

TITLE 31.
CRIMES AND PUNISHMENTS

CHAPTER 1.

CRIMINAL CODE

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An Act to proscribe certain criminal acts and establish the penalties therefore in the Republic.

Source: TTC 1966
11 TTC 1970
COM P.L. 6-107 (1976)

COM P.L. 7-1 (1977)
COM P.L. 7-92 (1978)
11 TTC 1980
P.L. 1992-1
P.L. 1993-36
P.L. 1993-47
P.L. 1993-52
P.L. 1994-79
P.L. 1994.88
P.L. 1994-96
P.L. 1995-127
P.L. 1996-8
P.L. 2000-6
P.L. 2001-37
P.L. 2001-40
P.L. 2003-104
P.L. 2005-31

PART I - GENERAL PROVISIONS

§101. Short title.

This Chapter may be cited as the “Criminal Code”.

§102. Classification of crimes.

(1) A felony is a crime or offense which may be punishable by imprisonment for a period of more than one year. Every other crime is a misdemeanor.

(2) An offense defined by this code or by any other statute of the RMI, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, misdemeanors, or petty misdemeanors.

(3) A crime is a felony if it is so designated in this code, or if persons convicted of that crime may be sentenced to imprisonment for a term that, apart from an extended term, is in excess of one year.

(4) A crime is a misdemeanor if it is so designated in this code, or in a statute other than this code enacted subsequent to the date this code comes into effect.

(5) A crime is a petty misdemeanor if it is so designated in this code, or in a statute other than this code enacted subsequent to the date this code comes into effect, or if it is defined by a statute other than this code that now provides that persons convicted of that crime may be sentenced to imprisonment for a term of which the maximum is less than one year.

(6) An offense defined by this code or by any other statute of the RMI constitutes a violation if it is so designated in this code, or in the law defining the offense, or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction, or if it is defined by a statute other than this code that now provides that the offense shall not constitute a crime. A violation does not constitute a crime, and conviction of a violation shall not give rise to any

disability or legal disadvantage based on conviction of a criminal offense.

(7) Any offense declared by law to constitute a crime, without specification of the grade of that crime, or of the sentence authorized upon conviction, is a misdemeanor. [TTC 1966, §375; 11TTC 1970, §1; 11TTC 1980, §1][amended by P.L. 2005-31.]

§103. Definitions, Burden of Proof; General principles of liability; Requirements of culpability.

(A) Definitions.

In this code, unless a different meaning plainly is required:

(1) “principal” means every person who commits an offense against the Republic or aids, abets, counsels, commands, induces, or procures its commission or who causes an act to be done, which, if directly performed by him, would be an offense against the Republic. No distinction is made between principals in the first and second degrees, and no distinction is made between a principal and what has heretofore been called an accessory before the fact.

(2) “statute” includes the Constitution and laws of the RMI, and any local law or ordinance of a municipality or other political subdivision of the RMI;

(3) “act” or “action” means a bodily movement whether voluntary or involuntary;

(4) “voluntary” has the meaning specified in section 103 (c);

(5) “omission” means a failure to act;

(6) “conduct” means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;

(7) “actor” includes, where relevant, a person guilty of an omission;

(8) “acted” includes, where relevant, “omitted to act”;

(9) “person”, “he or she”, “she” and “actor” include any natural person and, where relevant, a corporation or an unincorporated association;

(10) “element of an offense” means:

(a) such conduct; or

(b) such attendant circumstances; or

(c) such a result of conduct as:

(i) is included in the description of the forbidden conduct in the definition of the offense; or

(ii) establishes the required kind of culpability; or

(iii) negatives an excuse or justification for such conduct; or

(iv) negatives a defense under the statute of limitations; or

(v) establishes jurisdiction or venue;

(11) “material element of an offense” means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue, or to any other matter similarly unconnected with:

(a) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or;

(b) the existence of a justification or excuse for such conduct;

(12) “purposely” means “intentionally,” and equivalent terms such as “with purpose,” “designed” or “with design” have the same meaning;

(13) “intentionally” has the meaning specified in section 103 (C) and equivalent terms such as “intentional” and “with intent” have the same meaning;

(14) “knowingly” has the meaning specified in section 103 (C) and equivalent terms such as “knowing” or “with knowledge” have the same meaning;

(15) “recklessly” has the meaning specified in section 103 (C) and equivalent terms such as “recklessness” and “with recklessness” have the same meaning;

(16) “negligently” has the meaning specified in section 103(C) and equivalent terms such as “negligence” and “with negligence” have the same meaning;

(17) “reasonably believes” or “reasonable belief” designates a belief that the actor is not reckless or negligent in holding.

(B) Burden of Proof.

(1) No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed.

(2) Subsection (1) of this section does not:

(a) require the disproof of an affirmative defense unless and until there is evidence supporting such defense; or

(b) apply to any defense that the code or another statute plainly requires the defendant to prove by a preponderance of evidence.

(3) A ground of defense is affirmative, within the meaning of subsection (2) (a) of this section, when:

(a) it arises under a section of the code that so provides; or

(b) it relates to an offense defined by a statute other than the code and such statute so provides; or

(c) it involves a matter of excuse or justification peculiarly within the knowledge of the defendant on which the defendant can fairly be required to adduce supporting evidence.

(4) When the application of the code depends upon the finding of a fact that is not an element of an offense, unless the code otherwise provides:

(a) the burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made; and

(b) the fact must be proved by a preponderance of the evidence.

(5) A presumption not established by the code or inconsistent with it has the consequences otherwise accorded it by law.

(C) General principles of liability.

(1) A person is not guilty of an offense unless the person’s liability is based on conduct that includes a voluntary act or the omission to perform an act of which the person is physically capable.

(2) The following are not voluntary acts within the meaning of this section:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion;

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(3) Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:

(a) the omission is expressly made sufficient by the law defining the offense; or

(b) a duty to perform the omitted act is otherwise imposed by law.

(4) Possession is an act, within the meaning of this section, if the possessor knowingly procured or received the thing possessed or was aware of his or her control of the thing possessed for a sufficient period to have been able to terminate possession.

(D) Requirements of culpability.

(1) Minimum requirements of culpability. Except as provided in subsection (2), a person is not guilty of an offense unless the person acted intentionally, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.

(2) The requirements of culpability prescribed by subsection (1) do not apply to:

(a) offenses that constitute violations, unless the requirement involved is included in the definition of the offense or the court determines that its application is consistent with effective enforcement of the law defining the offense; or

(b) offenses defined by statutes other than the code, insofar as a legislative purpose to impose absolute liability for such offenses or with respect to any material element thereof plainly appears.

(3) Notwithstanding any other provision of existing law and unless a subsequent statute otherwise provides:

(a) when absolute liability is imposed with respect to any material element of an offense defined by a statute other than the code and a conviction is based upon such liability, the offense constitutes a violation; and

(b) although absolute liability is imposed by law with respect to one or more of the material elements of an offense defined by a statute other than the code, the culpable commission of the offense may be charged and proved, in which event negligence with respect to such elements constitutes sufficient culpability and the classification of the offense and the sentence that may be imposed therefor upon conviction are determined by this Act.

(4) Kinds of culpability defined.

(a) *Intentionally*. A person acts intentionally with respect to a material element of an offense when:

(i) if the element involves the nature of the person's conduct or a result of the conduct, it is the person's conscious object to engage in conduct of that nature or to cause such a result; and

(ii) if the element involves the attendant circumstances, the person is aware of the existence of such circumstances or believes or hopes that they exist.

(b) *Knowingly*. A person acts knowingly with respect to a material element of an offense when:

(i) if the element involves the nature of the person's conduct or the attendant circumstances, the person is aware that his or her conduct is of that nature or that such circumstances exist; and

(ii) if the element involves a result of the person's conduct, the person is aware that it is practically certain that his or her conduct will cause such a result.

(c) *Recklessly*. A person acts recklessly with respect to a material element of an offense when the person consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a

nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(d) *Negligently*. A person acts negligently with respect to a material element of an offense when the person should be aware of a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his or her conduct and the circumstances known to the actor, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(e) *Culpability required unless otherwise provided*. When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts intentionally, knowingly, or recklessly with respect thereto.

(f) *Prescribed culpability requirement applies to all material elements*. When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements of the offense, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(g) *Substitutes for negligence, recklessness and knowledge*. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

(h) *Requirement of intent or purpose satisfied even if conditional*. When a particular intent or purpose is an element of an offense, the element is established although such intent or purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.

(i) *Requirement of knowledge satisfied by knowledge of high probability*. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he or she actually believes that it does not exist.

(j) *Requirement of wilfulness satisfied by acting knowingly*. A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

(k) *Culpability as to illegality of conduct*. Neither knowledge, nor recklessness, or negligence, as to whether conduct constitutes an offense, or as to the existence, meaning, or application of the law determining the elements of an offense, is an element of such offense, unless the definition of the offense or the code so provides.

(l) *Culpability as determinant of grade of offense*. When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly or negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense. [TTC 1966, §430; 11TTC 1970, §2; 11TTC 1980, §2; [modified] [Amended by P.L. 2005-31.]

§104. Accessories.

Every person who, knowing that an offense against the Republic has been committed, receives, relieves, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment, is an accessory after the fact. An accessory after the fact shall be imprisoned not more than one half (1/2) the maximum term of imprisonment or fined not more than one-half (1/2) the maximum fine prescribed for punishment of the principal, or both; or if the principal is punishable by life imprisonment, the accessory shall be imprisoned not more than ten (10) years. [TTC 1966, §430(d); 11TTC 1970, §3; 11TTC 1980, §3, modified.]

§105. Attempts.

(1) Except as provided in Subsection (2) of this Section, every person who unlawfully attempts to commit any of the crimes named in this Chapter, including each crime referred to in Part IV other than a simple assault, or in any other Chapter of this Revised Code, which attempt shall fall short of actual commission of the crime itself, shall be guilty of attempt to commit the said crime, and where no separate provision is made by law for punishment upon conviction of such attempt, a person so convicted shall be punished by imprisonment for a term not exceeding one-half (1/2) of the maximum term of imprisonment which may lawfully be imposed upon conviction for commission of the offense attempted, or by a fine in an amount not exceeding one-half (1/2) of the fine which may lawfully be imposed upon conviction for commission of the offense attempted, or by both such fine and imprisonment.

(2) Every person who shall unlawfully attempt to commit murder; which attempt shall fall short of actual commission of the crime itself, shall be guilty of attempted murder, and shall be sentenced as follows:

(a) for attempted murder in the first degree, imprisonment for a term of thirty (30) years; and

(b) for attempted murder in the second degree, imprisonment for a term of not less than thirty (30) months no more than thirty (30) years.

(3) *Definition of Attempt.* A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, the person:

(a) intentionally engages in conduct that would constitute the crime if the attendant circumstances were as the person believes them to be; or

(b) when causing a particular result is an element of the crime, does or omits to do anything with the intention of causing or with the belief that it will cause such result without further conduct on his or her part; or

(c) intentionally does or omits to do anything that, under the circumstances as the person believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his or her commission of the crime.

(4) *Conduct that may be held substantial step under subsection (3)(c).* Conduct shall not be held to constitute a substantial step under subsection (3)(c) of this section unless it is strongly corroborative of the actor's criminal intent. Without negating the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal intent, shall not be held insufficient as a matter of law:

(a) lying in wait, searching for or following the contemplated victim of the crime;

(b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

(c) reconnoitering the place contemplated for the commission of the crime;

(d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(e) possession of materials to be employed in the commission of the crime, that are specially designed for such unlawful use or that can serve no lawful purpose of the actor under the circumstances;

(f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, if such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(g) soliciting an innocent agent to engage in conduct constituting an element of the crime.

(5) *Conduct Designed to Aid Another in Commission of a Crime.* A person who engages in conduct designed to aid another to commit a crime, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

(6) *Renunciation of Criminal Purpose.* When the actor's conduct would otherwise constitute an attempt under subsection (3)(b) or (3)(c) of this section, it is an affirmative defense that the person abandoned his or her effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

(7) Within the meaning of this Act, renunciation of criminal intent is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, that increase the probability of detection or apprehension or that make more difficult the accomplishment of the criminal purpose.

(8) Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim. [TTC 1966, §431; 11TTC 1970, §4; COMP.L. 6-107, §1 (1976); 11TTC 1980, §4, modified][amended by P.L. 1993-47, §2.][amended by P.L. 2005-31]

§106. Insanity.

(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental illness, disease or defect the person lacks substantial capacity either to appreciate the wrongfulness of such person's conduct or to conform his or her conduct to the requirements of law. As used in this Act, the terms "mental illness, disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(2) Evidence of mental illness, disease or defect admissible when relevant to element of the offense. Evidence that the defendant suffered from a mental illness, disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind that is an element of the offense.

(3) Mental illness, disease or defect excluding responsibility is affirmative defense; requirement of notice; form of judgment when finding of irresponsibility is made.

(a) Mental illness, disease or defect excluding responsibility is an affirmative defense.

(b) Evidence of mental illness, disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his or her plea of not guilty, or within

ten days thereafter, or at such later time as the court may for good cause permit, files a written notice of the defendant's intention to rely on such defense.

(c) When the defendant is acquitted on the ground of mental illness, disease or defect excluding responsibility, the decision and the judgment shall so state.

(4) Mental illness, disease or defect excluding fitness to proceed. No person who as a result of mental illness, disease or defect lacks capacity to understand the proceedings against such person, or to assist in his or her own defense, shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

(5) Psychiatric examination of defendant with respect to mental illness, disease or defect.

(a) Whenever the defendant has filed a notice of intention to rely on the defense of mental illness, disease or defect excluding responsibility, or there is reason to doubt the defendant's fitness to proceed, or reason to believe that mental illness, disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one qualified psychiatrist, or other qualified mental health professional if a qualified psychiatrist is not available in the RMI, or shall request the Minister of Health to designate at least one such qualified psychiatrist or mental health professional, to examine and report upon the mental condition of the defendant. The court may order the defendant to be committed to the RMI Hospital or other suitable medical facility for the purpose of the examination for an initial period not exceeding sixty days, or such longer period as the court determines, after hearing, to be necessary, but not to exceed 120 days, and may direct that a qualified psychiatrist or qualified mental health professional retained by the defendant be permitted to witness and participate in the examination.

(b) In such examination any method may be employed that is accepted by the medical or mental health profession for the examination of those alleged to be suffering from mental illness, disease or defect.

(c) The report of the examination shall include the following:

(i) a description of the nature of the examination;

(ii) a diagnosis of the mental condition of the defendant;

(iii) if the defendant suffers from a mental illness, disease or defect, an opinion as to the defendant's capacity to understand the proceedings against him or her and to assist in his or her own defense;

(iv) when a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired at the time of the criminal conduct charged; and

(v) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged.

(6) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental illness, disease, or defect.

(7) The report of the examination shall be filed in triplicate with the clerk of the court, and the clerk shall forthwith cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(8) Determination of fitness to proceed; effect of finding of unfitness; proceedings if fitness

is regained; post-commitment hearing.

(a) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed pursuant to Section (v), the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding of the report shall have the right to summon and to cross-examine the psychiatrist(s) or other mental health professionals who joined in the report and to offer evidence upon the issue.

(b) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in subsections (3) and (4) of this section, and the court shall commit the defendant to the custody of the Minister of Health to be placed in an appropriate institution of the Ministry of Health for that reasonable period of time necessary to determine whether there exists a substantial probability of defendant regaining fitness in the foreseeable future, but in no event to exceed the lesser of 3 years or the maximum possible sentence for the offense charged. When the court, on its own motion or upon the application of the Minister of Health or the prosecuting attorney, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed.

(c) If, however, after the maximum period of commitment has expired, based upon evidence presented at the hearing, the court finds that the defendant is still not fit to proceed, the court may dismiss the charge and may order the defendant to be discharged or, pursuant to the law governing the civil commitment of persons suffering from mental illness, disease or defect, may order the defendant to be committed to an appropriate institution of the Ministry of Health.

(d) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible of fair determination prior to trial and without the personal participation of the defendant. At any time within ninety days after commitment as provided in subsection (2) of this section, or at any later time with permission of the court granted for good cause, the defendant, or the defendant's counsel, or the Minister of Health may apply for a special post-commitment hearing. If the application is made by or on behalf of a defendant not represented by counsel, the defendant shall be afforded a reasonable opportunity to obtain counsel, and if the defendant lacks funds to do so, counsel shall be assigned by the court. The application shall be granted only if counsel for the defendant satisfies the court by affidavit or otherwise that as an attorney he or she has reasonable grounds for a good faith belief that defendant has, on the facts and the law, a defense to the charge other than mental illness, disease or defect excluding responsibility.

(e) If the motion for a special post-commitment hearing is granted, the hearing shall be by the court. No evidence shall be offered at the hearing by either party on the issue of mental illness, disease, or defect as a defense to, or in mitigation of, the crime charged. After hearing, the court may in an appropriate case quash the information, complaint or other charge, or find it to be defective or insufficient, or determine that it is not proved beyond a reasonable doubt by the evidence, or otherwise terminate the proceedings on the evidence or the law. In any such case, unless all defects in the proceedings are promptly cured, the court shall terminate the commitment ordered under subsection (2) of this section and order

the defendant to be discharged or, pursuant to the law governing the civil commitment of persons suffering from mental illness, disease or defect, order the defendant to be committed to an appropriate institution of the Ministry of Health.

(9) Determination of irresponsibility on basis of report; access to defendant by psychiatrist of defendant's own choice; form of expert testimony when issue of responsibility is tried.

(a) If the report filed pursuant to Subsection (5) finds that the defendant at the time of the criminal conduct charged suffered from a mental illness, disease or defect that substantially impaired his or her capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law, and the court, after a hearing if a hearing is requested by the prosecuting attorney or the defendant, is satisfied that such impairment was sufficient to exclude responsibility, the court on motion of the defendant shall enter judgment of acquittal on the ground of mental illness, disease or defect excluding responsibility.

(b) When, notwithstanding the report filed pursuant to Subsection (5), the defendant wishes to be examined by a qualified psychiatrist or other expert of his or her own choice, such examiner shall be permitted to have reasonable access to the defendant for the purposes of such examination.

(c) Upon the trial, the psychiatrist(s) or mental health professional(s) who reported pursuant to subsection (5) may be called as witnesses by the prosecution, the defendant or the court. If called by the court, the witness shall be subject to cross-examination by the prosecution and by the defendant. Both the prosecution and the defendant may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant shall be competent to testify to an expert opinion with respect to the mental condition or responsibility of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific propositions stated by, another witness.

(d) When a psychiatrist or other expert who has examined the defendant testifies concerning the defendant's mental condition, the psychiatrist or other expert shall be permitted to make a statement as to the nature of the examination, the diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his or her opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform his or her conduct to the requirements of law or to have a particular state of mind that is an element of the offense charged was impaired as a result of mental illness, disease or defect at that time. The psychiatrist or other expert shall be permitted to make any explanation reasonably serving to clarify his or her diagnosis and opinion and may be cross-examined as to any matter bearing on such person's competency or credibility or the validity of his or her diagnosis or opinion.

(10) Legal effect of acquittal on the ground of mental illness, or defect excluding responsibility; commitment; release or discharge.

(a) When a defendant is acquitted on the ground of mental illness, disease or defect excluding responsibility, the court shall order the defendant to be committed to the custody of Minister of Health to be placed in an appropriate medical institution for custody, care and treatment.

(b) If the Minister of Health is of the view that a person committed to his or her custody, pursuant to Subsection (1) of this section, may be discharged or released on

condition without danger to himself or herself or to others, he or she shall make application for the discharge or release of such person in a report to the court by which such person was committed and shall transmit a copy of such application and report to the prosecuting attorney. The Court shall thereupon appoint at least two qualified psychiatrists or mental health professionals to examine such person and to report within sixty days, or such longer period as the court determines to be necessary for the purpose, their opinion as to the defendant's mental condition.

(c) If the court is satisfied by the report filed pursuant to Subsection (5) of this section and such testimony of the reporting psychiatrists or mental health professionals as the court deems necessary that the committed person may be discharged or released on condition without danger to himself or herself or others, and the interests of justice so require, the court shall order his or her discharge or his or her release on such conditions as the court determines to be necessary. If the court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged or released. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the committed person to prove that he or she may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall thereupon be discharged or released on such conditions as the court determines to be necessary, or shall be recommitted to the custody of the Minister of Health, subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(d) If, within five years after the conditional release of a committed person, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of such person or for the safety of others his or her conditional release should be revoked, the court shall forthwith order the defendant to be recommitted to the Minister of Health, subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(e) A committed person may make application for the person's discharge or release to the court by which he or she was committed, and the procedure to be followed upon such application shall be the same as that prescribed above in the case of an application by Minister of Health. However, no such application by a committed person need be considered until the person has been confined for a period of not less than six months from the date of the order of commitment, and if the determination of the court be adverse to the application, such person shall not be permitted to file a further application until one year has elapsed from the date of any preceding hearing on an application for the person's release or discharge.

(11) Statements for purposes of examination or treatment inadmissible except on issue of mental condition.

(a) A statement made by a person subjected to psychiatric/mental health examination or treatment pursuant to subsections (5), (6) or (7) for the purpose of such examination or treatment shall not be admissible in evidence against the person in any criminal proceeding on any issue other than that of his or her mental condition but it shall be admissible upon that issue, whether or not it would otherwise be deemed a privileged communication . [TTC 1966, §432; 11TTC 1970, §5; 11TTC 1980, §5][amended by P.L. 2005-31]

§107. Presumption as to responsibility of children.

Children under the age of ten (10) are conclusively presumed to be incapable of committing any crime. Children between the ages of ten (10) and fourteen (14) are also conclusively presumed to be incapable of committing any crime, except the crimes of murder and rape, in which case the presumption is rebuttable. The provisions of this Section, however, shall not prevent proceedings against and the disciplining of any person under eighteen (18) years of age as a delinquent child. [TTC 1966, §432; 11TTC 1970, §6; 11TTC 1980, §6, modified; Cross reference §118, Evidence Act.]

§108. Limitation of prosecution.

No person shall be prosecuted, tried or punished for any crime, except murder in the first or second degree, unless the prosecution is commenced by the filing of a criminal information, complaint or citation within six (6) years after such crime has been committed; provided, however, that nothing in this Section shall bar any prosecution against any person who shall flee from justice, or absent himself from the Republic, or so secrete himself that he cannot be found by the officers of the law, so that process cannot be served upon him. [TTC 1966, §433; 11TTC 1970, §7; 11TTC 1980, §7, Limitation increased to six years by P.L. 2000-6, §2.]

§109. Limitation of punishment for crimes in violation of native customs.

The penalty for any act which is made a crime solely by generally respected native custom shall not exceed a fine of \$100, or six (6) months imprisonment, or both. [TTC 1966, §434; 11TTC 1970, §8; 11TTC 1980, §8.]

PART II- ABUSE OF PROCESS

§110. Interference with service of process.

Every person who, knowingly and willfully obstructs, resists, or opposes the Chief of Police, policeman or other person duly authorized, in serving or executing, or attempting to serve or execute any process issued by any court or official authorized to issue the same, or whoever assaults, beats or wounds the Chief of Police, policeman or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such process shall be guilty of obstructing justice and shall upon conviction be liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding one year, or both. [TTC 1966, §253(a); 11TTC 1970, §101; 11TTC 1980, §101, modified.]

§111. Concealment, removal or alteration of record or process.

Every person who willfully and unlawfully conceals, removes, takes away, mutilates, obliterates, alters, or destroys, or attempts to do so, or willfully takes and carries away records or process in or from any court or official authorized to issue or serve the same, shall be guilty of tampering with judicial records or process, as the case may be, and shall upon conviction be liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding five (5) years, or both. [TTC 1966, §253(b); 11TTC 1970, §202; 11TTC 1980, §202, modified.]

PART III - ARSON

§112. Defined; punishment.

(1) Every person who shall unlawfully, willfully and maliciously set fire to or burn any office, warehouse, store, barn, shed, cookhouse, boat, canoe, lumber, copra or any other building or

shelter, crop, timber or other property, shall be guilty of arson and shall upon conviction be liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding five (5) years, or both.

(2) If the building is a dwelling or if the life of any person be placed in jeopardy, he shall be liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding twenty (20) years, or both. [TTC 1966, §390; 11TTC 1970, §151; 11TTC 1980, §151; modified.]

PART IV - ASSAULT AND BATTERY

§113. Assault.

Every person who shall unlawfully offer or attempt, with force or violence, to strike, beat, wound, or to do bodily harm to another, shall be guilty of assault and shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §378; 11 TTC 1970, §201; 11 TTC 1980, §201, modified.]

§114. Aggravated assault.

Every person who shall unlawfully assault, strike, beat, or wound another with a dangerous weapon, with intent to kill, rape, rob, inflict grievous bodily harm, or to commit any other felony against the person of another, shall be guilty of aggravated assault and shall upon conviction be liable to a term of imprisonment not exceeding ten (10) years. [TTC 1966, §377, 11TTC 1970, §202; 11TTC 1980, §202, modified.]

§115. Assault and battery.

Every person who shall unlawfully strike, beat, wound or otherwise do bodily harm to another, shall be guilty of assault and battery and shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §379; 11TTC 1970, §203; 11TTC 1980, §203, modified.]

§116. Assault and battery with a dangerous weapon.

Every person who shall unlawfully commit assault and battery upon another by means of a dangerous weapon shall be guilty of assault and battery with a dangerous weapon and shall upon conviction be liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding five (5) years, or both. [TTC 1966, §377-A; 11TTC 1970, §204; 11TTC 1980, §204, modified.]

PART V - BIGAMY

§117. Defined; punishment.

Every person who, being legally married, shall unlawfully and willfully marry another during the tenure of the marriage contract shall be guilty of bigamy, and upon conviction thereof shall be imprisoned for a period of not more than five (5) years; provided, however, that no person shall be found guilty of bigamy whose wife or husband has been absent for a period of five (5) years, without being known by such person to be alive during that time. [TTC 1966, §406; 11TTC 1970, §251; 11TTC 1980, §251, modified.]

PART VI- BRIBERY

§118. Defined; punishment.

Every person who shall unlawfully and voluntarily give or receive anything of value in

wrongful and corrupt payment for an official act done or not done, to be done or not to be done, shall be guilty of bribery and shall upon conviction be liable to a term of imprisonment not exceeding five (5) years, and to a fine three (3) times the value of the payment received; or, if the value of the payment cannot be determined in dollars, to a fine not exceeding \$1,000, and to a term of imprisonment not exceeding five (5) years. [TTC 1966, §412; 11TTC 1970, §301; 11TTC 1980, §301, modified.]

PART VII- BURGLARY

§119. Defined; punishment.

Every person who shall unlawfully and by force, or by stealth or trickery, enter a dwelling house or other building of another with the intent to commit a felony, petit larceny, an assault or an assault and battery therein, shall be guilty of burglary and shall upon conviction be liable to a term of imprisonment not exceeding ten (10) years. [TTC 1966, §391; 11TTC 1970, §351; 11TTC 1980, §351.]

PART VIII- CONSPIRACY

§120. Defined; punishment.

If two or more persons conspire, either to commit any crime against the Republic, or to defraud the Republic in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be guilty of conspiracy and shall upon conviction be liable to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding five (5) years, or both. If, however, the offense, the commission of which is the object of conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum penalty provided for such misdemeanor. [TTC 1966, §414; 11TTC 1970, §401; 11TTC 1980, §401, modified.]

PART IX - COUNTERFEITING

§121. Defined; punishment.

(1) Every person who, with intent to defraud, falsely makes, forges, photographs, counterfeits or alters any currency of any country, shall be guilty of counterfeiting, and shall upon conviction be liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding ten (10) years, or both.

(2) Every person who, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent bring into the Republic or keeps in possession or conceals any falsely made, forged, photographed, counterfeited or altered currency of any country shall be guilty of counterfeiting and shall upon conviction be liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding ten (10) years, or both.

(3) Every person who knowingly buys, sells, exchanges, transfers, receives, or delivers any false, forged, photographed, counterfeited or altered currency of any country, with the intent that the same shall be passed, published, or used as true and genuine, shall be guilty of counterfeiting and shall upon conviction be liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding ten (10) years, or both. [TTC 1966, §394-A; 11TTC 1970, §501; 11TTC 1980, §501, modified.]

PART X
DISTURBANCES, RIOTS, AND OTHER CRIMES AGAINST THE PEACE

§122. Disturbing the peace.

Every person who shall unlawfully and willfully commit any acts which annoy or disturb other persons so that they are deprived of their right to peace and quiet, or which provoke a breach of the peace, shall be guilty of disturbing the peace and shall upon conviction be liable to a fine not exceeding \$50 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §426; 11TTC 1970, §551; 11TTC 1980, §551, modified.]

§123. Riot.

Whenever three (3) or more persons shall assemble, and by force and violence or by loud noise and shouting shall unlawfully place others in fear or danger, they shall be guilty of riot and shall upon conviction be liable to a fine not exceeding \$50 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §428; 11TTC 1970, §552; 11TTC 1980, §552.]

§124. Drunken and disorderly conduct.

Every person who is drunk and disorderly on any street, road, or other public place from the voluntary use of intoxicating liquor shall be guilty of drunken and disorderly conduct, and shall upon conviction be liable to a fine not exceeding \$50 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §427; 11TTC 1970, §553; 11TTC 1980, §553, modified.]

§125. Affray.

Every person who shall unlawfully and willfully engage in altercation or fight with one or more persons in a public place, so that others are put in fear or danger, shall be guilty of affray and shall upon conviction be liable to a fine not exceeding \$50 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §424; 11TTC 1970, §554; 11TTC 1980, §554, modified.]

§126. Security to keep the peace.

(1) A complaint may be made to any court that a person has threatened to commit an offense against the person or property of another. When such complaint is made, the court shall examine under oath the complainant and any witnesses he may produce, reduce the complaint to writing and cause it to be signed and sworn to by the complainant. If the court is satisfied that there is danger that such offense will be committed, the court shall issue a warrant to any policeman setting out the substance of the complaint and commanding the officer to apprehend the person complained of and bring him before the court at a certain time.

(2) When the person complained of is brought before the court, the testimony produced on both sides shall be heard if the charge is denied. If it appears that there is no just reason to fear the commission of the offense, the defendant shall be discharged; and if the judge is of the opinion that the prosecution was commenced maliciously without proper cause he may give judgment against the complainant for the costs of prosecution. If, however, the court finds there is just reason to fear the commission of such offense, the person complained of may be required to enter into an undertaking in a sum fixed by the court, not exceeding \$100, to keep the peace toward the Government of the Marshall Islands and particularly toward the complainant. The defendant shall deposit the sum fixed in cash with the Clerk of the Courts or the court may grant him permission to

give bond in the same amount with one or more sufficient sureties. The undertaking to keep the peace shall be valid and binding for six (6) months, and may upon the renewal of the complaint be extended for a longer period.

(3) If the undertaking required in the preceding Subsection is given, the defendant shall be discharged. If the defendant does not give such security, the court shall commit the defendant to jail for a period not to exceed six (6) months, specifying in the order of commitment the requirement to give security, the amount thereof, and the omission to give it. Any person committed to jail as above provided may be discharged upon giving the required undertaking.

(4) If the court finds, after hearing, that the defendant has violated his undertaking to keep the peace, the court may direct a forfeiture of the whole or such part of the deposit or bond as it appears that justice requires, and may enforce such forfeiture in the same manner as a forfeiture of bail in a criminal case.

(5) If the defendant fulfills his undertaking to keep the peace, he may claim his deposit from the Clerk of Courts upon presentation of receipt. [TTC 1966, §429; 11TTC 1970, §555; 11TTC 1980, §555, modified.]

PART XI- ESCAPE AND RESCUE

§127. Escape.

Every person who, being a law enforcement officer, or having lawful custody of a prisoner, shall unlawfully, willfully or negligently allow said prisoner to depart from such custody, except by due process of law, or whosoever, being a prisoner, shall unlawfully and willfully depart from such custody, shall be guilty of escape and shall upon conviction be liable to a term of imprisonment not exceeding three (3) years. [TTC 1966, §416; 11TTC 1970, §601; 11TTC 1980, §601, modified.]

§128. Rescue.

Every person who shall unlawfully, knowingly, forcibly and willfully rescue any prisoner from the custody of any person lawfully having custody thereof shall be guilty of rescue and shall upon conviction be liable to a term of imprisonment not exceeding three (3) years. [TTC 1966, §420; 11TTC 1970, §602; 11TTC 1980, §602, modified.]

PART XII- FALSE ARREST

§129. Defined; punishment.

Every person who shall unlawfully detain another by force and against his will, then and there not being in possession of authority to do so, shall be guilty of false arrest and shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §380; 11TTC 1970, §651; 11TTC 1980, §651, modified.]

PART XIII- FORGERY

§130. Defined; punishment.

Every person who shall unlawfully and falsely make or materially alter a writing or document of apparent legal weight and authenticity, with intent thereby to defraud, shall be guilty

of forgery and shall upon conviction be liable to a term of imprisonment not exceeding five (5) years. [TTC 1966, §394; 11TTC 1970, §701; 11TTC 1980, §701, modified.]

PART XIV - HOMICIDE

§131. Murder in the first degree.

Every person who shall unlawfully take the life of another with malice aforethought by poison, lying in wait, torture, or any other kind of willful, deliberate, malicious, and premeditated killing, or while in the perpetration of, or in the attempt to perpetrate, any arson, rape, burglary, or robbery, shall be guilty of murder in the first degree, and upon conviction thereof shall be sentenced to life imprisonment. [TTC 1966, §385; 11TTC 1970, §751; 11TTC 1980, §751, modified.]

§132. Murder in the second degree.

Every person who shall unlawfully take the life of another with malice aforethought, or while in the perpetration of, or in the attempt to perpetrate, any felony other than those enumerated in Section 131 of this Part, shall be guilty of murder in the second degree and shall upon conviction be liable to a term of imprisonment not less than five (5) years or for life. [TTC 1966, §386; 11TTC 1970, §752; 11TTC 1980, §52, modified.]

§133. Voluntary manslaughter.

Every person who shall unlawfully take the life of another without malice aforethought, upon a sudden quarrel or heat of passion, shall be guilty of voluntary manslaughter and shall upon conviction be liable to a term of imprisonment not exceeding ten (10) years. [TTC 1966, §384; 11TTC 1970, §753; 11TTC 1980, §753, modified.]

§134. Involuntary manslaughter.

Every person who shall unlawfully take the life of another without malice, in the commission of an unlawful act not amounting to a felony, or in the commission of a lawful act which might produce death in an unlawful manner, or without due caution and circumspection, shall be guilty of involuntary manslaughter and shall upon conviction be liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding three (3) years, or both. [TTC 1966, §383; 11TTC 1970, §754; 11TTC 1980, §754, modified.]

PART XV - KIDNAPING

§135. Defined; punishment.

Every person who forcibly or fraudulently and deceitfully, and without authority by law, imprisons, seizes, detains, or inveigles away any person (other than his minor child), with intent to cause such person to be secreted within the Republic against his will, or sent out of the Republic against his will, or sold or held as a slave or for ransom, shall be guilty of kidnaping and shall upon conviction be liable to a term of imprisonment not exceeding ten (10) years. [TTC 1966, §381; 11TTC 1970, §801; 11TTC 1980, §801, modified.]

PART XVI- LARCENY

§136. Petit larceny.

Every person who shall unlawfully steal, take and carry away personal property of another, of the value of less than \$500, without the owner's knowledge or consent, and with the intent to permanently convert it to his own use, shall be guilty of petit larceny and shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, 397; 11TTC 1970, §851; 11TTC 1980, §851, modified][Value of property increased to \$500.00 by P.L. 2003-104]

§137. Grand larceny.

Every person who shall unlawfully steal, take and carry away personal property of another, of the value of \$500 or more, without the owner's knowledge or consent, and with the intent to permanently convert it to his own use, shall be guilty of grand larceny and shall upon conviction be liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding five (5) years, or both. [TTC 1966, §395; 11TTC 1970, §852; 11TTC 1980, §852, modified][Value of property increased to \$500 by P.L. 2003-104]

§138. Cheating.

Every person who shall unlawfully obtain the property or money of another by false pretenses, knowing the pretenses to be false, and with the intent thereby to permanently defraud the owner thereof, shall be guilty of cheating and if the value of the property thus obtained be \$500 or more, shall be imprisoned for a period of not more than five (5) years; or if the value of the property thus obtained be less than \$500, shall be imprisoned for a period of not more than six (6) months, or fined not more than \$100, or both." [TTC 1966, §392; 11TTC 1970, §853; 11TTC 1980, §853.][value of property increased to \$500 by P.L. 2003-104]

§139. Embezzlement.

Every person who, after having lawfully obtained possession of the personal property of another, shall take and carry away said property without the owner's knowledge and consent, and with the intent to permanently convert it to his own use shall be guilty of embezzlement, and, if the value of said property be \$500 or more, shall be imprisoned for a period of not more than five (5) years, or fined not more than \$1,000, or both; or if the value of the property thus obtained be less than \$500, shall be imprisoned for a period of not more than six (6) months, or fined not more than \$100, or both." [TTC 1966, §393; 11TTC 1970, §854; 11TTC 1980, §854.][value of property increased to \$500 by P.L. 2003-104]

§140. Receiving stolen goods.

Every person who shall unlawfully take into his possession, with the consent of the donor, stolen or embezzled property, then and there knowing said property to have been stolen or embezzled, with fraudulent intent thereby or to aid in the theft, shall be guilty of receiving stolen goods and shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding one year, or both. [TTC 1966, §399; 11TTC 1970, §855; 11TTC 1980, §855, modified.]

§141. Unlawful issuance of bank checks or drafts.

(1) Every person who, for the procurement of any article or thing of value, with intent to defraud or, for the payment of any past due obligation, or for any other purpose, with intent to deceive, makes, draws, utters, or delivers any check, draft, or order for payment of money upon a

bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be guilty of cheating and, if the value of the property thus obtained be \$500 or more, shall be imprisoned for a period of not more than five (5) years; or if the value of the property thus obtained be less than \$500, shall be imprisoned for a period of not more than six (6) months, or fined not more than \$100, or both.”

(2) The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee’s possession or control, is prima fade evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five (5) days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment.

(3) In this Section, the word “credit” means an arrangement or an understanding expressed or implied, with the bank or other depository for the payment of that check, draft, or order. [TTC 1966, §403; 11TTC 1970, §856; 11TTC 1980, §856][Value of property raised to \$500 by P.L. 2003-104]

§142. Larceny from a dwelling house.

Every person who shall unlawfully steal, take and carry away the personal property of another, of any value whatsoever, from his or another’s dwelling house, without the owner’s knowledge or consent, and with the intent to permanently convert it to his own use, but without the force necessary to constitute a burglary, shall be guilty of larceny from a dwelling house and shall upon conviction be liable to a term of imprisonment not exceeding five (5) years. [TTC 1966, §396; 11TTC 1970, §857; 11TTC 1980, §857, modified.]

PART XVII- LIBEL

§143. Defined; punishment.

Every person who shall unlawfully, willfully, and maliciously, speak, write, print, or in any other manner publish material which exposes another person to hatred, contempt, or ridicule, shall be guilty of criminal libel, and shall upon conviction be liable to a fine not exceeding \$50 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §425; 11TTC 1970, §901; 11TTC 1980, §901, modified.]

PART XVIII- MALICIOUS MISCHIEF

§144. Defined; punishment.

Every person who shall unlawfully:

(a) vandalize by writing, drawing, painting, marking or inscribing on any public or private property any word, slogan, caricature, drawing, mark, symbol or other thing (commonly referred to as ‘graffiti’); or

(b) shall otherwise destroy, damage, or otherwise injure property belonging to another, including the property of the Republic or any Local Government; or

(c) shall unlawfully throw, discard, or scatter upon any public road, street or ground or other land owned, reserved, controlled or maintained, for any purpose other than a public dumping ground, by the Government of the Marshall Islands or any Local Government, any

waste material, garbage or other debris, in any form or substance; or

(d) otherwise carelessly or willfully litter such places, shall be guilty of malicious mischief and shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §398; 11TTC 1970, §951; 11TTC 1980, §951, modified][amended by P.L. 1994-96, §2.]

PART XIX - MAYHEM

§145. Defined; punishment.

Every person who, with intent to maim or disfigure, shall cut, bite, or slit the nose, ear, or lip, or cut off or disable the tongue, or put out or destroy an eye, or cut off or disable a limb or any member of another person, shall be guilty of mayhem and shall upon conviction be liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding seven (7) years, or both. [TTC 1966, §382; 11TTC 1970, §1001; 11TTC 1980, §1001, modified.]

PART XX - MISCONDUCT IN PUBLIC OFFICE

§146. Defined; punishment.

Every person who, being a public official, shall do any illegal acts under the color of office, or willfully neglect to perform the duties of his offices provided by law, shall be guilty of misconduct in public office and shall upon conviction be liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding one year, or both. [TTC 1966, §417; 11TTC 1970, §1051; 11TTC 1980, §1051, modified.]

PART XXI - NUISANCE

§147. Defined; punishment.

Every person who shall unlawfully maintain or allow to be maintained a condition of things which is prejudicial to the health, comfort, safety, property, sense of decency, or morals of the people of the Republic by an illegal act, or by neglect of legal duty, shall be guilty of maintaining a nuisance and shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §408; 11TTC 1970, §1101; 11TTC 1980, §1101, modified.]

PART XXII - OBSTRUCTING JUSTICE

§148. Defined; punishment.

Every person who shall unlawfully resist or interfere with any law enforcement officer in the lawful pursuit of his duties, or shall unlawfully tamper with witnesses or prevent or attempt to prevent their attendance at trials, shall be guilty of obstructing justice and shall upon conviction be liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding one year, or both. [TTC 1966, §418; 11TTC 1970, §1151; 11TTC 1980, §1151, modified.]

PART XXIII - PERJURY

§149. Perjury defined; punishment.

(1) Every person who, having taken an oath to testify or certify truly before any competent tribunal, officer or person, in any of the cases in which an oath to tell the truth may be administered, willfully and contrary to the oath states as true any material matter which he or she knows to be false is guilty of a crime and upon conviction shall be liable to a term of imprisonment not exceeding five (5) years.

(2) Every person who declares orally or in writing that he or she will or would testify or certify truly before any competent tribunal, officer or person, in any case in which an oath to tell the truth may by law be administered, willfully and contrary to the declaration states as true any material matter which he or she knows to be false is guilty of a crime and upon conviction shall be liable to a term of imprisonment not exceeding five (5) years.

(3) The term "oath" as used herein includes an affirmation and every other mode authorized by law of attesting the truth of that which is stated. [TTC 1966, §419; 11TTC 1970, §1201, 11TTC 1980, §1201, modified]; amended in its entirety by P.L. 1995-127, §2.]

§149.5. False reports.

Any person who makes a false representation to a police officer or to the Attorney-General or his or her staff, knowing such representation to be false, with the intent to deceive and to have the matter acted upon, or discontinued, in some manner is guilty of a misdemeanor and upon conviction shall be liable to a fine not exceeding one hundred dollars (\$100) or a term of imprisonment not exceeding six (6) months, or both. [added by P.L. 1995-127, §2.]

PART XXIV- ROBBERY**§150. Defined; punishment.**

Every person who shall unlawfully steal, take and carry away the personal property of another, of whatever value, from his person or in his presence and against his will, by the use of force or intimidation, with the intent to permanently convert said property to his own use, shall be guilty of robbery and shall upon conviction be liable to a term of imprisonment not exceeding ten (10) years. [TTC 1966, §400; 11TTC 1970, §1251; 11TTC 1980, §1251, modified.]

PART XXV - SEX CRIMES**§151. Definitions.**

In this Part, unless a different meaning plainly is required:

- (1) "Bodily injury" means physical pain, illness, or any impairment of physical condition.
- (2) "Compulsion" means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.
- (3) "Dangerous instrument" means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.
- (4) "Deviate sexual intercourse" means any act of sexual gratification between a person and

an animal or a corpse, involving the sex organs of one and the mouth, anus, or sex organs of the other.

(5) "Married" includes: persons legally married; a male and female living together as husband and wife recognized by Marshallese custom; a male and female living together as husband and wife regardless of their legal status. This does not include spouses living apart.

(6) "Mentally defective" means a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person's conduct.

(7) "Mentally incapacitated" means a person rendered temporarily incapable of appraising or controlling the person's conduct owing to the influence of a substance administered to the person without the person's consent.

(8) "Person" means a human being who has been born and is alive.

(9) "Physically helpless" means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act.

(10) "Relative" means parent, ancestor, brother, sister, uncle, aunt, or legal guardian, and includes relatives through adoption;

(11) "Restrain" means to restrict a person's movement in such a manner as to interfere substantially with the person's liberty:

(a) by means of force, threat, or deception; or

(b) if the person is under the age of eighteen or incompetent, without the consent of the relative, person, or institution having lawful custody of the person. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(12) "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

(13) "Sexual penetration" means vaginal intercourse, anal intercourse, fellatio, cunnilingus, anilingus, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.

(14) "Strong compulsion" means the use of or attempt to use one or more of the following to overcome a person

(a) a threat, express or implied, that places a person in fear of bodily injury to the individual or another person, or in fear that the person or another person will be kidnapped;

(b) a dangerous instrument; or

(c) physical force.

(15) "Substantial bodily injury" means bodily injury which causes: a major avulsion, laceration, or penetration of the skin; a burn of at least second degree severity; a bone fracture; a

serious concussion; or a tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs. [TTC 1966, §407; 11TTC 1970, §1301; 11TTC 1980, §1301.][amended by P.L. 2005-31]

§152. Sexual Offenses.

(A)(1) *Sexual assault in the first degree.* A person commits the offense of sexual assault in the first degree if:

(a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;

(b) The person knowingly engages in sexual penetration with another person who is younger than sixteen (16) years of age; or

(A)(2) Subsection (1)(b) shall not be construed to prohibit medical practitioners duly licensed under the laws of the Republic, from performing any act within their respective practices.

(A)(3) Sexual assault in the first degree is a felony of the first degree and, any person found guilty thereof, shall be liable to a term of imprisonment not exceeding twenty-five (25) years.

(B)(1) *Sexual assault in the second degree.* A person commits the offense of sexual assault in the second degree if:

(a) The person knowingly subjects another person to an act of sexual penetration by compulsion;

(b) The person knowingly subjects to sexual penetration another person who is mentally defective, mentally incapacitated, or physically helpless; or

(c) The person, while employed:

(i) in an RMI correctional facility;

(ii) by a private company providing services at a correctional facility;

(iii) by a private company providing community-based residential services to persons committed to the Ministry of Justice and having received notice of this statute;

(iv) by a private correctional facility operating in the RMI; or

(v) As a law enforcement officer;

knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person residing in a correctional facility operating in the RMI, or a person in custody; provided that:

(i) paragraph (b) above and this paragraph shall not be construed to prohibit medical practitioners duly licensed under the laws of the Republic from performing any act within their respective practices; and

(ii) further, provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.

(B)(2) Sexual assault in the second degree is a felony of the second degree and any person found guilty thereof, shall be liable to a term of imprisonment, not exceeding ten (10) years.

(C)(1) *Sexual assault in the third degree.* A person commits the offense of sexual assault in the third degree if:

(a) The person recklessly subjects another person to an act of sexual penetration by compulsion;

(b) The person knowingly subjects to sexual contact another person who is younger than sixteen (16) years of age, or causes such a person to have sexual contact with the person;

(c) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;

(d) The person, while employed in a state correctional facility;

(i) by a private company providing services at a correctional facility;

(ii) by a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute; or

(iii) by a private correctional facility operating in the RMI,

knowingly subjects to sexual contact an imprisoned person, a person committed to the director of public safety, or a person residing in a private correctional facility operating in the RMI or causes the person to have sexual contact with the actor; or

(e) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.

(C)(2) Paragraphs (b), (c), (d), and (e) shall not be construed to prohibit medical practitioners duly licensed under the laws of the Republic, from performing any act within their respective practices.

(C)(3) Sexual assault in the third degree is a felony of the third degree and any person found guilty thereof, shall be liable to a term of imprisonment not exceeding five (5) years.

(D)(1) *Sexual assault in the fourth degree.* A person commits the offense of sexual assault in the fourth degree if:

(a) The person knowingly subjects another person to sexual contact by compulsion or causes another person to have sexual contact with the actor by compulsion;

(b) The person knowingly exposes the person's genitals to another person under circumstances in which the actor's conduct is likely to alarm the other person or put the other person in fear of bodily injury; or

(c) The person knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the actor.

(D)(2) Sexual assault in the fourth degree is a misdemeanor, and any person found guilty thereof, shall be liable to a term of imprisonment not exceeding one year.

(D)(3) Whenever a court sentences a defendant for an offense under this section, the court may order the defendant to submit to a pre-sentence mental and medical examination.

(E)(1) *Continuous sexual assault of a minor under the age of sixteen (16) years.*

Any person who:

(a) either, resides in the same home with a minor under the age of sixteen (16) years, or has recurring access to the minor; and

(b) engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, but while the minor is under the age of fourteen sixteen (16) years; is guilty of the offense of continuous sexual assault of a minor under the age of sixteen (16).

(E)(2) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this section, unless the other charged offense occurred outside the time frame of the offense charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved, in which case a separate count may be charged for each victim.

(E)(3) Continuous sexual assault of a minor under the age of sixteen (16) years is a felony in the first degree, and any person found guilty thereof shall be liable to a term of imprisonment not exceeding twenty-five (25) years.

(F)(1) *Indecent exposure*. A person commits the offense of indecent exposure if, the person intentionally exposes the person's genitals to a person to whom the person is not married under circumstances in which the actor's conduct is likely to cause affront.

(F)(2) Indecent exposure is a petty misdemeanor and shall upon conviction thereof may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed thirty (30) days. [TTC 1966, §387; 11 TTC 1970, §1302; 11 TTC 1980, §1302, modified.][amended by P.L. 2005-31]

§153. Provisions generally applicable to this Part.

(1) *Mistake as to Age*. In this Article, whenever the criminality of conduct depends on a child's being younger than sixteen years of age, it is no defense that the defendant reasonably believed the child to be sixteen years of age, or older. Whenever in this Act, the criminality of conduct depends on a child's being below a younger than a specified age older than fourteen sixteen years, it is an affirmative defense that the defendant reasonably believed the child to be of that age or older.

(2) *Victim's Testimony Need Not be Corroborated*. For prosecutions under this Part, there is no requirement that the testimony of the victim be corroborated.

(3) *Resistance Not Required*. A victim need not resist the actor for a proper prosecution under this Part. [amended by P.L. 2005-31]

PART XXVI- TRESPASS

§154. Defined; punishment.

Every person who shall unlawfully violate or interfere with the peaceful use and possession of the dwelling house, premises, or property of another, whether by force or by stealth, but without committing or attempting to commit any of the crimes defined in Parts III (arson), VII (burglary), XIII (forgery), XVI (larceny), XVIII (malicious mischief), and XXIV (robbery) of this Chapter, shall be guilty of trespass and shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §401; 11 TTC 1970, §1351; 11 TTC 1980, §1351, modified.]

PART XXVII- MISCELLANEOUS CRIMES

§155. Compounding a crime.

Every person who, having knowledge that a crime has been, is being, or is about to be committed, shall unlawfully, knowingly, and willfully agree for a reward not to prosecute it, shall be guilty of compounding a crime and shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding one year, or both. [TTC 1966, § 413; 11 TTC 1970, §1401; 11 TTC 1980, §1401, modified.]

§156. Tampering with mail.

Every person who, without authority, opens, or destroys any mail not directed to him, shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §402; 11 TTC 1970, §1402; 11 TTC 1980, §1402, modified.]

§157. Unauthorized disposition of certain foods.

Every person who, having any responsibility for disposition of any food commodity donated under any program of any foreign government or the Government of the Marshall Islands, willfully makes any unauthorized disposition of such food commodity, or every person who, not being an authorized recipient thereof, willfully converts to his own use or benefit any such food commodity, shall upon conviction be liable to a fine not exceeding \$500 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §404; 11 TTC 1970, §1403; 11 TTC 1980, §1403, modified.]

§158. Duty to report wounds or deaths.

(1) Every person who gains knowledge of a death or injury resulting from a knife wound, bullet wound, powder burn, or sustained in a suspicious or unusual manner or under conditions suggesting poisoning or violence, shall make a report thereof immediately, and in any case within five (5) days of obtaining such knowledge, to the nearest law enforcement official or to any police officer or to the Chief of Police. Such report shall state:

- (a) the name and location of the injured or deceased person;
- (b) the date of injury or death, or date of gaining knowledge thereof by informant, if date of injury or death is unknown;
- (c) the cause and manner of injury or death; and
- (d) the name of the person causing injury or death, if known.

(2) No person making a report in compliance with this Section shall be deemed to have violated the confidential relationship existing between doctor and patient.

(3) Copies of such report shall be furnished without charge to the Public Defender at his request.

(4) Any person violating Subsection (1) of this Section shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$500 or to a term of imprisonment not exceeding one year, or both. [11 TTC 1970, §1404; 11 TTC 1980, §1404, modified.]

§159. Possession or removal of government property.

It shall be unlawful for any person without proper authority to have in his possession or remove from its location any property of any kind, wherever situated, of the Government of the United States or of the Government of the Marshall Islands, or the Local Governments. Any person convicted of a violation of this Section shall be liable to a fine not exceeding \$1000 or to a term of imprisonment not exceeding six (6) months, or both. [11 TTC 1970, §1405; II TTC 1980, §1405, modified.]

§160. Theft of electricity; injuring or altering meter.

Every person who willfully and knowingly, with intent to injure or defraud, makes or causes to be made any connection with the electric lines of any agency or corporation authorized to generate, transmit, or sell electric current by means of electric wire or electric appliance of any character whatsoever, without the written authority of such agency or corporation, or who shall, knowingly and with like intent, injure, alter, or procure to be injured or altered any electric meter, or obstruct its working, or procure the same to be tampered with or injured, or use or cause to be used any electric meter or appliance so tampered with or injured, shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding six (6) months, or both. [COM P.L. 7-1, §1(1977); 11 TTC 1980, §1406.]

§161. Altering, damaging or contaminating a water or sewer line or other facility or appliance.

(1) For purposes of this Section only:

(a) "water line" means any pipe, pump, or any other conduit or appliance used to transport water or salt water; and

(b) "contamination of sewer line" means the discharge into a sewer line of any matter that is not authorized in writing by the agency or corporation authorized to transport or discharge sewage through the line.

(2) Every person who wilfully or knowingly alters, damages, or contaminates a water line or a sewer line or any other facility or appliance of any agency or corporation authorized to transport or sell water or to transport or discharge sewage, or receives or uses water or sewage service without the written authorization of the agency or corporation, shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$500, or to a term of imprisonment not exceeding six (6) months, or both. Upon a second or subsequent conviction, a fine of at least \$500 shall be assessed, a term of at least one year imprisonment imposed, or both." [added by P.L. 1992-12][P.L. 2001-37 §2 Oct. 18, 2001]

§162. Altering, tampering with, damaging, or destroying a telephone, cable television, other communication line, or related facility or appliance; punishment.

(1) Every person who unlawfully, by any means whatsoever, with criminal intent, alters, tampers with, makes any connection to, damages, or destroys a telephone or cable television transmission line or any related facility or appliance of any agency or corporation transmitting, selling, receiving, or broadcasting telephone or television signals or related communications, without the written authorization or consent of the agency or corporation who transmits, sells, receives, or broadcasts such signal or service shall be guilty of a misdemeanor and shall upon conviction be

liable to a fine not exceeding \$500, or to a term of imprisonment not exceeding six (6) months, or both. Upon a second or subsequent conviction, a fine of at least \$500 shall be assessed, a term of at least one (1) year of imprisonment imposed, or both.

(2) "Telephone and cable television transmission line" as used in this section includes any wire, line, or conduit either above ground or underground, or any other appliance or facility used either to receive or transmit telephone or television signals or other related communications. [added by P.L. 1993-36 §§ 1 and 3.]

§163. Altering weighing or measuring equipment.

(1) Every person who willfully and knowingly, with intent to defraud, injures, alters, defaces or procures to be injured, altered or defaced any weighing or measuring equipment used or intended to be used for trade or commercial purposes, or obstructs its working, or procures the same to be tampered with or injured, or uses or causes to be used any such weighing or measuring equipment so tampered with or injured, or in any other way uses or causes to be used any weighing or measuring equipment to perpetrate a fraud, shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$100 or a term of imprisonment not exceeding six (6) months, or both.

(2) For the purposes of this Section, "weighing or measuring equipment" means equipment for measuring in terms of length, area, volume, capacity, weight or number, whether or not the equipment is constructed to give an indication of the measurement made or other information determined by reference to that measurement. [added by P.L. 1994-79, §2.]

§164-169. - *Reserved*

PART XXVIII- PUBLIC OFFICERS AND EMPLOYEES

§170. Interpretation.

In this Part, unless the context requires otherwise:

(1) "employee" means any employee of the Government, and includes any person who holds a commission of appointment, as a consultant or otherwise.

(2) "public official" means any person elected pursuant to the Elections and Referenda Act 1980, as amended, and is then in office.

(3) "Government" means any national or local governmental branch, agency, commission, board, authority or any government wholly-owned or controlled corporation thereunder.

(4) "immediate family" means any spouse, child, parent, brother or sister. [added by P.L. 1993-52, §2.]

§171. Misconduct in public office.

(1) Every person who, being an employee or public official of the Government, commits any illegal act under color of public office is guilty of a crime and upon conviction shall be liable to a fine not exceeding three (3) times the value of any amount obtained or sought by the illegal act or \$1,000, whichever is greater, or a term of imprisonment not exceeding one (1) year, or by both such

fine and imprisonment. Upon a second conviction of the same or another crime wherein the defendant was adjudged guilty as a public official or Government employee, the defendant shall be liable to a fine not exceeding three (3) times the value of any amount obtained or sought by the illegal act or \$1,000, whichever is greater, or a term of imprisonment not exceeding three (3) years, or by both such fine and imprisonment.

(2) Every person who, being a public official or Government employee, willfully and without lawful excuse fails to perform his duties of office is guilty of a crime and upon conviction shall be liable to a fine not exceeding \$1,000 or a term of imprisonment not exceeding one (1) year or both. Upon a second conviction of the same or another crime wherein the defendant was adjudged guilty as a public official or Government employee, the defendant shall be liable to a fine not exceeding \$1,000 or term of imprisonment not exceeding three (3) years, or both. [added by P.L. 1993-52, §3(1).]

§172. Bribe of public officials and government employees.

(1) Every person who gives or offers as a bribe to any public official or Government employee anything the theft of which would be petty larceny is guilty of a crime and upon conviction shall be liable to a fine not exceeding \$100 or a term of imprisonment not exceeding six (6) months, or both.

(2) If the theft of the thing given or offered in Subsection (1) would be grand larceny, upon conviction the person shall be liable to a fine not exceeding three (3) times the value of such bribe or \$1,000, whichever is greater, or a term of imprisonment not exceeding five (5) years, or by both such fine and imprisonment.

(3) Every person who is a public official or Government employee and who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or action upon any matter then pending, or which may be brought before him in his capacity as a public official or Government employee, shall be influenced thereby, is guilty of a crime and upon conviction shall be liable to a fine not exceeding three (3) times the value of such bribe or \$5,000, whichever is greater, or a term of imprisonment not exceeding five (5) years, or by both such fine and imprisonment. [added by P.L. 1993-52, §3(2).]

§173. Private financial gain by public officials or government employees.

(1) Any public official or Government employee who uses his color of office to obtain private financial gain for himself or any member of his immediate family, either directly or indirectly, shall be guilty of a crime and upon conviction shall be liable to a fine not exceeding three (3) times the estimated value of that gain or \$10,000, whichever is greater, or a term of imprisonment not exceeding five (5) years, or by both such fine and imprisonment.

(2) In adopting this section, it is the intention of the Nitijela that where there is a conflict of interest that will likely result in private financial gain, such public official or Government employee who stands to gain must:

- (a) disclose in good faith all material facts relating to such gain; and
- (b) recuse himself or herself from further involvement in the matter on behalf of the Government immediately upon becoming aware of the conflict of interest.

(3) In the event there is a directly involved Government board of directors or other similar body of representatives of which that public official or Government employee is a member, disclosure should be made to that board or other such body. In the event there is no such board or other body, disclosure should be made to all public officials and Government employees who are directly involved in the referenced matter on behalf of the Government. In the event there is no such public official or Government employee directly involved in the referenced matter then to the public official's or Government employee's delegate who will assume the duties on his or her behalf. [added by P.L. 1993-52, §3(3).]

§174. Receipt of unauthorized rewards gratuities and emoluments.

(1) Any public official or Government employee who knowingly asks, receives or agrees to receive any reward, gratuity or emolument or any promise thereof excepting such as may be authorized by law for doing an official act, is guilty of a crime and upon conviction, if the theft of such reward, gratuity or emolument would constitute petty larceny, shall be liable to a fine not exceeding \$100 or a term of imprisonment not exceeding six (6) months, or both.

(2) If the theft of the reward, gratuity or emolument referred to in Subsection (1) would be grand larceny, upon conviction the person shall be liable to a fine not exceeding three (3) times the value of the reward, gratuity or emolument or \$1,000, whichever is greater, or a term of imprisonment not exceeding five (5) years, or by both such fine and imprisonment. [added by P.L. 1993-52, §3(4).]

§175. Termination of employment for felonious acts.

(1) Any person adjudged guilty of a felony is prohibited from being a Government employee for a period of two (2) years from the date of judgment, unless this section is specifically waived by the Cabinet by resolution.

(2) Any public official who is adjudged guilty of a felony shall thereupon be disqualified from being a public official and shall immediately resign from office. In addition, such public official shall be prohibited from being a Government employee for a period of two years from the date of judgment, unless this section is specifically waived by Cabinet by resolution.

(3) Any person who becomes a Government employee in violation of this Section is guilty of a crime and upon conviction, shall be liable to a fine not exceeding \$500 or a term of imprisonment not exceeding six (6) months, or both.

(4) Any public official or Government employee who knowingly employs, as a Government employee, a person who has been prohibited from such employment in accordance with this Section is guilty of a crime and upon conviction shall be liable to a fine not exceeding \$500 or a term of imprisonment not exceeding six (6) months, or both. [added by P.L. 1993-52, §3(5).]

§§176 -180. - *Reserved*

PART XXIX - PUNISHMENTS; JUDGMENT AND SENTENCING

§181. Recognition of custom in imposing or suspending sentences and in granting

probation.

In imposing or suspending the execution of sentences, or in suspending the imposition of sentence and granting probation, in accordance with this Chapter, due recognition shall be given to the customs of the inhabitants of the Republic. [TTC 1966, §436; 11 TTC 1970, §1451; COM P.L. 7-92, §2 (1978); 11 TTC 1980, §1451, modified.]

§182. Consideration of previous convictions.

Before imposing or suspending the execution of sentence upon a person found guilty of a criminal offense, or in suspending the imposition of sentence and granting probation, evidence of good or bad character, including any prior criminal record of the defendant, may be received and considered by the court. [TTC 1966, §168; 11 TTC 1970, §1452; COM P.L. 7-92, §3 (1978); 11 TTC 1980, §1452.]

§183. Imposition of fines; procedure upon nonpayment of fines.

Where an offense is made punishable by fine the court imposing the fine may give such directions as appear to be just with respect to the payment of the fine. In default of payment of the fine or any part thereof the court may order the defendant to be imprisoned for such period of time as it may direct. These directions may be given and orders for imprisonment made at any time, and may be modified if the court deems justice so requires, until the fine is paid in full or the imprisonment served which has been ordered in default of payment; provided, that the accused shall be given an opportunity to be heard before any such direction or order is given, made, or modified, except when that is done at the time sentence is imposed; and provided further, that no defendant shall be imprisoned for a longer period of time than that fixed by law for such offense. [TTC 1966, §169; 11 TTC 1970, §1453; 11TTC 1980, §1453.]

§184. Orders requiring specified residence.

The High Court may, in lieu of or in addition to other lawful punishment, direct that a person found by it to be guilty of a criminal offense shall establish his place of residence within a specified area and maintain it there for a period of time not exceeding the maximum period of imprisonment which may be imposed for the offense.[TTC 1966, §170; 11 TTC 1970, §1454; 11 TTC 1980, §1454.]

§185. Restitution, compensation or forfeiture.

If a defendant is convicted of a wrongful or unlawful sale, purchase, use or possession of any article, or of a willful wrong causing damage to another, the court may, in lieu of or in addition to other lawful punishment, order restitution or compensation to the owner or person damaged or the forfeiture of the article to the Government of the Marshall Islands or a Local Government. [TTC 1966, §171; 11 TTC 1970, §1455; 11 TTC 1980, §1455, modified.]

§186. Closing of business.

If a defendant is convicted of an offense involving the sale of a harmful article or the operation of an unlawful business, the court may, in lieu of or in addition to other lawful punishment, order that the place of sale or business be vacated or closed for a specified time. [TTC 1966, §172; 11 TTC 1970, §1456; 11 TTC 1980, §1456.]

§187. Labor with or without imprisonment.

In any case in which a court is authorized to impose a sentence of imprisonment, the court shall sentence the accused to perform hard labor or community service during the sentence of imprisonment in accordance with his physical ability on any public project for a period not exceeding that for which the sentence of imprisonment is imposed. The court may, in certain circumstances, instead of imposing imprisonment, sentence the accused to perform hard labor or community service for a period not exceeding that for which imprisonment might be imposed. [TTC 1966, § 173; 11 TTC 1970, §1457; 11 TTC 1980, §1457; amended by P.L. 1996-8, §2.]

§188. Designation of place of confinement.

Any court upon sentencing a person to imprisonment may designate in the commitment order a place of confinement within the Republic. The place of confinement may be changed or otherwise designated as follows at any time while the sentence is still in force:

(a) the Chief Secretary, subject to instruction, if any, from higher authority, may transfer the person to or designate any place of confinement within the Republic; or,

(b) the Cabinet may transfer the person to or designate any place of confinement. [TTC 1966, §496; 11 TTC 1970, §1458; 11 TTC 1980, §1458, modified.]

§189. Suspension of sentence.

The court which imposes a sentence upon a person convicted of a criminal offense may direct that the execution of the whole or any part of a sentence of imprisonment imposed by it shall be suspended on such terms as to good behavior and on such conditions as the court may think proper to impose. A subsequent conviction by a court for any offense shall have the effect of revoking the suspension of the execution of the previous sentence unless the court otherwise directs. [TTC 1966, §174; 11 TTC 1970, §1459; 11 TTC 1980, §1459.]

§190. Probation.

(1) Upon entering a judgment of conviction of any offense not punishable by life imprisonment, the court, when satisfied that the ends of justice and the best interests of the public as well as the defendant will be served, may suspend the imposition of sentence and may direct that the suspension continue for a period of time, not exceeding the maximum term of sentence which may be imposed, and upon the terms and conditions which the court determines, and shall place the person on probation, under the charge and supervision of a probation officer or any other person designated by the court, during the suspension.

(2) Upon violation of any of the terms and conditions of probation at any time during the probationary period, the court may issue a warrant for the arrest of the person on probation and, after giving the person an opportunity to be heard and to rebut any evidence presented against him, may revoke and terminate the probation.

(3) Upon the revocation of the probation, the court may then impose any sentence which may have initially been imposed had the court not suspended imposition of sentence in the first instance.

(4) The court may at any time during the period of probation modify its order of suspension

of imposition of sentence. The court may at any time, when the ends of justice and the best interests of the public as well as the defendant will be served, and when the good conduct and reform of the person held on probation warrants it, terminate the period of probation and discharge the person held. If the court has not revoked the order of probation and pronounced sentence, the defendant shall, at the end of the term of probation, be discharged by the court.

(5) Upon discharge of the defendant without imposition of sentence, the court shall vacate the judgment of conviction and the defendant shall not be deemed to have been convicted of the crime for any purpose. [COM P.L. 7-92, §1 (1978), 11 TTC 1980, §1460.]

§191. Effect of new laws; severability.

(1) Crimes committed prior to the effective date of a new law are subject to prosecution and punishment under the law as it existed at the time the crime was committed.

(2) If any portion of a criminal law is deemed unenforceable and that portion can be judicially severed from the remaining portions of the law, those remaining portions will remain in force. [added by P.L. 1993-47, §1.]

§192. Remedies in Lieu of prosecution; stipulated plea and sentence.

(1) In addition to any other remedies, an arrested person may forfeit bail or perform labor in accordance with his or her physical or mental abilities on any public project or program in lieu of prosecution with the consent of the Attorney-General or his or her delegate. Such arrested person shall be made aware of his or her constitutional rights to remain silent and to have counsel pursuant to Section 120 of 32 MIRC Ch. 2 “Criminal Procedures Act”¹ before any bail is forfeited or labor is imposed.

(2) Except in cases of offenses that are not criminal felonies where the only penalty imposed is a fine, a person against whom charges have not yet been brought may admit an offense that is not a criminal felony upon stipulation of plea and sentence by the Attorney-General and defense counsel. Such person shall not be permitted to admit an offense in this manner without advise of counsel who shall represent to the court that all prerequisites for entering a plea to a charge have been satisfied. Such representation by defense may be satisfied by a written affidavit filed with the court. By order of the court, the stipulated plea and sentence shall become a judgment and sentence of the court.

(3) In the case of citations for offenses that are not criminal felonies including, but not limited to, traffic offenses, a person may admit an offense and pay a standard fine directly with the court without advice of counsel or the need for a court hearing. [added by P.L. 1994-88, §2.]

§193-195. - Reserved

PART XXX - PARDONS AND PAROLES

§196. Authority of Cabinet.

¹[Correct citation inserted by Revisor (Rev.2003)]

(1) Any person convicted of a crime in the Republic may be pardoned by the Cabinet acting on the recommendation of the Parole Board.

(2) Any person convicted of a crime in the Republic may be paroled by the Parole Board, upon such terms and conditions as may be prescribed in any other law or applicable Regulations.

(3) Any Regulations for the time being in force, regulating the granting of pardon and parole shall, to the extent that they are not inconsistent with this Act or any other law, remain applicable and have the force and effect of law.

(4) As used in this Section, the term "Parole Board" means the Parole Board established under the Parole of Prisoners Act of 2001." [TTC 1966, §435; II TTC 1970, §1501; 11 TTC 1980, §1501, modified.][P.L. 2001-40 §2 Oct.18, 2001]

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