

CHAPTER 6

Crimes Against Property and Persons

SUBCHAPTER I

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SUBCHAPTER II

Trafficking in Persons

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Editor's note: Former chapter 6 of this title on Offenses Against Government Property (§§ 601-604) was repealed in its entirety by PL 11-72 § 1.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

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

§ 601. Definitions.

As used in this chapter:

(1) "Deprive" means:

- (a) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or
- (b) to dispose of the property so as to make it unlikely that the owner will recover it.

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

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

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

(5) "Obtain" means:

- (a) in relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or
- (b) in relation to labor or service, to secure performance thereof.

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

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

(8) *Receiving stolen property.*

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

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

(9) *Theft by deception.*

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

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

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

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

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

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

(10) *Theft by extortion.*

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

(i) inflict bodily injury on anyone or commit any other crime;

(ii) accuse anyone of a crime;

(iii) expose any secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute;

(iv) take or withhold action as an official, or cause an official to take or withhold action;

(v) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(vi) inflict any other harm which would not benefit the defendant.

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

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

(a) to know of any legal obligation relevant to his criminal liability under this section; and

(b) to have dealt with the property as his own if he fails to pay or account for upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

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

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

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

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

(14) *Theft of services.*

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

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

Source: PL 11-72 § 66.

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

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

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

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

§ 602. Theft.

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

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

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

(a) was unaware that the property or service was that of another;

(b) acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or

(c) took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.

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

(a) if the value of the property or service is \$5,000 or more, for not more than ten years;

(b) if the value of the property or service is at least \$1,000 but less than \$5,000, for not more than five years;

(c) if the value of the property or service is at least \$100 but less than \$1,000, for not more than one year;

(d) if the value of the property or service is at least \$25 but less than \$100 for not more than six months; or

(e) if the value of the property or service is less than \$25, for not more than thirty days.

Source: PL 11-72 § 67.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that

were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

Theft

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

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

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

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

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

§ 603. Criminal mischief.

- (1) A person commits the crime of criminal mischief if he or she intentionally or recklessly:
 - (a) causes any damage to property in which another person has any legal, equitable, or possessory interest; or
 - (b) causes another person by deception or threat to suffer any loss.
- (2) The amount involved in a crime of criminal mischief shall be deemed to be the highest value, by any reasonable standard, of the loss which the defendant caused or attempted to cause. Amounts involved in acts of criminal mischief, committed pursuant to one scheme or course of conduct, may be aggregated in determining the grade of such crime.
- (3) It is an affirmative defense to prosecution under subsection (1)(a) of this section that the defendant:
 - (a) was unaware that the property was that of another; or
 - (b) acted under an honest claim of right to dispose of the property as he or she did.
- (4) A person convicted under this section shall be imprisoned:

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

Source: PL 11-72 § 68, modified.

§ 604. Unauthorized possession or removal of property.

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

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

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

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

Source: PL 11-72 § 69.

§ 605. Trespassing.

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

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

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

(i) at night;

(ii) while in possession of a dangerous weapon;

(iii) while any other person is lawfully present on the premises;

(iv) with the purpose to commit any crime therein; or

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

Source: PL 11-72 § 70.

§ 606. Murder.

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

(a) intentionally or knowingly; or

(b) recklessly under circumstances manifesting extreme indifference to the value of human life.

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

Source: PL 11-72 § 71.

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

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

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

Where the defendant is fighting another person and uses a wrestling hold which causes the death of the other person, but where the court is unable to find that reasonable person would be aware that such a hold, as applied, would create a substantial risk of death, the defendant is

not guilty of the crimes of manslaughter or negligent homicide. *FSM v. Raitoun*, 1 FSM R. 589, 590-92 (Truk 1984).

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

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

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

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

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

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

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

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

§ 607. Manslaughter.

- (1) A person commits a crime if he or she causes the death of another human being when:
 - (a) the person has acted recklessly; or

(b) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the defendant's situation under the circumstances as he believes them to be.

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

Source: PL 11-72 § 72.

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

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

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

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

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

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

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

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

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

§ 608. Aggravated Assault.

- (1) A person commits a crime if he or she causes serious bodily injury to another intentionally, knowingly, or recklessly under circumstances showing extreme indifference to the value of human life.
- (2) A person convicted under this section shall be imprisoned for not more than ten years.

Source: PL 11-72 § 73.

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

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

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

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

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

A simple assault, one without a weapon or the intent to inflict serious bodily injury, is punishable only by six months' imprisonment. Therefore, it is neither a major crime under the National Criminal Code, because it does not call for three years' imprisonment, nor a

felony. *FSM v. Boaz (I)*, 1 FSM R. 22, 24 n.* (Pon. 1981).

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

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

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

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

§ 609. Assault.

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

Source: PL 11-72 § 74.

§ 610. Kidnapping.

- (1) A person commits a crime if he or she unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he or she unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:
 - (a) to hold for ransom or reward, or as a shield or hostage;
 - (b) to facilitate commission of any felony or flight thereafter;
 - (c) to inflict bodily injury on or to terrorize the victim or another; or
 - (d) to interfere with the performance of any government or political function.

(2) A removal or confinement is unlawful under this section if it is accomplished by force, threat, or deception, or, in the case of a person who is under the age of fourteen or incompetent, without the consent of a parent, guardian, or other person responsible for general supervision of the child or incompetent person's welfare.

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

Source: PL 11-72 § 75.

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

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

SUBCHAPTER II

Trafficking in Persons

§ 611. Citation.

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

Source: PL 17-38 § 3.

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

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

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

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

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

§ 612. Definitions.

(1) “Child” means any person below the age of 18 at the time of the commission of an offense under this chapter.

(2) “Commercial carrier” means a legal or a natural person that engages in international or interstate transportation of goods or people for commercial gain.

(3) “Exploitation” means:

- (a) the obtaining of financial or other material benefit from the prostitution of another person;
- (b) the exaction of forced labor or services, or the obtaining of labor or services through deceit, fraud, or by means of a material misrepresentation;
- (c) slavery or practices similar to slavery.

(4) “Forced labor or services” means work or services, the solicitation of financial or material benefits, or the donation of body parts or organs, exacted under the threat of any penalty and for which the person concerned has not offered himself or herself voluntarily. It does not include the performance of reasonable and lawful work or services by a child at the behest of a parent or legal guardian.

(5) “Practices similar to slavery” include debt bondage, serfdom, and forced marriage.

(6) “Prostitution” means illicit sexual services performed for financial or material benefit.

Source: PL 17-38 § 4.

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

§ 613. Offense of human smuggling.

A person who knowingly or recklessly arranges or assists another person’s illegal entry into any country, including the Federated States of Micronesia, of which the other person is not a citizen and has no lawful right to enter

shall be guilty of human smuggling, regardless of whether the smuggled person successfully arrives in the receiving country. Upon conviction, a person guilty of this offense shall be imprisoned for not more than ten years, or fined not less than \$5,000 but not more than \$20,000, or both.

Source: PL 17-38 § 5.

§ 614. Offense of aggravated human smuggling.

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

Source: PL 17-38 § 6.

§ 615. Offense of human trafficking.

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

Source: PL 17-38 § 7.

§ 616. Offense of trafficking in children.

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

Source: PL 17-38 § 8.

§ 617. Offense of aggravated human trafficking.

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

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

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

Source: PL 17-38 § 9.

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

§ 618. Offense of exploiting a trafficked person.

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

Source: PL 17-38 § 10.

§ 619. Consent of trafficked or smuggled person irrelevant.

Consent to the act or acts constituting an offense on the part of a smuggled person under sections 613 and 614 of

this chapter, or a trafficked person under sections 616, 617, and 618 of this chapter, is not a legal defense.

Source: PL 17-38 § 11.

§ 620. Rights of victims.

(1) A trafficked person shall not be subject to criminal prosecution with respect to:

- (a) the act of human trafficking;
- (b) that person's entry into the receiving country;
- (c) that person's unlawful residence in the receiving country; and
- (d) that person's procurement or possession of any fraudulent travel or identity document.

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

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

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

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

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

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

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

Source: PL 17-38 § 12.

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

the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 621. Scope of application.

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

- (1) the Federated States of Micronesia is the receiving country, or if the exploitation occurs herein; or
- (2) the acts or conduct constituting an offense under this chapter started, ended or occurred in part in the jurisdiction of the Federated States of Micronesia; or
- (3) the offense is committed by a national of the Federated States of Micronesia or by a person who is not a citizen of any country but has his or her habitual residence in the Federated States of Micronesia at the time of the commission of the offense; or
- (4) the offense is committed against a victim who is a national of the Federated States of Micronesia.

Source: PL 17-38 § 13.

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

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

Source: PL 17-38 § 14.

§ 623. Obligation of commercial carriers.

- (1) A commercial carrier shall verify that every passenger possesses the necessary travel documents, including passports, visas and other supporting papers, to enter the destination country and any transit countries.
- (2) The requirement in subsection (1) of this section applies both to staff of the commercial carrier selling or issuing tickets, boarding passes or similar travel documents and to staff collecting or checking tickets prior to or subsequent to boarding.
- (3) Commercial carriers, or persons referred to under subsection (2) of this section, which fail to comply with the requirements of this section shall be fined \$1,000 for every passenger. Repeated failure to comply may be sanctioned by revocation of license, permit, certificate or authority to operate.

Source: PL 17-38 § 15.

