TITLE 12
CRIMINAL PROCEDURE

CHAPTERS

CHAPTER 1
General Provisions

SECTIONS

§ 101. Definitions.

As used in this title, the following terms shall have the meanings set forth below:

(1) "Arrest" means placing any person under any form of detention by legal authority.

(2) "Attorney General" means the legal officer on the staff of the High Commissioner or any person appointed by the High Commissioner to supervise prosecutions throughout the Trust Territory.

(3) "Citation" means a written order to appear before a court at a time and place named therein to answer a criminal charge briefly described in the citation. It shall contain a warning that failure to obey it will render the accused liable to have a complaint filed against him upon which a warrant of arrest may be issued. The statement of the charge or charges in a citation or a copy thereof may be accepted by the court in place of an information in any misdemeanor tried in the first instance in a community court or a district court.

(4) "Complaint" means a statement of the essential facts constituting a criminal offense by one or more persons named or described therein. It shall be made under oath before a court or an official authorized to issue a warrant. It may be either written or oral, but whenever the court or official hearing it deems practicable it shall be reduced to writing, signed by the complainant, and bear a record of the oath signed by the person who administered it. The complaint shall refer to the code section, ordinance, district order, native custom, or other provision of the law which the accused is alleged to have violated, but any error in this reference or its omission may be corrected by leave of court at any time prior to sentence and shall not be ground for reversal of a conviction if the error or omission did not mislead the accused to his prejudice. If a felony is not charged, the court may accept a complaint in lieu of an information.

(5) "District Attorney" means any person appointed by the High Commissioner to represent the government in any case, civil or criminal, in any court of the Trust Territory.

(6) "Judge" means any member of the High Court, a district court, or a community court.

(7) "Oath" shall include a solemn affirmation.

(8) "Penal Summons" means a written order summoning a person or persons to appear before a court at a time and place named therein, instead of commanding an arrest. Otherwise it shall meet all the requirements of a warrant. It shall contain a warning that failure to obey it will render the accused liable to arrest upon a warrant.

(9) "Personal Recognizance" means a promise made before an official authorized to accept bail that in consideration of the release of the person he will appear in accordance with all orders of the court and that if he fails to do so he will pay a stated sum of money.

(10) "Policeman" means any member of the Micronesia police or any person authorized by the High Commissioner or any district administrator to act as a policeman.

(11) "Search Warrant" means a written order directed to a policeman, commanding him to search for and, if found, to seize and bring before a particular court or official certain articles supposed to be in the possession of a person or at a place named or described in the search warrant. It shall be signed by the Clerk of Court or by the official issuing it, and shall state the grounds or probable cause

for its issuance and the name of the person or persons whose statements, under oath, have been taken in support thereof. It shall designate the court or official to whom it shall be returned.

(12) "Warrant of Arrest" means a written order commanding that a person or persons be arrested and brought without unnecessary delay before a court named therein, or otherwise dealt with according to law. It shall be signed by the Clerk of the Court or by the official issuing it and shall contain the name of the accused, or if his name is unknown any name or description by which he can be identified with reasonable certainty. It shall describe the criminal offense charged and may do so by referring to either the original or a copy of the complaint or information attached to or on the same sheet as the warrant. Except where otherwise indicated, the word "warrant" in this title refers to a "warrant of arrest."

Source: TT Code 1966 § 445; TT Code 1970, 12 TTC 1; TT Code 1980, 12 TTC 1.

Cross-reference: FSM Const., art. IV, §§ 3 and 5. The provisions of the Constitution are found in Part I of this code.

Editor's note: Subsections rearranged in alphabetical order in 1982 edition of this code.

§ 102. Name in which prosecution shall be conducted.

Criminal prosecutions shall be conducted in the name of the Federated States of Micronesia for violations of the following:

(1) laws enacted by the Congress of the Federated States of Micronesia; and

(2) statutes of the Trust Territory of the Pacific Islands which are continued in effect by article XV, section 1, of the Constitution of the Federated States of Micronesia and are within the jurisdiction of the National Government of the Federated States of Micronesia.

Source: TT Code 1966 § 486; TT Code 1970, 12 TTC 201; TT Code 1980, 12 TTC 201; PL 1-127 § 2.

Cross-reference: FSM Const., art. IV, §§ 3 and 5. The provisions of the Constitution are found in Part I 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: National court jurisdiction over the Trust Territory 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 Federated States of Micronesia. 11 F.S.M.C. 1201-1231. *FSM v. Nota*, 1 FSM R. 299, 303 (Truk 1983).

Prosecution

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).

A prosecuting attorney's decision whether to prosecute must be overruled only in the most extraordinary circumstances, e.g., vindictiveness, impermissible discrimination, or an attempt to prevent the exercise of constitutional rights. *Nix v. Ehmes*, 1 FSM R. 114, 125-26 (Pon. 1982).

A prosecuting attorney has wide discretion in determining whether to prosecute. *Nix v. Ehmes*, 1 FSM R. 114, 126 (Pon. 1982).

The decision to initiate, continue, or terminate a particular criminal prosecution is, with limited exceptions, within the discretion of the prosecutor. *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 prosecution of criminals is not a power having an indisputably national character. *Truk v. Hartman*, 1 FSM R. 174, 178 (Truk 1982).

The high public office of state prosecutor may be the most powerful office in our system of justice. The prosecutor invokes and implements the sovereign powers of the state in the justice system and is given a wide degree of discretion in so doing. *Rauzi v. FSM*, 2 FSM R. 8, 13 (Pon. 1985).

Some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. *Rauzi v. FSM*, 2 FSM R. 8, 16 (Pon. 1985).

There are sound reasons why prosecutors should retain discretion over whether to submit a plea agreement to a court based upon information obtained by the prosecution subsequent to execution of a written plea agreement but before presentation of that agreement to the court. *FSM v. Ocean Pearl*, 3 FSM R. 87, 91 (Pon. 1987).

Although the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is initiated in the FSM Supreme Court, the court also has responsibility for assuring that actions thereafter taken are in the public interest. Thus, criminal litigation can be dismissed only by obtaining leave of court. *FSM v. Ocean Pearl*, 3 FSM R. 87, 91 (Pon. 1987).

CHAPTER 2
Process—Warrants and Arrest

SECTIONS

§ 201. Process obligatory upon police.

(1) All process in any criminal proceedings, in all contempt proceedings, and in juvenile delinquency proceedings, issued in accordance with law and the rules of procedure prescribed in accordance with law, shall be obligatory upon all policemen having knowledge thereof, and any policeman to whom such process is given shall promptly make diligent effort to execute or serve the same either personally or through another policeman.

(2) This section shall cover orders to show cause why a person should not be adjudged in contempt, orders of attachment of a person, summons, and all other orders (including an oral order in place of any of the foregoing), issued in either civil contempt proceedings or juvenile delinquency proceedings, as well as all forms of process in criminal proceedings.

Source: TT Code 1966 § 489; TT Code 1970, 12 TTC 51; TT Code 1980, 12 TTC 51.

§ 202. Limitation of arrests without a warrant.

No arrest of any person shall be made without first obtaining a warrant therefor, except in the cases authorized in this chapter or as otherwise provided by law.

Source: TT Code 1966 § 456; TT Code 1970, 12 TTC 52; TT Code 1980, 12 TTC 52.

Cross-reference: FSM Const., art. IV, § 3. The provisions of the Constitution are found in Part I of this code.

Case annotations: Suspicion of guilt can justify the extreme action of an arrest only when based upon reasonable grounds known to the arresting officer at the time of arrest so strong that a cautious man would "believe," that is, consider it more likely than not that the accused is guilty of the offense. *Ludwig v. FSM*, 2 FSM R. 27, 33 (App. 1985).

§ 203. Authority to issue a warrant of arrest.

The following officials are authorized to issue a warrant of arrest:

(1) any court;

(2) any judge;

(3) the clerk of courts for a district subject to such limitations as the Chief Justice of the High Court may impose;

(4) any other person authorized in writing by the High Commissioner and a certified copy of whose authorization is filed with the clerk of courts for the district in which he acts.

Source: TT Code 1966 § 446; TT Code 1970, 12 TTC 53; TT Code 1980, 12 TTC 53.

Cross-reference: FSM Const., art. IV, § 3. The provisions of the Constitution are found in Part I of this code.

Case annotations:

Arrest and Custody

No right is held more sacred, or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraints or interference of others, unless by clear and unquestionable authority of law. *FSM v. Tipen*, 1 FSM R. 79, 86 (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).

Police may question persons who, while they are in police custody, fall under suspicion for another crime, without regard to the fact that other persons in a similar category would be released without questioning. *FSM v. Jonathan*, 2 FSM R. 189, 199 (Kos. 1986).

§ 204. Warrant or penal summons upon complaint.

(1) Any person, other than the Attorney General or a district attorney, desiring the issuance of a warrant of arrest for a criminal offense shall personally appear and make a complaint within the district where the offense or some part thereof is alleged to have been committed, before an official authorized to issue a warrant.

(2) If the complaint states the essential facts constituting a criminal offense by one or more persons named or described therein, and if, in the opinion of the official, there is probable cause to believe or strongly suspect that the offense complained of has been committed by such person or persons, the official may issue his warrant for the arrest of such person or persons, or may issue a penal summons as provided in this chapter.

(3) Any official, other than a judge of a district court, may refuse to act if he deems that the public interest does not require action before the matter can reasonably be presented to a judge of a district court.

Source: TT Code 1966 § 448; TT Code 1970, 12 TTC 54; TT Code 1980, 12 TTC 54.

Cross-reference: FSM Const., art. IV, § 3. The provisions of the Constitution are found in Part I of this code.

§ 205. Investigation of complaint in doubtful cases.

(1) If a judge of a district court before whom a complaint is made is doubtful whether sufficient grounds in fact exist for the issuance of a warrant or penal summons, he may, if the complainant consents, refer the complaint to the Micronesia police for investigation and report and withhold action for a reasonable time pending such report.

(2) If the complainant does not consent to such a reference or if the report of investigation is not received within a reasonable time, the judge shall proceed to examine under oath the complainant, any witnesses offered by the complainant and such other witnesses as the judge deems best and may, in his discretion, give the accused an opportunity to be present and to be heard.

(3) If the judge is satisfied from the investigation made by the Micronesia police or that made by him as directed in subsection (2) of this section that there is probable cause to believe or strongly suspect that the offense complained of has been committed and that the accused committed it, he shall issue a warrant or a penal summons as provided in this chapter.

Source: TT Code 1966 § 449; TT Code 1970, 12 TTC 55; TT Code 1980, 12 TTC 55.

Cross-reference: The statutory provisions the Executive and the President 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.

§ 206. Use of penal summons in lien of warrant of arrest.

(1) In the case of all criminal offenses for which the lawful punishment does not exceed a fine of $100, or six months imprisonment, or both, a penal summons to appear before a court at a time and place fixed in the penal summons shall be issued instead of a warrant of arrest, unless it shall appear to the court or official issuing the process that the public interest requires the arrest of the accused.

(2) Upon request of the complainant, a penal summons instead of a warrant may be issued in any case.

(3) If, after a penal summons has been served upon him, the accused fails to appear in response to the penal summons without an excuse known to and deemed adequate by the court named therein, a warrant shall be issued.

Source: TT Code 1966 § 450; TT Code 1970, 12 TTC 56; TT Code 1980, 12 TTC 56.

§ 207. Execution of warrants and service of penal summons.

A warrant of arrest shall be executed or the penal summons served by a policeman or by a person specifically authorized in the warrant or summons to execute or serve it. The warrant may be executed or the summons served at any place within the jurisdiction of the Trust Territory. The penal summons shall be served upon the accused by delivering a copy to him personally and orally explaining the substance thereof to him in a language generally understood in the locality and, if practicable, in one understood by the accused, or by leaving it at his dwelling house or usual place of abode or of business with some person of suitable age and discretion then residing or employed therein and orally explaining the substance thereof.

Source: TT Code 1966 § 451; TT Code 1970, 12 TTC 57; TT Code 1980, 12 TTC 57.

§ 208. Return of service.

(1) The person executing a warrant shall endorse thereon and sign a statement of the arrest showing the date and place of arrest and shall have such warrant delivered to the court or official before whom the accused is brought pursuant to section 217 of this chapter, or to the court named in the warrant if the accused is released on bail or personal recognizance before being brought before a court or official.

(2) At or before the time stated in a penal summons for appearance of the accused, the person to whom a penal summons is delivered for service shall endorse and sign a report of his action thereon and have such summons delivered to the court named therein. If he has served the summons, his report shall show the date, place, and method of service.

Source: TT Code 1966 § 452; TT Code 1970, 12 TTC 58; TT Code 1980, 12 TTC 58.

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

§ 209. Issuance of oral order in lieu of warrant or penal summons by community court.

(1) A community court or any judge thereof may, if the court or judge deems the public interest so requires, issue an oral order in place of either a warrant of arrest or a penal summons, which shall have the same force and effect within the territorial jurisdiction of that court as a warrant or penal summons.

(2) Such an oral order may be served by orally communicating the substance thereof to the accused and the report of execution or service of such an order may be made orally.

(3) Any person making an arrest on such an oral order or serving such an order in place of a penal summons shall report all the essential facts to the court or official before whom the accused is brought or ordered to appear.

(4) Any person by going to trial before a community court without requesting a copy of the charges against him thereby waives his right to have a copy in advance of trial in that court, but he does not thereby waive his right to such copy before trial in a district court in the event of an appeal.

Source: TT Code 1966 § 453; TT Code 1970, 12 TTC 59; TT Code 1980, 12 TTC 59.

§ 210. Issuance of warrant or penal summons on information.

The Attorney General or a district attorney may file an information signed by him in any court competent to try the accused for a criminal offense or offenses charged therein. If the information states the essential facts constituting a criminal offense or offenses by one or more persons named or described therein and is supported by one or more written statements under oath showing to the satisfaction of the court that there is probable cause to believe or strongly suspect that the offense complained of has been committed by such person or persons, the court shall, upon request of the Attorney General or district attorney, issue its warrant or penal summons as upon a complaint.

Source: TT Code 1966 § 454; TT Code 1970, 12 TTC 60; TT Code 1980, 12 TTC 60.

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

Case annotations:

Information

Under 12 F.S.M.C. 210, the lack of sworn, written statements showing probable cause makes the issuance of the summonses defective. It does not make the information defective. *FSM v. Kansou*, 13 FSM R. 48, 50 (Chk. 2004).

Where language of an information is more specific than the language of the statute under which the offense is charged, the prosecution is required to establish those specific facts in addition to a violation of the statute. *FSM v. Boaz (I)*, 1 FSM R. 22, 24 (Pon. 1981).

An information which claims that the defendant entered a building for the purpose of "fighting" rather than "assaulting" a person within the building does not render the information inadequate for a conviction. A desire to fight carries with it a desire to commit an assault. *FSM v. Boaz (I)*, 1 FSM R. 22, 26 (Pon. 1981).

Government's failure to prove the assertion in its information that a dangerous weapon was used to cause the victim to submit to the sexual assault need not result in dismissal of the case. It merely prevents an application of the greater punishment available under 11 F.S.M.C. 914(3)(b). *Buekea v. FSM*, 1 FSM R. 487, 493-94 (App. 1984).

Allegations in the Information alleging a criminal violation must be proven in order to obtain a conviction. It is not sufficient that the evidence show a violation of the statute specified in the Information if the actual violation is different from the one alleged. *Buekea v. FSM*, 1 FSM R. 487, 493-94 (App. 1984).

At the discretion of the trial judge, the Information may be amended to conform to the evidence if it appears fair to do so. *Buekea v. FSM*, 1 FSM R. 487, 494 (App. 1984).

When an information sufficiently apprizes the defendant of the charges against which he must be prepared to defend and is sufficiently detailed to enable him to plead his case as a bar to future prosecutions for the same offense, it is generally sufficient that an information set forth the offense in words of the statute itself. *Laion v. FSM*, 1 FSM R. 503, 516-17 (App. 1984).

The language of Rule 7(c) of FSM Supreme Court Rules of Criminal Procedure has been interpreted by other courts as permitting prosecution to charge commission of a single offense by different means, or by charging in conjunctive actions prohibited disjunctively in a statute. *Laion v. FSM*, 1 FSM R. 503, 517 (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 Criminal Rule 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).

11 F.S.M.C. 301 is one of a set of sections in Chapter 3 of the 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).

Dropping one count from a criminal information does not prevent the prosecution from proving that count as an element of other pending charges. *FSM v. Cheng Chia-W (I)*, 7 FSM R. 124, 126 (Pon. 1995).

Where counts in an information other than the one count dismissed also charge illegal fishing violations the dismissal of two other counts for which illegal fishing is an element will be denied. *FSM v. Cheng Chia-W (I)*, 7 FSM R. 124, 126 (Pon. 1995).

Criminal defendants have the constitutional right to be informed of the nature of the accusation against them. This protection is implemented through Criminal Rule 7(c)(1), which requires that an information must "be a plain, concise and definite written statement of the essential facts constituting the offense charged." An information should not be thrown out because of minor, technical objections which do not prejudice the accused. *FSM v. Xu Rui Song*, 7 FSM R. 187, 189 (Chk. 1995).

The fundamental purpose of the information is to inform the defendant of the charge so that he may prepare his defense, and the test for sufficiency is whether it is fair to defendant to require him to defend on the basis of the charge as stated in the particular information. Another purpose is to inform the court of the facts alleged so that it may decide whether they are sufficient in law to support a conviction, if one should be had. *FSM v. Xu Rui Song*, 7 FSM R. 187, 189 (Chk. 1995).

The information should be sufficiently definite, certain, and unambiguous as to permit the accused to prepare his defense. Common sense will be a better guide than arbitrary and artificial rules, and the sufficiency of the information will be determined on the basis of practical rather than technical considerations. In an information each count should stand on its own although facts alleged therein may be incorporated by reference. This is true as to each defendant. *FSM v. Xu Rui Song*, 7 FSM R. 187, 189-90 (Chk. 1995).

An information that is sufficient for one co-defendant may be insufficient and defective as to another. *FSM v. Xu Rui Song*, 7 FSM R. 187, 190 (Chk. 1995).

An information that, as a practical matter, is not sufficiently certain and unambiguous so as to permit defendant to prepare a defense, or to inform the court of what alleged acts or omissions of this particular defendant result in criminal liability is defective, and may be dismissed without prejudice. *FSM v. Xu Rui Song*, 7 FSM R. 187, 190 (Chk. 1995).

§ 211. Authority to arrest without warrant.

Arrest without a warrant is authorized in the following situations:

(1) Where a breach of the peace or other criminal offense has been committed, and the offender shall endeavor to escape, he may be arrested by virtue of an oral order of any official authorized to issue a warrant, or without such order if no such official be present.

(2) Anyone in the act of committing a criminal offense may be arrested by any person present, without a warrant.

(3) When a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it, such policeman may arrest the person without a warrant.

(4) Policemen, even in cases where it is not certain that a criminal offense has been committed, may, without a warrant, arrest and detain for examination, persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony.

Source: TT Code 1966 § 457; TT Code 1970, 12 TTC 61; TT Code 1980, 12 TTC 61.

Cross-reference: FSM Const., art. IV, § 3. The provisions of the Constitution are found in Part I of this code.

§ 212. Use of citations.

A policeman in any case in which he may lawfully arrest a person without a warrant, may, subject to such limitations as his superiors may impose, issue and serve a citation upon the person instead of making an arrest, if he deems that the public interest does not require an arrest.

Source: TT Code 1966 § 455; TT Code 1970, 12 TTC 62; TT Code 1980, 12 TTC 62.

§ 213. Complaints in cases of arrest without warrant.

When a person arrested without a warrant is brought before a court or official authorized to issue a warrant, a complaint shall be made against him forthwith, if that has not already been done.

Source: TT Code 1966 § 465; TT Code 1970, 12 TTC 63; TT Code 1980, 12 TTC 63.

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.

§ 214. Arrested person to be informed of cause and authority of arrest.

(1) Any person making an arrest shall, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest.

(2) A policeman making an arrest by virtue of a warrant need not have the warrant in his possession at the time of the arrest, but, after the arrest, the person arrested may request to see the warrant, and that shall be shown to him as soon as possible.

Source: TT Code 1966 § 458; TT Code 1970, 12 TTC 64; TT Code 1980, 12 TTC 64.

Editor's note: The 1970 and 1980 editions of the Trust Territory Code made extensive changes in the phraseology of the 1966 edition.

Cross-reference: FSM Const., art. IV, § 3. The provisions of the Constitution are found in Part I of this code.

Case annotations: Where a municipal police officer intending to make an arrest to for unlawful drinking, informs the accused that he is going to "take him to a place" because he was drinking and where there are indications that the accused understands that the officer is seeking to effect an arrest, there is sufficient compliance with the requirement of 12 F.S.M.C. 214 that arresting officers "make every reasonable effort to advise the person arrested as to the cause and authority of the arrest." *Loch v. FSM*, 1 FSM R. 566, 569 (App. 1984).

Where the plaintiffs were set upon and beaten by police officers and one plaintiff was arrested and no reason was provided to that plaintiff when the officers detained and arrested him, nor was any reason subsequently given although 12 F.S.M.C. 214(1) provides that any person making an arrest must, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest, the plaintiff's detention for six hours was without any justification, precisely the sort of conduct that 11 F.S.M.C. 701 was meant to protect against. The assaulting police officers were acting under color of law and as agents of the defendant Chuuk Department of Public Safety, which is an agency of the defendant Chuuk state government. Thus these defendants are liable for the violation of the plaintiffs' civil rights under 11 F.S.M.C. 701. *Hauk v. Emilio*, 15 FSM R. 476, 479 (Chk. 2008).

One should be considered "arrested," for the purposes of the right to be advised of his rights to remain silent when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained persons may be, or may have been, involved in commission of a crime. *FSM v. Edward*, 3 FSM R. 224, 232 (Pon. 1987).

That the plaintiff was not informed at or before the time of his arrest why he was being arrested constituted a violation. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 483, 491 (Pon. 2005).

§ 215. Use of force in making arrest.

In all cases where the person arrested refuses to submit or attempts to escape, such degree of force may be used as is necessary to compel submission.

Source: TT Code 1966 § 459; TT Code 1970, 12 TTC 65; TT Code 1980, 12 TTC 65.

Case annotations: 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).

Where no Micronesian legislative body has addressed the rules concerning arrests and where no party suggests that the matter is influenced by customary law, the principles stated in the Restatements of Torts concerning use of deadly force may be considered in determining, for purposes of a criminal case, the scope of police officer's right to use force while making an arrest. *Loch v. FSM*, 1 FSM R. 566, 570 (App. 1984).

The interest of society in the life of its members, even though they be felons or reasonably suspected of felony, is so great that the use of force involving serious danger to them is privileged only as a last resort when it reasonably appears that there is no other alternative except abandoning his attempts to make the arrest. In determining whether the use of such force is privileged, the actor has not the same latitude of discretion which is permitted to him in determining whether it is necessary to use force which is intended or likely to cause less serious consequences. *Loch v. FSM*, 1 FSM R. 566, 570 (App. 1984).

Deadly force by a police officer attempting to effect an arrest, may be justified by evidence indicating the defendant reasonably believes that there is no alternative method of effecting the arrest and that deadly force is necessary as a last resort. *Loch v. FSM*, 1 FSM R. 566, 571-72 (App. 1984).

Reasonableness of a police officer's conduct in using deadly force while making an arrest must be assessed on the basis of the information the police officer had when he acted. *Loch v. FSM*, 1 FSM R. 566, 571-72 (App. 1984).

It is quite reasonable for a police officer, who uses a deadly weapon in deadly fashion against a person armed with a knife, to obtain a weapon that will afford him a means of protecting himself against the knife and intimidating the person to be arrested. *Loch v. FSM*, 1 FSM R. 566, 573 (App. 1984).

Where a police officer arms himself with a weapon to arrest a man armed with a knife, and then uses the weapon in a deadly fashion without first giving the person an opportunity to submit and without determining whether the person intends to use the knife to prevent arrest, this use of force cannot be viewed as a last resort necessary to the arrest not as reasonably necessary to protect the police officer from serious bodily injury. *Loch v. FSM*, 1 FSM R. 566, 573 (App. 1984).

While a police officer may use force to effect an arrest and to protect himself and other citizens, he may not use force simply to punish people he dislikes or those he decides have done wrong. The principal functions of the police officer are to preserve peace and order and to apprehend lawbreakers so that they may be tried by the courts and handled justly. *Loch v. FSM*, 1 FSM R. 566, 574_75 (App. 1984).

Punishment is no part of the police officer's assignment. A policeman who chooses to mete out punishment violates his office and does so at his own peril. *Loch v. FSM*, 1 FSM R. 566, 575 (App. 1984).

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).

In making an otherwise lawful arrest, a police officer may use whatever force is reasonably necessary to effect the arrest, and no more; he must avoid using unnecessary violence. *Meitou v. Uwera*, 5 FSM R. 139, 143 (Chk. S. Ct. Tr. 1991).

The use of force by police officers is not privileged or justified when the arrestee was so drunk and unstable to resist or defend himself and when the police officer used force because he was enraged at being insulted by the arrestee. *Meitou v. Uwera*, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

§ 216. Disposition of persons arrested by private persons.

Any private person making an arrest shall deliver the arrested person to a policeman or an official authorized to issue a warrant without unnecessary delay and shall explain the cause of the arrest. Except where transportation difficulties are involved, or neither a policeman nor an official authorized to issue a warrant can be located promptly, such delay should not extend beyond a few hours during the daytime or early evening nor beyond ten o'clock on the following morning in the case of persons arrested during the night time.

Source: TT Code 1966 § 462; TT Code 1970, 12 TTC 66; TT Code 1980, 12 TTC 66.

§ 217. Disposition of arrested persons by policeman.

Persons arrested by a policeman, except under subsection (4), section 211 of this chapter, or delivered to him after arrest by a private person, shall be brought without unnecessary delay before a court competent to try the offender for the criminal offense charged, subject to the following:

(1) If bail has been fixed, it shall be accepted and the arrested person released to appear in accordance with all orders of the court named in the warrant or any court to which the case may be transferred. Reasonable opportunity to raise bail shall be afforded by permitting the person arrested to send a message or messages through a policeman or other persons by telephone, cable, wireless, messenger, or other expeditious means, to any person likely to assist in securing bail; provided, that such message can be sent without expense to the government or that the arrested person prepays any expense there may be to the government.

(2) If it appears that it will not be practicable to bring the arrested person promptly before a court competent to try him for the offense charged, and he has not been released on bail or personal recognizance, he shall be brought before an official authorized to issue a warrant without unnecessary delay. This official shall commit the arrested person, discharge him, or release him on bail or personal recognizance as provided in this title. Whenever a judge of a district court is available, the arrested person shall be brought before such a judge in preference to any other official authorized to issue a warrant.

Source: TT Code 1966 § 463; TT Code 1970, 12 TTC 67; TT Code 1980, 12 TTC 67.

Cross-reference: The statutory provisions the Executive and the President 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.

§ 218. Rights of persons arrested.

In any case of arrest, or arrest for examination, as provided in subsection (4) of section 211 of this chapter, it shall be unlawful to:

(1) deny to counsel, whether such counsel is retained by the arrested person or a member of his family or is a Public Defender not yet appointed by the Court, the right to see the arrested person once, at any time, for a reasonable period of time at the place of detention, and thereafter at reasonable intervals and for reasonable periods of time; or

(2) deny to the arrested person the right to see at reasonable intervals, and for reasonable periods of time at the place of his detention, counsel, or members of his family, or his employer, or a representative of his employer; or

(3) refuse or fail to make a reasonable effort to send a message by telephone, cable, wireless, messenger, or other expeditious means to any person mentioned in subsection (2) of this section, provided the arrested person so requests and such message can be sent without expense to the Government or the arrested person prepays any expense there may be to the Government; or

(4) fail either to release or charge such arrested person with a criminal offense within a reasonable time, which under no circumstances shall exceed 24 hours; or

(5) fail to either release the accused or to bring him before a court, judge, or judicial officer for a bail hearing within a reasonable time, which under no circumstances shall exceed 24 hours after his arrest, unless the location of the nearest court makes such appearance impossible. When the location of the court makes such appearance impossible, the municipal or community court judge for the area where the person was arrested shall be immediately notified by the arresting person or officer and shall set any conditions for the release of the person that the judge believes will protect the public and will insure the presence of the person when transportation to the nearest court becomes possible. The person arrested shall be transported to the nearest court without unnecessary delay.

(6) further, it shall be unlawful for those having custody of one arrested, before questioning him about his participation in any crime, to fail to inform him of his rights and their obligations under subsections (1) through (5) of this section.

(7) In addition, any person arrested shall be advised as follows:

(a) that the individual has a right to remain silent;

(b) that the police will, if the individual so requests, endeavor to call counsel to the place of detention and allow the individual to confer with counsel there before he is questioned further, and allow him to have counsel present while he is questioned by the police if he so desires; and

(c) that the services of the Public Defender, when in the vicinity or of his local representative, are available for these purposes without charge.

Source: TT Code 1966 § 464; COM PL 4-5 § 1; TT Code 1970, 12 TTC 68; TT Code 1980, 12 TTC 68: PL 1-74 § 1.

Cross-reference: FSM Const., art. IV, § 3. The provisions of the Constitution are found in Part I of this code.

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.

Case annotations: Under FSM law, courts will rarely be required to look to the Constitution to determine the scope of any right a person in custody may have to be advised of rights before questioning because national statute establishes the rights of persons accused of national crimes. 12 F.S.M.C. §§ 218, 220. *FSM v. Edward*, 3 FSM R. 224, 230 (Pon. 1987).

One should be considered "arrested" within the meaning of 12 F.S.M.C. 218 when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime. *FSM v. Louis*, 15 FSM R. 348, 352 (Pon. 2007).

When the police officers only viewed the accused as a potential witness in the matter of another person, not as a suspect; when the officers dropped him back off at the funeral where they originally met him instead of taking him to the police station and the officers never substantially restricted or controlled the accused's freedom of movement; when the accused agreed to take the officers to fetch the handgun at Palikir, and willingly went with them in the vehicle; and when there is simply no evidence that the officers threatened, demanded, or compelled the accused in any manner, the accused was not under arrest during the car ride to and from Palikir. Accordingly, the officers were not required to inform the accused of his rights under 12 F.S.M.C. 218. *FSM v. Louis*, 15 FSM R. 348, 353 (Pon. 2007).

When an accused has expressed a wish to meet with counsel before further questioning or to have counsel present during questioning, questioning must cease at once, and any attempt by police to ignore or override the accused's wish, or to dissuade him from exercising his right, violates 12 F.S.M.C. 218, and evidence obtained as a result of that violation is not admissible against an accused. *FSM v. Suzuki*, 17 FSM R. 70, 73-74 (Chk. 2010).

It is unlawful for the government to fail either to release or charge an arrested person with a criminal offense within a reasonable time, which must under no circumstances exceed 24 hours. Thus, evidence, such as an accused's statement, obtained as a result of the defendant being detained for more than 24 hours without being charged or released must be excluded. *FSM v. Sam*, 15 FSM R. 491, 493 (Chk. 2008).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible, but the defendant is entitled to the suppression of any evidence or statements obtained from him after his first 24 hours of detention. *FSM v. Sato*, 16 FSM R. 26, 30 (Chk. 2008).

A claim of failure to inform an arrestee of his rights and denying him legal counsel and access to the courts is a statutory claim, not a constitutional one. An arrested person's rights are codified at 12 F.S.M.C. 218, which provides that, at the time of arrest, a police officer must inform the arrestee of her rights, including the right to counsel, prior to any questioning and that the officer must either release the arrestee or bring her before a judicial officer within twenty-four hours of the arrest. *Annes v. Primo*, 14 FSM R. 196, 204 (Pon. 2006).

In any case of arrest it is unlawful to fail either to release or charge an arrested person with a criminal offense within a reasonable time, which must under no circumstances exceed 24 hours. *FSM v. Menisio*, 14 FSM R. 316, 319 (Chk. 2006).

The remedy for an unlawful detention over 24 hours is not the dismissal of the information against the defendant or the suppression of all evidence and statements obtained from him. The only remedy in a criminal prosecution (as opposed to a civil suit) is suppression of any evidence obtained as a result of the illegal detention. *FSM v. Menisio*, 14 FSM R. 316, 319 (Chk. 2006).

Evidence obtained in violation of 12 F.S.M.C. 218 is rendered inadmissible by 12 F.S.M.C. 220. *FSM v. Menisio*, 14 FSM R. 316, 319 (Chk. 2006).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible. The defendant is entitled to the suppression of any evidence or statements obtained from him after the first 24 hours of his detention. *FSM v. Menisio*, 14 FSM R. 316, 320 (Chk. 2006).

One should be considered "arrested," for the purposes of the right to be advised of his rights to remain silent when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained persons may be, or may have been, involved in commission of a crime. *FSM v. Edward*, 3 FSM R. 224, 232 (Pon. 1987).

The actions of corrections officers in refusing to permit the plaintiff to use the phone to call an attorney or to contact one at his request; in refusing to allow the plaintiff to telephone his family or to contact them at his request and in refusing to permit his wife to speak to him when she called the jail; and in failing to insure that the plaintiff was brought before a judicial officer within 24 hours of his arrest constituted violations of 12 F.S.M.C. 218. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 483, 491 (Pon. 2005).

Corrections officers' failure to permit the use of restroom facilities while he was in jail and to provide him with food and water while he was in their custody was an inhumane condition of confinement constituting cruel and unusual punishment. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 483, 491 (Pon. 2005).

When it was the Pohnpei Department of Public Safety's stated policy not to deny an arrested person the right to see family members or counsel at reasonable times; not to unreasonably refuse to an arrested person the right to use the telephone to call family members or counsel; and to insure that within 24 hours of arrest the arrested person was either released or charged and taken before a qualified magistrate, but when the actual policy was that arrestees could not see family members; that arrestees could make phone calls to or meet with a lawyer, but could not receive phone calls from or make phone calls to family members, except in emergency situations such as funerals, the restrictions on contact with family members violated both the department regulations and 12 F.S.M.C. 213(2) and (3). The corrections officers' actions in denying the plaintiff the opportunity to contact family members; in refusing him permission to call a lawyer (except on the last day of his confinement); in failing to permit him to use the restroom; and in failing to provide him with food were products of decisions and action of persons with the final policy-making power concerning prisoners in that time and place. This constituted the actual policy at relevant times irrespective of stated policy and the failure to undertake any investigation of the plaintiff's complaints resulted in the ratification by the chief policy-maker of the challenged actions. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 483, 491-92 (Pon. 2005).

That the plaintiff was not informed at or before the time of his arrest why he was being arrested constituted a violation. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 483, 491 (Pon. 2005).

By not raising it until five years after relevant events, Pohnpei waived the cholera epidemic as a defense to its failure to insure that the plaintiff was taken before a judicial officer within 24 hours of arrest. But it would not make a difference even if the defense of the cholera epidemic were considered, when Pohnpei presented no showing of a causal link between the cholera epidemic and Warren's being held in jail for 63½ hours. Since jail staff was not reduced as a result of the epidemic, nor did any other epidemic-related factor prevent Warren from being taken before a magistrate within 24 hours of arrest. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 483, 492 (Pon. 2005).

§ 219. Effect of irregularities in issuance of warrant of arrest.

The proceedings before a court or an official authorized to issue a warrant of arrest shall not be invalidated, nor any finding, order, or sentence set aside, for any error or omission, technical or otherwise, occurring in such proceedings, unless in the opinion of the reviewing authority or a court hearing the case on appeal or otherwise it shall appear that the error or omission has prejudiced the accused.

Source: TT Code 1966 § 497; TT Code 1970, 12 TTC 69; TT Code 1980, 12 TTC 69.

§ 220. Effect of violation of title.

No violation of the provisions of this title shall in and of itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused; provided, that any person detained in custody in violation of any provision of this title may, upon motion by any person in his behalf, and after such notice as the court may order, be released from custody by the court named in the warrant, or before which he has been held to answer. The release shall be upon such terms as the court may deem law and justice require. The relief authorized by this section shall be in addition to, and shall not bar, all forms of relief to which the arrested person may be entitled by law.

Source: TT Code 1966 §§ 498, 499; TT Code 1970, 12 TTC 70; TT Code 1980, 12 TTC 70.

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.

Case annotations: Under FSM law, courts will rarely be required to look to Constitution to determine scope of any right a person in custody may have to be advised of rights before questioning because national statute establishes rights of persons accused of national crimes. 12 F.S.M.C. §§ 218, 220. *FSM v. Edward*, 3 FSM R. 224, 230 (Pon. 1987).

Statements made by a person being questioned by police without being advised of all his rights violates 12 F.S.M.C. 218. A statement so obtained is rendered inadmissible by 12 F.S.M.C. 220. *FSM v. George*, 6 FSM R. 626, 629 (Kos. 1994).

When a person's ability to think or reason has been diminished due to lack of rest by being held in custody for over 12 hours, his submission to questioning is not an act of voluntariness or consent even though he was advised of some of his rights just before questioning. Any statements made then were the products of physical exhaustion and a sense of oppression, and as a result of violation of the accused's rights under 12 F.S.M.C. 218. Under 12 F.S.M.C. 220, the statement, or evidence derived therefrom, is thus inadmissible against the accused. *FSM v. George*, 6 FSM R. 626, 629 (Kos. 1994).

CHAPTER 3
Searches and Seizures

SECTIONS

§ 301. Searches and seizures in connection with arrests.

(1) Every person making an arrest may take from the person arrested all offensive weapons which he may have about his person and may also search the person arrested and the premises where the arrest is made, so far as the premises are controlled by the person arrested, for the instruments, fruits, and evidences of the criminal offense for which the arrest is made, and, if found, seize them.

(2) Any property taken or seized shall be promptly delivered to a policeman or an official authorized to issue a warrant, to be disposed of according to law.

(3) No search warrant shall be required for the actions authorized by this section.

Source: TT Code 1966 § 460; TT Code 1970, 12 TTC 101; TT Code 1980, 12 TTC 101.

Cross-reference: FSM Const., art. IV, § 5. The provisions of the Constitution are found in Part I of this code.

Case annotations: A constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. *Ludwig v. FSM*, 2 FSM R. 27, 32 (App. 1985).

A police officer making an arrest has a limited right to conduct a search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Although the right to search is of limited scope, it plainly authorizes a reasonable search of the person being arrested. *Ludwig v. FSM*, 2 FSM R. 27, 34 (App. 1985).

The standard announced in the second sentence of FSM Const. art. IV § 5 for issuance of a warrant must be employed in determining the reasonableness of a search or seizure. Imposition of a standard of probable cause for issuance of a warrant in FSM Const. art. IV, § 5 implies that no search or seizure may be considered reasonable unless justified by probable cause. *Ludwig v. FSM*, 2 FSM R. 27, 32 (App. 1985).

§ 302. Forcing entrance to make arrest.

Whenever it is necessary to enter a building or ship to make an arrest and entrance is refused, any person making an arrest for a felony committed in his presence or a policeman making an arrest may

force an entrance. Before breaking any door or other barrier, he shall first demand entrance in a loud voice and state that he desires to execute a warrant of arrest or an oral order in place of a warrant, or, if it is a case in which arrest is lawful without a warrant, he must substantially state that information in a loud voice. Whenever practicable, this demand and statement shall be made in a language generally understood in the locality.

Source: TT Code 1966 § 461; TT Code 1970, 12 TTC 102; TT Code 1980, 12 TTC 102.

§ 303. Authority to issue a search warrant.

The following officials are authorized to issue a search warrant:

(1) any court;

(2) any judge;

(3) the clerk of courts for a district subject to such limitations as the Chief Justice of the High Court may impose;

(4) any other person authorized in writing by the High Commissioner, provided a certified copy of such authorization is filed with the clerk of courts for the district in which he acts.

Source: TT Code 1966 § 446; TT Code 1970, 12 TTC 103; TT Code 1980, 12 TTC 103.

Cross-reference: FSM Const., art. IV, § 5. The provisions of the Constitution are found in Part I of this code.

§ 304. Property for which search warrant may be issued.

(1) Except where otherwise expressly authorized by law, search warrants shall be issued only to search for and seize the following:

(a) property the possession of which is prohibited by law; or

(b) property stolen or taken under false pretenses or embezzled or found and fraudulently appropriated; or

(c) forged instruments in writing, or counterfeit coin intended to be passed, or instruments or materials prepared for making them; or

(d) arms or munitions prepared for the purpose of insurrection or riot; or

(e) property necessary to be produced as evidence or otherwise on the trial of anyone accused of a criminal offense; or

(f) property designed or intended for use as, or which is, or has been used as, the means of committing a criminal offense.

(2) The term "property" as used herein includes documents, books, papers and any other tangible objects.

Source: TT Code 1966 § 477; TT Code 1970, 12 TTC 104; TT Code 1980, 12 TTC 104.

Cross-reference: FSM Const., art. IV, § 5. The provisions of the Constitution are found in Part I of this code.

§ 305. Procedure for issuance of search warrants.

(1) Anyone desiring the issuance of a search warrant shall personally appear and make application therefor under oath, within the district where the property sought is alleged to be, before an official authorized to issue a warrant.

(2) The application shall set forth the grounds for issuing the warrant and may be supported by statements of others made under oath before the official.

(3) The application and statements may be either written or oral, but, whenever the official hearing the application deems practicable, they shall be reduced to writing, signed by the person or persons making them, and bear a record of the oath signed by the person who administered it.

(4) If the official hearing the application is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a search warrant identifying the property and naming or describing the person or place to be searched, except that any official other than a judge of a district court may refuse to act if he deems that the public interest does not require action before the matter can reasonably be presented to a judge of a district court.

Source: TT Code 1966 § 478; TT Code 1970, 12 TTC 105; TT Code 1980, 12 TTC 105.

Cross-reference: FSM Const., art. IV, § 5. The provisions of the Constitution are found in Part I of this code.

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.

§ 306. Contents of search warrant.

(1) A search warrant shall command a policeman to search forthwith the person or place named, for the property specified.

(2) The warrant shall direct that it be served in the daytime, except that, if the statements under oath in support of the application are positive that the property is on the person or in the place to be searched, the warrant may, at the discretion of the official issuing it, direct that it be served at any time.

(3) It shall designate some official authorized to issue a warrant, to whom it shall be returned, and, whenever consistent with the reasonable expeditious handling of the matter, the official so designated shall be a judge of a district court.

(4) It shall designate the time within which it may be executed and returned. This time shall not exceed ten days, plus whatever time the official issuing the warrant determines will be reasonably required for the policeman to travel to the point where the search is to be made and to return such warrant to the appropriate official.

Source: TT Code 1966 § 479; TT Code 1970, 12 TTC 106; TT Code 1980, 12 TTC 106.

Cross-reference: FSM Const., art. IV, § 5. The provisions of the Constitution are found in Part I of this code.

§ 307. Execution of search warrant and return with inventory.

(1) The policeman taking property under a search warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken.

(2) The policeman executing a search warrant shall promptly, upon completion of his search, endorse upon the warrant and sign a brief statement of the action he has taken pursuant to the warrant, showing the date on which the search was made, the person or place searched, the person to whom he

gave a copy of the warrant and a receipt for the property taken, or the place where he left the copy and receipt.

(3) He shall then deliver the warrant, accompanied by a written inventory of any property taken, and the property seized, to the official before whom the warrant is returnable.

(4) The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by a statement signed and sworn to by the policeman to the effect that the inventory is a true account of all property taken under the warrant.

(5) The official before whom a search warrant is returned shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

Source: TT Code 1966 § 480; TT Code 1970, 12 TTC 107; TT Code 1980, 12 TTC 107.

§ 308. Hearing upon return of search warrant.

(1) If the grounds on which the warrant was issued are controverted, the official to whom a search warrant is returned shall proceed to take testimony in relation thereto, and the testimony of each witness shall be reduced to writing and subscribed by the witness.

(2) If it appears that the property taken is not the same as that described in the warrant or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the official must cause the property to be restored to the person from whom it was taken; but if it appears that the property taken is the same as that described in the warrant and that there is probable cause for believing the existence of the grounds on which the warrant was issued, then the official shall order the same retained in the custody of the person seizing it or otherwise disposed of according to law.

Source: TT Code 1966 § 481; TT Code 1970, 12 TTC 108; TT Code 1980, 12 TTC 108.

§ 309. Filing of search warrant and accompanying papers.

The official to whom a search warrant is returned shall attach to the warrant the inventory and all other papers in connection therewith, including any order made as to the disposition of the property seized, and shall file such documents with the clerk of courts for the district in which the property was seized.

Source: TT Code 1966 § 482; TT Code 1970, 12 TTC 109; TT Code 1980, 12 TTC 109.

§ 310. Oral order in lieu of search warrant.

(1) A municipal court or any judge thereof may, if the public interest so requires, issue an oral order in place of a search warrant. Such oral order shall have the same force and effect within the territorial jurisdiction of that court as a search warrant and shall be returnable before the issuing court or judge.

(2) An oral order in place of a search warrant may be orally communicated to the person from whom or from whose premises the property is taken, and no inventory shall be required in such case, but the property seized shall be brought promptly before the court or judge issuing the order, and the policeman executing it may orally report his actions thereon.

(3) The court or judge shall, upon request, allow the applicant for the order and the person from whom or from whose premises the property was taken to view the property taken, and shall report all actions in the matter to the clerk of courts for the district as soon as possible.

(4) If the grounds on which the order was issued are controverted, the court or judge shall proceed to take testimony orally. Such testimony need not be reduced to writing.

Source: TT Code 1966 § 483; TT Code 1970, 12 TTC 110; TT Code 1980, 12 TTC 110.

§ 311. Entering building or ship to execute search warrant.

(1) If a building or ship or any part thereof is designated as the place to be searched, the policeman executing the warrant or oral order in place of a warrant may enter without demanding permission if he finds the building or ship open.

(2) If the building or ship be closed, he shall first demand entrance in a loud voice and state that he desires to execute a search warrant or an oral order in place thereof as the case may be. If the doors, gates, or other bars to the entrance be not immediately opened, he may force an entrance, by breaking them if necessary. Having entered, he may demand that any other part of the building or ship, or any closet, or other closed space within the place designated in the search warrant in which he has reason to believe the property is concealed, be opened for his inspection, and, if refused, he may break them. Whenever practicable these demands and statements shall be made in a language generally understood in the locality.

Source: TT Code 1966 § 484; TT Code 1970, 12 TTC 111; TT Code 1980, 12 TTC 111.

§ 312. Motion for return of property and to suppress evidence.

(1) A person aggrieved by an unlawful search and seizure may move the Trial Division of the High Court or a district court in the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained. The motion to suppress evidence may also be made in the court where the trial is to be held and in which the evidence is sought to be used.

(2) The motion shall be made before trial or hearing unless opportunity therefor did not exist before trial or hearing or the accused was not aware of the ground for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

(3) Upon such motion the court shall review any order previously made by the official before whom any search warrant, or oral order in place thereof, was returned, and shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial.

Source: TT Code 1966 § 485; TT Code 1970, 12 TTC 112; TT Code 1980, 12 TTC 112.

Case annotations: The FSM Supreme Court is vested, by statute, with authority to suppress, or exclude, evidence obtained by unlawful search and seizure. *FSM v. Tipen*, 1 FSM R.

§ 313. Sale of perishable property.

Seized property which is perishable may be ordered sold and the proceeds brought into court.

Source: TT Code 1966 § 490; TT Code 1970, 12 TTC 113; TT Code 1980, 12 TTC 113.

§ 314. Effect of irregularities in proceedings to issue search warrant.

The proceedings before a court or an official authorized to issue a search warrant shall not be invalidated, nor any finding, order, or sentence set aside for any error or omission, technical or otherwise, occurring in such proceedings, unless in the opinion of the reviewing authority or a court hearing the case on appeal or otherwise it shall appear that the error or omission has prejudiced the accused.

Source: TT Code 1966 § 497; TT Code 1970, 12 TTC 114; TT Code 1980, 12 TTC 114.

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

CHAPTER 4
Rights of Defendants

SECTIONS

§ 401. Rights of defendants enumerated.

Every defendant in a criminal case before a court of the Trust Territory shall be entitled:

(1) to have in advance of trial a copy of the charge upon which he is to be tried;

(2) to consult counsel before the trial and to have an attorney at law or other representative of his own choosing defend him at the trial;

(3) to apply to the court for further time to prepare his defense, which the court shall grant if it is satisfied that the defendant will otherwise be substantially prejudiced in his defense;

(4) to bring with him to the trial such material witnesses as he may desire or to have them summoned by the court at his request;

(5) to give evidence on his own behalf at his own request at the trial, although he may not be compelled to do so;

(6) to have proceedings interpreted for his benefit when he is unable to understand them otherwise; and

(7) to request the appointment of an assessor in trials before the Trial Division of the High Court in the event that one has not been appointed by the Trial Judge under the provisions of section 514 of title 5 of this code.

Source: TT Code 1966 § 187; TT Code 1970, 12 TTC 151; TT Code 1980, 12 TTC 151.

Cross-reference: FSM Const., art. IV, §§ 5 and 6, along with accompanying case annotations. The provisions of the Constitution are found in Part I of this code. See also Bill of Rights in chapter 1 of title 1 of this code.

Title 5 of this code on Judiciary of the Trust Territory of the Pacific Islands (TTPI) was repealed in its entirety by PL 5-135 § 7.

CHAPTER 5
Preliminary Matters

SECTIONS

§ 501. Preliminary hearing—Duties of official.

When an arrested person is brought before an official authorized to issue a warrant but such official is not competent to try the arrested person for the offense charged, the official shall:

(1) inform the arrested person of the charge or charges;

(2) inform the arrested person of his right to retain counsel and of his right to be released on bail as provided by law, and allow him reasonable time and opportunity to consult counsel, if desired;

(3) inform the arrested person of his right to have a preliminary examination, and of his right to waive the examination and the consequences of such waiver;

(4) inform the arrested person that he is not required to make a statement and that any statement that he does make may be used against him; and

(5) fix the amount of bail as provided by law if the arrested person so requests or alter the bail previously set if the official deems best.

Source: TT Code 1966 § 466(a); TT Code 1970, 12 TTC 202; TT Code 1980, 12 TTC 202.

§ 502. Preliminary hearing—Plea not to be taken.

The arrested person shall not be called upon to plead at the preliminary hearing.

Source: TT Code 1966 § 466(b); TT Code 1970, 12 TTC 203; TT Code 1980, 12 TTC 203.

Case annotations:

Pleas

The trial judge did not actively participate in plea negotiations where he did nothing other than judicially review and comment upon a proposed plea agreement prepared solely by counsel an parties and then voluntarily submitted by counsel to the court. *FSM v. Skilling*, 1 FSM R. 464, 478-79 (Kos. 1984).

A trial judge cannot be said to have negotiated with the parties concerning a proposed plea where he did not in any way suggest that the defendant plead guilty, made no efforts to encourage either party to enter into a plea agreement or to pursue further negotiations, offered no promise to accept any agreement ultimately arrived at, nor was present at any plea agreement negotiations. *FSM v. Skilling*, 1 FSM R. 464, 479 (Kos. 1984).

The plea bargaining process contemplates that plea agreements will be submitted to the trial judge for acceptance or rejection. When counsel place documents before a court either voluntarily or as part of standard court procedures under circumstances where the court is normally expected to comment judicially on the documents, the court's

response may not customarily be used as a basis for judicial disqualification. *FSM v. Skilling*, 1 FSM R. 464, 480-81 (Kos. 1984).

Submission of a proposed plea agreement to the court is intended to elicit from the court some indication of an acceptable sanction, assuming that the defendant will admit guilt. The court's statement as to an acceptable penalty does not denote its belief of defendant's guilt. *FSM v. Skilling*, 1 FSM R. 464, 482 (Kos. 1984).

The existence of plea negotiations says little to the court about defendant's actual guilt. *FSM v. Skilling*, 1 FSM R. 464, 483 (Kos. 1984).

A defendant's violation of his plea agreement after the agreement was filed with, and accepted by, the court, but before sentencing by the court, may serve as the basis for court punishment of the defendant. Based upon that violation, the court may accept the defendant's plea of guilty to the crime, although the plea agreement provides for the court to defer acceptance of the plea. *FSM v. Dores*, 1 FSM R. 580, 584 (Pon. 1984).

FSM Criminal Rule 11(e)(1)(C) calls for implementation of the terms of a plea agreement by the court if the court accepts the agreement. When the court accepts, the defendant, the prosecution and the court are all bound to carry out the terms of the plea agreement. The defendant is entitled to the benefit of the bargain reflected in the plea agreement and the government is likewise entitled to enforce the defendant's promises. *FSM v. Dores*, 1 FSM R. 582, 587 (Pon. 1984).

Considerations of fairness and mutuality, as well as sound policy, require that a defendant who enters into a plea agreement be subject to punishment when he violates the terms of his agreement. *FSM v. Dores*, 1 FSM R. 582, 588 (Pon. 1984).

There are sound reasons why prosecutors should retain discretion over whether to submit a plea agreement to a court based upon information obtained by the prosecution subsequent to execution of a written plea agreement but before presentation of that agreement to the court. *FSM v. Ocean Pearl*, 3 FSM R. 87, 91 (Pon. 1987).

A plea agreement calling for dismissal or reduction of charges pending in criminal litigation is contingent upon court approval. Until such approval, neither party is bound by the agreement and neither party can enforce it against the other. *FSM v. Ocean Pearl*, 3 FSM R. 87, 92 (Pon. 1987).

A plea agreement is not fixed until the court has acted upon it in all particulars and has fixed all conditions and explained them to the defendant. *Dores v. FSM*, 3 FSM R. 155, 158 (App. 1987).

The defendant may withdraw from a plea agreement at any time prior to the court's action on every element on the agreement. *Dores v. FSM*, 3 FSM R. 155, 158 (App. 1987).

A duty imposed on the trial court by Rule 11(e)(5) of the FSM Rules of Criminal Procedure to protect the defendant by assuring that there is a factual basis for the plea, may be breached only if the trial court should "enter a judgment" without finding a factual basis. *In re Main*, 4 FSM R. 255, 259 (App. 1990).

§ 503. Pre-trial procedure.

(1) If the arrested person does not waive preliminary examination, the official shall hear the evidence within a reasonable time.

(2) A reasonable continuance shall be granted at the request of the arrested person or the prosecution to permit preparation of evidence. The arrested person has the right to be released on bail as provided by law during the period of a continuance.

(3) The arrested person may cross-examine witnesses against him and may introduce evidence in his own behalf.

(4) If the arrested person waives preliminary examination, or if from the evidence it appears to the official that there is probable cause to believe that a criminal offense has been committed and that the arrested person committed it, the official shall forthwith:

(a) hold the arrested person to answer in a court competent to try him for the offense charged;

(b) fix, continue, or alter the bail as provided by law; and

(c) if bail is not provided, or a personal recognizance accepted, commit him to jail to await trial.

(5) If during the preliminary examination it appears to the official that the warrant of arrest, complaint or other statement of the charge or charges does not properly name or does not properly set forth the nature of the offense for which he was arrested or that although not guilty of the offense specified there is probable cause to believe he has committed some other offense, the official shall not discharge such person but shall forthwith hold him to answer for the offense shown by the evidence.

(6) If the arrested person does not waive preliminary examination and from the evidence it does not appear to the official that there is probable cause to believe that a criminal offense has been committed and that the arrested person committed it, the official shall discharge him.

Source: TT Code 1966 § 466(c); TT Code 1970, 12 TTC 204; TT Code 1980, 12 TTC 204.

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.

Editor's note: The words, "or does not properly set forth the nature of the offense for which he was arrested" were contained in the 1966 edition of the Trust Territory Code but were deleted from the 1970 and 1980 edition.

§ 504. Disposition of the record.

After concluding the proceedings, the official shall transmit forthwith to the clerk of courts for the district all papers in the proceedings and any bail taken by him; provided, that when a person has been held to answer in a community court, the papers and any bail taken shall be transmitted to the clerk of the community court.

Source: TT Code 1966 § 466(d); TT Code 1970, 12 TTC 205; TT Code 1980, 12 TTC 205.

§ 505. Preliminary examination upon request of person released on bail or personal recognizance.

If it appears it will not be practicable to bring an arrested person promptly before a court as indicated in subsection (2) of section 217 of this chapter, and he has been released on bail or personal recognizance, he may apply to a judge of a district court, if one is available, otherwise to any official authorized to issue a warrant, and request a preliminary examination. Thereupon the judge or official shall set a time and place for preliminary examination, give the complainant and accused reasonable notice thereof, and proceed as outlined in sections 501 through 504 of this title.

Source: TT Code 1966 § 467; TT Code 1970, 12 TTC 206; TT Code 1980, 12 TTC 206.

Editor's note: The 1966 edition of the Trust Territory Code refers, in the final sentence of this section, to section 466 of that edition. Section 466 is codified herein as section 501 through 504 of this title. The 1970 and 1980 editions of the code erroneously referred to "sections 351-354 of this subchapter."

§ 506. National offense—Detention of accused.

For any offense against the National Government of the Federated States of Micronesia, or for the commission of any major crime, a Justice of the Supreme Court or any judicial officer of any State where the accused may be found may cause the accused to be arrested and confined or released for trial before the Supreme Court.

Source: PL 2-22 § 1.

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.

§ 507. National offense—Definition.

"Judicial officer of any State" means a judge of a district court of the Trust Territory, a judge or justice of any court of record established pursuant to the charter of any district within the Federated States of Micronesia, or a judge or justice of any court of record of a State of the Federated States of Micronesia; or the clerk of court of any State only for the purpose of setting bail from a bail system established by the Supreme Court.

Source: PL 2-22 § 2.

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.

CHAPTER 6
Bail

SECTIONS

§ 601. Right to bail.

(1) Any person arrested for a criminal offense, other than murder in the first degree, shall be entitled as a matter of right to be released on bail before conviction; provided, however, that no person shall be so released while he is so under the influence of intoxicating liquor or drugs that there is a reasonable ground to believe he will be offensive to the general public.

(2) A person arrested for murder in the first degree may be released on bail by any judge who is authorized to be assigned by the Chief Justice to sit in the Appellate Division of the High Court; provided, that the district attorney shall be given reasonable opportunity to be heard before any application for bail is granted.

Source: TT Code 1966 § 468; TT Code 1970, 12 TTC 251; TT Code 1980, 12 TTC 251.

Case annotations: The object in determining conditions of pretrial release is to assure the presence of the defendant at trial so that justice may be done while keeping in mind the presumption of innocence and permitting the defendant the maximum amount of pretrial freedom. The FSM Supreme Court should attempt to weigh the various forces likely to motivate a defendant to stay and face trial against those forces likely to impel him to leave. FSM Crim. R. 46(a)(2). *FSM v. Jonas (I)*, 231a, 233 (Pon. 1982).

Where the highest prior bail was $1,500.00 imposition of bail in the amount of $10,000.00, on the basis of dispute and unsubstantiated government suggestions that the defendant has cash and assets available to him, would be unwarranted. *FSM v. Jonas (I)*, 1 FSM R. 231a, 236 (Pon. 1982).

Relief from improperly set or denied bail must be speedy to be effective. *In re Iriarte (II)*, 1 FSM R. 255, 265 (Pon. 1983).

The bearer of the title of Nahniken, by virtue of his position. s deep ties to Ponapean society, may be expected to appear and stand trail if accused of crime and to submit to sentence if found guilty. Bail, therefore should be granted. *In re Iriarte (II)*, 1 FSM R. 255, 265 (Pon. 1983).

A nahniken, just as any ordinary citizen, is entitled to bail and due process. *In re Iriarte (II)*, 1 FSM R. 255, 272 (Pon. 1983).

The FSM Supreme Court must approach the question of whether bail is "excessive" with a recognition that the defendant is presumed innocent, is to be treated with dignity, and needs a reasonable opportunity to prepare his defense. At the same time the judicial must keep in mind his responsibility to the public to assure that the defendant will be made to respond to the charges leveled at him. *FSM v. Etpison*, 1 FSM R. 370, 372 (Pon. 1983).

Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. *In re Extradition of Jano*, 6 FSM R. 62, 63 (App. 1993).

In an international extradition case, bail can be granted only if "special circumstances" are shown. Neither risk of flight nor the availability of a suitable custodian are primary considerations. Rather the primary consideration is the ability of the government to surrender the accused to the requesting government. *In re Extradition of Jano*, 6 FSM R. 62, 64 (App. 1993).

§ 602. Who may fix bail; Allowing bail after conviction.

(1) In the case of any person arrested for a criminal offense, other than murder in the first degree, any court or any official authorized to issue a warrant may fix the bail prior to conviction. This may be done at the time of issuing the warrant and endorsed on the warrant or may be done at any time prior to conviction.

(2) After conviction bail may be allowed only if a stay of execution of the sentence has been granted and only in the exercise of discretion by a court authorized to order a stay or by a judge thereof.

Source: TT Code 1966 § 469; TT Code 1970, 12 TTC 252; TT Code 1980, 12 TTC 252.

§ 603. Notice by police of requests to have bail fixed.

When any arrested person for whom bail has not been fixed, or to whom bail has been once denied in the case of murder in the first degree, notifies any policeman or jail attendant that he desires to give bail, an official authorized to fix bail shall be promptly notified by the police authorities. The arrested person shall be brought before the official for this purpose if the official so requests.

Source: TT Code 1966 § 470; TT Code 1970, 12 TTC 253; TT Code 1980, 12 TTC 253.

§ 604. Amount of bail.

The amount of bail shall be such as, in the judgment of the court or official fixing it, will insure the presence of the accused in the future. The determination of the court or official should take into account the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the accused to give bail, and the character of the accused.

Source: TT Code 1966 § 471; TT Code 1970, 12 TTC 254; TT Code 1980, 12 TTC 254.

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

§ 605. Form and disposition of bail; Sufficiency of sureties.

(1) Cash or bonds or notes of the United States may be accepted as bail.

(2) If a bail bond is given, one or more sureties may be required. A person of good standing in the community who is in a position of moral or customary authority over the accused, such as his father, the head of his extended family group, or the chief of his lineage or clan, may be accepted as surety without the disclosure of property by way of justification, if the official taking bail or determining the sufficiency of the surety considers that such surety will reasonably guarantee the appearance of the accused. Otherwise, no surety or sureties are to be accepted unless their combined net worth over and

above all just debts and obligations is not less than the amount of the bond. Any surety may be required to furnish proof of his sufficiency, either by his own oath or otherwise.

(3) If the official to whom the bail is tendered refuses to accept the surety or sureties offered, the question of their sufficiency shall, at the request of the accused, be referred promptly to a judge for determination. The determination of the judge shall be final.

(4) Any bail accepted shall be promptly transmitted to the clerk of courts for the district; provided, that when a person has been released to appear in accordance with the orders of a community court, the bail shall be transmitted to the clerk of the community court.

Source: TT Code 1966 § 472; TT Code 1970, 12 TTC 255; TT Code 1980, 12 TTC 255.

§ 606. Modification of bail.

The court before which a criminal case is pending may, for cause shown, either increase or decrease the bail or require an additional surety or sureties or allow substitution of sureties. If increased bail or an additional surety or sureties is required, the accused may be committed to custody unless he gives bail in the increased amount or furnishes additional surety or sureties as required.

Source: TT Code 1966 § 473; TT Code 1970, 12 TTC 256; TT Code 1980, 12 TTC 256.

§ 607. Exoneration and release of bail.

When the condition for which the bail was given has been satisfied, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bail bond or by a timely surrender of the accused into custody.

Source: TT Code 1966 § 473; TT Code 1970, 12 TTC 257; TT Code 1980, 12 TTC 257.

§ 608. Personal recognizance.

In the case of an arrest for any criminal offense, the lawful punishment for which does not exceed a fine of $100, or six months imprisonment, or both, any court or official authorized to fix bail may, in the exercise of discretion, order that the arrested person be released on his personal recognizance in such sum as the court or official may fix, without security, into the custody of a responsible member of the community, provided the arrested person has a usual place of abode or of business or employment in the Trust Territory.

Source: TT Code 1966 § 475; TT Code 1970, 12 TTC 258; TT Code 1980, 12 TTC 258.

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

CHAPTER 7
Witnesses

SECTIONS

§ 701. Witness summons.

A witness summons in a proceeding before an official authorized to issue a warrant, who is not a court, may be issued by such an official. Failure by any person without adequate excuse to obey such a witness summons may be deemed a contempt of the district court within whose territorial jurisdiction it was issued.

Source: TT Code 1966 § 487; TT Code 1970, 12 TTC 301; TT Code 1980, 12 TTC 301.

§ 702. Detention and release of witness.

(1) Whenever the court has reason to believe that a witness may be intimidated or become unavailable at the trial, he may be detained as a material witness; provided, that no such person shall be detained for a period of more than 21 days without a further order being made. A report of such detention shall be made forthwith in the manner provided for the transmission of the record.

(2) A person detained as a material witness shall be entitled to be released as a matter of right upon giving bail for his appearance as witness in an amount fixed by the court ordering the detention or any higher court. The court ordering the detention, or any higher court, may order the witness' release without bail if he has been detained for an unreasonable length of time and may modify at any time the requirement as to bail.

Source: TT Code 1966 § 488; TT Code 1970, 12 TTC 302; TT Code 1980, 12 TTC 302.

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

CHAPTER 8
Dismissal

SECTIONS

§ 801. Dismissal by Attorney General or district attorney.

The Attorney General or the district attorney may by leave of court file a dismissal of an information, or complaint, or citation and the prosecution shall thereupon terminate. Such a dismissal may not, however, be filed during the trial without the consent of the accused.

Source: TT Code 1966 § 491; TT Code 1970, 12 TTC 351; TT Code 1980, 12 TTC 351.

§ 802. Dismissal by court.

If there is unnecessary delay in bringing an accused to trial, the court may dismiss an information, or complaint, or citation.

Source: TT Code 1966 § 492; TT Code 1970, 12 TTC 352; TT Code 1980, 12 TTC 352.

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

Case annotations: Four factors 1) length of delay, 2) the reason for the delay, 3) the defendant's assertion of his right, and 4) prejudice to the defendant are balanced when analyzing the FSM Constitution's speedy trial right and to determine speedy trial violations; and they are also used to analyze whether a Rule 48(b) dismissal for unnecessary delay in prosecution is warranted. The court will also use the same four-factor balancing test to determine whether dismissal is appropriate under 12 F.S.M.C. 802 since that statutory right is embodied in Rule 48(b). *FSM v. Kansou*, 15 FSM R. 180, 183 (Chk. 2007).

A lengthy delay is a triggering mechanism to determine if further analysis is required to determine if a defendant's right to a speedy trial has been violated. If the delay has not been so lengthy as to be presumptively prejudicial, no further analysis is needed. *FSM v. Kansou*, 15 FSM R. 180, 183 (Chk. 2007).

A longer delay is tolerable for a complex conspiracy, than for an ordinary crime. *FSM v. Kansou*, 15 FSM R. 180, 184 (Chk. 2007).

The provisions in the FSM Constitution's Declaration of Rights are traceable to the United States Constitution's Bill of Rights, and when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, United States authority may be consulted to understand its meaning. The FSM speedy trial right is patterned after the United States Constitution. FSM v. Kansou, 15 FSM R. 180, 185 n.1 (Chk. 2007).

A defendant may waive his right to a speedy trial. He effects a waiver, in respect of a particular delay, when he requests it, consents to it, enters a plea of guilty, makes certain dilatory pleas or motions, or when the delay is otherwise attributable to the defendant. *FSM v. Kansou*, 15 FSM R. 180, 185 (Chk. 2007).

Although non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. *FSM v. Kansou*, 15 FSM R. 180, 185 (Chk. 2007).

The court can disregard the delay during the 2005 discovery when the defendant's first assertion of his speedy trial right was not until he filed a motion to dismiss on that ground on November 6, 2006, since he had already waived

any claim based on that right by consenting to the March 13, 2006 trial date. A defendant's consent to a trial date that may, or is, beyond the time when a trial would have to be held under the defendant's speedy trial right, constitutes the defendant's waiver of his right to a speedy trial. Since an express waiver of an accused's speedy trial right is not required if defense counsel agrees to a trial date beyond the speedy trial limit, the defendant thus waived any speedy trial claim for the delay before the March 13, 2006 trial date when his attorney consented to that trial date. *FSM v. Kansou*, 15 FSM R. 180, 185-86 (Chk. 2007).

Delay caused or requested by a defendant suspends his speedy trial right, or is considered his waiver of that right, until that delay is over, even when that delay is justified. The movant's speedy trial right was thus suspended or waived by his successful (and justified) motion to disqualify the FSM Department of Justice. *FSM v. Kansou*, 15 FSM R. 180, 186 (Chk. 2007).

When a defendant raises an issue before trial which makes the original trial date impractical, the reasonable period of delay caused thereby is attributable to the defendant. *FSM v. Kansou*, 15 FSM R. 180, 186 (Chk. 2007).

A defendant is free to take whatever actions he feels are necessary to protect his rights prior to trial. He may not, however, use the delaying consequences of those actions as a basis for claiming that his trial was improperly delayed. *FSM v. Kansou*, 15 FSM R. 180, 186 (Chk. 2007).

Delay caused by a defendant's successful motion to disqualify the FSM Department of Justice is attributable to him, if not wholly, at least in large part, and delay caused by his successful motion to disqualify the judge is also attributable to him. *FSM v. Kansou*, 15 FSM R. 180, 186 (Chk. 2007).

Although judicial economy considerations cannot be elevated to where they impair a defendant's constitutional rights, they are relevant. *FSM v. Kansou*, 15 FSM R. 180, 187 n.3 (Chk. 2007).

When co-defendants are charged together and will be tried together, any delay attributed to one co-defendant is attributed to all of them. *FSM v. Kansou*, 15 FSM R. 180, 187 (Chk. 2007).

Delay due to a co-defendant's unavailability is not attributed to the government, and this includes the time a co-defendant was a fugitive. *FSM v. Kansou*, 15 FSM R. 180, 187 (Chk. 2007).

A single speedy trial "clock" governs in cases with multiple defendants. The "clock" starts to run with the most recently added defendant and any delay attributable to any one defendant is charged against the single clock, thus making the delay applicable to all defendants. No other rule is practical. If every co-defendant had a different "clock," the advantages of a joint trial would be destroyed and multiple trials, with all their disadvantages, would have to be held in sequence. *FSM v. Kansou*, 15 FSM R. 180, 187-88 & n.5 (Chk. 2007).

A defendant remains free to move for a severance at any time during which his speedy trial clock has not begun to run because a codefendant has not been apprehended. *FSM v. Kansou*, 15 FSM R. 180, 188 (Chk. 2007).

When the movant's case has never been severed from his co-defendant's and the movant never sought a severance, the speedy trial "clock" therefore did not start to run until December 11, 2006, when the co-defendant made his initial appearance. *FSM v. Kansou*, 15 FSM R. 180, 188 (Chk. 2007).

CHAPTER 9
Insanity

SECTIONS

§ 901. Insanity at time of offense.

If it is ascertained by the court upon competent medical or other evidence that the accused at the time of committing the offense with which he is charged was so insane as not to know the nature and quality of his act, the court shall record a finding of such fact and may make an order pursuant to section 1802 of title 6 of this code.

Source: TT Code 1966 § 493; TT Code 1970, 12 TTC 401; TT Code 1980, 12 TTC 401.

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

§ 902. Insanity at time of trial.

If the court ascertains that the accused is insane at the time of trial, the court shall adjourn the trial and order the accused to be detained as in section 901 of this chapter.

Source: TT Code 1966 § 494; TT Code 1970, 12 TTC 402; TT Code 1980, 12 TTC 402.

CHAPTER 10
Criminal Extradition
[REPEALED in its entirety by PL 5-22 § 1]

Editor's note: PL 5-22, section 1 repealed the former chapter 10, "Criminal Extradition," in its entirety. PL 5-22 also enacted new chapters 14 on Criminal Extradition and 15 on Criminal Extradition Procedures of this title in its place.

CHAPTER 11
Juveniles

SECTIONS

§ 1101. Adoption of flexible procedures by courts.

(1) In cases involving offenders under the age of 18 years, courts shall adopt a flexible procedure based on the accepted practices of juvenile courts of the United States, including insofar as possible the following measures:

(a) report by a welfare or probation officer in advance of trial;
(b) detention, where necessary, apart from adult offenders;
(c) hearing informally in closed session;
(d) interrogation of parents or guardians and release in their custody if appropriate.

(2) An offender 16 years of age or over may, however, be treated in all respects as an adult if in the opinion of the court his physical and mental maturity so justifies.

Source: TT Code 1966 § 495; TT Code 1970, 15 TTC 1; TT Code 1980, 15 TTC 1.

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

Case annotations:

Juvenile

The 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 Code makes no reference to charges against juveniles or to the Juvenile Code. *FSM v. Albert*, 1 FSM R. 14, 15 (Pon. 1981).

The section of the Juvenile Code mandating that courts adopt flexible procedures in juvenile cases remains in effect; neither the National Criminal Code nor any other provision of law enacted by the Congress is at odds with it. 12 F.S.M.C. 1101. *FSM v. Albert*, 1 FSM R. 14, 17 (Pon, 1981).

It is appropriate to proceed separately in cases involving multiple juvenile defendants. 12 F.S.M.C. 1101. *FSM v. Albert*, 1 FSM R. 14, 17 (Pon, 1981).

§ 1102. Delinquent child defined.

As used in this title, "delinquent child" includes any child:

(1) who violates any Trust Territory or district law, except that a child who violates any traffic law or regulation shall be designated as a "juvenile traffic offender" and shall not be designated as a delinquent unless it be so ordered by the court after hearing the evidence; or

(2) who does not subject himself to the reasonable control of his parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient; or

(3) who is a habitual truant from home or school; or

(4) who deports himself so as to injure or endanger the morals or health of himself or others.

Source: TT Code 1966 § 437; TT Code 1970, 15 TTC 2; TT Code 1980, 15 TTC 2.

§ 1103. Conduct of proceedings; Delinquency not a crime.

Proceedings against a person under 18 years of age as a delinquent child shall be conducted in accordance with the provisions of this chapter, and an adjudication that a person is a delinquent child shall not constitute a criminal conviction.

Source: TT Code 1966 § 432; TT Code 1970, 15 TTC 3; TT Code 1980, 15 TTC 3.

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.

§ 1104. Proceedings—Where brought.

Proceedings against a person as a delinquent child may be brought in the Trial Division of the High Court, or in the district or community court having jurisdiction over the place where the delinquency or any part of it occurred, except that if the acts charged may legally constitute murder or rape of which the person is not conclusively presumed to be incapable by law, the proceedings shall be brought only in the Trial Division of the High Court.

Source: TT Code 1966 § 432; TT Code 1970, 15 TTC 4; TT Code 1980, 15 TTC 4.

§ 1105. Confinement.

A person adjudged to be a delinquent child may be confined in such place, under such conditions, and for such period as the court deems the best interests of the child require, not exceeding the period for which he might have been confined if he were not treated as a juvenile offender under this chapter.

Source: TT Code 1966 § 432; TT Code 1970, 15 TTC 6; TT Code 1980, 15 TTC 6.

Editor's note: This provision was contained in a section on disabilities in the 1966 edition of the Trust Territory Code. The final portion of the text was rewritten, deleting a reference to disability by the editors of the 1970 edition of the TT Code, and is published here in this version.

§ 1106. Orders regarding persons encouraging, causing or contributing to delinquency; Appeals.

(1) In any juvenile delinquency proceeding, if it is found by the court that any person is encouraging, causing, or contributing to acts or conditions which result in an adjudication of the delinquency of a child, the court may require such person to be brought before the court and, after hearing, may order such person to do any specific thing which falls within the duty owed by such person to the child, or refrain from doing any specific act inconsistent with that duty, and, upon the failure of such person to comply with the order of the court, he may be proceeded against for criminal or civil contempt of court.

(2) An adjudication in juvenile delinquency proceedings and all orders in connection with such adjudication shall be subject to appeal as in civil actions, except that no filing fees shall be required.

Source: TT Code 1966 § 438; TT Code 1970, 15 TTC 5; TT Code 1980, 15 TTC 5.

§ 1107. Liability of parents for acts of delinquent child.

(1) A parent or guardian having custody of a child is charged with the control of such child and shall have the power to exercise parental control and authority over such child.

(2) In any case where a child is found delinquent and placed on probation, if the court finds at the hearing that the parent or guardian having custody of such child has failed or neglected to subject him to reasonable parental control and authority, and that such failure or neglect is the proximate cause of the act or acts of the child upon which the finding of delinquency is based, the court may require such parent to enter into a recognizance with sufficient surety, in an amount of not more than $100, conditioned upon the faithful discharge of the conditions of probation of such child.

(3) If the child thereafter commits a second act and is by reason thereof found delinquent, or violates the conditions of probation, and the court finds at the hearing that the failure or neglect of such parent to subject him to reasonable parental control and authority, or to faithfully discharge the conditions of probation of such child on the part of such parent is the proximate cause of the act or acts of the child upon which such second finding of delinquency is based, or upon which such child is found to have violated the conditions of his probation, the court may declare that all or a part of the recognizance forfeited and the amount of such forfeited recognizance shall be applied in payment of any damages; otherwise, the proceeds therefrom, or part remaining after the payment of damages as aforesaid, shall be paid into the district treasury.

Source: TT Code 1966 § 439; TT Code 1970, 15 TTC 51; TT Code 1980, 15 TTC 51.

Editor's note: The phrase "or guardian" does not appear in subsections (2) or (3) of this section in the 1966 edition of the Trust Territory Code. The phrase in subsection (2) was added in the 1970 edition of the TT Code, and the phrase in subsection (3) was added in the 1982 edition of this code.

CHAPTER 12
Joint Administration of Law Enforcement

SECTIONS

§ 1201. Definitions.

(1) "Law enforcement function" means any duty, responsibility, authority, or discretion in connection with enforcement of the criminal laws of the Federated States of Micronesia which, under the Constitution of the Federated States of Micronesia and National laws, is vested in the executive branch of the National Government.

(2) "National offense" means an offense defined by the National criminal laws of the Federated States of Micronesia or contained in other applicable National laws.

Source: PL 1-126 § 1; PL 12-39 § 1.

Editor's note: Subsections rearranged in alphabetical order in the 1982 edition of this code. The reference to "a major crime" in subsection 2 was removed by PL 12-39 § 1.

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

Case annotations: 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).

§ 1202. Joint administration of law enforcement functions.

The President of the Federated States of Micronesia may authorize appropriate State government officials to act on behalf of the National Government in performing the following law enforcement functions:

(1) detection and prevention of National offenses;

(2) arrest and detention of persons having committed or being charged with a National offense;

(3) investigation and prosecution of criminal cases involving the commission of a National offense;

(4) providing legal defense and assistance to persons being prosecuted for a National offense;

(5) incarceration of persons convicted of a National offense and under a sentence of imprisonment;

(6) granting of parole to persons convicted of a National offense and eligible under applicable laws for parole from a sentence of imprisonment;

(7) probation and parole supervision over persons serving a penal sentence following conviction of a National offense; and

(8) extradition and transfer of prisoners.

Source: PL 1-126 § 2; amended by PL 5-23 § 1.

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.

§ 1203. Joint administration agreements.

Joint administration of law enforcement functions pursuant to section 1202 of this chapter shall be undertaken only as provided for in a formal written agreement between the President and the State government with which joint administration of law enforcement functions is to be established. An agreement for joint administration of the law enforcement functions specified in section 1202 of this chapter shall clearly define policies and procedures under which State government officials may act on behalf of the National Government. Each agreement for joint administration of law enforcement functions between the National Government and a State government shall be signed by the President and shall expressly reserve to the President final legal and administrative authority for the proper and lawful performance of National law enforcement functions.

Source: PL 1-126 § 3.

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

§ 1204. Regulations.

The Secretary of Justice, after consultation with each State's Attorney General, shall issue written regulations implementing the provisions of this chapter and the joint law enforcement agreements referred to in section 1203 of this chapter. Such regulations shall be issued pursuant to the provisions of subsection 102(1) of title 17 of this code.

Source: PL 12-39 § 2.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions the President and the Executive are found in title 2 of this code. Chapter 1 of title 17 of this code is on Administrative Procedures.

Editor's note: Section 3 of PL 12-39 states: "The regulations required under section 2 of this act shall be issued within 120 days of this act becoming law."

CHAPTER 13
Justice Improvement Commission

SECTIONS

§ 1301. Findings and purpose.

The Congress finds and declares that:

(1) crime and delinquency are complex social phenomena requiring the attention and efforts of the criminal justice system, territorial and district governments, and private citizens alike;

(2) the establishment of appropriate goals, objectives, and standards for the reduction of crime and delinquency and for the administration of justice must be a priority concern;

(3) the functions of the criminal justice system must be coordinated more efficiently and effectively;

(4) the full and effective use of resources affecting territorial and district criminal justice systems requires the complete cooperation of territorial and district government agencies; and

(5) training, research, evaluation, technical assistance, and public education activities must be encouraged and focused on the improvement of the criminal justice system and the generation of new methods for the prevention and reduction of crime and delinquency; and

(6) for the foregoing reasons and in order for the Trust Territory to continue to be eligible to receive funding from the Law Enforcement Assistance Administration of the United States Justice Department (hereinafter referred to as "LEAA"), it is necessary to create a planning agency to address the problems and needs of the criminal and juvenile justice systems of the Trust Territory.

Source: PL IC-5 § 1.

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

§ 1302. Justice Improvement Commission.

There is hereby created within the executive branch of the Government of the Trust Territory of the Pacific Islands the Justice Improvement Commission (hereinafter referred to as the "Commission") which shall be under the jurisdiction of the High Commissioner and shall have the following powers and duties:

(1) serve as the territorial planning agency to address the needs of the criminal and juvenile justice systems of the Trust Territory;

(2) advise and assist the High Commissioner in developing policies, plans, programs, and budgets for improving the coordination, administration, and effectiveness of the criminal justice system in the territory;

(3) prepare a comprehensive criminal justice plan on behalf of the High Commissioner. Such plan, and any substantial modifications thereto, shall be submitted to the Congress of the Federated States of Micronesia for its advisory review of the goals, priorities, and policies contained therein. Such plan, to be periodically updated, shall be based on an analysis of the criminal justice needs and problems and shall be in conformance with territorial and other appropriate regulations;

(4) establish goals, priorities, and standards for the reduction of crime and the improvement of the administration of justice in the territory;

(5) recommend legislation to the High Commissioner and the Congress in the criminal justice field;

(6) encourage local comprehensive criminal justice planning efforts;

(7) monitor and evaluate programs and projects, funded in whole or in part by the Territory Government, aimed at reducing crime and delinquency and improving the administration of justice;

(8) cooperate with and render technical assistance to territorial agencies and units of general local government and public or private agencies relating to the criminal justice system;

(9) apply for, contract for, receive, and expend for its purposes any appropriations or grants from the Trust Territory, the Federal Government, or any other source, public or private, in accordance with the appropriations process;

(10) have the authority to collect from the public records of any Trust Territory local governmental entity information, data, reports, statistics, or such other material which is necessary to carry out its duties and functions; and

(11) perform such other duties as may be necessary to carry out the purposes of this chapter.

Source: PL IC-5 § 2.

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

§ 1303. Supervisory board created—Membership; Compensation.

(1) The supervisory board of the Justice Improvement Commission shall consist of 15 members appointed by the High Commissioner in consultation with the presiding officers of the Interim Congress of the Federated States of Micronesia, or its successor. The composition of the supervisory board shall be representative of the composition of the juvenile and criminal justice systems of the Trust Territory. The supervisory board shall include, but not be limited to, members selected from the following groups: police agencies, the judiciary, prosecution and defense counsels, adult correctional and rehabilitative agencies, juvenile justice agencies, territorial and district Government, public and private agencies related to the criminal justice system, and the private citizenry.

(2) Each member shall serve for a four-year term and may be reappointed for no more than one additional consecutive term, unless LEAA regulations provide that a member's term must be extended by virtue of the nature of his membership on the supervisory board.

(3) Should any member cease to be an officer or employee of the unit or agency he is appointed to represent, his membership on the supervisory board shall terminate immediately and a new member shall be appointed in the same manner as his predecessor to fill the unexpired term. Other vacancies occurring, except those by the expiration of a term, shall be filled for the balance of the unexpired term in the same manner as the original appointment within 30 days of the vacancy.

(4) The supervisory board shall elect a chairman from among the members. A vice chairman shall be selected by the supervisory board from among its members and shall serve as chairman in the event of the chairman's absence.

(5) A member of the supervisory board is not entitled to a salary for duties performed as a member of the supervisory board. Each member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official supervisory board duties.

Source: PL IC-5 § 3.

Editor's note: The term "group" in the final sentence of subsection (1) has been changed to "groups" in the 1982 edition of this code.

§ 1304. Supervisory board meetings; Quorum; Committee; Bylaws.

(1) The supervisory board shall meet at least once a year and at such other times designated by the chairman.

(2) Eight members shall constitute a quorum.

(3) The supervisory board may establish committees as it deems advisable.

(4) All meetings of the supervisory board, or any committee thereof, at which public business is discussed or formal action is taken shall be announced and open to the public.

(5) The supervisory board and any other committee or organization, for the purposes of this chapter, shall provide for public access to all records relating to its functions under this chapter, except such records as are required to be kept confidential by any other provisions of territorial or local law or by the requirements of any of the Commission's funding sources.

Source: PL IC-5 § 4.

§ 1305. Executive administrator; Commission staff.

(1) The supervisory board shall appoint, with the approval of the High Commissioner, an executive administrator for the Commission, who shall serve at the pleasure of the High Commissioner and who shall be paid such compensation as the High Commissioner may determine. The executive administrator may employ additional personnel to carry out the purposes of this chapter.

(2) Commission staff shall be employed in accordance with Trust Territory personnel regulations and shall be subject to its provisions.

Source: PL IC-5 § 5.

§ 1306. Reports.

(1) The Commission shall submit an annual report to the High Commissioner and to the Congress concerning its work during the preceding calendar year.

(2) Other studies, evaluations, crime data analyses, and reports may be submitted to the High Commissioner or the Congress as deemed appropriate or as requested.

Source: PL IC-5 § 6.

§ 1307. Termination.

The High Commissioner shall:

(1) conduct periodic reviews of the Commission's overall performance, including but not limited to, a study of its effectiveness in accomplishing its general purposes; and

(2) make public and submit to the Congress a report on the findings of the review conducted pursuant to subsection (1) of this section. Such report shall include a recommendation that the authority of this chapter be extended, that the commission be reorganized, or that the authority of this chapter be allowed to lapse.

Source: PL IC-5 § 8.

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

CHAPTER 14
Criminal Extradition

SECTIONS

§ 1401. Scope and limitation of chapter.

The provisions of this chapter relating to the surrender of persons who have committed crimes in foreign countries shall continue in force only during the existence of any extradition agreement with such foreign government and shall be read in light of and consistent with the extradition agreement pursuant to which a request for extradition is made.

Source: PL 5-22 § 2.

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 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 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/.

Editor's note: PL 5-22 was signed into law by the President on November 6, 1987.

Case annotations: Extradition is neither a criminal nor a civil proceeding. *In re Extradition of Jano*, 6 FSM R. 12, 13 (App. 1993).

No Micronesian custom or tradition is applicable to extradition. *In re Extradition of Jano*, 6 FSM R. 93, 97 (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).

Extradition is founded upon treaties between sovereign nations involving mutual agreements and commitments. There is no counterpart in Micronesia custom and tradition that is applicable. *In re Extradition of Jano*, 6 FSM R. 23, 25 (App. 1993).

Certification of extraditability is an adversarial proceeding. An advocate in an adversarial proceeding is expected to be zealous. *In re Extradition of Jano*, 6 FSM R. 26, 27 (App. 1993).

Extradition is not a criminal action although it involves a criminal accusation. The specific provisions of the international extradition statute apply rather than the general provisions of Title 12, chapter 2. *In re Extradition of Jano*, 6 FSM R. 62, 63 (App. 1993).

Where a court has dismissed a criminal case for lack of jurisdiction over the crimes for which the defendant was charged, the dismissal does not act as a discharge so as to preclude extradition on the charge. "Discharge" requires both personal and subject matter jurisdiction. *In re Extradition of Jano*, 6 FSM R. 93, 107-08 (App. 1993).

Where the extradition agreement specifically requires that the requesting government's statute of limitations be used to determine extraditability, a general provision cannot be read to apply the statute of limitations of the requested government. *In re Extradition of Jano*, 6 FSM R. 93, 108 (App. 1993).

§ 1402. Fugitives from foreign country to Federated States of Micronesia.

Whenever there is an agreement for extradition between the Federated States of Micronesia and any foreign government, any Federated States of Micronesia justice or any judge authorized to do so by a Federated States of Micronesia court may, upon complaint made under oath charging any person found within his jurisdiction with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such agreement, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice or judge, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of External Affairs, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

Source: PL 5-22 § 3.

Cross-reference: For statutory provisions on Foreign Affairs Responsibilities and Procedures see chapter 5 of title 10 of this code. 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.

§ 1403. Secretary of External Affairs to surrender fugitive.

The Secretary of External Affairs may order the person committed under section 1402 of this chapter to be delivered to any authorized agent of such foreign government, to be tried for the offenses of which charged. Such agent may hold such person in custody, and take him to the territory of such foreign government, pursuant to such treaty. A person so accused who escapes may be retaken in the same manner as any person accused of any offense.

Source: PL 5-22 § 4, modified.

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

Case annotations: Certifications of extraditability are not final decisions of the trial court since the final decision-making authority rests with the Secretary of External Affairs. Therefore they are not appealable. *In re Extradition of Jano*, 6 FSM R. 23, 25 App. 1993).

§ 1404. Time of commitment pending extradition.

Whenever any person who is committed for rendition to a foreign government to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the Federated States of Micronesia within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the Federated States of Micronesia, any Federated States of Micronesia justice or any judge authorized to do so by a Federated States of Micronesia court upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of External Affairs, may order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

Source: PL 5-22 § 5.

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

Case annotations: Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. *In re Extradition of Jano*, 6 FSM R. 62, 63 (App. 1993).

In an international extradition case, bail can be granted only if "special circumstances" are shown. Neither risk of flight nor the availability of a suitable custodian are primary considerations. Rather the primary consideration is the ability of the government to surrender the accused to the requesting government. *In re Extradition of Jano*, 6 FSM R. 62, 64 (App. 1993).

Judicial review of an extradition hearing is by petition for a writ of habeas corpus. *In re Extradition of Jano*, 6 FSM R. 93, 97 (App. 1993).

The scope of a habeas corpus review of an extradition proceeding is 1) whether the judge had jurisdiction, 2) whether the court had jurisdiction over the extraditee, 3) whether there is an extradition agreement in force, 4) whether the crimes charged fall within the terms of the agreement, and 5) whether there was sufficient evidence to support a finding of extraditability. *In re Extradition of Jano*, 6 FSM R. 93, 104 (App. 1993).

§ 1405. Place and character of hearing.

Hearings in cases of extradition under an extradition agreement shall be held on land, publicly, and in a courthouse easily accessible to the public.

Source: PL 5-22 § 6.

Cross-reference: For constitutional provisions on the Judiciary see art. XI of the FSM Constitution. The provisions of the Constitution are found in Part I of this code.

For statutory provisions on the FSM Supreme Court and the Judiciary see title 4 of this code. For statutory provisions on Judicial Procedure see title 6 of this code.

Case annotations: An extradition hearing justice is required to make written findings for two reasons: 1) to meet the "rule of specialty" by which prosecution is limited to those offenses upon which extradition is granted, and 2) to reflect that the offenses for which extradition is granted is criminal in both the requesting and requested countries. *In re Extradition of Jano*, 6 FSM R. 93, 105 (App. 1993).

A person for whom extradition is sought must be brought before a justice that evidence of his criminality may be heard and considered so that he may be certified as extraditable. Such a person is entitled to notice of the hearing and an opportunity to be heard and to effective assistance of counsel. *In re Extradition of Jano*, 6 FSM R. 93, 99 (App. 1993).

A person whose extradition is sought can always contest identification. *In re Extradition of Jano*, 6 FSM R. 93, 100 (App. 1993).

§ 1406. Evidence on hearing.

Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal representative or liaison officer of the Federated States of Micronesia resident in such foreign country, if any, shall be proof that the same, so offered, are authenticated in the manner required. Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case may also be authenticated by any means provided for in an extradition agreement.

Source: PL 5-22 § 7.

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 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.

Case annotations: A person whose extradition is sought may, at the extradition hearing, introduce evidence that explains the government's evidence of probable cause, but not evidence that contradicts it. *In re Extradition of Jano*, 6 FSM R. 93, 101 (App. 1993).

§ 1407. Witnesses for indigent fugitives.

On the hearing of any case under a claim of extradition by a foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his

defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the justice or judge hearing the matter may order that such witnesses be subpoenaed; and the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner as in the case of witnesses subpoenaed in behalf of the Federated States of Micronesia.

Source: PL 5-22 § 8.

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

§ 1408. Protection of accused.

Whenever any person is delivered by any foreign government to an agent of the Federated States of Micronesia, for the purpose of being brought within the Federated States of Micronesia and tried for any offense of which he is duly accused, the Attorney General shall have power to take all necessary measures for the transportation and safekeeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such offenses, and for a reasonable time thereafter.

Source: PL 5-22 § 9.

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

§ 1409. Receiving and transporting offenders.

An officer of the Division of Security and Investigation or a State police officer authorized by the Attorney General shall receive, in behalf of the Federated States of Micronesia, the delivery, by a foreign government, of any person accused of a crime committed within the Federated States of Micronesia, and shall convey him to the place of his trial.

Source: PL 5-22 § 10.

§ 1410. Payment of fees and costs.

(1) All costs or expenses incurred in any extradition proceeding in apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority. All witness fees and costs of every nature in cases of international extradition shall be certified by the justice or judge before whom the hearing shall take place to the Attorney General, and the same shall be paid out of appropriations to defray the expenses of the judiciary or the Office of the Attorney General as the case may be.

(2) The Attorney General shall certify to the Secretary of External Affairs the amounts to be paid to the Federated States of Micronesia on account of said fees and costs in extradition cases by the foreign government requesting the extradition, and the Secretary of External Affairs shall cause said amounts to be collected and transmitted to the Attorney General for deposit in the General Fund of the Federated States of Micronesia.

Source: PL 5-22 § 11.

Cross-reference: FSM Const., art. IV, § 6. 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 of this code. For statutory provisions on Judicial Procedure see title 6 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 of this code.

CHAPTER 15
Criminal Extradition Procedures

SECTIONS

§ 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.

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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: 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.

CHAPTER 16
Interstate Extradition

SECTIONS

§ 1601. Interstate extradition—Obligations of States.

(1) A person charged with a public offense in any State of the Federated States of Micronesia, who flees to any other State of the Federated States of Micronesia, shall, upon demand from the executive of the charging State, be apprehended, removed and delivered from the asylum State to the requesting State, in accordance with the provisions of this chapter.

(2) The asylum State shall, within a reasonable time after apprehension of a person in accordance with this section, make reasonable efforts to provide notice of the apprehension to one of the following people, in the following order of priority:

(a) The apprehended person's spouse, if any;

(b) The apprehended person's most competent child, if any;

(c) The head of the family with which the apprehended person has been staying in the asylum State;

(3) Before a person who has been apprehended in accordance with subsection (1) of this section may be removed to the requesting State, the asylum State must make reasonable efforts to allow an opportunity for the person who is apprehended to communicate for a reasonable length of time with the person who has been notified in accordance with subsection (2) of this section.

(4) A person who has been apprehended in accordance with subsection (1) of this section may choose to waive his rights to notice and/or visitation under subsections (2) and (3) of this section. Any such waiver must be in writing, and must be signed by the apprehended person. If the apprehended person signs a waiver of his right to notice under subsection (2) of this section, no such notice shall be made. If the apprehended person signs a waiver of his right to visitation under subsection (3) of this section, no such visitation shall occur.

Source: PL 10-30 § 3.

Cross-reference: The provisions on Criminal Extradition are found in chapter 14 of this title.

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/.

§ 1602. Requirement for warrant.

No person shall be extradited from one State to another within the Federated States of Micronesia unless a warrant of arrest is first issued by a court of competent jurisdiction in the requesting State.

Source: PL 10-30 § 4.

§ 1603. Contents of warrant.

The warrant of arrest shall set forth with specificity the person to be arrested, a physical description of the person, the offense for which extradition is sought, and the accused person's rights under subsections (2), (3), and (4) of section 1601 of this chapter. The offense for which extradition is sought need not be an offense in the asylum State, so long as it is an offense in the requesting State.

Source: PL 10-30 § 5.

§ 1604. Transmittal of warrant.

After a warrant of arrest has been issued, the executive of the requesting State shall transmit a copy of the warrant of arrest, along with his request for execution thereof, to the executive of the asylum State.

Source: PL 10-30 § 6.

§ 1605. Ratification of warrant.

Upon receipt, the executive of the asylum State shall ratify the warrant and request, and deliver the same to local law enforcement agencies for execution.

Source: PL 10-30 § 7.

§ 1606. Required findings by court.

After arrest of the fugitive, he shall be brought before a court of competent jurisdiction in the asylum State. The court shall determine the validity of the warrant and request and the identity of the fugitive, and may detain the fugitive until his removal or may release him on such conditions as will insure his ready presence for removal, and shall issue findings of fact as to the validity of the warrant and request and the identity of the fugitive.

Source: PL 10-30 § 8.

§ 1607. Time limitations.

A fugitive detained shall be removed to the requesting State within 30 days of the issuance of findings by a court of the asylum State, and if not detained, the fugitive shall be removed to the

requesting State within 60 days of the issuance of findings by a court of the asylum State. If not removed within these time limits, the case shall be dismissed without prejudice.

Source: PL 10-30 § 9.

§ 1608. Expenses.

All expenses of the extradition, including return to the asylum State upon completion of proceedings in the requesting State, shall be borne by the requesting State.

Source: PL 10-30 § 10.

CHAPTER 17
Mutual Assistance in Criminal Matters

SUBCHAPTER I
General Provisions

SECTIONS

SUBCHAPTER II
Mutual Assistance

SECTIONS

SUBCHAPTER III
Miscellaneous

SECTIONS

SUBCHAPTER I
General Provisions

§ 1701 . Short title.

This Act shall be known and may be cited as the "Mutual Assistance in Criminal Matters Act of 2000".

Source: PL 11-71 § 3.

§ 1702 . Purpose.

The purpose of this Act is to enable the Federated States of Micronesia to cooperate with foreign states in criminal investigations and proceedings.

Source: PL 11-71 § 4.

§ 1703 . Jurisdiction and application.

The provisions of this Act shall extend and apply throughout all of the territory 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. This Act shall apply in relation to mutual assistance in criminal matters between the Federated States of Micronesia and any foreign state, subject to any condition, variation or modification in any existing or future agreement with that state, whether in relation to a particular case or more generally.

Source: PL 11-71 § 5.

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/.

§ 1704 . Definitions.

Unless the subject or context otherwise requires, in this Act:

(1) "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.

(2) "Data" means representations, in any form, of information or concepts.

(3) "Document" means any record of information and 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 includes, but is not limited to:

(a) anything on which there is writing;

(b) anything on which there are marks, figures, symbols, or perforations having 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.

(4) "Foreign confiscation order" means an order, made by a court in a foreign state, for the purposes of the confiscation or forfeiture of property in connection with, or recovery of the proceeds of, a serious offense.

(5) "Foreign restraining order" means an order made in respect of a serious offense by a court in a foreign state for the purpose of restraining a particular person or all persons from dealing with property.

(6) "Foreign state" means:

(a) any country other than the Federated States of Micronesia; and

(b) every constituent part of such country, including a territory, dependency or protectorate, or political subdivision which administers its own laws relating to international cooperation.

(7) "Interest", in relation to property, means a:

(a) legal or equitable estate or interest in the property; or

(b) right, power or privilege in connection with the property, whether present or future and whether vested or contingent.

(8) "Person" means any natural or legal person.

(9) "Place" includes any land (whether vacant, enclosed or built upon, or not) and any premises.

(10) "Premises" includes the whole or any part of a structure, building, aircraft, or vessel.

(11) "Proceedings" means any proceeding conducted by or under the supervision of a judge, magistrate 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.

(12) "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.

(13) "Property" means 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 real or personal property.

(14) "Secretary" means the Secretary of the Department of Justice of the Federated States of Micronesia or the chief law enforcement officer of the Federated States of Micronesia, whatever the title of such position is or in the future may become.

(15) "Serious offense" means a violation of:

(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.

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

(17) A reference in this Act to the law of the Federated States of Micronesia, any State of the Federated States of Micronesia, or 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 11-71 § 6; PL 11-83 § 1.

SUBCHAPTER II
Mutual Assistance

§ 1705 . Authority to make and act on mutual legal assistance requests.

(1) The Secretary may make requests on behalf of the Federated States of Micronesia to the appropriate authority of a foreign state for mutual legal assistance in any investigation commenced or proceeding instituted in the Federated States of Micronesia, relating to any serious offense. When the request is to a foreign country, the request shall be made through the Secretary who shall give notice to the Secretary of the Department of Foreign Affairs of the Federated States of Micronesia, of the name of the foreign country to which the request is being made, the nature of the request, and the nature of the criminal matter.

(2) The Secretary may, in respect of any request from a foreign state for mutual assistance in any investigation commenced or proceeding instituted in that state relating to a serious offense:

(a) grant the request, in whole or in part, on such terms and conditions as he or she deems fit;

(b) refuse the request, in whole or in part, on the grounds that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of the Federated States of Micronesia; or

(c) after consulting with the competent authority of the foreign state, postpone the request, in whole or in part, on the grounds that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in the Federated States of Micronesia.

(3) Requests on behalf of the Federated States of Micronesia to the appropriate authorities of foreign states for assistance of the kind referred to in section 1707 of this chapter shall be made only by or with the authority of the Secretary.

(4) Notwithstanding any other provisions of this act, nothing in this act shall be construed or interpreted to affect or take away such powers of a State of the Federated States of Micronesia to deal with a foreign state regarding its own criminal investigations and other mutual assistance in criminal matters to the extent such dealings do not conflict with any constitutional powers of the Federated States of Micronesia on the same subjects or matters. A State of the Federated States of Micronesia may request through the Secretary any assistance in criminal matters that it may need from a foreign state, as authorized in this act.

Source: PL 11-71 § 8.

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/.

The statutory provisions on Foreign Relations are found in of title 10 of this code.

§ 1706 . Saving provision for other requests or assistance in criminal matters.

Nothing in this act shall be taken to limit:

(1) the power of the Secretary, apart from this act, to make requests to foreign states or act on requests from foreign states for assistance in investigations or proceedings in criminal matters;

(2) the power of any other person or court, apart from this act, to make requests to foreign states or act on requests from foreign states for forms of international assistance other than those specified in section 1707 of this title; or

(3) the nature or extent of assistance in investigations or proceedings in criminal matters which the Federated States of Micronesia may lawfully give to or receive from foreign states.

Source: PL 11-71 § 9.

Cross-reference: The statutory provisions on Foreign Relations are found in of title 10 of this code.

§ 1707 . Mutual legal assistance requests by the FSM.

The requests which the Secretary is authorized to make under section 1705 of this title are that the foreign state:

(1) have evidence taken, or documents or other articles produced in evidence in the foreign state;

(2) obtain and execute search warrants or other lawful instruments authorizing a search for things believed to be located in that foreign state, which may be relevant to investigations or proceedings in the Federated States of Micronesia, and if found, seize them;

(3) locate or restrain any property believed to be the proceeds of crime located in the foreign state;

(4) confiscate any property believed to be located in the foreign state, which is the subject of a confiscation order made pursuant to chapter 9 of title 11 of this code;

(5) transmit to the Federated States of Micronesia any such confiscated property or any proceeds realized therefrom, or any such evidence, documents, articles or things;

(6) transfer in custody to the Federated States of Micronesia a person detained in the foreign state who consents to assist the Federated States of Micronesia in the relevant investigation or proceedings;

(7) provide any other form of assistance in any investigation commenced or proceeding instituted in the Federated States of Micronesia that involves or is likely to involve the exercise of a coercive power over a person or property believed to be in the foreign state; or

(8) permit the presence of nominated persons during the execution of any request made under this act.

Source: PL 11-71 § 10.

Cross-reference: The statutory provisions on chapter 9 of title 11 of this code are on Money Laundering and Proceeds of Crime.

§ 1708 . Contents of requests for assistance.

(1) A request for mutual assistance shall:

(a) give the name of the authority conducting the investigation or proceeding to which the request relates;

(b) give a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws together with a copy of the laws being referenced;

(c) give a description of the purpose of the request and of the nature of the assistance being sought; in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in the requested state, give details of the offense in question, particulars of any investigation or proceeding commenced in respect of the offense, and be accompanied by a copy of any relevant restraining or forfeiture order;

(d) give details of any procedure that the requesting state wishes to be followed by the requested state in giving effect to the request, particularly in the case of a request to take evidence;

(e) include a statement setting out any wishes of the requesting state concerning any confidentiality relating to the request and the reasons for those wishes;

(f) give details of the period within which the requesting state wishes the request to be complied with;

(h) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in the requested state; and

(i) give any other information that may assist in giving effect to the request.

(2) A request for mutual assistance from a foreign state may be granted, if necessary after consultation, notwithstanding that the request, as originally made, does not comply with subsection (1) of this section.

Source: PL 11-71 § 11.

§ 1709. Foreign requests for an evidence-gathering order or a search warrant.

(1) Notwithstanding anything contained in any other law, where the Secretary grants a request by a foreign state to obtain evidence in the Federated States of Micronesia, an authorized person may apply to the Supreme Court for:

(a) a search warrant; or

(b) an evidence-gathering order.

(2) The Supreme Court, to which an application is made under subsection (1) of this section, may issue an evidence-gathering order or a search warrant under this subsection, where it is satisfied that there is probable cause to believe that:

(a) a serious offense has been or may have been committed against the laws of the foreign state; and

(b) evidence relating to that offense may:

(i) be found in a building, receptacle or place in the Federated States of Micronesia; or

(ii) be able to be given by a person believed to be in the Federated States of Micronesia; and

(c) in the case of an application for a search warrant, it would not, in all the circumstances, be more appropriate to grant an evidence-gathering order.

(3) For the purposes of subsection (2)(a) of this section, a statement contained in the foreign request to the effect that a serious offense has been or may have been committed against the laws of the foreign state is prima facie evidence of that fact.

(4) An evidence-gathering order:

(a) shall provide for the manner in which the evidence is to be obtained in order to give proper effect to the foreign request, unless such manner is prohibited under the laws of the Federated States of Micronesia, and in particular, may require any person named therein to:

(i) make a record from data or make a copy of a record;

(ii) attend court to give evidence on oath or otherwise until excused;

(iii) produce to the Supreme Court or to any person designated by the Court, any thing, including any document, or copy thereof; and

(b) may include such other terms and conditions as the Supreme Court considers desirable, including those relating to the interests of the person named therein or of third parties.

(5) A person named in an evidence-gathering order may refuse to answer a question or to produce a document or thing where the refusal is based on:

(a) a law currently in force in the Federated States of Micronesia;

(b) a privilege recognized by a law in force in the foreign state that made the request; or

(c) a law currently in force in the foreign state that would render the answering of that question or the production of that document or thing by that person, in the person's own jurisdiction, an offense.

(6) Where a person refuses to answer a question or to produce a document or thing pursuant to subsection (5)(b) or (c) of this section, the Supreme Court shall report the matter to the Secretary who shall notify the foreign state and request the foreign state to provide a written statement on whether the person's refusal was well founded under the law of the foreign state.

(7) Any written statement received by the Secretary from the foreign state in response to a request under subsection (6) of this section, shall be admissible in the evidence-gathering proceedings, and for the purposes of this section be determinative of whether the person's refusal is well founded under the foreign law.

(8) A person who, without reasonable excuse, refuses to comply with a lawful order of the Supreme Court made under this section, or who having refused pursuant to subsection (5) of this section, continues to refuse, notwithstanding the admission into evidence of a statement under subsection (7) of this section, to the effect that the refusal is not well founded, commits a contempt of court and may be punished accordingly.

(9) A search warrant shall be in the usual form in which a search warrant is issued in the Federated States of Micronesia, varied to the extent necessary to suit the case.

(10) No document or thing seized and ordered to be sent to a foreign state shall be sent until the Secretary is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the document or thing.

(11) The Supreme Court is hereby authorized to adopt, recognize and enforce foreign court orders certified or under seal, which orders shall be presumed to be valid in the absence of any evidence to the contrary.

Source: PL 11-71 § 12; PL 11-83 § 2.

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

§ 1710. Foreign requests for consensual transfer of detained persons.

(1) Where the Secretary approves a request of a foreign state to have a person, who is detained in custody in the Federated States of Micronesia by virtue of a sentence or order of a court, transferred to a foreign state to give evidence or assist in an investigation or proceeding in that state relating to a serious offense, an authorized person may apply to the Supreme Court for a transfer order.

(2) The Supreme Court to which an application is made under subsection (1) of this section, may make a transfer order under this subsection where it is satisfied, having considered any document filed or information given in support of the application, that the detained person consents to the transfer.

(3) A transfer order made under subsection (2) of this section:

(a) shall set out the name of the detained person and the person's current place of confinement;

(b) shall order the person who has custody of the detained person to deliver the detained person into the custody of a person who is designated in the order or who is a member of the class of persons so designated;

(c) shall order the person who is to take custody of the detained person, to take the detained person to the foreign state and, on return of the detained person to the Federated States of Micronesia, to return that person to a place of confinement in the Federated States of Micronesia specified in the order, or to such other place of confinement as the Secretary may subsequently notify the foreign state;

(d) shall state the reasons for the transfer; and

(e) shall fix the period of time at or before the expiration of which the detained person must be returned, unless varied for the purposes of the request by the Secretary.

(4) The time spent in custody by a person pursuant to a transfer order shall count toward any sentence required to be served by that person, so long as the person remains in such custody and is of good behavior.

Source: PL 11-71 § 13.

§ 1711 . Detention of persons transferred to FSM.

(1) The Secretary may by written notice authorize:

(a) the temporary detention in the Federated States of Micronesia of a person in detention in a foreign state who is to be transferred from that state to the Federated States of Micronesia pursuant to a request under section 1707(6) of this chapter, for such period as may be specified in the notice; and

(b) the return of the person to the custody of the foreign state when his or her presence is no longer required.

(2) A person in respect of whom a notice is issued under subsection (1) of this section, shall, so long as the notice is in force:

(a) be permitted to enter and remain in the Federated States of Micronesia for the purposes of the request, and be required to leave the Federated States of Micronesia when no longer required for those purposes, notwithstanding any Federated States of Micronesia law to the contrary; and

(b) while in custody in the Federated States of Micronesia for the purposes of the request, be deemed to be in lawful custody.

(3) The Secretary may at any time vary a notice issued under subsection (1) of this section, and where the foreign state requests the release of the person from custody, either immediately or on a specified date, the Secretary shall direct that the person be released from custody accordingly; PROVIDED, however, that the Secretary may require the immediate departure of that person from the Federated States of Micronesia if such departure is determined to be in the best interest of the nation.

(4) Any person who escapes from lawful custody while in the Federated States of Micronesia pursuant to a request under section 1707(6) of this chapter, may be arrested without warrant by any authorized person and returned to the custody authorized under subsection (1)(a) of this section.

(5) Where a foreign country has requested that a person be detained in the Federated States of Micronesia in the course of transit between the foreign country and a third country and the Secretary grants the request, the provisions of this section shall apply with necessary changes in points of detail in relation to that person.

(6) No court in the Federated States of Micronesia has jurisdiction to entertain any application by or on behalf of any person in the Federated States of Micronesia pursuant to a request under section 1707(6) of this chapter, relating to release from custody or continued presence in the Federated States of Micronesia after his or her presence is no longer required for the purpose of the request.

Source: PL 11-71 § 14.

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.

§ 1712 . Safe conduct guarantee.

(1) Where a person, whether or not a detained person, is in the Federated States of Micronesia in response to a request by the Secretary to a foreign state under this act for such person to give evidence in a proceeding or to assist in an investigation, prosecution or related proceeding, the person shall not, while in the Federated States of Micronesia, be:

(a) detained, prosecuted or punished; or

(b) subjected to civil process; in respect of any act or omission that occurred before the person's departure from the foreign state pursuant to the request; PROVIDED, however, that this section shall not preclude the person, by voluntary agreement and consent, from entering into a stipulated settlement or resolution of any criminal charges pending in the Federated States of Micronesia, or of any civil or criminal matter.

(2) Subsection (1) of this section, ceases to apply to the person when the person leaves the Federated States of Micronesia, or has had the opportunity to leave, but remains in the Federated States

of Micronesia for ten days after the Secretary has notified the person that he or she is no longer required for the purposes of the request.

Source: PL 11-71 § 15.

§ 1713 . Foreign requests for FSM restraining orders.

(1) The Secretary may apply to the Supreme Court for a restraining order under subsection (2) of this section where:

(a) a foreign state requests the Secretary to obtain the issuance of a restraining order against property, some or all of which is believed to be located in the Federated States of Micronesia;

(b) criminal proceedings have begun in the foreign state in respect of a serious offense; and

(c) there is probable cause to believe that the property relating to the offense or belonging to the defendant or the defendant's co-conspirators is located in the Federated States of Micronesia.

(2) Where the Secretary makes application to the Supreme Court under subsection (1) of this section, the Court may make a restraining order in respect of the property, and this act or the relevant provisions of chapter 9 of title 11 of this code shall apply as requested by the Secretary in relation to the application and to any restraining order issued as a result, as if the serious offense that is the subject of the order had been committed in the Federated States of Micronesia.

Source: PL 11-71 § 16; PL 11-83 § 3.

Cross-reference: The statutory provisions on chapter 9 of title 11 of this code are on Money Laundering and Proceeds of Crime. 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.

§ 1714 . Requests for enforcement of foreign confiscation or restraining orders.

(1) Where a foreign state requests the Secretary to make arrangements for the enforcement of a foreign restraining order or a foreign confiscation order, the Secretary may apply to the Supreme Court of the Federated States of Micronesia for entry and enforcement of the order under this act or under chapter 9 of title 11 of this code.

(2) The Supreme Court shall, upon application by the Secretary, enter and enforce a foreign restraining order under this act or under chapter 9 of title 11 of this code, if the Court is satisfied that at the time of entry and registration, the order is in force in the foreign state.

(3) The Supreme Court shall, upon application by the Secretary, enter and enforce a foreign confiscation order, which is legally capable of enforcement in the Federated States of Micronesia and its States, if the Court is satisfied:

(a) at the time of entry and enforcement, that the order is in force in the foreign state and is not subject to appeal; and

(b) where the person subject of the order did not appear in the confiscation proceedings in the foreign state, that:

(i) the person was given fair notice of the proceedings; or

(ii) the person had absconded or had died before such notice could be given, and if the person died, the decedent's estate was given fair notice of the proceedings.

(4) For the purposes of subsections (2) and (3) of this section, a statement contained in the foreign request to the effect that:

(a) the foreign restraining order is in force in the foreign state;

(b) the foreign confiscation order is in force in the foreign state and is not subject to appeal; or

(c) the person, who is the subject of the foreign confiscation order, was given notice of the proceedings in sufficient time to enable him or her to defend them, or that the person had absconded or died before such notice could be given and if the person died, the decedent's estate was given fair notice of the proceedings is prima facie evidence of those facts, without proof of the signature or official character of the person appearing to have signed the foreign request.

(5) Where a foreign restraining order or foreign confiscation order is entered for enforcement in accordance with this section, a copy of any amendments made to the order in the foreign state (whether before or after entry and enforcement), may be entered and enforced in the same way as the order, but shall not have effect for the purposes of chapter 9 of title 11 of this code, until they are so entered and enforced.

(6) The Supreme Court shall, upon application by the Secretary, rescind entry of:

(a) a foreign restraining order, if it appears to the Court that the order has ceased to have effect; or

(b) a foreign confiscation order, if it appears to the Court that the order has been satisfied or has ceased to have effect.

(7) Subject to subsection (9) of this section, where the foreign restraining order or foreign confiscation order comprises a facsimile copy of a duly authenticated foreign order, or amendment made to such an order, the facsimile shall be regarded, for the purposes of this act, as the same as the duly authenticated foreign order.

(8) Entry and registration effected by means of a facsimile ceases to have effect at the end of the period of 21 days, commencing on the date of entry and registration, unless a duly authenticated original of the order has been entered and registered by that time.

(9) Where a foreign restraining order or a foreign confiscation order has been entered pursuant to this section, the relevant provisions of chapter 9 of title 11 of this code shall be deemed to apply in relation to the order as if the serious offense that is the subject of the order had been committed in the Federated States of Micronesia, and the order had been made pursuant to that act.

Source: PL 11-71 § 17; PL 11-83 § 4.

Cross-reference: The statutory provisions on chapter 9 of title 11 of this code are on Money Laundering and Proceeds of Crime. 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.

§ 1715 . Foreign requests for the location of the proceeds of crime.

Where a foreign state requests the Secretary to assist in locating property believed to be the proceeds of a serious crime committed in that state, the Secretary may authorize the making of any application under sections 971, 976 or 978 of chapter 9 of title 11 of this code, for the purpose of acquiring the information sought by the foreign state.

Source: PL 11-71 § 18.

Cross-reference: The statutory provisions on chapter 9 of title 11 of this code are on Money Laundering and Proceeds of Crime.

§ 1716 . Sharing confiscated property with foreign states.

(1) Subject to approval by Congress or if Congress is not in session, subject to approval by the Judiciary and Governmental Operations Committee of Congress, the Secretary may enter into an arrangement with the competent authorities of a foreign state, in respect of money laundering and proceeds of crime, for the reciprocal sharing with that state of such part of any property realized:

(a) in the foreign state, as a result of action taken by the Secretary pursuant to section 1707(4) of this chapter; or

(b) in the Federated States of Micronesia, as a result of action taken in the Federated States of Micronesia pursuant to section 1714(1) of this chapter.

(2) Except as otherwise provided by law, any proceeds of crime that have been received by the Federated States of Micronesia pursuant to this chapter shall be deposited in the General Fund of the Federated States of Micronesia.

Source: PL 11-71 § 19; PL 11-83 § 5.

SUBCHAPTER III
Miscellaneous

§ 1717. Privilege for foreign documents.

(1) Subject to subsection (2) of this section, a document sent to the Secretary by a foreign state, in accordance with a Federated States of Micronesia request pursuant to this act, is privileged and no person shall disclose to anyone the document, or its purport, or the contents of the document or any part thereof, before the document, in compliance with the conditions on which it was so sent, is made public or disclosed in the course of and for the purpose of any proceeding.

(2) No person in possession of a document referred to in subsection (1) of this section, or a copy thereof, or who has knowledge of any information contained in the document, shall be required, in connection with any legal proceeding, to produce the document or copy, or to give evidence relating to any information that is contained therein.

(3) Except to the extent required under this act to execute a request by a foreign state for mutual assistance in criminal matters, no person shall disclose:

(a) the fact that the request has been received; or

(b) the contents of the request.

(4) Violation of subsection (3) 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 11-71 § 21.

§ 1718 . Restriction on use of evidence and materials obtained by mutual assistance.

No information, document, article or other thing obtained from a foreign state, pursuant to a request made under this act, shall be used in any investigation or proceeding other than the investigation or proceeding disclosed in the request, unless the Secretary consents after consulting with the foreign state.

Source: PL 11-71 § 22.

§ 1719 . Confiscated proceeds of drug crime to be deposited in the General Fund of FSM or in a Fund for Drug Abuse Prevention and Control.

To the extent available under any sharing of confiscated property arrangement referred to in section 1716 of this chapter, or otherwise, any proceeds of drug related crime which have been:

(1) confiscated in a foreign state pursuant to a request by the Federated States of Micronesia under section 1707(4) of this chapter; or

(2) confiscated in the Federated States of Micronesia pursuant to a request by a foreign state under section 1714(1) of this chapter; shall be deposited in the General Fund of the Federated States of Micronesia until such time as a Fund for Drug Abuse Prevention and Control is established by law.

Source: PL 11-71 § 23; PL 11-83 § 6.

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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