

# **TITLE 62**

## **CRIMINAL PROCEDURE**



## TITLE 62 CRIMINAL PROCEDURE

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### CHAPTER 1 GENERAL PROVISIONS

Section  
1-101 Definitions

**§1-101. 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 legal detention by legal authority.
- (2) “Attorney General” means the chief legal officer of the Office of the Attorney General.
- (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 another court in the state.
- (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 that 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) “Judge” means a justice of the Pohnpei Supreme Court or a judge of a state court.

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

(7) "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.

(8) "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.

(9) "Policeman" means any member of the state police or any person authorized by the Governor to act as a policeman.

(10) "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.

(11) "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: TTC §445 (1966); 12 TTC §1 (1970); 12 TTC §1 (1980)

Note: Original Subsection (9) has been omitted.

## CHAPTER 2 ARRESTS; SEARCH WARRANTS

### Section

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## PART A ARRESTS

### **§2-101. Process obligatory upon police. —**

(1) All process in any criminal proceeding, 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: TTC §489 (1966); 12 TTC §51 (1970); 12 TTC §51 (1980)

**§2-102. 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: TTC §456 (1966); 12 TTC §52 (1970); 12 TTC §52 (1980)

**§2-103. 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 the Pohnpei Supreme Court, subject to such limitations as the Chief Justice of the Supreme Court may impose; and
- (4) Any other person authorized in writing by the Governor, and a certified copy of whose authorization is filed with the Clerk of the Pohnpei Supreme Court.

Source: TTC §446 (1966); 12 TTC §53 (1970); 12 TTC §53 (1980)

**§2-104. Warrant or penal summons upon complaint.** —

(1) Any person, other than the Attorney General, desiring the issuance of a warrant of arrest for a criminal offense shall personally appear and make a complaint 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 justice of the Pohnpei Supreme 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 justice of the Supreme Court.

Source: TTC §448 (1966); 12 TTC §54 (1970); 12 TTC §54 (1980)

**§2-105. Investigation of complaint in doubtful cases.** —

(1) If a justice of the Pohnpei Supreme 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 state 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 state 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: TTC §449 (1966); 12 TTC §55 (1970); 12 TTC §55 (1980)

**§2-106. Use of penal summons in lieu 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 such fine and imprisonment, 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: TTC §450 (1966); 12 TTC §56 (1970); 12 TTC §56 (1980)

**§2-107. 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 state of Pohnpei. A 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: TTC §451 (1966); 12 TTC §57 (1970); 12 TTC §57 (1980)

**§2-108. 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 §2-117, 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: TTC §452 (1966); 12 TTC §58 (1970); 12 TTC §58 (1980)

**§2-109. [RESERVED]**

**§2-110. Issuance of warrant or penal summons on information.** — The Attorney General 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, issue its warrant or penal summons as upon a complaint.

Source: TTC §454 (1966); 12 TTC §60 (1970); 12 TTC §60 (1980)

**§2-111. 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: TTC §457 (1966); 12 TTC §61 (1970); 12 TTC §61 (1980)

**§2-112. 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: TTC §455 (1966); 12 TTC §62 (1970); 12 TTC §62 (1980)

**§2-113. 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: TTC §465 (1966); 12 TTC §63 (1970); 12 TTC §63 (1980)

**§2-114. 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: TTC §458 (1966); 12 TTC §64 (1970); 12 TTC §64 (1980)

Note: The Editor's note following 12 TTC §64 (1970) states "Based upon Trust Territory Code, 1966 ed., §458. Extensive changes have been made in phraseology." See Public Law 3C-51, §1 and §3.

**§2-115. 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: TTC §459 (1966); 12 TTC §65 (1970); 12 TTC §65 (1980)

**§2-116. 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 nighttime.

Source: TTC §462 (1966); 12 TTC §66 (1970); 12 TTC §66 (1980)

**§2-117. Disposition of arrested persons by policeman.** — Persons arrested by a policeman, except under §2-111(4), 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 state 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: TTC §463 (1966); 12 TTC §67 (1970); 12 TTC §67 (1980)

**§2-118. Rights of persons arrested. —**

- (1) In any case of arrest, or arrest for examination, as provided by §2-111(4), it shall be unlawful:
- (a) To deny to the person so arrested the right to see at reasonable intervals, and for a reasonable time at the place of his detention, counsel, or members of his family, or his employer, or a representative of his employer;
  - (b) To 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 (1) 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;
  - (c) To fail either to release or charge such arrested person with a criminal offense within a reasonable time, which under no circumstances shall exceed twenty-four hours; and
  - (d) 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 Paragraphs (a) through (c) of this subsection.
- (2) 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 of his local representative, are available for these purposes without charge.

Source: TTC §464 (1966); 12 TTC §68 (1970); 12 TTC §68 (1980)

**§2-119. 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: TTC §497 (1966); 12 TTC §69 (1970); 12 TTC §69 (1980)

**§2-120. Effect of violation of title. —** No violation 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 on 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: TTC §§498 & 499 (1966); 12 TTC §70 (1970); 12 TTC §70 (1980)

## PART B SEARCH WARRANTS

### §2-121. 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: TTC §460 (1966); 12 TTC §101 (1970); 12 TTC §101 (1980)

**§2-122. 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: TTC §461 (1966); 12 TTC §102 (1970); 12 TTC §102 (1980)

**§2-123. 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 the Pohnpei Supreme Court subject to such limitations as the Chief Justice of the Supreme Court may impose; and

(4) Any other person authorized in writing by the Governor, provided a certified copy of such authorization is filed with the Clerk of the Supreme Court.

Source: TTC §446 (1966); 12 TTC §103 (1970); 12 TTC §103 (1980)

### §2-124. 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: TTC §477 (1966); 12 TTC §104 (1970); 12 TTC §104 (1980)

**§2-125. Procedure for issuance of search warrants.** — Anyone desiring the issuance of a search warrant shall personally appear and make application therefor under oath before an official authorized to issue a warrant. 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. 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. 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 justice of the Pohnpei Supreme 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 justice of the Pohnpei Supreme Court.

Source: TTC §478 (1966); 12 TTC §105 (1970); 12 TTC §105 (1980)

**§2-126. Contents of search warrant.** — A search warrant shall command a policeman to search forthwith the person or place named, for the property specified. 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. 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 justice of the Pohnpei Supreme Court. 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: TTC §479 (1966); 12 TTC §106 (1970); 12 TTC §106 (1980)

**§2-127. Execution of search warrant and return with inventory.** — 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. 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. 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. 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 by him under the warrant. 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: TTC §480 (1966); 12 TTC §107 (1970); 12 TTC §107 (1980)

**§2-128. Hearing upon return of search warrant.** — 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. 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: TTC §481 (1966); 12 TTC §108 (1970); 12 TTC §108 (1980)

**§2-129. 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 the Pohnpei Supreme Court.

Source: TTC §482 (1966); TTC §109 (1970); TTC §109 (1980)

**§2-130. [RESERVED]**

Note: TTC §483 (1966); 12 TTC §110 (1970); 12 TTC §110 (1980) refers to oral orders originating with Trust Territory Community Courts and judges.

**§2-131. Entering building or ship to execute search warrant.** — 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. 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: TTC §484 (1966); 12 TTC §111 (1970); 12 TTC §111 (1980)

**§2-132. Motion for return of property and to suppress evidence.** — A person aggrieved by an unlawful search and seizure may move the Trial Division of the Pohnpei Supreme Court 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. 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. 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: TTC §485 (1966); 12 TTC §112 (1970); 12 TTC §112 (1980)

**§2-133. Sale of perishable property.** — Seized property that is perishable may be ordered sold and the proceeds brought into court.

Source: TTC §490 (1966); 12 TTC §113 (1970); 12 TTC §113 (1980)

**§2-134. 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: TTC §497 (1966); 12 TTC §114 (1970); 12 TTC §114 (1980)

CRIMINAL PROCEDURE

### CHAPTER 3 RIGHTS OF DEFENDANTS

Section

3-101 Rights of defendants

**§3-101. Rights of defendants.** — Every defendant in a criminal case before a court of the state of Pohnpei 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 Pohnpei Supreme Court in the event that one has not been appointed by the trial judge under 4 PC 1-105.

Source: TTC §187 (1966); 12 TTC §151 (1970); 12 TTC §151 (1980)

Note: Reference to 5 TTC §353 (1980) has been superseded by 4 PC 1-105 (S.L. No. 3L-99-95 §1-5, 7/20/95).

CRIMINAL PROCEDURE



## CHAPTER 4 PRELIMINARY MATTERS

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4-104 Pre-trial procedure	

**§4-101. Name in which prosecution conducted.** — All criminal prosecutions shall be conducted in the name of the “state of Pohnpei.”

Source: TTC §486 (1966); 12 TTC §201 (1970); 12 TTC §201 (1980)

**§4-102. Duties of official at preliminary hearing.** — 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: TTC §466(a) (1966); 12 TTC §202 (1970); 12 TTC §202 (1980)

**§4-103. Plea not to be taken.** — The arrested person shall not be called upon to plead at the preliminary hearing.

Source: TTC §466(b) (1966); 12 TTC §203 (1970); 12 TTC §203 (1980)

**§4-104. 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 describe the person

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: TTC §466(c) (1966); 12 TTC §204 (1970); 12 TTC §204 (1980)

Note: In Subsection (5), following the phrase "or describe the person arrested", the 1966 edition of the TT Code contains the phrase "or does not properly set forth the nature of the offense for which he was arrested". This phrase does not appear in the 1970 or 1980 edition of the TT Code. *See* Public Law 3C-51, §1 and §3.

**§4-105. Disposition of the record.** — After concluding the proceedings, the official shall transmit forthwith to the Clerk of the Pohnpei Supreme Court all papers in the proceedings and any bail taken by him.

Source: TTC §466(d) (1966); 12 TTC §205 (1970); 12 TTC §205 (1980)

**§4-106. 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 §2-117(2), and he has been released on bail or personal recognizance, he may apply to a justice of the Pohnpei Supreme Court, if one is available, otherwise to any official authorized to issue a warrant, and request a preliminary examination. Thereupon the justice or official shall set a time and place for preliminary examination, give the complainant and accused reasonable notice thereof, and proceed as outlined in §§4-102 through 4-105.

Source: TTC §467 (1966); 12 TTC §206 (1970); 12 TTC §206 (1980)

Note: An error in section numbering in the 1970 Trust Territory Code and repeated in the 1980 Trust Territory Code has been corrected through reference to the original 1966 Trust Territory Code.

## CHAPTER 5 BAIL

### Section

5-101 Right to bail	5-105 Form and disposition of bail; sufficiency of sureties
5-102 Who may fix bail; allowing bail after conviction	5-106 Modification of bail
5-103 Notice by police of requests to have bail fixed	5-107 Exoneration and release of bail
5-104 Amount of bail	5-108 Personal recognizance

### **§5-101. 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 Pohnpei Supreme Court; **PROVIDED**, that the Attorney General shall be given reasonable opportunity to be heard before any application for bail is granted.

Source: TTC §468 (1966); 12 TTC §251 (1970); 12 TTC §251 (1980)

**§5-102. Who may fix bail; allowing bail after conviction. —** 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. 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: TTC §469 (1966); 12 TTC §252 (1970); 12 TTC §252 (1980)

**§5-103. 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: TTC §470 (1966); 12 TTC §253 (1970); 12 TTC §253 (1980)

**§5-104. 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: TTC §471 (1966); 12 TTC §254 (1970); 12 TTC §254 (1980)

**§5-105. Form and disposition of bail; sufficiency of sureties. —** Cash or bonds or notes of the United States of America may be accepted as bail. 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. 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. Any bail accepted shall be promptly transmitted to the Clerk of the Pohnpei Supreme Court.

Source: TTC §472 (1966); 12 TTC §255 (1970); 12 TTC §255 (1980)

**§5-106. 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: TTC §473 (1966); 12 TTC §256 (1970); 12 TTC §256 (1980)

**§5-107. 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: TTC §473 (1966); 12 TTC §257 (1970); 12 TTC §257 (1980)

**§5-108. 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 state of Pohnpei.

Source: TTC §475 (1966); 12 TTC §258 (1970); 12 TTC §258 (1980)

## CHAPTER 6 TRIAL COURT: CRIMINAL PROCEDURE

### Section

Part A [Reserved – General provisions]

6-101 – 6-105 [Reserved]

Part B Witnesses

6-106 Witness summons

6-107 Detention and release of witness

6-108 – 6-110 [Reserved]

### PART A [RESERVED – GENERAL PROVISIONS]

**§§6-101 – 6-105. [RESERVED]**

### PART B WITNESSES

**§6-106. 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 Pohnpei Supreme Court.

Source: TTC §487 (1966); 12 TTC §301 (1970); 12 TTC §301 (1980)

**§6-107. 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: TTC §488 (1966); 12 TTC §302 (1970); 12 TTC §302 (1980)

**§§6-108 – 6-110. [RESERVED]**

CRIMINAL PROCEDURE

## CHAPTER 7 INSANITY

### Section

7-101 Insanity at time of offense

7-102 Insanity at time of trial

**§7-101. 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 17 PC 7-102.

Source: TTC §493 (1966); 12 TTC §401 (1970); 12 TTC §401 (1980)

Cross-reference: See 61 PC 1-109.

**§7-102. 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 §7-101.

Source: TTC §494 (1966); 12 TTC §402 (1970); 12 TTC §402 (1980)

CRIMINAL PROCEDURE



## **CHAPTER 8 DISMISSAL**

### Section

8-101 Dismissal by Attorney General

8-102 Dismissal by court

**§8-101. Dismissal by Attorney General.** — The Attorney General 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: TTC §491 (1966); 12 TTC §351 (1970); 12 TTC §351 (1980)

**§8-102. 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: TTC §492 (1966); 12 TTC §352 (1970); 12 TTC §352 (1980)

## **CHAPTER 9 [RESERVED]**

CRIMINAL PROCEDURE

## CHAPTER 10 CRIMINAL EXTRADITION

### Section

10-101	Definitions	10-116	Arrest prior to requisition; commitment to await requisition
10-102	Fugitives from justice; duty of the Governor	10-117	Bail; when allowed; conditions of bond
10-103	Form of demand	10-118	Bail; discharge, recommitment or renewal
10-104	Official investigation of demand for extradition	10-119	Bail; forfeiture
10-105	Extradition of person imprisoned or awaiting trial in another state	10-120	Persons under criminal prosecution in the state of Pohnpei at time of requisition
10-106	Extradition of persons who have left demanding state involuntarily	10-121	Inquiry into guilt or innocence of accused
10-107	Extradition of persons not present in demanding state at time of commission of crime	10-122	Governor may recall warrant or issue additional warrant
10-108	Governor's warrant of arrest; issuance; recitals	10-123	Fugitives from the state of Pohnpei; issuance of warrant to receive and convey
10-109	Governor's warrant of arrest; manner and place of execution	10-124	Fugitives from the state of Pohnpei; applications for requisition; return of person charged with crime
10-110	Governor's warrant of arrest; assistance to arresting officer	10-125	Fugitives from the state of Pohnpei; applications for requisition; escaped convict
10-111	Governor's warrant of arrest; rights of accused persons; application for writ of habeas corpus	10-126	Fugitives from the state of Pohnpei; applications for requisition; form of applications; copies, etc
10-112	Governor's warrant of arrest; penalty for noncompliance	10-127	Fugitives from the state of Pohnpei; costs and expenses
10-113	Governor's warrant of arrest; confinement in jail authorized when necessary	10-128	Immunity from service of process in certain civil actions
10-114	Arrest prior to requisition; by warrant	10-129	Waiver of extradition proceedings
10-115	Arrest prior to requisition; without a warrant	10-130	Procedures of chapter not deemed waiver of state of Pohnpei's rights
		10-131	Immunity from other criminal prosecutions while in the state of Pohnpei

**§10-101. Definitions.** — Where appearing in this chapter:

- (1) *Governor*. The term “Governor” includes any person performing the functions of the Governor by authority of the law of the state of Pohnpei;
- (2) *Executive authority*. The term “executive authority” includes the Governor, and any person performing the functions of Governor in any state of the Federated States of Micronesia; and
- (3) *State*. The term “state” refers to any state of the Federated States of Micronesia.

Source: 12 TTC §451 (1970); P.L. No 7-4 §1; 12 TTC §451 (1980)

**§10-102. Fugitives from justice; duty of the Governor.** — Subject to this chapter, the Governor shall have arrested and delivered up to the executive authority of any state, any person charged in that state with treason, felony or other crime, who has fled from justice and is found in the state of Pohnpei.

Source: 12 TTC §452 (1970); 12 TTC §452 (1980)

**§10-103. Form of demand. —**

(1) No demand for the extradition of a person charged with or convicted of crime in a state shall be recognized by the Governor unless in writing alleging, except in cases arising under §10-107, that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from such state. Such demand shall be accompanied by:

- (a) A copy of an indictment found;
- (b) A copy of an information supported by an affidavit filed in the state having jurisdiction of the crime;
- (c) A copy of an affidavit made before a magistrate in such state together with a copy of any warrant which was issued thereon; or
- (d) A copy of a judgment of conviction or of a sentence imposed in execution thereof together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole.

(2) The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

Source: 12 TTC §453 (1970); 12 TTC §453 (1980)

**§10-104. Official investigation of demand for extradition. —** When a demand shall be made upon the Governor by the executive authority of a state for the surrender of a person charged with or convicted of a crime, the Governor may call upon the Attorney General or any prosecuting officer in the state of Pohnpei to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

Source: 12 TTC §454 (1970); 12 TTC §454 (1980)

**§10-105. Extradition of person imprisoned or awaiting trial in a state. —** When it is desired to have returned to the state of Pohnpei a person charged in the state of Pohnpei with a crime and such person is imprisoned or is held under criminal proceedings then pending against him in a state, the Governor may agree with the executive authority of such state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such state, upon condition that such person be returned to such state at the expense of the state of Pohnpei as soon as the prosecution in the state of Pohnpei is terminated.

Source: 12 TTC §455 (1970); 12 TTC §455 (1980)

**§10-106. Extradition of persons who have left demanding state involuntarily. —** The Governor may also surrender on demand of the executive authority of any other state, any person in the state of Pohnpei who is charged, in the manner provided in §10-124, with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

Source: 12 TTC §456 (1970); 12 TTC §456 (1980)

**§10-107. Extradition of persons not present in demanding state at time of commission of crime. —** The Governor may also surrender, on demand of the executive authority of any other state, any person in the state of Pohnpei charged in such state, in the manner provided in §10-103, with committing an act in the state of Pohnpei, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand. This chapter, not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

Source: 12 TTC §457 (1970); 12 TTC §457 (1980)

**§10-108. Governor's warrant of arrest; issuance; recitals.** — If the Governor decides that a demand for extradition of a person charged with, or convicted of, a crime in a state should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state of Pohnpei seal, and be directed to the Attorney General, Director of the Department of Public Safety, Chief of the Division of Police and Security or other person whom he may think fit to be entrusted with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

Source: 12 TTC §458 (1970); 12 TTC §458 (1980)

**§10-109. Governor's warrant of arrest; manner and place of execution.** — Such warrant shall authorize the officer or other person to whom it is directed to arrest the accused at any time and at any place where he may be found within the state of Pohnpei, and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to this chapter, to the duly authorized agent of the demanding state.

Source: 12 TTC §459 (1970); 12 TTC §459 (1980)

**§10-110. Governor's warrant of arrest; assistance to arresting officer.** — Every officer or other person empowered to make the arrest, as provided in §10-109, shall have the same authority in arresting the accused to command assistance therein as the Attorney General, Director of the Department of Public Safety, Chief of the Division of Police and Security, and other officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

Source: 12 TTC §460 (1970); 12 TTC §460 (1980)

**§10-111. Governor's warrant of arrest; rights of accused persons; application for writ of habeas corpus.** — No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of the Pohnpei Supreme Court, who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the court shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the Attorney General of the state of Pohnpei and to the agent of the demanding state.

Source: 12 TTC §461 (1970); 12 TTC §461 (1980)

**§10-112. Governor's warrant of arrest; penalty for noncompliance.** — Any officer who shall deliver a person in his custody under the Governor's warrant to the agent for extradition of the demanding state in disobedience of §10-111 shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$1,000, or be imprisoned not more than six months, or both such fine and imprisonment.

Source: 12 TTC §462 (1970); 12 TTC §462 (1980)

**§10-113. Governor's warrant of arrest; confinement in jail authorized when necessary.** — The officer or person executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner is to be delivered may, when necessary, confine the prisoner in any jail of the government of the state of Pohnpei and the warden of such jail shall receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping the prisoner.

Source: 12 TTC §463 (1970); 12 TTC §463 (1980)

**§10-114. Arrest prior to requisition; by warrant.** — A justice or magistrate shall issue a warrant directed to the Attorney General, Director of the Department of Public Safety or Chief of the Division of Police and Security commanding him to apprehend the person named therein wherever he may be found in the state of Pohnpei and to bring him before the Pohnpei Supreme Court to answer the charge or complaint and affidavit. A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant whenever:

(1) Any person within the state of Pohnpei shall be charged on the oath of any credible person before any judge or magistrate of the state of Pohnpei with the commission of a crime in any state, and, except in cases arising under §10-107, with having fled from justice, with having been convicted of a crime in that state and with having escaped from confinement, or with having broken the terms of his bail, probation or parole; or

(2) Complaint shall have been made before the Supreme Court setting forth on the affidavit of any credible person in a state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under §10-107, has fled from justice, or that the accused has been convicted of a crime in that state and has escaped from confinement, or has broken the terms of his bail, probation or parole, and that the accused is believed to be in the state of Pohnpei.

Source: 12 TTC §464 (1970); 12 TTC §464 (1980)

**§10-115. Arrest prior to requisition; without a warrant.** — The arrest of a person may also be lawfully made by any policeman or private citizen without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by imprisonment for a term exceeding one year. When so arrested the accused must be taken before the Pohnpei Supreme Court with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section and thereafter his answer shall be heard as if he had been arrested on a warrant.

Source: 12 TTC §465 (1970); 12 TTC §465 (1980)

Note: Reference to the death penalty has been omitted. *See* Pohnpei Constitution, Article 4, Section 11.

**§10-116. Arrest prior to requisition; commitment to await requisition.** — If from the examination before the Pohnpei Supreme Court it appears that the person held pursuant to either of the two preceding sections is the person charged with having committed the crime alleged and, except in cases arising under §10-107, that he has fled from justice, the Supreme Court shall, by a warrant reciting the accusation, commit him to jail for such a time not exceeding 45 days specified in the warrant as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused shall give bail as provided in §10-117, or until he shall be legally discharged.

Source: 12 TTC §466 (1970); 12 TTC §466 (1980)

**§10-117. Bail; when allowed; conditions of bond.** — Unless the offense with which the prisoner is charged is shown to be an offense punishable by life imprisonment under the laws of the state in which it was committed, the Pohnpei Supreme Court may admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as the court deems proper, conditioned upon his appearance before it at a time specified in such bond or undertaking, and upon his surrender for arrest upon the warrant of the Governor.

Source: 12 TTC §467 (1970); 12 TTC §467 (1980)

Note: Reference to the death penalty has been omitted. *See* Pohnpei Constitution, Article 4, Section 11.

**§10-118. Bail; discharge, recommitment or renewal.** — If the accused is not arrested under warrant of the Governor by the expiration time specified in the warrant, bond or undertaking, the Pohnpei

Supreme Court may discharge him or may recommit him to a further day, or may again take bail for his appearance and surrender, as provided in §10-117. At the expiration of the second period of commitment, or if he has been bailed and appeared according to the terms of his bond or undertaking, the court may either discharge him, or may require him to enter into a new bond or undertaking, to appear and surrender himself at another day.

Source: 12 TTC §468 (1970); 12 TTC §468 (1980)

**§10-119. Bail; forfeiture.** — If the prisoner is admitted to bail and fails to appear and surrender himself according to the condition of his bond, the Pohnpei Supreme Court shall declare the bond forfeited and order his immediate arrest without warrant if he be within the state of Pohnpei. Recovery may be had on such bond in the name of the state of Pohnpei as in the case of other bonds or undertakings given by the accused in criminal proceedings within the state of Pohnpei.

Source: 12 TTC §469 (1970); 12 TTC §469 (1980)

**§10-120. Persons under criminal prosecution in the state of Pohnpei at time of requisition.** — If a criminal prosecution has been instituted under the laws of the state of Pohnpei against a person subject to extradition and is still pending, the Governor, in his discretion, either may surrender him on the demand of the executive authority of another state or may hold him until he has been tried and discharged or convicted and punished in the state of Pohnpei.

Source: 12 TTC §470 (1970); 12 TTC §470 (1980)

**§10-121. Inquiry into guilt or innocence of accused.** — Except as that may be involved in identifying the person held as the person charged with the crime, the Governor shall make no inquiry into the guilt or innocence of the accused as to the crime of which he is charged, nor may any such inquiry be made in any proceeding after presentation to the Governor of the demand for extradition accompanied by a charge of crime in legal form as provided in this chapter.

Source: 12 TTC §471 (1970); 12 TTC §471 (1980)

**§10-122. Governor may recall warrant or issue additional warrant.** — The Governor may recall his warrant of arrest or may issue another warrant whenever he deems it proper.

Source: 12 TTC §472 (1970); 12 TTC §472 (1980)

**§10-123. Fugitives from the state of Pohnpei; issuance of warrant to receive and convey.** — Whenever the Governor shall demand from the executive authority of any state a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in the state of Pohnpei, he shall issue a warrant under the seal of the state of Pohnpei to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the government of the state of Pohnpei.

Source: 12 TTC §473 (1970); 12 TTC §473 (1980)

**§10-124. Fugitives from the state of Pohnpei; applications for requisition; return of person charged with crime.** — When the return to the state of Pohnpei of a person charged with a crime in the state of Pohnpei is required, the Attorney General or his assistant shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the Attorney General or his assistant, the ends of justice require the arrest and return of the accused to the state of Pohnpei for trial, and that the proceeding is not instituted to enforce a private claim.

Source: 12 TTC §474 (1970); 12 TTC §474 (1980)

**§10-125. Fugitives from the state of Pohnpei; applications for requisition; escaped convict.** — When the return to the state of Pohnpei is required of a person who has been convicted of a crime in the state of Pohnpei and who has escaped from confinement or broken the terms of his bail, probation or parole, the Attorney General shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, and the state in which he is believed to be, including the location of the person therein at the time application is made.

Source: 12 TTC §475 (1970); 12 TTC §475 (1980)

**§10-126. Fugitives from the state of Pohnpei; applications for requisition; form of applications; copies, etc.** — The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the information and affidavit filed, or of the complaint made to the judge or magistrate charged, or of the judgment of conviction, or of the sentence. The Attorney General or his assistant may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, or complaint, or information and affidavits, or of the judgment of conviction, or of the sentence shall be filed in the office of the Lieutenant Governor of the state of Pohnpei to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

Source: 12 TTC §476 (1970); 12 TTC §476 (1980)

**§10-127. Fugitives from the state of Pohnpei; costs and expenses.** — The expenses incident to the extradition of any person under §§10-123 through 10-126 shall be paid out of the Pohnpei Treasury.

Source: 12 TTC §477 (1970); 12 TTC §477 (1980)

**§10-128. Immunity from service of process in certain civil actions.** — A person brought into the state of Pohnpei by or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had ample opportunity to return to the state from which he was extradited.

Source: 12 TTC §478 (1970); 12 TTC §478 (1980)

**§10-129. Waiver of extradition proceedings.** —

(1) Any person arrested in the state of Pohnpei and charged with having committed any crime in any state, or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in §§10-108 and 10-109 and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a trial justice of the Pohnpei Supreme Court within the state of Pohnpei a writing which states that he consents to return to the demanding state; PROVIDED, HOWEVER, that before such waiver shall be executed it shall forthwith be forwarded to the office of the Lieutenant Governor and filed therein.

(2) The justice shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent of the demanding state, and shall deliver or cause to be delivered to such agent a copy of such consent; PROVIDED, HOWEVER, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an executive procedure or to limit the powers, rights or duties of the officers of the demanding state or of the state of Pohnpei.

Source: 12 TTC §479 (1970); 12 TTC §479 (1980)



**§10-130. Procedures of chapter not deemed waiver of state of Pohnpei's rights.** — Nothing in this chapter shall be deemed to constitute a waiver by the state of Pohnpei of its right, power or privilege to try such demanded person for crime committed within the state of Pohnpei, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within the state of Pohnpei; nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by the state of Pohnpei of any of its rights, privileges or jurisdiction in any way whatsoever.

Source: 12 TTC §480 (1970); 12 TTC §480 (1980)

**§10-131. Immunity from other criminal prosecutions while in the state of Pohnpei.** — After a person has been brought back to the state of Pohnpei by or after waiver of extradition proceedings, he may be tried in the state of Pohnpei for other crimes which he may be charged with having committed therein as well as that crime specified in the requisition for his extradition.

Source: 12 TTC §481 (1970); 12 TTC §481 (1980)

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