FSMC, TITLE 11. CRIMES

CHAPTER 1
General Provisions

SECTIONS

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Editor's note: Former chapter 1 of this title on General Provisions was repealed in its entirety by PL 11-72 § 1. This new chapter 1 was enacted by PL 11-72 § 2 and is part of the Revised Criminal Code Act.

§ 101. Title.

This Act shall be known and cited as the "Revised Criminal Code Act".

Source: PL 11-72 § 3.

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

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at http://fsmgov.org.

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

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

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annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code.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

§ 102. Applicability to crimes committed before and after effective date.

(1) Except as provided in subsection (2) of this section, this act does not apply to crimes committed before its effective date. For purposes of this section, a crime is committed before the effective date if any of the elements of the crime occurred before that date.

(2) Prosecutions for offenses committed before the effective date are governed by the prior law, which is continued in effect for that purpose, as if this act were not in force.

Source: PL 11-72 § 4; PL 11-76 § 2.

Editor's note: PL 11-72 § 1 repealed chapters 1 through 10 and 12 through 14 of the National Criminal Code (PL 1-134, as amended) as previously codified herein. PL 11-72 left untouched the provisions of chapter 11 which is the Trust Territory Controlled Substances Act.

PL 11-72 was signed into law on January 25, 2001. PL 11-72 had effective date provisions as follows:

> Section 210. Notwithstanding this act becoming law pursuant to section 211 hereof chapter 9 of this act shall take effect on July 1, 2001.
>
> Section 211. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

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

Case annotations: Title 11 of the TTC, prior to effective date of National Criminal Code, is not a national law because its criminal jurisdiction was not expressly delegated to the national government, nor is the power it confers of indisputably national character; therefore, it is not within the jurisdiction of the FSM Supreme Court. *Truk v. Otokichy (I)*, 1 FSM R. 127, 130 (Truk 1982).

The delegation of judicial functions to the FSM, pursuant to Secretarial Order 3039, does not by itself give the FSM Supreme Court jurisdiction over title 11, TTC crimes occurring before the effective date of the National Criminal Code. U.S. Dept. Int. Sec. Order 3039, § 2 (1979). *Truk v. Otokichy(I)*, 1 FSM R. 127, 131 (Truk 1982).

Offenses prior to the effective date of the National Criminal Code are outside the jurisdiction of the FSM Supreme Court. *Truk v. Otokichy (II)*, 1 FSM R. 133, 134 (Truk 1982).

National Criminal Code preserves President's parole powers for offenses committed before the Code's effective date; the repeal of parole powers applies only to offenses committed thereafter. I F.S.M.C. 102(1); 11 TTC 1501. *Tosie v. Tosie*, I FSM R. 149, 151, 158 (Kos. 1982).

Sections of title 11 of the TTC covering matters within jurisdiction of Congress owe their continuing vitality to § 102 of the National Criminal Code. Thus, criminal prosecutions thereunder are a national matter and fall within FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102. *In re Otokichy*, 1 FSM R. 183, 185 (App. 1982).

Upon inception of constitutional self-government by people of FSM, criminal law provisions in Title 11 of TTC became the law of governments within FSM by virtue of Constitution's transition provisions. *In re Otokichy*, 1 FSM R. 183, 187 (App. 1982).

Prosecutions of title 11 TTC offenses occurring before the effective date of the National Criminal Code are specifically authorized by § 102(2) of the National Criminal Code. 11 F.S.M.C. 102(2). *In re Otokichy*, 1 FSM R. 183, 189 (App. 1982).

The savings clause, 11 F.S.M.C. 102(2), unlike the other sections of the National Criminal Code, was intended to apply to offenses committed before the Code's effective date. It specifically authorizes prosecutions of Title 11, TTC offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. *In re Otokichy*, 1 FSM R. 183, 189-90 (App. 1982).

Section 102(2), the savings clause of the National Criminal Code, authorizes prosecutions of title 11 TTC offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102(2). *In re Otokichy*, 1 FSM R. 183, 190 (App. 1982).

Section 102(2) of the National Criminal Code preserved all the substantive rights of defendants applicable in a guilt determination proceeding as of the time of the crime's commission. 11 F.S.M.C. 102(2). *In re Otokichy*, 1 FSM R. 183, 191-92 (App. 1982).

Presumably, Congress inserted no specific jurisdictional provision in § 102 of the National Criminal Code because Congress recognized that this Court would have jurisdiction over all cases arising under national law by virtue of art. XI, § 6(b) of the Constitution. 11 F.S.M.C. 102. *In re Otokichy*, 1 FSM R. 183, 193 (App. 1982).

Change of forum for Title 11 TTC cases from the Trust Territory High Court to the FSM Supreme Court is a procedural matter with no effect on the substantive rights of defendants. *In re Otokichy*, 1 FSM R. 183, 193 (App. 1982).

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

§ 103. Jurisdiction of the FSM.

(1) The National Government of the Federated States of Micronesia has exclusive jurisdiction over all national crimes, as defined in section 104(7) of this chapter, pursuant to article IX, section 2(p) of the Constitution of the Federated States of Micronesia.

(2) A person may be convicted and sentenced under the laws of the Federated States of Micronesia if:

(a) he or she commits, or attempts to commit a crime, in whole or in part within the Federated States of Micronesia; or

(b) being outside the Federated States of Micronesia, he or she conspires with, causes, assists, aids or abets another to commit or attempt to commit a crime within the Federated States of Micronesia; or

(c) being outside the Federated States of Micronesia, he or she intentionally causes, or attempts to cause a result within the Federated States of Micronesia prohibited by the criminal laws of this country.

Source: PL 11-72 § 5.

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

Case annotations: National Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the National Criminal Code. *FSM v. Albert*, 1 FSM R. 14, 15 (Pon. 1981).

§ 104. Definitions.

The definitions in this section shall apply throughout this title, unless otherwise specified or a different meaning is plainly required.

(1) "Crime" means an act committed or omitted in violation of any law forbidding or commanding it, and which, upon conviction, is punishable by either or both of the following:

(a) imprisonment; or

(b) fine.

(2) "Criminal negligence" means to engage in conduct which creates a substantial and unjustifiable risk of bodily injury to another, or to engage in conduct which constitutes gross deviation from the standard of care that a reasonable person would exercise, which conduct causes the criminal result.

(3) "Felony" means any crime which is punishable by imprisonment for more than one year.

(4) "Intent" means acting with the conscious purpose to engage in the conduct specified, refrain from the omission specified or cause the specific result.

(5) "Knowledge" means being aware of the nature of the conduct or omission or of the existing circumstances, or believing that a fact exists which brings the conduct or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such conduct or omission.

(6) "Misdemeanor" means any crime which is not a felony.

(7) "National crime" means:

(a) any crime which is

(i) inherently national in character and defined anywhere in this title; or

(ii) otherwise a crime against the Federated States of Micronesia.

(b) A crime is "inherently national in character" when any of the following is true:

(i) the crime is committed in the exclusive economic zone of the Federated States of Micronesia as defined in title 18 of this code;

(ii) the crime is committed in the airspace above the territory comprising the Federated States of Micronesia as defined in article I, section 1 of the FSM Constitution;

(iii) the crime is committed on any airborne vehicle of the National Government, regardless of that vehicle's location;

(iv) the crime is committed on any watergoing vessel flagged and registered by the Federated States of Micronesia regardless of that watergoing vessel's location;

(v) the crime is committed on any watergoing vessel of the National Government regardless of that vessel's location;

(vi) the crime is committed against a national public servant in the course of, in connection with, or as a result of that person's employment or service;

(vii) the crime is committed against a former national public servant in retaliation for an act undertaken while that person was engaged in public service and within the scope of his or her official duties;

(viii) the crime is committed by a national public official or public servant while that person is engaged in his or her official duties or in violation of a fiduciary duty;

(ix) the crime involves property belonging to the National Government; or

(x) the crime is committed against any person participating in or attempting to participate in a national election.

(8) "Official proceedings" means any proceeding conducted by or under the supervision of a judge, magistrate, judicial officer or other public official in relation to any alleged offense or proven offense, and includes an inquiry, investigation, or preliminary or final determination of facts.

(9) Person. The terms "person", "he", "she", "accused" and "defendant" include any natural or legal person, including but not limited to, a government, corporation or unincorporated association, or other organization.

(10) "Principal" means a person who commits or participates in the commission of a crime and shall include a co-conspirator, accomplice or an aid or abettor.

(11) "Property" shall mean both real and personal property.

(12) "Public official" and "public servant" means any person elected, appointed or employed to perform a governmental function on behalf of the Federated States of Micronesia, or any department, agency or branch thereof, or any allottee as defined in the Financial Management Act of 1979 or any successor law, in any official function under or by authority of any such agency or branch of government. The terms include, but are not limited to, the President, Vice President, department heads and other government employees, legislators, judges, law enforcement officers, advisors and consultants, but do not include witnesses.

(13) "Reckless" means to engage in conduct with a willful disregard for the safety of others or to engage in conduct in a manner that constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

(14) "Serious bodily injury" means bodily injury which creates a high probability of death or which causes serious permanent disfigurement or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other bodily injury of like severity.

(15) "Willfully" means to act with a purpose or willingness to commit an act, or to make an omission. It does not require any intent to violate the law, or to injure another, or to acquire any advantage.

Source: PL 11-72 § 6; PL 11-76 § 2.

Editor's note: Subsections rearranged in alphabetical order.

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

In context of a claim of aggravated assault which calls for "causing serious bodily injury intentionally," the words, "engage in the conduct," in 11 F.S.M.C. 104(4) mean engaging in the conduct of causing serious bodily injury. Section 104(4) requires a conscious purpose either to engage in the conduct of causing bodily injury or to cause a result, which is itself serious bodily injury. *Laion v. FSM*, 1 FSM R. 503, 519 (App. 1983).

The requisite intent for aggravated assault cannot be found simply by determining that the defendant purposely engaged in conduct which caused serious bodily injury. The crime of aggravated assault assumes at the very least disregard by the defendant for the well-being of the victim, and more typically, requires desire on the part of the defendant to injure the victim seriously. *Laion v. FSM*, 1 FSM R. 503, 519_20 (App. 1983).

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

National Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the National Criminal Code. *FSM v. Albert*, 1 FSM R. 14, 15 (Pon. 1981).

To dismiss litigation against juvenile defendants for lack of jurisdiction would be contrary to the National Criminal Code despite the fact that the Code makes no reference to charges against juveniles or the Juvenile Code. *FSM v. Albert*, 1 FSM R. 14, 15 (Pon. 1981).

Fact that Congress repealed many provisions of title 11 of the TTC by implication does not lead to the conclusion that all provisions of title 11 are repealed. *FSM v. Boaz (II)*, 1 FSM R. 28, 29 (Pon. 1981).

Since national government does not have major crimes jurisdiction over Title 11 TTC assaults calling for imprisonment of no more than six months, the repealer clause of the National Criminal Code would not appear to repeal those sections. *FSM v. Boaz (II)*, 1 FSM R. 28, 30 (Pon. 1987).

It is doubtful that Congress would have the power to require that all criminal prosecutions be in the name of the Federated States of Micronesia. *FSM v. Boaz (II)*, 1 FSM R. 28, 31 (Pon. 1981).

Since the National Criminal Code has defined major crimes as those calling for more than three years imprisonment, this major crimes provision could not be relied upon as authority for congressional action making the FSM a party to all criminal proceedings. FSM Const. art. IX, § 2(p). *FSM v. Boaz (II)*, 1 FSM R. 28, 32 (Pon. 1981).

All elements of a crime need not themselves be criminal in order for the combination of those elements to be criminal. *FSM v. Boaz (II)*, 1 FSM R. 28, 33 (Pon. 1981).

Familial relationships are an important segment, perhaps the most important component, of the custom and tradition referred to generally in the Constitution FSM Const. art. V, art. XI, § 11, and more specifically in the National Criminal Code. 11 F.S.M.C. 108, 1003. *FSM v. Ruben*, 1 FSM R. 34, 40 (Truk 1981).

Where FSM Supreme Court has jurisdiction over a violation of the National Criminal Code, it cannot then take jurisdiction over a non-major crime, which arose out of the same transaction and formed part of the same plan, under a theory of ancillary jurisdiction. *FSM v. Hartman*, 1 FSM R. 43, 44-46 (Truk 1981).

The repealer clause of the National Criminal Code repealed those provisions of Title 11 of the TTC above the monetary minimum of $1,000 set for major crimes. Where the value is below $1,000, section 2 does not apply because it is not within the national court jurisdiction. *FSM v. Hartman*, 1 FSM R. 43, 46 (Truk 1981).

Title 11 of the TTC is not inconsistent with nor violative of the FSM Constitution; therefore Title 11 of the TTC continued in effect after the effective date of the Constitution and until the effective date of the National Criminal Code. *Truk v. Otokichy (I)*, 1 FSM R. 127, 130 (Truk 1982).

FSM Supreme Court is required by National Criminal Code to recognize generally accepted customs and to determine the applicability and effect of customary law in a criminal case; it is not authorized to develop new customary law. 11 F.S.M.C. 108. *FSM v. Mudong*, 1 FSM R. 135, 140, 146-47 (Pon. 1982).

FSM Supreme Court has jurisdiction to try Title 11 TTC cases if they arise under a national law. Title 11 of TTC is not a national law. It was not adopted by Congress as a national law and it did not become a national law by virtue of the transition article. *Truk v. Hartman*, 1 FSM R. 174, 178 (Truk 1982).

Sections of Title 11 of the TTC covering matters within jurisdiction of Congress owe their continuing vitality to section 102 of the National Criminal Code. Thus, criminal prosecutions thereunder are a national matter and fall within FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102. *In re Otokichy*, 1 FSM R. 183, 185 (App. 1982).

Upon inception of constitutional self-government by people of FSM, criminal law provisions in Title 11 of the TTC became law of governments within FSM by virtue of Constitution's transition provisions. *In re Otokichy*, 1 FSM R. 183, 187 (App. 1982).

National Criminal Code is exercise of Congress' power to define and provide penalties for major crimes. FSM Const. art. IX, § 2(p). *In re Otokichy*, 1 FSM R. 183, 187 (App. 1982).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language. *Laion v. FSM*, 1 FSM R. 503, 507 (App. 1983).

Although the Model Penal Code was the primary source for the National Criminal Code it was modified to suit the particular needs of the area. *Laion v. FSM*, 1 FSM R. 503, 511 (App. 1983).

Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. *Laion v. FSM*, 1 FSM R. 503, 523-24 (App. 1983).

Statutory construction rule of lenity reflects the reluctance of courts to increase or multiply punishments absent a clear and definite legislative direction. *Laion v. FSM*, 1 FSM R. 503, 528 (App. 1983).

Where two statutory provisions aimed at similar types of wrongdoing and upholding citizen and public interests of the same nature would apply to a solitary illegal act, which caused only one injury, the statutes will be construed not to authorize cumulative convictions in absence of a clear indication of legislative intent. However, the government is not denied the right to charge separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. *Laion v. FSM*, 1 FSM R. 503, 529 (App. 1983).

The savings clause, 11 F.S.M.C. 102(2), unlike the other sections of the National Criminal Code, was intended to apply to offenses committed before the Code's effective date. It specifically authorizes prosecutions of Title 11 TTC offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. *In re Otokichy*, 1 FSM R. 183, 189-90 (App. 1982).

Section 102(2) of the National Criminal Code preserved all the substantive rights of defendants applicable in a guilt determination proceeding as of the time of the crime's commission. 11 F.S.M.C. 102(2). *In re Otokichy*, 1 FSM R. 183, 191-92 (App. 1982).

Change of forum for Title 11 TTC cases from Trust Territory High Court to FSM Supreme Court is a procedural matter with no effect on the substantive rights of defendants. *In re Otokichy*, 1 FSM R. 183, 193 (App. 1982).

Presumably, Congress inserted no specific jurisdictional provision in section 102 of National Criminal Code because Congress recognized that FSM Supreme Court would have jurisdiction over all cases arising under national law by virtue of art. XI, § 6(b) of the Constitution. 11 F.S.M.C. 102. *In re Otokichy*, 1 FSM R. 183, 193 (App. 1982).

The court must first look to sources of law and circumstances here to establish legal requirements in criminal cases rather than begin with a review of cases decided by other courts. *Alaphonso v. FSM*, 1 FSM R. 209, 214 (App. 1982).

Although Model Penal Code was primary source for National Criminal Code it was modified to suit particular needs of the area. *Laion v. FSM*, 1 FSM R. 503, 511 (App. 1984).

Where more than one offense or wrongful intent is charged in a single count, the trial court may require the government to select among the charges if failure to do so might result in prejudice to the defendant. However, this is a matter within the discretion of the trial court. *Laion v. FSM*, 1 FSM R. 503, 517 (App. 1984).

A defendant is not unfairly prejudiced or incapable of preparing an intelligent defense, simply because the government insisted on each of 11 F.S.M.C. §§ 918 and 919's three adjectives, "intentionally, knowingly and recklessly," as possibly accurate descriptions of a defendant's frame of mind. *Laion v. FSM*, 1 FSM R. 503, 518 (App. 1984).

FSM Supreme Court Rules of Criminal Procedure were designed to avoid technicalities and gamesmanship in criminal pleading. They are to be construed to secure simplicity in procedure. FSM Crim. R. 2 convictions should not be reversed, nor information thrown out, because of minor, technical objections which do not prejudice the accused. *Laion v. FSM*, 1 FSM R. 503, 518 (App. 1984).

Trial court may in its discretion permit a case involving separate charges based upon the same act to proceed to trial. However, court should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. After appeal, if any, has been completed, and the greater charge is reversed on appeal, the trial court may then find it necessary to enter a judgment on the lesser charge. *Laion v. FSM*, 1 FSM R. 503, 529 (App. 1984).

FSM Const., art. IV, § 6, as implemented by FSM Crim. R. 7(c), requires that the government's reliance upon aggregation to bring an alleged crime within the jurisdictional boundaries of the court be plainly disclosed to the defendant in the information. *Fred v. FSM*, 3 FSM R. 141, 144 (App. 1987).

State courts are not prohibited by FSM Const., art. XI, § 6(b) from hearing and determining cases where the defendants are from FSM states other than the prosecuting state. Jurisdiction over criminal matters between the national and state governments is determined by the severity of the crime; not diversity of citizenship. *Pohnpei v. Hawk*, 3 FSM R. 543, 554 (Pon. S. Ct. App. 1988).

The general rule of criminal procedure is that jurisdiction over a particular crime places in the trial division the necessary authority to find a defendant guilty of any offense necessarily included in the offense charged. *Kosrae v. Tosie*, 4 FSM R. 61, 63 (Kos. 1989).

The function of the criminal law is to declare what conduct a society considers to be unacceptable and worthy of sanctions at the instigation of government on the society's behalf; the criminal law is thus the principal vehicle for the expression of the people's standards of right and wrong. *Hawk v. Pohnpei*, 4 FSM R. 85, 91 (App. 1989).

In course of formation of FSM, allocation of responsibilities between states and nation was such that the impact of the national courts in criminal matters was to be in the area of major crimes and as the ultimate arbiter of human rights issues. *Hawk v. Pohnpei*, 4 FSM R. 85, 93 (App. 1989).

Under equal protection clause of Declaration of Rights in FSM Constitution, indigency alone should not disadvantage an accused in our system of criminal justice. *Gilmete v. FSM*, 4 FSM R. 165, 169 (App. 1989).

In adopting Declaration of Rights as part of FSM Constitution and therefore supreme law of the land, people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause, that determinations of guilt are arrived at fairly, and that punishments for wrongdoing are proportionate to the crime and meet prescribed standards. *Tammed v. FSM*, 4 FSM R. 266, 281-82 (App. 1990).

Where crimes charged are no longer those expressly delegated to Congress to define, or are not indisputedly of a national character FSM Supreme Court has no subject matter jurisdiction. *FSM v. Jano*, 6 FSM R. 9, 11 (Pon. 1993).

§ 105. Statute of limitations.

(1) A prosecution for murder or treason may be commenced at any time.

(2) A prosecution for a crime which is punishable by imprisonment for ten years or more must be commenced within six years after it is committed or within two years after it is discovered or with reasonable diligence could have been discovered, whichever is longer.

(3) A prosecution for any other felony must be commenced within three years after it is committed, or within one year after it is discovered or with reasonable diligence could have been discovered, whichever is longer.

(4) A prosecution for a misdemeanor must be commenced within two years after it is committed.

(5) The time limitation set by the statute does not run:

(a) during any time when the accused is continuously absent from the complaining jurisdiction or has no reasonably determinable place of abode or work within the jurisdiction; or

(b) during any time when a prosecution against the accused for the same conduct is pending in this jurisdiction.

(6) A prosecution is commenced either when an information or complaint is filed or when an arrest warrant, summons or other process is issued, provided that reasonable attempts are made at service.

Source: PL 11-72 § 7.

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

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

The day upon which a crime is committed is to be excluded in the computation of the statute of limitations. *In re Extradition of Jano*, 6 FSM R. 93, 106 (App. 1993).

Where the prosecution of an underlying offense is not time-barred, prosecution of conspiracy to commit that offense is not time-barred even if part of the conspiracy extends back in time to a point that would be time-barred. *In re Extradition of Jano*, 6 FSM R. 93, 107 (App. 1993).

Section 105(3)(b)'s object was to apply the statute of limitations exception to all public officers, not just to those defined as "public servants" in section 104(11) or as "public officials" in section 1301(2). This was 11 F.S.M.C. 105(3)(b)'s plain and unambiguous meaning. If the drafters had intended to restrict the section 105(3)(b) exception to just those persons that had been defined as "public servants," or as "public officials" they could easily have inserted either term into section 105(3)(b) as they so easily inserted "public servants" in so many other criminal code sections or as they so easily used "public officials" in chapter 13. Instead, the drafters deliberately chose the term "public officer" for section 105(3)(b). *FSM v. Wainit*, 13 FSM R. 532, 539 (Chk. 2005).

Section 105(3)(b) "public officer" exception to the statute of limitations applied to persons based upon their status as public officers persons holding posts and exercising governmental functions. It did not matter whether that status was defined and bestowed upon a person by the national government or by another level of government. It only mattered that the person held that status. That the term "public officer" cannot possibly refer to state and municipal public officials since the national government lacks the constitutional power to define those offices and to determine or install those officials is a frivolous and misplaced contention because national laws are often applied to persons based on their status, even when that status is defined solely by another government. *FSM v. Wainit*, 13 FSM R. 532, 539 (Chk. 2005).

When the public officer tolling exception was part of a provision of general application to the whole criminal code, not to just one portion and the information alleges that the accused used his office to commit the charged offenses, that section did not require that the accused additionally actually use the office to conceal the wrongful act(s), the statute's application was triggered by the accused's alleged use of his office to commit allegedly national offenses. *FSM v. Wainit*, 13 FSM R. 532, 541 (Chk. 2005).

The section 105(3)(b) exception to the criminal statute of limitations applied to any public officer in any level of government in the FSM who, based on the public officer's misconduct in office, was charged with the commission of a national criminal offense. *FSM v. Wainit*, 13 FSM R. 532, 541 (Chk. 2005).

The time limitation does not run during any time when a prosecution against the accused for the same conduct is pending in the jurisdiction. *FSM v. Wainit*, 13 FSM R. 532, 541 (Chk. 2005).

As a general principle, the subsection 105(4)(b) tolling the statute of limitations while a prosecution is pending operated independently of the public officer tolling exception in subsection 105(3) because it was applicable to all limitations on criminal prosecutions. Thus, the time tolled by the operation of subsection (4)(b) cannot be included in the subsection (3)(b) three-year limit to the public officer extension of the statute of limitations. *FSM v. Wainit*, 13 FSM R. 532, 541-42 (Chk. 2005).

FSM law provides that a prosecution commences when an information is filed, and the filing of an information is sufficient for statute of limitations purposes. *FSM v. Kansou*, 14 FSM R. 128, 131 (Chk. 2006).

§ 106. Venue.

(1) All trials of national crimes shall be held in the State in which the crime was committed.

(2) If elements of the crime(s) were committed in different States, the trial may be held in any State in which a material element was committed.

(3) If elements of a national crime were committed in the exclusive economic zone, or elsewhere out of the boundaries of any State, the trial shall be held in the State in which the accused is arrested or is first brought or in which the majority of the witnesses are located.

(4) Either a defendant or the Government may petition the court for a change of venue for good cause. The court shall determine the place of trial with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

Source: PL 11-72 § 8.

§ 107. Defenses.

(1) A defense is a fact or set of facts which removes or mitigates penal liability.

(2) No defense may be considered by the trier of fact unless evidence of the specified fact or facts has been presented.

(a) a defendant is entitled to an acquittal if, in light of all the evidence presented, a reasonable doubt as to the defendant's guilt is found to exist; however,

(b) if a defense is designated an affirmative defense by this act or another statute, the defendant is entitled to an acquittal if the defense evidence presented, when considered in the light of any contrary evidence, proves by a preponderance of the evidence the specified fact or facts, which fact(s) remove or mitigate penal liability.

(3) It is a complete defense to a criminal charge that at the time of engaging in the wrongful conduct the defendant was legally incapable of committing a crime as defined in chapter 3, section 301A of this title.

Source: PL 11-72 § 9.

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

As a matter of constitutional due process, a trial court presented with an alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find the defendant guilty if after considering all of that evidence, the judge feels there is a reasonable doubt as to the defendant's guilt. *Alaphonso v. FSM*, 1 FSM R. 209, 223-25 (App. 1982).

Statutes which provided a defense in the form of exceptions to a general proscription do not reduce or remove the government's traditional burden of proving beyond a reasonable doubt every fact necessary to constitute the offense. *Ludwig v. FSM*, 2 FSM R. 27, 35 (App. 1985).

The government ultimately bears the burden of disproving the applicability of a statutory exception when it is properly presented as a defense. *Ludwig v. FSM*, 2 FSM 27, 35 (App. 1985).

The 11 F.S.M.C. 1203(1), (4) and (5) exemptions whereunder possession of a firearm is permissible are defenses within the meaning of 11 F.S.M.C. 107, although they are not affirmative defenses for they are not so designated. The ultimate burden of persuasion remains with the government, but the defendant has the burden of going forward with sufficient evidence to raise these exemptions as issues. *Ludwig v. FSM*, 2 FSM R. 27, 36 (App. 1985).

Some exceptions under 11 F.S.M.C. 1203 whereunder possession of a firearm is permissible relate to considerations separate from the essential elements of the crime and require the defendant to place them in issue. A defendant claiming exemption as a law enforcement officer or United States military person engaged in official duty, §§ 1203(1), (4), or as a designated crocodile hunter, § 1203(5), is not disputing any element of the government's basic case. Instead, these exemption claims bring into play new facts, uniquely within the knowledge of the defendant, which the government could overlook by focusing on whether the conduct prohibited by the Weapons Control Act has occurred. The defendant is in a far better position to place these exemptions in issue and it is fair to require that he do so. *Ludwig v. FSM*, 2 FSM R. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(2) exemption for curios, ornaments and historical pieces where possession of a firearm is permissible requires findings that the firearm be in "unserviceable condition" and "incapable of being fired or discharged". *Ludwig v. FSM*, 2 FSM R. 27, 37 (App. 1985).

If there are defenses, proof of which would not negate any essential element of the crime itself, it is constitutionally permissible to place same burden of proof for those defenses upon defendant. *Runmar v. FSM*, 3 FSM R. 308, 311 (App. 1988).

11 F.S.M.C. 107 does not create any presumption as to mental health or lack thereof but merely establishes the standard of proof for a defense based upon mental disease, disorder, or defect, and places the burden of persuasion for that defense upon the defendant. *Runmar v. FSM*, 3 FSM R. 308, 314 (App. 1988).

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

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. FSM Crim. R. 52(a). *Otto v. Kosrae*, 5 FSM R. 218, 222 (App. 1991).

Self-Defense

The general rule is that a person can use no more force than is necessary to protect himself, his family, and his home and property from an intruder and to expel the intruder. *FSM v. Ruben*, 1 FSM Instr. 34, 37 (Truk 1981).

There is no automatic prohibition against use of a dangerous weapon to protect oneself and family against an intruder, even against an intruder without a weapon, so long as the weapon is not used in deadly fashion and the actual force employed is not more than would be reasonably necessary for purposes of protection. *FSM v. Ruben*, 1 FSM R. 34, 38 (Truk 1981).

The court is willing to assume that the homeowner whose wife's brother is seeking to enter the house by force late at night in a threatening manner should as a matter of customary law go lightly and use less force than he might to expel some other intruder. *FSM v. Ruben*, 1 FSM R. 34, 41 (Truk 1981).

Privilege to use reasonable force in defense of family, home and property may under the circumstances extend onto the road adjacent to the home. *Tosie v. FSM*, 5 FSM R. 175, 177 (App. 1991).

A person can use no more force than is reasonably necessary to protect himself, his family, home and property from an intruder, and to expel the intruder. *Tosie v. FSM*, 5 FSM R. 175, 177-78 (App. 1991).

A claim of self-defense is meritless when the only provocation is an insulting gesture and there is no imminent threat of bodily harm. *Alik v. Kosrae*, 6 FSM R. 469, 472 (App. 1994).

There are two different standards used when reviewing a claim of self-defense. When one is threatened with imminent serious bodily harm or death by another he may justifiably use deadly force if necessary to protect himself from great bodily harm or death. When one is threatened with imminent unlawful bodily harm (but not serious bodily harm or death) he may justifiably use nondeadly force if force is necessary to prevent the unlawful bodily harm. Where there is no threat of deadly force the correct standard is that the unlawful force must at least constitute imminent threat of an assault before one may defend oneself by force. The force employed must be reasonable in the light of the amount, degree and kind of force being used by the aggressor. *Alik v. Kosrae*, 6 FSM R. 469, 473 (App. 1994).

Self-defense is not an affirmative defense. A defense is an affirmative defense only if it is so designated by the National Criminal Code or another statute. *Engichy v. FSM*, 1 FSM R. 532, 554 (App. 1984).

A police officer is entitled under 12 F.S.M.C. 215 to respond to physical resistance or attacks against him as he attempts to make an arrest and he may use whatever force is reasonably necessary to defend himself or others from harm. However, the police officer may not employ more force than he reasonably believes to be necessary, either to effect arrest or to defend himself. *Loch v. FSM*, 1 FSM R. 566, 570 (App. 1984).

§ 108. Customary law.

(1) Generally accepted customs prevailing within the Federated States of Micronesia relating to crimes and criminal liability shall be recognized and considered by the national courts. Where conflicting customs are both relevant, the court shall determine the weight to be accorded to each.

(2) Unless otherwise made applicable or given legal effect by statute, the applicability and effect of customary law in a criminal case arising under this act shall be determined by the court of jurisdiction in such criminal case.

(3) The party asserting applicability of customary law has the burden of proving by a preponderance of the evidence the existence, relevance, applicability, and customary effect of such customary law.

Source: PL 11-72 § 10.

Cross-reference: FSM Const., art. V and art. XI, § 11. The provisions of the Constitution are found in Part I of this code.

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

Custom and Tradition

A customary privilege to enter one's cousin's house cannot be exercised by pounding on the walls of the house at two a.m. until a hole for entry is created and shouting threats at the occupants. *FSM v. Boaz (I)*, 1 FSM R. 22, 26 (Pon. 1981).

The fact that one may have a general customary privilege to enter property does not necessarily mean that the privilege may be exercised at all times and in every conceivable manner. *FSM v. Ruben*, 1 FSM R. 34, 39 (Truk 1981).

Familial relationships are at the core of Micronesian society and are the source of numerous rights and obligations which influence practically every aspect of the lives of individual Micronesians. *FSM v. Ruben*, 1 FSM R. 34, 40 (Truk 1981).

Familial relationships are an important segment, perhaps the most important component, of the custom and tradition referred to generally in the Constitution, FSM Const. art. V, art. XI, § 11, and more specifically in the National Criminal Code, 11 F.S.M.C. 108, 1003. *FSM v. Ruben*, 1 FSM R. 34, 40 (Truk 1981).

While the court may find that a criminal defendant's conduct did not violate the criminal law and the defendant owes no debt to society in general, this does not suggest that the defendant has necessarily fulfilled all customary obligations he may owe to a relative who was the victim of his actions. *FSM v. Ruben*, 1 FSM R. 34, 41 (Truk 1981).

The court is willing to assume that the homeowner whose wife's brother is seeking to enter the house by force late at night in a threatening manner should as a matter of customary law go lightly and use less force than he might to expel some other intruder. *FSM v. Ruben*, 1 FSM R. 34, 41 (Truk 1981).

Customary law is placed in neither an overriding nor inferior position by the FSM Constitution and statutes. *FSM v. Mudong*, 1 FSM R. 135, 139 (Pon. 1982).

Customary settlements do not require court dismissal of court proceedings if no exceptional circumstances are shown. *FSM v. Mudong*, 1 FSM R. 135, 140 (Pon. 1982).

The prosecutor does not have authority to dismiss an existing prosecution on the basis of customary law but the court does have power to respond to a prosecutorial suggestion for dismissal because of customary considerations. *FSM v. Mudong*, 1 FSM R. 135, 141 (Pon. 1982).

The burden of proof is on a defendant to establish effect of customary law; the effect of customary apology ceremony on court proceedings is not self-evident. 11 F.S.M.C. 108(3). *FSM v. Mudong*, 1 FSM R. 135, 141-43 (Pon. 1982).

Under appropriate circumstances customary law may assume importance equal to or greater than particular written provisions in the National Criminal Code. 11 F.S.M.C. 108. *FSM v. Mudong*, 1 FSM R. 135, 139-40 (Pon. 1982).

FSM Supreme Court is required by National Criminal Code to recognize generally accepted customs and determine applicability and effect of customary law in a criminal case; it is not authorized to develop new customary law. I F.S.M.C. 108. *FSM v. Mudong*, 1 FSM R. 135, 140, 146-47 (Pon. 1982).

Customary law and the constitutional legal system perform different roles; they may mutually support each other. Neither system controls the other. *FSM v. Mudong*, 1 FSM R. 135, 145 (Kos. 1982).

Custom is more properly considered during sentencing than at other stages of a criminal prosecution. *FSM v. Mudong*, 1 FSM R. 135, 147-48 (Pon. 1982).

The constitutional government seeks not to override custom but to work in cooperation with the traditional system in an atmosphere of mutual respect. *In re Iriarte (II)*, 1 FSM R. 255, 271 (Pon. 1982).

Where no custom is established by a preponderance of the evidence that the vile phrases used are sufficient provocation for a serious attack on the speaker, that alleged custom will not be considered in determining the criminal culpability of the person who attacks the one who has used vile phrases. *FSM v. Raitoun*, 1 FSM R. 589, 591-92 (Truk 1984).

The Major Crimes Clause, with its admonition to Congress to have due regard for local custom and tradition, unmistakably reflects awareness of the framers that Congress would be empowered under this clause to regulate crimes that would require consideration of local custom and tradition. *Tammow v. FSM*, 2 FSM R. 53, 57 (App. 1985).

Duty of a national court justice to give full and careful consideration to a request to consider a particular customary practice or value in arriving at a decision requires careful investigation of the nature and customary effect of the specific practice at issue, a serious effort to reconcile the custom and tradition with other constitutional requirements, and an individualized decision as to whether the specific custom or tradition should be given effect in the particular contexts of the case before the court. *Tammed v. FSM*, 4 FSM R. 266, 279 (App. 1990).

Congress has no power to specify voting requirements for the Constitutional Convention and therefore any attempt to exercise this power so as to uphold tradition is also outside the powers of Congress under art. V, § 2 of the Constitution, which is not an independent source of congressional power but which merely confirms the power of Congress, in exercising national legislative powers, to make special provisions for Micronesian tradition. *Constitutional Convention 1990 v. President*, 4 FSM R. 320, 328 (App. 1990).

6 F.S.M.C. 1614 exempts adoptions effected in accordance with local custom from the domestic relations law of the FSM. Customary adoptions are an alternative to court-ordered adoptions which are established by the Code. *In re Marquez*, 5 FSM R. 381, 383 (Pon. 1992).

Parties who wish to adopt a child have a choice of method of adoption. They may adopt according to local custom, or they may adopt according to the laws of the FSM. What a petitioner may not do is seek the court's involvement in a customary adoption. *In re Marquez*, 5 FSM R. 381, 383 (Pon. 1992).

Determining the relevancy of custom in carrying out the mandate of art. XI, § 11 of the FSM Constitution must proceed on a case-by-case basis. *Wito Clan v. United Church of Christ*, 6 FSM R. 129, 132 (App. 1993).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. *Wito Clan v. United Church of Christ*, 6 FSM R. 129, 133 (App. 1993).

§ 109. Severability.

If any provision of this title or amendments or additions thereto, or the application thereof to any person, thing or circumstance is held invalid, the invalidity does not affect the provisions, application, amendments or additions that can be given effect without the invalid provisions or application, and to this end the provisions of this title and the amendments or additions thereto are severable.

Source: PL 11-72 § 11.

Case annotations: Since the National Government does not have major crimes jurisdiction over title 11 TTC assaults calling for imprisonment of no more than six months, the repealer clause of the National Criminal Code would not appear to repeal those sections. *FSM v. Boaz (II)*, 1 FSM R. 28, 30 (Pon. 1981).

The repealer clause of the National Criminal Code repealed those provisions of title 11 of the TTC above the monetary minimum of $1,000 set for major crimes. Where the value is below $1,000, § 2 does not apply because it is not within the national court jurisdiction. *FSM v. Hartman*, 1 FSM R. 43, 46 (Truk 1981).

FSM Supreme Court has jurisdiction to try title 11 TTC cases if they arise under a national law. Title 11 of the TTC is not a national law. It was not adopted by Congress as a national law and it did not become a national law by virtue of the transition article. Pub. L. No. 1-134, § 2 (1st Cong., 4th Reg. & 3rd Spec. Sess. 1980_81); FSM Const., art. XV, § 1. *Truk v. Hartman*, 1 FSM R. 174, 178 (Truk 1982).

National Government has exclusive jurisdiction over crimes arising under national law. Pub. L. No. 1-134, § 2 (1st Cong., 4th Reg. & 3rd Spec. Sess. 1980-81). *Truk v. Hartman*, 1 FSM R. 174, 181 (Truk 1982).

Title 11 of TTC is not inconsistent with nor violative of FSM Constitution; therefore 11 TTC continued in effect after the effective date of the Constitution and until the effective date of the National Criminal Code. FSM Const. art XV, § I; Pub. L. No. 1-134, §§ 2-3 (1st Cong., 4th Reg. Sess. 1980). *Truk v. Otokichy (I)*, 1 FSM R. 127, 130 (Truk 1982).

§ 110. Effective date.

Upon the approval of the President of the Federated States of Micronesia, or upon its becoming law without such approval, the act from which this section derives shall take effect on July 12, 1981.

Source: PL 1-134 § 3.

Case annotations: Title 11 of TTC is not inconsistent with nor violative of the FSM Constitution; therefore 11 TTC continued in effect after the effective date of the Constitution and until the effective date of the National Criminal Code. FSM Const., art. XV, § 1; Pub. L. No. 1-134 §§ 2-3 (1st Cong., 4th Reg. Sess. 1980). *Truk v. Otokichy*, 1 FSM R. 127, 130 (Truk 1982).