

# Federated States of Micronesia Rules of Court

## CHAPTER 1 General Provisions

Sections:

§ 101. Definitions.

§ 102. Name in which prosecution shall be conducted.

§ 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: FSM Code (1982).

#### Annotations

Brief detention for questioning about suspicious circumstances is not an arrest, but neither is a formal charge essential. *FSM v Edward*, 3 FSM Intrm 224, 232 (Pon 1987).

One should be considered "arrested" 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 the commission of a crime. *Plais v Panuelo*, 5 FSM Intrm 179, 191 (Pon 1991).

§ 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: FSM Code (1982).

#### Annotations

Provision limits cases which may be conducted in the name of the National Government to cases charging violation of statutes within the jurisdiction of the National Government. *FSM v Boaz (II)*, 1 FSM Intrm 28, 32 (Pon 1981).

The conclusion that the Trust Territory Weapons Control Act became a National law is consistent with Section 102 which states that criminal prosecutions that shall be conducted in the name of the National government for violations of statutes of the Trust Territory. *FSM v Nota*, 1 FSM Intrm 299, 303 (Chk 1983).

## CHAPTER 2 PROCESS-WARRANTS AND ARREST

- § 201. Process obligatory upon police.
- § 202. Limitation of arrests without a warrant.
- § 203. Authority to issue a warrant of arrest.
- § 204. Warrant or penal summons upon complaint.
- § 205. Investigation of complaint in doubtful cases.
- § 206. Use of penal summons in lieu of warrant of arrest.
- § 207. Execution of warrants and service of penal summons.
- § 208. Return of service.
- § 209. Issuance of oral order in lieu of warrant or penal summons by community court.
- § 210. Issuance of warrant or penal summons on information.
- § 211. Authority to arrest without warrant.
- § 212. Use of citations.
- § 213. Complaints in cases of arrest without warrant.
- § 214. Arrested person to be informed of cause and authority of arrest.
- § 215. Use of force in making arrest.
- § 216. Disposition of persons arrested by private persons.
- § 217. Disposition of arrested persons by policeman.
- § 218. Rights of persons arrested.
- § 219. Effect of irregularities in issuance of warrant of arrest.
- § 220. Effect of violation of title.

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

#### § 206. 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 6 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: FSM Code (1982).

#### § 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: FSM Code (1982).

§ 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 an 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

Annotations

Section 211 does not authorize arrest for violation of local ordinances because they are not criminal offenses. *Paul v Celestine*, 4 FSM Intrm 205, 209 (App 1990).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

Annotations

Where officer told defendant that he was going to take him "to a place" because he was drinking, and defendant apparently understood that the officer was seeking to effect an arrest, there was sufficient compliance with Section 214. *Loch v FSM*, 1 FSM Intrm 566, 569 (App 1984).

Liability for failure to inform a person of the charge for which he is being arrested will not be imposed when he knew was dealing with police who could arrest him, that he was likely to be arrested and why. *Conrad v Kolonia Town*, 8 FSM Intrm 183, 193 (Pon 1997).

§ 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: FSM Code (1982).

Annotations

A police officer is entitled to respond to physical resistance or attacks against him as he attempts to make an arrest by using whatever force is reasonable to defend himself or others from harm. *Loch v FSM*, 1 FSM Intrm 566, 570 (App 1984).

Where rights specified in Section 208 were read to the defendant before his questioning began, and there was no other showing of police intimidation or manipulation and the defendant had recognized that his guilt was apparent, the defendant's confession was voluntary even though a police officer promised to reduce charges if the defendant cooperated. *FSM v Jonathan*, 2 FSM Intrm 189, 198 (Kos 1986).

Defendant's rights were violated when he was detained and questioned for some 6 or 7 hours without being advised of his rights. *FSM v Edward*, 3 FSM Intrm 224, 232 (Pon 1987).

Section 218 established a statutory right in the nature of a civil right, which is directly violated by questioning without prior advice of right. *FSM v Edward*, 3 FSM Intrm 224, 233 (Pon 1987).

Unlawful questioning of defendant without prior advice of rights does not require suppression of later statement made after defendant had been advised of his rights. *FSM v Edward*, 3 FSM Intrm 224, 234 (Pon 1987).

When a defendant has expressed a wish to meet with counsel before further questioning, questioning must cease at once. Any attempt by police officers to ignore or override the defendant's wish, or to dissuade him from exercising his right, constitutes a violation of Section 218. *FSM v Edward*, 3 FSM Intrm 224, 237 (Pon 1987).

A person should be considered as "arrested" within the meaning of Section 218 when his freedom of movement is substantially restricted or controlled by a police officer exercising official authority. *Plats v Panuelo*, 5 FSM Intrm 179, 191 (Pon 1981).

Refusal of officers to permit representative of the Office of the Public Defender and accused mother to see accused violated civil rights guaranteed by Section 218, and constituted official actions for which the State of Pohnpei could be held responsible. *Plais v Panuelo*, 5 FSM Intrm 179, 207 (Pon 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 nighttime.

Source: FSM Code (1982).

§ 217. Disposition of arrested persons by policeman.

Persons arrested by a policeman, except under Subsection (4) of 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: FSM Code (1982).

§ 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) 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 (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: FSM Code (1982).

#### § 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: FSM Code (1982).

#### § 220. Effect of violation of title.

No violation of the provisions of this Chapter 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 Chapter 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: FSM Code (1982).

#### Annotations

Section 220 prohibits evidence or admissions gained through violations of the

defendant' s rights from being used to elicit other admissions. FSM v Edward, 3 FSM Intrm 224, 233 (Pon 1987).

Where admissions had been obtained in the course of questioning conducted in violation of the defendant' s right, statutory policy calls for a presumption that subsequent admissions were also obtained as a result of the violation. FSM v Edward, 3 FSM Intrm 224, 233 (Pon 1987).

Once a defendant has invoked his right to counsel, officers may not present to the defendant a waiver form for his signature and resume questioning; any statement obtained as a result of such actions is inadmissible. FSM v Edward, 3 FSM Intrm 224, 237 (Pon 1987).

Where defendant is questioned without being advised of all of his rights, the effect of the violation was to render inadmissible the evidence obtained. FSM v Sangechik, 4 FSM Intrm 210, 211 (Chk 1990).

## CHAPTER 3 Searches and Seizures

### Sections:

- § 301. Searches and seizures in connection with arrests.
- § 302. Forcing entrance to make arrest.
- § 303. Authority to issue a search warrant.
- § 304. Property for which search warrant may be issued.
- § 305. Procedure for issuance of search warrants.
- § 306. Contents of search warrant.
- § 307. Execution of search warrant and return with inventory.
- § 308. Hearing upon return of search warrant.
- § 309. Filing of search warrant and accompanying papers.
- § 310. Oral order in lieu of search warrant.
- § 311. Entering building or ship to execute search warrant.
- § 312. Motion for return of property and to suppress evidence.
- § 313. Sale of perishable property.
- § 314. Effect of irregularities in proceedings to issue search warrant.

§ 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: FSM Code (1982).

### § 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: FSM Code (1982).

### § 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: FSM Code (1982).

### § 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 not; 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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 10 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: FSM Code (1982).

§ 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: FSM Code (1982).

### § 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: FSM Code (1982).

### § 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: FSM Code (1982).

§ 310. Oral order in lieu of search warrant.

(1) A community 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

Annotations

Section 312 vests a court with authority to exclude evidence obtained by unlawful search and seizure. *FSM v Tipen*, 1 FSM Intrm 79, 92 (Pon 1982).

Fact that only two FSM Supreme Court justices and various state court and district court judges are authorized to execute warrants, does not justify neglect of police officers in obtaining warrants before seizing evidence. *FSM v Mark*, 1 FSM Intrm 284 (Pon 1983).

A court may suppress evidence obtained by an unlawful search and seizure. *FSM v Santa*, 8 FSM Intrm 266, 268 (Chk 1998).

When a search or seizure is conducted without a warrant the burden is on the government to justify the search or seizure, but when the search or seizure is conducted pursuant to a judicially-issued warrant the burden rests with the defendant to prove the illegality of the search or seizure. *FSM v Santa*, 8 FSM Intrm 266, 268 (Chk 1998).

§ 313. Sale of perishable property.

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

Source: FSM Code (1982).

§ 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: FSM Code (1982).

## CHAPTER 4 Rights of Defendants

Sections:

§ 401. Rights of defendants enumerated.

§ 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: FSM Code (1982).

## CHAPTER 5 Preliminary Matters

### Sections:

§ 501. Preliminary hearing—Duties of official.

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

§ 503. Pre-trial procedure.

§ 504. Disposition of the record.

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

§ 506. National offense—Detention of accused.

§ 507. National offense—Definition.

§ 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: FSM Code (1982).

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

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

Source: FSM Code (1982).

#### § 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 describe the person arrested or does not 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: FSM Code (1982).

#### § 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: FSM Code (1982).

§ 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: FSM Code (1982).

#### § 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: FSM Code (1982).

§ 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: FSM Code (1982).

**CHAPTER 6 Bail**

Sections:

§ 601. Right to bail.

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

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

§ 604. Amount of bail.

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

§ 606. Modification of bail.

§ 607. Exoneration and release of bail.

§ 608. Personal recognizance.

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

#### § 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: FSM Code (1982).

#### § 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: FSM Code (1982).

#### § 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 6 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: FSM Code (1982).

## CHAPTER 7 Witnesses

Sections:

§ 701. Witness summons.

§ 702. Detention and release of witness.

§ 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: FSM Code (1982).

§ 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' s 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: FSM Code (1982).

## CHAPTER 8 Dismissal

Sections:

§ 801. Dismissal by Attorney General or district attorney.

§ 802. Dismissal by court.

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

## CHAPTER 9 Insanity

Sections:

§ 901. Insanity at time of offense.

§ 902. Insanity at time of trial.

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

## CHAPTER 10 (Repealed by PL 5-22 § 1)

## CHAPTER 11 Juveniles

Sections:

§ 1101. Adoption of flexible procedures by courts.

§ 1102. Delinquent child defined.

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

§ 1104. Proceedings—Where brought.

§ 1105. Confinement.

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

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

§ 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: FSM Code (1982).

## Annotations

The National Criminal Code places exclusive jurisdiction in the National courts over allegations of violations of the Code and makes no exception to that jurisdiction for crimes committed by juveniles. FSM v Albert, 1 FSM Intrm 14, 15 (Pon 1981).

If a provision of the juvenile code is in conflict with the National Criminal Code, the national criminal code constitutes an amendment or repeal of that provision, but the repeal is only to the extent of the inconsistency. FSM v Albert, 1 FSM Intrm 14, 16 (Pon 1981).

Section 1101 remains in effect, and coupled with the court's broad rule-making powers under Article XI, Section 9 of the Constitution, calls for the court to institute special procedures for consideration of criminal charges against juveniles. FSM v Albert, 1 FSM Intrm 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: FSM Code (1982).

### § 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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: FSM Code (1982).

§ 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 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: FSM Code (1982).

## CHAPTER 12 Joint Administration of Law Enforcement

Sections:

§ 1201. Definitions.

§ 1202. Joint administration of law enforcement functions.

§ 1203. Joint-administration agreements.

§ 1201. Definitions.

As used in this Chapter:

(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 Code of the Federated States of Micronesia or a major crime contained in other applicable laws.

Source: FSM Code (1982).

#### Annotations

State law enforcement officers are generally authorized to enforce criminal laws of the National Government as well as the State; in evaluating the conduct of such officers, the court must consider both State and National law. *Ishizawa v Pohnpei*, 2 FSM Intrm 67, 71 (Pon 1985).

When State government is acting on behalf of the National Government by virtue of the Joint Administration of Law Enforcement Act, the State officers and employees are agents of the National Government and are acting “under color of authority” within the meaning of 6 FSMC 702 (5). *Plais v Panuelo*, 5 FSM Intrm 179, 209 (Pon 1991).

The National Government is liable for civil rights violation when it has abdicated its responsibility toward National prisoner. *Plais v Panuelo*, 5 FSM Intrm 179, 210 (Pon 1991).

The joint law enforcement agreement in no way affects the ability of a National court to require a jailer who has accepted custody of a prisoner to act in conformity with the sentencing order. *Soares v FSM*, 4 FSM Intrm 78, 84 (App 1989).

#### § 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 5-23 § 1.

#### § 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: FSM Code (1982).

### CHAPTER 13 Justice Improvement Commission

Sections:

- § 1301. Findings and purpose.
- § 1302. Justice Improvement Commission.
- § 1303. Supervisory board created—Membership; Compensation.
- § 1304. Supervisory board meetings; Quorum; Committee; Bylaws.
- § 1305. Executive administrator; Commission staff.
- § 1306. Reports.

§ 1307. Termination.

§ 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 goal, 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;

(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: FSM Code (1982).

§ 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 territory-wide 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 territory's 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: FSM Code (1982).

§ 1303. Supervisory board created—Membership; Compensation.

(1) The supervisory board of the Justice Improvement Commission shall consist of fifteen 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 4-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: FSM Code (1982).

#### § 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: FSM Code (1982).

#### § 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: FSM Code (1982).

#### § 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: FSM Code (1982).

#### § 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: FSM Code (1982).

## CHAPTER 14 Criminal Extradition

Sections:

- § 1401. Scope and limitation of chapter.
- § 1402. Fugitives from foreign country to Federated States of Micronesia .
- § 1403. Secretary of External Affairs to surrender fugitive.
- § 1404. Time of commitment pending extradition.
- § 1405. Place and character of hearing.
- § 1406. Evidence on hearing.
- § 1407. Witnesses for indigent fugitives.
- § 1408. Protection of accused.
- § 1409. Receiving and transporting offenders.
- § 1410. Payment of fees and costs.

§ 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.

§ 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.

§ 1403. Secretary of External Affairs to surrender fugitive.

The Secretary of External Affairs may order the person committed under Section 1402 of this Title 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.

§ 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 2 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

## CHAPTER 15 Criminal Extradition Procedures

Sections:

§ 1501. Scope and limitation of chapter.

§ 1502. Definitions.

§ 1503. Authority of the Attorney General.

§ 1504. Applicability of Federated States of Micronesia laws.

- § 1505. Transfer of offenders on probation.
- § 1506. Transfer of offenders serving sentence of imprisonment.
- § 1507. Transfer of offenders on parole.
- § 1508. Verification of consent of offender to transfer from the Federated States of Micronesia .
- § 1509. Verification of consent of offender to transfer to the Federated States of Micronesia .
- § 1510. Right to counsel; Appointment of counsel.
- § 1511. Transfer of juveniles.
- § 1512. Prosecution barred by foreign conviction.
- § 1513. Loss of rights; Disqualification.
- § 1514. Status of alien offender transferred to a foreign country.
- § 1515. Return of transferred offenders.
- § 1516. Execution of sentences imposing an obligation to make restitution or reparations.
- § 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 Title. 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.

## § 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;

(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;

(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 the Code of the Federated States of Micronesia , 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 the Code of the Federated States of Micronesia , 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.

#### § 1504. Applicability of Federated States of Micronesia 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.

§ 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 Title 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.

§ 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.

§ 1508. Verification of consent of offender to transfer from the Federated States of Micronesia .

(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.

§ 1509. Verification of consent of offender to transfer to the Federated States of Micronesia .

(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.

§ 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 Title 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 Title 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.

§ 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 the Code of the Federated States of Micronesia, 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 the Code of the Federated States of Micronesia, 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.

§ 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 10 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.

§ 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.

## CHAPTER 16 Interstate Extradition

Sections:

§ 1601. Interstate extradition - Obligations of States.

§ 1602. Requirement for warrant.

§ 1603. Contents for warrant.

§ 1604. Transmittal of warrant.

§ 1605. Ratification of warrant.

§ 1606. Required findings by court.

§ 1607. Time limitations.

§ 1608. Expenses.

§ 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.

#### § 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 title. 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.