States of Micronesia.

**Source:** PL 5-22 § 25, modified.

**Cross-reference:** Chapter 1 of title 50 (Immigration) of this code is on the Immigration Act.

**§ 1515. Return of transferred offenders.**

(1) Upon a final decision by a Federated States of Micronesia court that the transfer of the offender to the Federated States of Micronesia was not in accordance with an international agreement or the laws of the Federated States of Micronesia and ordering the offender released from serving the sentence in the Federated States of Micronesia the offender may be returned to the country from which he was transferred to complete the sentence if the country in which the sentence was imposed requests his return. The Attorney General shall notify the appropriate authority of the country which imposed the sentence within ten days of a final decision of a court of the Federated States of Micronesia ordering the offender released. The notification shall specify the time within which the sentencing country must request the return of the offender which shall be no longer than 30 days.

(2) Upon receiving a request from the sentencing country that the offender ordered released be returned for the completion of his sentence, the Attorney General may file a complaint for the return of the offender with any Federated States of Micronesia justice or any judge authorized by a Federated States of Micronesia court, within whose jurisdiction the offender is found. The complaint shall be upon oath and supported by affidavits establishing that the offender was convicted and sentenced by the courts of the country to which his return is requested; the offender was transferred to the Federated States of Micronesia for the execution of his sentence; the offender was ordered released by a court of the Federated States of Micronesia before he had completed his sentence because the transfer of the offender was not in accordance with the international agreement or the laws of the Federated States of Micronesia; and that the sentencing country has requested that he be returned for the completion of the sentence. There shall be attached to the complaint a copy of the sentence of the sentencing court and of the decision of the court which ordered the offender released.

(3) A summons or a warrant shall be issued by the justice or judge ordering the offender to appear or to be brought before the issuing authority. If the justice or judge finds that the person before him is the offender described in the complaint and that the facts alleged in the complaint are true, he shall issue a warrant for commitment of the offender to the custody of the Attorney General until surrender shall be made. The findings and a copy of all the testimony taken before him and of all documents introduced before him shall be transmitted to the Secretary of External Affairs, that a return warrant may issue upon the requisition of the proper authorities of the sentencing country, for the surrender of the offender.

(4) The complaint referred to in subsection (2) of this section must be filed within 60 days from the date on which the decision ordering the release of the offender becomes final.

(5) An offender returned under this section shall be subject to the jurisdiction of the country to which he is returned for all purposes.

(6) The return of an offender shall be conditioned upon the offender being given credit toward service of the sentence for the time spent in the custody of or under the supervision of the Federated States of Micronesia.

(7) Sections 1403 through 1407 and section 1410 of chapter 14 of this title shall be applicable to the return of an offender under this section. However, an offender returned under this section shall not be deemed to have been extradited for any purpose.

(8) An offender whose return is sought pursuant to this section may be admitted to bail or be released on his own recognizance at any stage of the proceedings.

**Source:** PL 5-22 § 26.

**Cross-reference:** Chapter 14 of this title is on Criminal Extradition.

### **§ 1516. Execution of sentences imposing an obligation to make restitution or reparations.**

If in a sentence issued in a penal proceeding of a transferring country an offender transferred to the Federated States of Micronesia has been ordered to pay a sum of money to the victim of the offense for damage caused by the offense, that penalty or award of damages may be enforced as though it were a civil judgment rendered by a Federated States of Micronesia court. Proceedings to collect the moneys ordered to be paid may be instituted by the Attorney General in the appropriate Federated States of Micronesia court. Moneys recovered pursuant to such proceedings shall be transmitted through diplomatic channels to the treaty authority of the transferring country for distribution to the victim.

**Source:** PL 5-22 § 27.

**Cross-reference:** The statutory provisions on Foreign Affairs Responsibilities and Procedures are found in chapter 5 of title 10 (Foreign Relations) of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code. The statutory provisions on Crimes are found in title 11 of this code.