

**PALAU**

**AN ACT**

To update criminal offenses contained in Title 17 of the Palau National Code by amending, repealing, and replacing specific Sections of Title 17, to amend 40 PNC § 1702, and for other related purposes.

**THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIL ERA KELULAU DO ENACT AS FOLLOWS:**

Section 1. Legislative Findings. Title 17 of the Palau National Code sets forth what acts and omissions constitute criminal offenses within the Republic of Palau. Title 17 has not been significantly updated since the days of the Trust Territory. While criminals have become more increasingly sophisticated, the Republic of Palau's Criminal Code has remained stagnant. This revision of Title 17 is based on the Model Penal Code that was originally drafted by the American Law Institute in 1962. Since that time the Model Penal Code has become the most promulgated penal code in the United States. The Model Penal Code provides a comprehensive criminal code that clearly defines each crime, what elements the prosecution must prove in order for an individual to be convicted of a crime and specifies the punishment to be applied upon conviction. Rather than being a reactionary piece of legislation, this penal code has been drafted with an eye on the future. No longer will criminals be able to victimize the people of Palau due to inadequate criminal laws.

Section 2. Short Title. This Act shall be known as the Penal Code of the Republic of Palau.

Section 3. Repealer. Sections 101, 102, 103, 104, 105, 106, 107, 108, 201, 301, 302, 401, 501, 502, 503, 504, 601, 701, 801, 901, 1001, 1101, 1201, 1202, 1203, 1204, 1205, 1301, 1302, 1401, 1501, 1601, 1701, 1702, 1703, 1704, 1801, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 2001, 2101, 2201, 2301, 2401, 2501, 2601, 2701, 2901, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3501, 3502, 3503, 3504, 3505, 3506, 3507, 3601, 3602, 3603, 3801, 3802, 3803, 3811, 3812, 3813, 3814, 3821, 3822, 3823, 3824, 3825, 3826, 3827, 3831, 3832, 3833, 3834, 3835, 3836, 3837, 3838, 3839, 3840, 3841, 3842, 3843, 3844, 3845, 3846, 3847, 3848, 3849, 3850, 3851, 3852, and 3853 of Title 17 of the Palau National Code are hereby repealed in their entirety. Section 518 and 519 of Title 42 of the Palau National Code is hereby repealed in its entirety.

Section 4. Amendment. Renumber the following sections of Title 17 of the Palau National Code as follows:

(a) Chapter 28 as amended by RPPL No. 8-51 entitled Sex Crimes shall be renumbered as Chapter 16 of Title 17 of the Palau National Code and its title amended as "Sexual Offenses" in accordance with this Act.

(b) Chapter 32 entitled Executive Clemency shall be renumbered as Chapter 4 of Title 17 of the Palau National Code.

(c) Chapter 33 of Title 17 of the Palau National Code entitled Firearms Control Act shall be renumbered as Chapter 45 of Title 17 of the Palau National Code.

(d) Chapter 34 of Title 17 of the Palau National Code entitled Trust Territory Weapons Control Act shall be renumbered as Chapter 46 of Title 17 of the Palau National Code.

(e) Chapter 37 of Title 17 of the Palau National Code entitled Smuggling shall be renumbered as Chapter 37 of Title 17 of the Palau National Code.

(f) Chapter 39 of Title 17 of the Palau National Code entitled Anti-People Smuggling and Trafficking shall be renumbered as Chapter 21 of Title 17 of the Palau National

Code.

(g) Chapter 40 of Title 17 of the Palau National Code entitled Prohibition Against Chemical Weapons shall be renumbered as Chapter 47 of Title 17 of the Palau National Code.

(h) Chapter 41 of Title 17 of the Palau National Code entitled Cash Courier Disclosure shall be renumbered as Chapter 36 of Title 17 of the Palau National Code.

(i) The Chapter entitled "Terrorism" in Title 17 of the Palau National Code shall be renumbered as Chapter 22 of Title 17 of the Palau National Code.

Section 5. Amendment. Title 17 of the Palau National Code ("PNC") is hereby amended to read as follows:

"TITLE 17  
PENAL CODE  
Index

DIVISION ONE: GENERAL PRINCIPLES

Chapter 1: Preliminary Provisions §§ 100 - 112  
Chapter 2: General Principles of Penal Liability §§ 200 - 236  
Chapter 3: General Principles of Justification §§ 300 - 310  
Chapter 4: Executive Clemency §§ 400 - 410  
Chapter 5: Penal Responsibility and Fitness to Proceed §§ 500 - 518  
Chapter 6: Disposition of Convicted Defendants §§ 600 - 670  
Chapter 7: Forfeiture §§ 700 - 719

DIVISION TWO: INCHOATE CRIMES

Chapter 8: Criminal Attempt §§ 800 - 802  
Chapter 9: Criminal Solicitation §§ 900 - 902  
Chapter 10: Criminal Conspiracy §§ 1000 - 1006  
Chapter 11: General Provisions Relating to Inchoate Offenses §§ 1100 - 1101

DIVISION THREE: OFFENSES AGAINST THE PERSON

Chapter 12: General Provisions Relating to Offenses Against the Person §1200  
Chapter 13: Criminal Homicide §§ 1300 - 1309  
Chapter 14: Criminal Assaults and Related Offenses §§ 1400 - 1409  
Chapter 15: Kidnapping and Related Offenses; Criminal Coercion §§1500 - 1502  
Chapter 16: Sexual Offenses §§ 1600 - 1608  
Chapter 17: Registration of Sex Offenders and Other Covered Offenders and Public Access to Registration Information §§ 1700 - 1709  
Chapter 18: Child Exploitation §§ 1800 - 1807  
Chapter 19: Extortion §§ 1900 - 1909  
Chapter 20: Labor Trafficking §§ 2000 - 2006  
Chapter 21: Anti-People Smuggling and Trafficking §§ 2100 - 2113  
Chapter 22: Terrorism §§ 2200 - 2243

DIVISION FOUR: OFFENSES AGAINST PROPERTY RIGHTS

Chapter 23: General Provisions Relating to Offenses Against Property Rights §§ 2300 - 2302  
Chapter 24: Burglary and Other Offenses of Intrusion §§ 2400 - 2406  
Chapter 25: Criminal Damage to Property §§ 2500 - 2509  
Chapter 26: Theft and Related Offenses §§ 2600 - 2616  
Chapter 27: Robbery §§ 2700 - 2702  
Chapter 28: Forgery and Related Offenses §§ 2800 - 2809  
Chapter 29: Business, Commercial and Land Frauds §§ 2900 - 2907

Chapter 30: Offenses Affecting Occupations § 3000  
Chapter 31: Computer Crimes §§ 3100 - 3110  
Chapter 32: Credit Card Offenses §§ 3200 - 3207  
Chapter 33: Money Laundering §§ 3300 – 3350  
Chapter 34: Cable Television and Telecommunication Service Offenses §§ 3400 - 3404  
Chapter 35: Arson §§ 3500 - 3503  
Chapter 36: Cash Courier Disclosure §§ 3600 - 3607  
Chapter 37: Smuggling §§ 3700 – 3708

#### DIVISION FIVE: OFFENSES AGAINST PUBLIC ADMINISTRATION

Chapter 38: General Provisions Relating to Offenses Against Public Administration §§ 3800 - 3801  
Chapter 39: Obstruction of Public Administration §§ 3900 - 3917  
Chapter 40: Escape and Other Offenses Related to Custody §§ 4000 - 4011  
Chapter 41: Bribery § 4100  
Chapter 42: Perjury and Related Offenses §§ 4200 - 4210  
Chapter 43: Offenses Related to Judicial and Other Proceedings §§ 4300 – 4310

#### DIVISION SIX: OFFENSES AGAINST PUBLIC ORDER

Chapter 44: Miscellaneous Offenses §§ 4400 - 4412  
Chapter 45: Firearms Control Act §§ 4500 - 4510  
Chapter 46: Trust Territory Weapons Control Act §§ 4600 - 4630  
Chapter 47: Prohibitions Against Chemical Weapons §§ 4700 – 4729

#### DIVISION SEVEN: OFFENSES AGAINST PUBLIC HEALTH AND MORALS

Chapter 48: Prostitution and Promoting Prostitution §§ 4800 - 4805  
Chapter 49: Offenses Related to Obscenity §§ 4900 - 4906  
Chapter 50: Gambling Offenses §§ 5000 – 5011

### DIVISION ONE GENERAL PRINCIPLES CHAPTER 1

#### PRELIMINARY PROVISIONS

§ 100. Applicability of offense committed before the effective date of this Act.  
§ 101. All offenses defined by statute; applicability to offenses committed after the effective date.  
§ 102. Purposes of this code.  
§ 103. Principles of construction.  
§ 104. Penal jurisdiction.  
§ 105. Grades and classes of offenses.  
§ 106. Time limitations.  
§ 107. Method of prosecution when conduct establishes an element of more than one offense.  
§ 108. When prosecution is barred by former prosecution for the same offense.  
§ 109. Proof beyond a reasonable doubt.  
§ 110. Defenses.  
§ 111. Prima facie evidence.  
§ 112. General definitions.

§ 100. Applicability of offenses committed before the effective date of this Act.

(a) Except as provided in subsection (b), this Penal Code does not apply to offenses committed before the effective date of this Act. Prosecutions for offenses committed before the effective date of this Act are governed by prior law, which shall continue in effect for that purpose as if this Act were not in force. An offense is committed before the effective date of this Act if any of the elements of the offense occurred

before that date.

(b) In any case pending on or commenced after the effective date of this Act involving an offense committed before that date, upon the request of the defendant, and subject to the approval of the court, the provisions of this Penal Code may be applied in particular cases.

§ 101. All offenses defined by statute; applicability to offenses committed after the effective date.

(a) No behavior constitutes an offense unless it is a crime or violation under this Penal Code or another statute of the Republic of Palau.

(b) The provisions of this Penal Code govern the construction of and punishment for any offense set forth herein committed after the effective date, as well as the construction and application of any defense to a prosecution for such an offense.

(c) The provisions of this Act are applicable to offenses defined by other statutes, unless other statutes within the Palau National Code provide otherwise.

§ 102. Purposes of this code.

The purposes of this Penal Code are to codify the general principles of the penal law and to define and codify certain specific offenses which constitute harms to basic social interests that the Penal Code seeks to protect.

§ 103. Principles of construction.

The provisions of this Penal Code cannot be extended by analogy so as to create crimes not provided for herein; however, in order to promote justice and effect the objects of the law, all of its provisions shall be given a genuine construction, according to the fair import of the words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision.

§ 104. Penal jurisdiction.

(a) Except as otherwise provided in this section, a person may be convicted under the law of the Republic of Palau of an offense committed by the person's own conduct or the conduct of another for which the person is legally accountable if:

(1) Either the conduct or the result of conduct that is an element of the offense occurs within the Republic of Palau; or

(2) Conduct occurring outside of the Republic of Palau is sufficient under the law of the Republic to constitute an attempt to commit an offense within the Republic of Palau; or

(3) Conduct occurring outside of the Republic of Palau is sufficient under the law of the Republic to constitute a conspiracy to commit an offense within the Republic and an overt act in furtherance of such conspiracy occurs within the Republic of Palau; or

(4) Conduct occurring within the Republic of Palau establishes complicity in the commission of, or an attempt, solicitation, or conspiracy to commit, an offense in another jurisdiction that is also an offense under the law of the Republic of Palau; or

(5) The offense consists of the omission, while within or outside the Republic of Palau, to perform a legal duty imposed by the law of the Republic of Palau with respect to domicile, residence, or a relationship to a

person, thing, or transaction in the Republic of Palau; or

(6) The offense is based on a statute of the Republic of Palau that expressly prohibits conduct outside the Republic, when the conduct bears a reasonable relation to a legitimate interest of the Republic of Palau and the person knows that the person's conduct is likely to affect that interest.

(b) Subsection (a)(1) does not apply when a specified result, or conduct creating a risk of such a result, is an element of an offense and the result occurs, or is intended or is likely to occur, only in another jurisdiction where the conduct charge would not constitute an offense, unless a legislative purpose plainly appears to declare that the conduct constitutes an offense regardless of the place of the result.

(c) Subsection (a)(1) does not apply when a particular result is an element of an offense and the result is caused by conduct occurring outside of the Republic of Palau which conduct would not constitute an offense if the result had occurred there, unless the person intentionally or knowingly caused the result within the Republic of Palau.

(d) When the offense involves a homicide, either the death of the victim or the bodily impact causing death constitutes a "result", within the meaning of subsection (a)(1). If the body of a homicide victim is found within the Republic of Palau, it is prima facie evidence that the result occurred within the Republic.

(e) The Republic of Palau includes the land and water and the air space about the land and water with respect to which the Republic of Palau has legislative jurisdiction.

#### § 105. Grades and classes of offenses.

(a) An offense defined by this Penal Code or by any other statute of the Republic of Palau for which a sentence of imprisonment is authorized constitutes a crime. Crimes are of three grades: felonies, misdemeanors, and petty misdemeanors. Felonies include murder in the first and second degrees, attempted murder in the first and second degrees, and the following three classes: class A, class B, and class C.

(b) A crime is a felony if it is so designated in this Penal Code or in a statute other than this Penal Code enacted subsequent thereto, or if it is defined in a statute other than this Penal Code, or if persons convicted thereof may be sentenced to a term of imprisonment that is in excess of one year.

(c) A crime is a misdemeanor if it is so designated in this Penal Code or in a statute other than this Penal Code enacted subsequent thereto, or if it is defined in a statute other than this Penal Code that provides for a term of imprisonment the maximum of which is one year.

(d) A crime is a petty misdemeanor if it is so designated in this Penal Code or in a statute other than this Penal Code enacted subsequent thereto, or if it is defined by a statute other than this Penal Code that provides that persons convicted thereof may be sentenced to imprisonment for a term not to exceed thirty days.

(e) An offense defined by this Penal Code or by any other statute of the Republic of Palau constitutes a violation if it is so designated in this Penal 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 Penal Code which 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 civil disability based on conviction of a criminal offense.

(f) Any offense declared by law to constitute a crime, without specification of the

grade thereof or of the sentence authorized upon conviction, is a misdemeanor.

(g) An offense defined by any statute of the Republic of Palau other than this Penal Code shall be classified as provided in this section and the sentence that may be imposed upon conviction shall be governed by this Penal Code unless the other statute provides otherwise.

§ 106. Time limitations.

(a) A prosecution for murder, murder in the first and second degrees, attempted murder, and attempted murder in the first and second degree, criminal conspiracy to commit murder in any degree, and criminal solicitation to commit murder in any degree may be commenced at any time.

(b) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

(1) A prosecution for manslaughter where the death was not caused by the operation of a motor vehicle shall be commenced within ten years after it is committed;

(2) A prosecution for a class A felony shall be commenced within six years after it is committed.

(3) A prosecution for a class B felony shall be commenced within five years after it is committed.

(4) A prosecution for any other felony shall be commenced within three years after it is committed.

(5) A prosecution for a misdemeanor shall be commenced within two years after it is committed; and

(6) A prosecution for a petty misdemeanor or a violation shall be commenced within one year after it is committed.

(c) If the period prescribed in subsection (b) has expired, a prosecution may nevertheless be commenced for:

(1) Any offense an element of which is either fraud, deception, as defined in 17 PNC Chapter 23 of this Penal Code, or a breach of fiduciary obligation within three years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is oneself not a party to the offense, but in no case shall this provision extend the period of limitations by more than six years from the expiration of the period of limitation prescribed in subsection (b); and

(2) Any offense based on misconduct in office by a public official or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case shall this provision extend the period of limitation by more than three years from the expiration of the period of limitation prescribed in subsection (b).

(d) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(e) A prosecution is commenced either when an information or similar charging instrument is filed, or when an arrest warrant or other process is issued, provided that

such warrant or process is executed without unreasonable delay.

(f) The period of limitation does not run:

(1) During any time when the accused is continuously absent from the Republic or has no reasonably ascertainable place or abode or work within the Republic, but in no case shall this provision extend the period of limitation by more than four years from the expiration of the period of limitation prescribed in subsection (b);

(2) During any time when a prosecution against the accused for the same conduct is pending in the Republic; or

(3) For any felony offense under 17 PNC Chapter 16 relating to Sexual Offenses, during any time when the victim is alive and under eighteen years of age.

§ 107. Method of prosecution when conduct establishes an element of more than one offense.

(a) When the same conduct of a defendant may establish an element of more than one offense, the defendant may be prosecuted for each offense of which such conduct is an element. The defendant may not, however, be convicted of more than one offense if:

(1) One offense is included in the other, as defined in subsection (d) of this section; or

(2) One offense consists only of a conspiracy or solicitation to commit the other; or

(3) Inconsistent findings of fact are required to establish the commission of the offenses; or

(4) The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(5) The offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of conduct constitute separate offenses.

(b) Except as provided in subsection (c) of this section, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of a single court.

(c) When a defendant is charged with two or more offenses based on the same conduct or arising from the same episode, the court, on application of the attorney general or of the defendant, may order any such charge to be tried separately, if it is satisfied that justice so requires.

(d) A defendant may be convicted of an offense included in an offense charged in the information. An offense is so included when:

(1) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(2) It consists of an attempt to commit the offense charged or to commit an

offense otherwise included therein; or

(3) It differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest or a different state of mind indicating lesser degree of culpability suffices to establish its commission.

§ 108. When prosecution is barred by former prosecution for the same offense.

When a prosecution is for an offense under the same statutory provision and is based on the same facts as a former prosecution, it is barred by the former prosecution under any of the following circumstances:

(a) The former prosecution resulted in an acquittal that has not subsequently been set aside. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination by the court that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside on appeal by the defendant.

(b) The former prosecution was terminated, after the information or similar charging instrument has been filed, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and that necessarily required a determination inconsistent with a fact or legal proposition which must be established for conviction of the offense.

(c) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction that has not been reversed or vacated, a verdict of guilty that has not been set aside and which is capable of supporting a judgment, or a plea of guilty or no contest accepted by the court.

(d) The former prosecution was improperly terminated. Except as provided in this subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

(1) The defendant consents to the termination or waives, by motion to dismiss or otherwise, the defendant's right to object to the termination.

(2) The trial court finds the termination is necessary because:

(A) It is physically impossible to proceed with the trial in conformity with law; or

(B) There is a legal defect in the proceedings that would make any judgment entered upon a verdict reversible as a matter of law; or

(C) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Republic of Palau; or

(D) The jury or trier of fact is unable to agree on a verdict; or

(E) False statements of a juror on voir dire prevent a fair trial.

§ 109. Proof beyond a reasonable doubt.

(a) Except as otherwise provided in 17 PNC section 110, no person may be convicted of an offense unless the following are proven beyond a reasonable doubt:

- (1) Each element of the offense;
- (2) The state of mind required to establish each element of the offense;
- (3) Facts establishing jurisdiction;
- (4) Facts establishing venue; and
- (5) Facts establishing that the offense was committed within the time period specified in 17 PNC section 106.

(b) In the absence of the proof required by subsection (a), the innocence of the defendant is presumed.

#### § 110. Defenses.

(a) A defense is a fact or set of facts that negates penal liability.

(b) No defense may be considered by the trier of fact unless evidence of the specified fact or facts has been presented. If such evidence is presented, then:

- (1) If the defense is not an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in the light of any contrary prosecution evidence, raises a reasonable doubt as to the defendant's guilt; or
- (2) If the defense is an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in the light of any contrary prosecution evidence, proves by a preponderance of the evidence the specified fact or facts that negate penal liability.

(c) A defense is an affirmative defense if:

- (1) It is specifically so designated by this Penal Code or other statute; or
- (2) If this Penal Code or another statute plainly requires the defendant to prove the defense by a preponderance of the evidence.

#### § 111. Prima facie evidence.

Prima facie evidence of a fact is evidence that, if accepted in its entirety by the trier of fact, is sufficient to prove the fact. Prima facie evidence provisions of this Penal Code are governed by Republic of Palau Rules of Evidence.

#### § 112. General definitions.

In this Penal Code, unless a different meaning is plainly required:

- (a) "Statute" includes the Constitution of the Republic of Palau and any local law or ordinance of a political subdivision of the Republic of Palau, and any State Constitution and any State law or ordinance of a political subdivision of any State of the Republic of Palau;
- (b) "Act" or "Action" means a bodily movement whether voluntary or involuntary;

- (c) “Omission” means a failure to act;
- (d) “Conduct” means an act or omission, or, where relevant, a series of acts or a series of omissions, or a series of acts and omissions;
- (e) “Actor” includes, a person who acts, or, where relevant, a person guilty of omission;
- (f) “Acted” includes, where relevant, “omitted to act”;
- (g) “Person,” “he,” “she,” “him,” “her,” “actor,” and “defendant” include any natural person, including any natural person whose identity can be established by means of scientific analysis, including but not limited to scientific analysis of deoxyribonucleic acid and fingerprints, whether or not the natural person’s name is known, and, where relevant, a corporation or an unincorporated association;
- (h) “Another” means any other person and includes, where relevant, the Republic of Palau, and any of its political subdivisions, and any state and any of its political subdivisions;
- (i) “State” means a state of the Republic of Palau; and
- (j) “Law enforcement officer” means any public servant, whether employed by the Republic of Palau or political subdivisions thereof, or any state thereof, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.

CHAPTER 2  
GENERAL PRINCIPLES OF PENAL LIABILITY

- § 200. Requirement of voluntary act or voluntary omission.
- § 201. “Voluntary act” defined.
- § 202. Voluntary act includes possession.
- § 203. Penal liability based on an omission.
- § 204. State of mind required.
- § 205. Elements of an offense.
- § 206. Definitions of states of mind.
- § 207. Specified state of mind applies to all elements.
- § 208. Substitutes for negligence, recklessness, and knowledge.
- § 209. Conditional intent.
- § 210. Requirement of willfulness satisfied by acting knowingly.
- § 211. State of mind as determinant of grade or class of a particular offense.
- § 212. When state of mind requirements are inapplicable to violations and to crimes defined by statutes other than this Penal Code.
- § 213. Effect of absolute liability in reducing grade of offense to violation.
- § 214. Causal relationship between conduct and result.
- § 215. Intentional or knowing causation; different result from that intended or contemplated.
- § 216. Reckless or negligent causation; different result from that within the risk.
- § 217. Causation in offenses of absolute liability.
- § 218. Ignorance or mistake as a defense.
- § 219. Ignorance or mistake; reduction in grade and class of the offense.
- § 220. Ignorance or mistake of law; belief that conduct not legally prohibited.
- § 221. Liability for conduct of another.
- § 222. Liability for conduct of another; complicity.
- § 223. Liability for conduct of another; complicity with respect to the result.
- § 224. Liability for conduct of another; exemption from complicity.
- § 225. Liability for conduct of another; incapacity of defendant; failure to prosecute

or convict or immunity of other person.

§ 226. Liability for conduct of another; multiple convictions; different degrees.

§ 227. Penal liability of corporations and unincorporated associations.

§ 228. Liability of persons acting, or under a duty to act, in on behalf of corporations or unincorporated associations.

§ 229. Definitions relating to corporations and unincorporated associations.

§ 230. Intoxication.

§ 231. Duress.

§ 232. Consent; general.

§ 233. Consent to bodily injury.

§ 234. Ineffective consent.

§ 235. De minimis infractions.

§ 236. Entrapment.

§ 200. Requirement of voluntary act or voluntary omission.

(a) In any prosecution it is a defense that the conduct alleged does not include a voluntary act or the voluntary omission to perform an act of which the defendant is physically capable.

(b) Where the defense provided in subsection (a) is based on a physical or mental disease, disorder, or defect which precludes or impairs a voluntary act or a voluntary omission, the defense shall be treated exclusively according to chapter 5 of this Penal Code, except that a defense based on intoxication which is pathological or not self-induced which precludes or impairs a voluntary act or a voluntary omission shall be treated exclusively according to this chapter.

§ 201. "Voluntary act" defined.

"Voluntary act" means a bodily movement performed consciously or habitually as the result of the effort or determination of the defendant.

§ 202. Voluntary act includes possession.

Possession is a voluntary act if the defendant knowingly procured or received the thing possessed or if the defendant was aware of the defendant's control of it for a sufficient period to have been able to terminate the defendant's possession.

§ 203. Penal liability based on an omission.

Penal liability may not be based on an omission unaccompanied by action unless:

(a) The omission is expressly made a sufficient basis for penal liability by the law defining the offense; or

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

§ 204. State of mind required.

Except as provided in 17 PNC section 212, a person is not guilty of an offense unless the person acted intentionally, knowingly, recklessly, or negligently, as the law specifies, with respect to each element of the offense. When the state of mind required to establish an element of an offense is not specified by the law, that element is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly.

§ 205. Elements of an offense.

The elements of an offense are such (a) conduct, (b) attendant circumstances, and (c) results of conduct, as:

(1) Are specified by the definition of the offense, and

(2) Negate a defense (other than a defense based on the statute of limitations,

lack of venue, or lack of jurisdiction).

§ 206. Definitions of states of mind.

(a) “Intentionally.”

(1) A person acts intentionally with respect to his or her conduct when it is his or her conscious object to engage in such conduct.

(2) A person acts intentionally with respect to attendant circumstances when he or she is aware of the existence of such circumstances or believes or hopes that they exist.

(3) A person acts intentionally with respect to a result of his or her conduct when it is his or her conscious object to cause such a result.

(b) “Knowingly.”

(1) A person acts knowingly with respect to his or her conduct when he or she is aware that his or her conduct is of that nature.

(2) A person acts knowingly with respect to attendant circumstances when he or she is aware that such circumstances exist.

(3) A person acts knowingly with respect to a result of his or her conduct when he or she is aware that it is practically certain that his or her conduct will cause such a result.

(c) “Recklessly.”

(1) A person acts recklessly with respect to his or her conduct when he or she consciously disregards a substantial and unjustifiable risk that the person’s conduct is of the specified nature.

(2) A person acts recklessly with respect to attendant circumstances when he or she consciously disregards a substantial and unjustifiable risk that such circumstances exist.

(3) A person acts recklessly with respect to a result of his or her conduct when he or she consciously disregards a substantial and unjustifiable risk that his or her conduct will cause such a result.

(4) A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person’s conduct and the circumstances known to him or her, the disregard of the risk involves a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.

(d) “Negligently.”

(1) A person acts negligently with respect to his or her conduct when he or she should be aware of a substantial and unjustifiable risk taken that the person’s conduct is of the specified nature.

(2) A person acts negligently with respect to attendant circumstances when he or she should be aware of a substantial and unjustifiable risk that such circumstances exist.

(3) A person acts negligently with respect to a result of his or her conduct when he or she should be aware of a substantial and unjustifiable risk that his or her conduct will cause such a result.

(4) A risk is substantial and unjustifiable within the meaning of this

subsection if the person's failure to perceive it, considering the nature and purpose of his or her conduct and the circumstances known to him or her, involves a gross deviation from the standard of care that a law-abiding person would observe in the same situation.

§ 207. Specified state of mind applies to all elements.

When the definition of an offense specifies the state of mind sufficient for the commission of that offense, without distinguishing among the elements thereof, the specified state of mind shall apply to all elements of the offense, unless a contrary purpose plainly appears.

§ 208. Substitutes for negligence, recklessness, and knowledge.

When the law provides that negligence is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly. When the law provides that recklessness is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acts intentionally or knowingly. When the law provides that acting knowingly is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acts intentionally.

§ 209. Conditional intent.

When a particular intent is necessary to establish an element of an offense, it is immaterial that such intent was conditional unless the condition negates the harm or evil sought to be prevented by the law prohibiting the offense.

§ 210. Requirement of willfulness satisfied by acting knowingly.

A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the elements of the offense, unless a purpose to impose further requirements appears.

§ 211. State of mind as determinant of grade or class of a particular offense.

When the grade or class of a particular offense depends on whether it is committed intentionally, knowingly, recklessly, or negligently, its grade or class shall be the lowest for which the determinative state of mind is established with respect to any element of the offense.

§ 212. When state of mind requirements are inapplicable to violations and to crimes defined by statutes other than this Penal Code.

The state of mind requirements prescribed by 17 PNC sections 204 and 207 through 211 do not apply to:

(a) An offense which constitutes a violation, unless the state of mind requirement involved is included in the definition of the violation or a legislative purpose to impose such a requirement plainly appears; or

(b) A crime defined by statute other than this Penal Code, insofar as a legislative purpose to impose absolute liability for such offense or with respect to any element thereof plainly appears.

§ 213. Effect of absolute liability in reducing grade of offense to violation.

Notwithstanding any other provisions of existing law and unless a subsequent statute otherwise provides:

(a) When absolute liability is imposed with respect to any element of an offense defined by a statute other than this Penal Code and a conviction is based upon such liability, the offense constitutes a violation except as provided in 17 PNC section 212(b) above; and

(b) Although absolute liability is imposed by law with respect to one or more of the elements of an offense defined by a statute other than this Penal Code, the culpable commission of the offense may be charged and proved, in which event negligence with respect to such elements constitutes a sufficient state of mind and the classification of the offense and the sentence that may be imposed upon conviction are determined by 17 PNC section 105 of Chapter 1, and Chapter 6 of this Penal Code.

§ 214. Causal relationship between conduct and result.

Conduct is the cause of a result when it is an antecedent but for which the result in question would not have occurred.

§ 215. Intentional or knowing causation; different result from that intended or contemplated.

In the following instances intentionally or knowingly causing a particular result shall be deemed to be established even though the actual result caused by the defendant may not have been within the defendant's intention or contemplation:

(a) The actual result differs from that intended or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or more extensive than that caused; or

(b) The actual result involves the same kind of injury or harm as the intended or contemplated result and is not too remote or accidental in its occurrence or too dependent on another's volitional conduct to have a bearing on the defendant's liability or on the gravity of the defendant's offense.

§ 216. Reckless or negligent causation; different result from that within the risk.

In the following instances, recklessly or negligently causing a particular result shall be deemed to be established even though the actual result caused by the defendant may not have been within the risk of which the defendant was or, in the case of negligence, should have been aware:

(a) The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

(b) The actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence or too dependent on another's volitional conduct to have a bearing on the defendant's liability or on the gravity of the defendant's offense.

§ 217. Causation in offenses of absolute liability.

When causing a particular result is an element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the defendant's conduct.

§ 218. Ignorance or mistake as a defense.

In any prosecution for an offense, it is a defense that the accused engaged in the prohibited conduct under ignorance or mistake of fact if:

(a) The ignorance or mistake negates the state of mind required to establish an element of the offense; or

(b) The law defining the offense or a law related thereto provides that the state of mind established by such ignorance or mistake constitutes a defense.

§ 219. Ignorance or mistake; reduction in grade and class of the offense.

Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as the defendant supposed. In such case, however, the ignorance or mistake of the defendant shall reduce the grade and class of the offense of which the defendant may be convicted to those of the offense of which the defendant would be guilty had the situation been as the defendant supposed.

§ 220. Ignorance or mistake of law; belief that conduct not legally prohibited.

In any prosecution, it shall be an affirmative defense that the defendant engaged in the conduct or caused the result alleged under the belief that the conduct or result was not legally prohibited when the defendant acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in:

- (a) A statute or other enactment;
- (b) A judicial decision, opinion, or judgment;
- (c) An administrative order or administrative grant of permission; or
- (d) An official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the offense.

§ 221. Liability for conduct of another.

(a) A person is guilty of an offense if it is committed by his or her own conduct or by the conduct of another person for which he or she is legally accountable, or both.

(b) A person is legally accountable for the conduct of another person when:

- (1) Acting with the state of mind that is sufficient for the commission of the offense, he or she causes an innocent or irresponsible person to engage in such conduct; or
- (2) He or she is made accountable for the conduct of such other person by this Penal Code or by the law defining the offense; or
- (3) He or she is an accomplice of such other person in the commission of the offense.

§ 222. Liability for conduct of another; complicity.

A person is an accomplice of another person in the commission of an offense if:

(a) With the intention of promoting or facilitating the commission of the offense, the person:

- (1) Solicits the other person to commit it; or
- (2) Aids or agrees or attempts to aid the other person in planning or committing it; or
- (3) Having a legal duty to prevent the commission of the offense, fails to make reasonable effort so to do; or

(b) The person's conduct is expressly declared by law to establish the person's complicity.

§ 223. Liability for conduct of another; complicity with respect to the result.

When causing a particular result is an element of an offense, an accomplice in the conduct causing the result is an accomplice in the commission of that offense, if the accomplice acts, with respect to that result, with the state of mind that is sufficient for the commission of the offense.

§ 224. Liability for conduct of another; exemption from complicity.

Unless otherwise provided by this Penal Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(a) He or she is a victim of that offense; or

(b) The offense is so defined that his or her conduct is inevitably incident to its commission; or

(c) He or she terminates his or her complicity prior to the commission of the offense and:

(1) Wholly deprives his or her complicity of effectiveness in the commission of the offense; or

(2) Gives timely warning to law enforcement authorities or otherwise makes reasonable effort to prevent the commission of the offense.

§ 225. Liability for conduct of another; incapacity of defendant; failure to prosecute or convict or immunity of other person.

In any prosecution for an offense in which the liability of the defendant is based on conduct of another person, it is no defense that:

(a) The offense charged, as defined, can be committed only by a particular class of persons, and the defendant, not belonging to such class, is for that reason legally incapable of committing the offense in an individual capacity, unless imposing liability on the defendant is inconsistent with the purpose of the provision establishing the defendant's incapacity; or

(b) The other person has not been prosecuted for or convicted of any offense, or has been convicted of a different offense or degree of offense, based upon the conduct in question; or

(c) The other person has a legal immunity from prosecution based upon the conduct in question.

§ 226. Liability for conduct of another; multiple convictions; different degrees.

When, pursuant to any section from 17 PNC section 221 through section 223, two or more persons are liable for an offense that is divided into degrees, each person is guilty of the degree of the offense that is consistent with the person's own state of mind and with the person's own accountability for an aggravating fact or circumstance.

§ 227. Penal liability of corporations and unincorporated associations.

A corporation or unincorporated association is guilty of an offense when:

(a) It omits to discharge a specific duty of affirmative performance imposed on corporations or unincorporated associations by law and the omission is prohibited by penal law; or

(b) The conduct or result specified in the definition of the offense is engaged in, caused, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors of the corporation or by the executive board of the unincorporated association or by a high managerial agent acting

within the scope of the agent's office or employment and on behalf of the corporation or the unincorporated association; or

(c) The conduct or result specified in the definition of the offense is engaged in or caused by an agent of the corporation or the unincorporated association while acting within the scope of the agent's office or employment and in behalf of the corporation or the unincorporated association and:

(1) The offense is a misdemeanor, petty misdemeanor, or violation; or

(2) The offense is one defined by a statute that clearly indicates a legislative purpose to impose such criminal liability on a corporation or unincorporated association.

§ 228. Liability of persons acting, or under a duty to act, on behalf of corporations or unincorporated associations.

(a) A person is legally accountable for any conduct the person performs or causes to be performed in the name of a corporation or an unincorporated association or in its behalf to the same extent as if it were performed in the person's own name or behalf.

(b) Whenever a duty to act is imposed by law upon a corporation or an unincorporated association, any agent of the corporation or the unincorporated association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon the agent.

(c) When a person is convicted of an offense by reason of the person's legal accountability for the conduct of a corporation or of an unincorporated association, the person is subject to the sentence authorized by law when a natural person is convicted of an offense of the grade and class involved.

§ 229. Definitions relating to corporations and unincorporated associations.

As used in 17 PNC sections 227 and 228 above:

(a) "Corporation" does not include an entity organized as or by a governmental agency for the execution of a governmental program.

(b) "Agent" means any director, officer, servant, employee or other person authorized to act on behalf of the corporation or association and, in the case of an unincorporated association, a member of such association.

(c) "High managerial agent" means an officer of a corporation or an unincorporated association, or, in the case of a partnership, a partner, or any other agent of a corporation or unincorporated association having duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the corporation or the unincorporated association.

§ 230. Intoxication.

(a) In this section:

(1) "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body;

(2) "Self-induced intoxication" means intoxication caused by substances that the defendant knowingly introduces into the defendant's body, the tendency of which is to cause intoxication the defendant knows or ought to know,

unless the defendant introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of a penal offense;

(3) "Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the defendant does not know the defendant is susceptible and that results from a physical abnormality of the defendant.

(b) Self-induced intoxication is prohibited as a defense to any offense, except as specifically provided in this section.

(c) Evidence of nonself-induced or pathological intoxication of the defendant shall be admissible to prove or negate the conduct alleged or the state of mind sufficient to establish an element of the offense. Evidence of self-induced intoxication of the defendant is admissible to prove or negate conduct or to prove state of mind sufficient to establish an element of an offense. Evidence of self-induced intoxication of the defendant is not admissible to negate the state of mind sufficient to establish an element of the offense.

(d) Intoxication does not, in itself, constitute a physical or mental disease, disorder, or defect within the meaning of 17 PNC Chapter 5 of this Penal Code.

(e) Intoxication that (1) is not self-induced or (2) is pathological is a defense if by reason of such intoxication the defendant at the time of the defendant's conduct lacks substantial capacity either to appreciate its wrongfulness or to conform the defendant's conduct to the requirements of law.

#### § 231. Duress.

(a) It is a defense to a penal charge that the defendant engaged in the conduct or caused the result alleged because he was coerced to do so by the use of, or a threat to use, unlawful force against his or her person or the person of another, which a person of reasonable firmness in his or her situation would have been unable to resist.

(b) The defense provided by this section is unavailable if the defendant recklessly placed himself or herself in a situation in which it was probable that he or she would be subjected to duress. The defense is also unavailable if he or she was negligent in placing himself or herself in such a situation, whenever negligence suffices to establish the requisite state of mind for the offense charged.

(c) It is not a defense that a person acted on the command of his or her spouse, unless he or she acted under such coercion as would establish a defense under this section.

(d) When the conduct of the defendant would otherwise be justifiable under 17 PNC section 302 of this Penal Code, this section does not preclude the defense of justification.

(e) In prosecutions for any offense described in this Penal Code, the defense asserted under this section shall constitute an affirmative defense. The defendant shall have the burden of going forward with the evidence to prove the facts constituting such defense, unless such facts are supplied by the testimony of the prosecuting witness or circumstance in such testimony.

#### § 232. Consent; general.

In any prosecution, the victim's consent to the conduct alleged, or to the result thereof, is a defense if the consent negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

#### § 233. Consent to bodily injury.

In any prosecution involving conduct that causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense if:

- (a) The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic event or competitive sport; or
- (b) The consent establishes a justification for the conduct under 17 PNC Chapter 3 of this Penal Code.

§ 234. Ineffective consent.

Unless otherwise provided by this Penal Code or by the law defining the offense, consent does not constitute a defense if:

- (a) It is given by a person who is legally incompetent to authorize the conduct alleged; or
- (b) It is given by a person who by reason of youth, mental disease, disorder, or defect, or intoxication is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct alleged; or
- (c) It is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or
- (d) It is induced by force, duress or deception.

§ 235. De minimis infractions.

(a) The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds that the defendant's conduct:

- (1) Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and that is not inconsistent with the purpose of the law defining the offense; or
- (2) Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
- (3) Presents such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

(b) The court shall not dismiss a prosecution under subsection (a)(3) of this section without filing a written statement of its reasons.

§ 236. Entrapment.

(a) In any prosecution, it is an affirmative defense that the defendant engaged in the prohibited conduct or caused the prohibited result because the defendant was induced or encouraged to do so by a law enforcement officer, or by a person acting in cooperation with a law enforcement officer, who, for the purpose of obtaining evidence of the commission of an offense, either:

- (1) Knowingly made false representations designed to induce the belief that such conduct or result was not prohibited; or
- (2) Employed methods of persuasion or inducement that created a substantial risk that the offense would be committed by persons other than those who are ready to commit it.

(b) The defense afforded by this section is unavailable when causing or threatening

bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

### CHAPTER 3 GENERAL PRINCIPLES OF JUSTIFICATION

§ 300. Definitions relating to justification.

§ 301. Justification a defense; civil remedies unaffected.

§ 302. Choice of evils.

§ 303. Execution of public duty.

§ 304. Use of force in self-protection.

§ 305. Use of force for the protection of other persons.

§ 306. Use of force for the protection of property.

§ 307. Use of force in law enforcement.

§ 308. Use of force to prevent suicide or the commission of a crime.

§ 309. Use of force by persons with special responsibility for care, discipline, or safety of others.

§ 310. Provisions generally applicable to justification.

§ 300. Definitions relating to justification.

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

(1) “Believes” means reasonably believes.

(2) “Deadly force” means force that the actor uses with the intent of causing or that the actor knows to create a substantial risk of causing death or serious bodily harm. Intentionally using a weapon capable of producing death or serious bodily injury constitutes deadly force. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor’s intent is limited to creating an apprehension that the actor will use deadly force if necessary, does not constitute deadly force.

(3) “Dwelling” means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a home or place of lodging.

(4) “Force” means any bodily impact, restraint, or confinement, or the threat thereof.

(5) “Unlawful force” means force that is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or would constitute an offense except for a defense not amounting to a justification to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious or substantial bodily injury.

§ 301. Justification a defense; civil remedies unaffected.

(a) In any prosecution for an offense, justification, as defined in 17 PNC sections 302 through 309 of this chapter, is a defense.

(b) The fact that conduct is justifiable under this chapter does not abolish or impair any remedy for such conduct that is available in any civil action.

§ 302. Choice of evils.

(a) Conduct which the actor believes to be necessary to avoid an imminent harm or evil to the actor or to another is justifiable provided that:

(1) The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and

(2) Neither the Penal Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

(3) A legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(b) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for the actor's conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(c) In a prosecution for escape under 17 PNC section 4000 or 4001, the defense available under this section is limited to an affirmative defense consisting of the following elements:

(1) The actor receives a threat, express or implied, of death, substantial bodily injury, or forcible sexual attack;

(2) Complaint to the proper prison authorities is either impossible under the circumstances or there exists a history of futile complaints;

(3) Under the circumstances there is no time or opportunity to resort to the courts;

(4) No force or violence is used against prison personnel or other innocent persons; and

(5) The actor promptly reports to the proper authorities when the actor has attained a position of safety from the immediate threat.

§ 303. Execution of public duty.

(a) Except as provided in subsection (b) below, conduct is justifiable when it is required or authorized by:

(1) The law defining the duties or functions of a public officer or the assistance to be rendered to a public officer in the performance of the public officer's duties; or

(2) The law governing the execution of legal process; or

(3) The judgment or order of a competent court or tribunal;

(4) The law governing the armed services or the lawful conduct of war; or

(5) Any other provision of law imposing a public duty.

(b) The other sections of this chapter apply to:

(1) The use of force upon or toward the person of another for any of the purposes dealt with in those sections; and

(2) The use of deadly force for any purpose, unless the use of deadly force is otherwise expressly authorized by law or occurs in the lawful conduct of war.

(c) The justification afforded by subsection (a) applies:

(1) When the actor believes the actor's conduct to be required or authorized by the judgment or direction of a competent court or tribunal or in the lawful

execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; and

(2) When the actor believes the actor's conduct to be required or authorized to assist a public officer in the performance of the officer's duties, notwithstanding that the officer exceeded the officer's legal authority.

§ 304. Use of force in self-protection.

(a) Subject to the provisions of this section and of 17 PNC section 308, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself or herself against the use of unlawful force by the other person on the present occasion.

(b) The use of deadly force is justifiable under this section if the actor believes that deadly force is necessary to protect himself or herself against death, serious bodily injury, kidnapping, rape, or forcible sodomy.

(c) Except as otherwise provided in subsections (d) and (e) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as he or she believes them to be when the force is used without retreating, surrendering possession, doing any other act that he or she has no legal duty to do, or abstaining from any lawful action.

(d) The use of force is not justifiable under this section:

(1) To resist an arrest that the actor knows is being made by a law enforcement officer, although the arrest is unlawful; or

(2) To resist force used by the occupier or possessor of property or by another person on his or her behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:

(A) The actor is a public officer acting in the performance of his or her duties or a person lawfully assisting a public officer therein or a person making or assisting in a lawful arrest; or

(B) The actor believes that such force is necessary to protect himself or herself against death or serious bodily injury.

(e) The use of deadly force is not justifiable under this section if:

(1) The actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself or herself in the same encounter; or

(2) The actor knows that he or she can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he or she abstain from any action which he or she has no duty to take, except that:

(A) The actor is not obliged to retreat from his or her dwelling or place of work, unless he or she was the initial aggressor or is assailed in his or her place of work by another person whose place of work the actor knows it to be; and

(B) A public officer justified in using force in the performance of his or her duties, or a person justified in using force in his or her assistance or a person justified in using force in making an arrest or preventing an escape, is not obliged to desist from efforts to perform

his or her duty, effect the arrest, or prevent the escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.

(f) The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he or she knows that he or she safely can, unless the person confined has been arrested on a charge of crime.

§ 305. Use of force for the protection of other persons.

(a) Subject to the provisions of this section and of 17 PNC section 310, the use of force upon or toward the person of another is justifiable to protect a third person when:

(1) Under the circumstances as the actor believes them to be, the person whom the actor seeks to protect would be justified in using such protective force; and

(2) The actor believes that the actor's intervention is necessary for the protection of the other person.

(b) Notwithstanding subsection (a) above:

(1) When the actor would be obliged under 17 PNC section 304 to retreat, to surrender the possession of a thing, or to comply with a demand before using force in self-protection, the actor is not obliged to do so before using force for the protection of another person, unless the actor knows that the actor can thereby secure the complete safety of such other person; and

(2) When the person whom the actor seeks to protect would be obliged under 17 PNC section 304 to retreat, to surrender the possession of a thing or to comply with a demand if the person knew that the person could obtain complete safety by so doing, the actor is obliged to try to cause the person to do so before using force in the person's protection if the actor knows that the actor can obtain the other's complete safety in that way; and

(3) Neither the actor nor the person whom the actor seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in the actor's or the person's own.

§ 306. Use of force for the protection of property.

(a) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:

(1) To prevent the commission of criminal trespass or burglary in a building or upon real property in the actor's possession or in the possession of another person for whose protection the actor acts; or

(2) To prevent unlawful entry upon real property in the actor's possession or in the possession of another person for whose protection the actor acts; or

(3) To prevent theft, criminal mischief, or any trespassory taking of tangible, movable property in the actor's possession or in the possession of another person for whose protection the actor acts.

(b) The actor may in the circumstances specified in subsection (a) use such force as the actor believes is necessary to protect the threatened property, provided that the actor first requests the person against whom force is used to desist from the person's interference with the property, unless the actor believes that:

- (1) Such a request would be useless; or
- (2) It would be dangerous to the actor or another person to make the request; or
- (3) Substantial harm would be done to the physical condition of the property that is sought to be protected before the request could effectively be made.

(c) The use of deadly force for the protection of property is justifiable only if:

(1) The person against whom the force is used is attempting to dispossess the actor of the actor's dwelling otherwise than under a claim of right to its possession; or

(2) The person against whom the deadly force is used is attempting to commit felonious property damage, burglary, robbery, or felonious theft and either:

(A) Has employed or threatened deadly force against or in the presence of the actor; or

(B) The use of force other than deadly force to prevent the commission of the crime would expose the actor or another person in the actor's presence to substantial danger of serious bodily injury.

(d) The justification afforded by this section extends to the use of a device for the purpose of protecting property only if:

(1) The device is not designed to cause or known to create a substantial risk of causing death or serious bodily injury; and

(2) The use of the particular device to protect the property from entry or trespass is reasonable under the circumstances, as the defendant believes them to be; and

(3) The device is one customarily used for such a purpose or reasonable care is taken to make known to probable intruders the fact that it is used.

(e) The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as the actor knows that the actor can do so with safety to the property, unless the person confined has been arrested on a charge of crime.

§ 307. Use of force in law enforcement.

(a) Subject to the provisions of this section and of 17 PNC Section 310, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

(b) The use of force is not justifiable under this section unless:

(1) The actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(2) When the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.

(c) The use of deadly force is not justifiable under this section unless:

(1) The arrest is for a felony; and

(2) The person effecting the arrest is authorized to act as a law enforcement officer or is assisting a person whom he or she believes to be authorized to act as a law enforcement officer; and

(3) The actor believes that the force employed creates no substantial risk of injury to innocent persons; and

(4) The actor believes that:

(A) The crimes for which the arrest is made involved conduct including the use or threatened use of deadly force; or

(B) There is a substantial risk that the person to be arrested will cause death or serious bodily injury if his or her apprehension is delayed.

(d) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a law enforcement officer is justified in using force that he or she believes to be immediately necessary to prevent the escape from a detention facility.

(e) A private person who is summoned by a law enforcement officer to assist in effecting an unlawful arrest is justified in using any force that he or she would be justified in using if the arrest were lawful, provided that he or she does not believe the arrest is unlawful. A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a law enforcement officer in effecting an unlawful arrest, is justified in using any force that he or she would be justified in using if the arrest were lawful, provided that he or she believes the arrest is lawful, and the arrest would be lawful if the facts were as he or she believes them to be.

§ 308. Use of force to prevent suicide or the commission of a crime.

(a) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent the other person from committing suicide, inflicting serious bodily harm upon oneself, committing or consummating the commission of a crime involving or threatening bodily injury, damage to or loss of property, or breach of the peace, except that:

(1) Any limitations imposed by the other provisions of this chapter on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest, or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and

(2) The use of deadly force is not in any event justifiable under this section unless:

(A) The actor believes that there is a substantial risk that the person whom the actor seeks to prevent from committing a crime will cause death or serious bodily injury to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; or

(B) The actor believes that the use of such force is necessary to suppress a riot after the rioters have been ordered to disperse and warned, in any particular manner that the law may require, that deadly force will be used if they do not obey.

(b) The justification afforded by this section extends to the use of confinement as preventive force only if the actor takes all reasonable measures to terminate the confinement as soon as the actor knows that the actor safely can, unless the person confined has been arrested on a charge of crime.

§ 309. Use of force by persons with special responsibility for care, discipline, or safety of others.

The use of force upon or toward the person of another is justifiable under the following circumstances:

(a) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor, or a person acting at the request of the parent, guardian, or other responsible person, and:

(1) The force is employed with due regard for the age and size of the minor and is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor's misconduct; and

(2) The force used is not designed to cause or known to create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage.

(b) The actor is a principal, the principal's agent, a teacher, or a person otherwise entrusted with the care or supervision for a special purpose of a minor, and:

(1) The actor believes that the force used is necessary to further that special purpose, including maintenance of reasonable discipline in a school, class, other group, or at activities supervised by the Ministry of Education held on or off school property and that the use of force is consistent with the welfare of the minor; and

(2) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under paragraph (a)(2) above.

(c) The actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person, and:

(1) The force is employed with due regard for the age and size of the incompetent person and is reasonably related to the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of the incompetent person's misconduct, or, when such incompetent person is in a hospital or other institution for the incompetent person's care and custody, for the maintenance of reasonable discipline in the institution; and

(2) The force used is not designed to cause or known to create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage.

(d) The actor is a doctor or other therapist or a person assisting the doctor or therapist at the doctor's or therapist's direction, and:

(1) The force is used for the purpose of administering a recognized form of treatment that the actor believes to be adapted to promoting the physical or mental health of the patient; and

(2) The treatment is administered with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of the minor's or incompetent person's parent or guardian or other person legally competent

to consent in the minor's or incompetent person's behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

(e) The actor is a warden or other authorized official of a correctional institution, and:

(1) The actor believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution; and

(2) The nature or degree of force used is not forbidden by other provisions of the law governing the conduct of correctional institutions; and

(3) If deadly force is used, its use is otherwise justifiable under this chapter.

(f) The actor is a person responsible for the safety of a vessel or an aircraft or a person acting at the direction of the person responsible for the safety of a vessel or an aircraft, and:

(1) The actor believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order, unless the actor's belief in the lawfulness of the order is erroneous and the actor's error is due to ignorance or mistake as to the law defining authority; and

(2) If deadly force is used, its use is otherwise justifiable under this chapter.

(g) The actor is a person who is authorized or required by law to maintain order or decorum in a vehicle or other carrier, or in a place where others are assembled, and:

(1) The actor believes that the force used is necessary for that purpose; and

(2) The force used is not designed to cause or known to create a substantial risk of causing death, bodily injury or extreme mental distress.

§ 310. Provisions generally applicable to justification.

(a) When the actor believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under sections 303 to 309 of this Chapter, but the actor is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief that is material to the justifiability of the actor's use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(b) When the actor is justified under sections 303 to 309 of this Chapter in using force upon or toward the person of another but the actor recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence toward innocent persons.

#### CHAPTER 4 EXECUTIVE CLEMENCY

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#### CHAPTER 5 PENAL RESPONSIBILITY AND FITNESS TO PROCEED

§ 500. Physical or mental disease, disorder, or defect excluding penal responsibility.

§ 501. Evidence of physical or mental disease, disorder, or defect admissible when relevant to state of mind.

§ 502. Physical or mental disease, disorder, or defect excluding responsibility is an

affirmative defense; form of verdict and judgment when finding of irresponsibility is made.

§ 503. Physical or mental disease, disorder, or defect excluding fitness to proceed.

§ 504. Examination of defendant with respect to physical or mental disease, disorder, or defect.

§ 505. Determination of fitness to proceed.

§ 506. Effect of finding of unfitness to proceed.

§ 507. Special hearing following commitment or release on conditions.

§ 508. Determination of irresponsibility.

§ 509. Access to defendant by examiners of defendant's choice.

§ 510. Form of expert testimony regarding physical or mental disease, disorder, or defect.

§ 511. Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing.

§ 512. Committed person; application for conditional release or discharge; by the minister of health; by the person.

§ 513. Conditional release; application for modification or discharge; termination of conditional release and commitment.

§ 514. Procedure upon application for discharge, conditional release, or modification of conditions of release.

§ 515. Disposition of application for discharge, conditional release, or modification of conditions of release.

§ 516. Statements for purposes of examination or treatment inadmissible except on issue of physical or mental condition.

§ 517. Supervision of person on conditional release.

§ 518. Use of out-of-state institutions.

§ 500. Physical or mental disease, disorder, or defect excluding penal responsibility.

(a) A person is not responsible, under this Penal Code, for conduct if at the time of the conduct as a result of physical or mental disease, disorder, or defect the person lacks substantial capacity either to appreciate the wrongfulness of the person's conduct or to conform the person's conduct to the requirements of law.

(b) As used in this chapter, the terms "physical or mental disease, disorder, or defect" do not include an abnormality manifested only by repeated penal or otherwise anti-social conduct.

§ 501. Evidence of physical or mental disease, disorder, or defect admissible when relevant to state of mind.

Evidence that the defendant was affected by a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind that is required to establish an element of the offense.

§ 502. Physical or mental disease, disorder, or defect excluding responsibility is an affirmative defense; form of verdict and judgment when finding of irresponsibility is made.

(a) Physical or mental disease, disorder, or defect excluding responsibility is an affirmative defense.

(b) When the defense provided for by subsection (a) is submitted to the finder of fact, the court shall, in the case of a jury trial, and if requested by the defendant, instruct the jury as to the consequences to the defendant of an acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility.

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

§ 503. Physical or mental disease, disorder, or defect excluding fitness to proceed. No person who as a result of a physical or mental disease, disorder, or defect lacks capacity to understand the proceedings against the person or to assist in the person's own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

§ 504. Examination of defendant with respect to physical or mental disease, disorder, or defect.

(a) Whenever the defendant has filed a notice of intention to rely on the defense of physical or mental disease, disorder, or defect excluding responsibility, or there is reason to doubt the defendant's fitness to proceed, or reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case, the court may immediately suspend all further proceedings in the prosecution. If a trial jury has been empanelled, it shall be discharged or retained at the discretion of the court. The discharge of the trial jury shall not be a bar to further prosecution.

(b) Upon suspension of further proceedings in the prosecution, the court shall appoint a qualified psychiatrist or psychologist to examine and report upon the physical and mental condition of the defendant. The examiner shall be appointed from a list of certified examiners as determined by the Ministry of Health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. The examination may be conducted on an out-patient basis or, in the court's discretion, when necessary the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or such longer period as the court determines to be necessary for the purpose. The court may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness the examination.

(c) An examination performed under this section may employ any method that is accepted by the professions of medicine or psychology for the examination of those alleged to be affected by a physical or mental disease, disorder, or defect. If more than one examiner is appointed, each examiner shall form and render diagnoses and opinions upon the physical and mental condition of the defendant independently from the other examiners. The examiner(s), upon approval of the court, may secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination and diagnosis.

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

(1) A description of the nature of the examination;

(2) A diagnosis of the physical or mental condition of the defendant;

(3) An opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

(4) An 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 the defendant's conduct to the requirements of law was impaired at the time of the conduct alleged;

(5) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is required to establish an element of the offense charged; and

(6) Where more than one examiner is appointed, a statement that the diagnosis and opinion rendered were arrived at independently of any other examiner, unless there is a showing to the court of a clear need for

communication between or among the examiners for clarification. A description of the communication shall be included in the report. After all reports are submitted to the court, examiners may confer without restriction.

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

(f) Three copies of the report of the examination, including any supporting documents, shall be filed with the clerk of the court, who shall cause copies to be delivered to the office of the attorney general and to counsel for the defendant.

(g) Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

(h) The court shall obtain all existing medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statutes, and make such records available for inspection by the examiners. If, pursuant to this section, the court orders the defendant committed to a hospital or other suitable facility under the control of the Ministry of Health, then the Bureau of Public Safety shall provide to the Ministry of Health and the defendant copies of all police reports from cases filed against the defendant that have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to 17 PNC section 500, or by the entry of plea of guilty or no contest made pursuant to Part I of Chapter 6 of this Penal Code, so long as the disclosure to the Minister of Health and the defendant does not frustrate a legitimate function of the Bureau of Public Safety, with the exception of expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile. The Bureau of Public Safety shall redact from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with its investigation, or who were of investigatory interest. Records shall not be further disseminated except to the extent permitted by law.

(i) The compensation of persons making or assisting in the examination, other than those retained by the non-indigent defendant, who are not undertaking the examination through the Ministry of Health as part of the examiner's normal duties as an employee of the Republic of Palau, shall be paid by the Republic of Palau.

§ 505. Determination of fitness to proceed.

When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the attorney general nor counsel for the defendant contests the finding of the report filed pursuant to 17 PNC section 504, 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. When the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross-examine the persons who joined in the report or assisted in the examination and to offer evidence upon the issue.

§ 506. Effect of finding of unfitness to proceed.

(a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in 17 PNC section 507, and the court shall commit the defendant to the custody of the Minister of Health to be placed in an appropriate institution for detention, care, and treatment; provided that the commitment shall be limited in certain cases as follows:

(1) When the defendant is charged with a petty misdemeanor not involving violence or attempted violence, the commitment shall be limited to no longer than sixty days from the date the court determines the defendant lacks fitness to proceed; and

(2) When the defendant is charged with a misdemeanor not involving violence or attempted violence, the commitment shall be limited to no longer than one hundred twenty days from the date the court determines the defendant lacks fitness to proceed.

(b) If the court is satisfied that the defendant may be released on conditions without danger to the defendant or to the person or property of others, the court shall order the defendant's release, which shall continue at the discretion of the court, on conditions the court determines necessary; provided that the release on conditions of a defendant charged with a petty misdemeanor not involving violence or attempted violence shall continue for no longer than sixty days, and the release on conditions of a defendant charged with a misdemeanor not involving violence or attempted violence shall continue for no longer than one hundred twenty days. A copy of the report filed pursuant to 17 PNC section 504 shall be attached to the order of commitment or order of release on conditions. When the defendant is committed to the custody of the Minister of Health for detention, care, and treatment, the Bureau of Public Safety shall provide to the Minister of Health and the defendant copies of all police reports from cases filed against the defendant that have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to 17 PNC section 500, or by the entry of a plea of guilty or no contest made pursuant to Part I of Chapter 6 of this Penal Code, so long as the disclosure to the Minister of Health and the defendant does not frustrate a legitimate function of the Bureau of Public Safety; provided that expunged records and records of or pertaining to any adjudication or disposition rendered in the case of a juvenile shall not be provided. The Bureau of Public Safety shall redact from the police reports information that would result in the likely or actual identification of individuals who furnished information in connection with the investigation or who were of investigatory interest. Records shall not be further disseminated except to the extent permitted by law.

(c) When the defendant is released on conditions after a finding of unfitness to proceed, the Minister of Health shall establish and monitor a fitness restoration program consistent with conditions set by the court order of release, and shall inform the attorney general that charged the defendant of the program and report the defendant's compliance therewith.

(d) When the court, on its own motion or upon the application of the Minister of Health, the attorney general, or the defendant, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the penal proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or release on conditions of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and:

(1) Order the defendant to be discharged; or

(2) Pursuant to 34 PNC Chapter 5, order the defendant to be committed to the custody of the Minister of Health to be placed in an appropriate institution for detention, care, and treatment, or order the defendant to be released on conditions the court determines necessary.

(e) If a defendant committed to the custody of the Minister of Health for a limited period pursuant to subsection (a) is not found fit to proceed prior to the expiration of the commitment, the charge for which the defendant was committed for a limited period shall be dismissed. Upon dismissal of the charge, the defendant shall be

released from custody unless the defendant is subject to prosecution for other charges, in which case, unless the defendant is subject to the law governing involuntary civil commitment, the court shall order the defendant's commitment to the custody of the Minister of Health to be placed in an appropriate institution for detention, care, and treatment. Within a reasonable time following any other commitment under subsection (a), the Minister of Health shall report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. The court, in addition, may appoint a qualified examiner to make a report. If, following a report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

(1) Release the defendant; or

(2) Pursuant to 34 PNC Chapter 5, order the defendant to be committed to the custody of the Minister of Health to be placed in an appropriate institution for detention, care, and treatment.

(f) If a defendant released on conditions for a limited period pursuant to subsection (a) is not found fit to proceed prior to the expiration of the release on conditions order, the charge for which the defendant was released on conditions for a limited period shall be dismissed. Upon dismissal of the charge, the defendant shall be discharged from the release on conditions unless the defendant is subject to prosecution for other charges or subject to the law governing involuntary civil commitment, in which case the court shall order the defendant's commitment to the custody of the Minister of Health to be placed in an appropriate institution for detention, care, and treatment. Within a reasonable time following any other release on conditions under subsection (a), the court shall appoint a qualified examiner to report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. If, following the report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

(1) Release the defendant; or

(2) Pursuant to 34 PNC Chapter 5, order the defendant to be committed to the custody of the Minister of Health to be placed in an appropriate institution for detention, care, and treatment.

§ 507. Special hearing following commitment or release on conditions.

(a) At any time after commitment as provided in 17 PNC section 506, the defendant or the defendant's counsel or the Minister of Health may apply for a special post-commitment or post-release 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 the counsel for the defendant satisfies the court by affidavit or otherwise that, as an attorney, the counsel has reasonable grounds for a good faith belief that the counsel's client has an objection based upon legal grounds to the charge.

(b) If the motion for a special post-commitment or post-release hearing is granted, the hearing shall be by the court without a jury. No evidence shall be offered at the hearing by either party on the issue of physical or mental disease, disorder, or defect as a defense to, or in mitigation of, the offense charged.

(c) After the hearing, the court shall rule on any legal objection raised by the application and, in an appropriate case, may quash the information or other charge, find it to be defective or insufficient, or otherwise terminate the proceedings on the law. In any such case, unless all defects in the proceedings are promptly cured, the court shall terminate the commitment or release ordered under section 506 and:

(1) Order the defendant to be discharged;

(2) Pursuant to 34 PNC Chapter 5, order the defendant to be committed to the custody of the Minister of Health to be placed in an appropriate institution for detention, care, and treatment, or order the defendant to be released on such conditions as the court deems necessary.

§ 508. Determination of irresponsibility.

If the report of the examiner(s) filed pursuant to 17 PNC section 504, or the report of examiner(s) of the defendant's choice under 17 PNC section 509, states that the defendant at the time of the conduct alleged was affected by a physical or mental disease, disorder, or defect that substantially impaired the defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law, the court shall submit the defense of physical or mental disease, disorder, or defect to the trier of fact or the jury at the trial of the charge against the defendant.

§ 509. Access to defendant by examiners of defendant's choice.

When, notwithstanding the report filed pursuant to 17 PNC section 504, the defendant wishes to be examined by one or more qualified physicians or other experts of the defendant's own choice and expense, such examiner(s) shall be permitted to have reasonable access to the defendant for the purposes of such examination.

§ 510. Form of expert testimony regarding physical or mental disease, disorder, or defect.

(a) At the hearing pursuant to 17 PNC section 505 or upon the trial, the examiner(s) who reported pursuant to 17 PNC section 504 may be called as witnesses by the attorney general, the defendant, or the court. If the issue is being tried before a jury, the jury may be informed that the examiner(s) or any of them were designated by the court or by the Minister of Health at the request of the court, as the case may be. If called by the court, the witness shall be subject to cross-examination by the attorney general and the defendant. Both the attorney general and the defendant may summon any other qualified physician or licensed psychologist 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 physical or mental condition of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific propositions stated by, another witness.

(b) When an examiner testifies on the issue of the defendant's fitness to proceed, the examiner shall be permitted to make a statement as to the nature of the examiner's examination, the examiner's diagnosis of the physical or mental condition of the defendant, and the examiner's opinion of the extent, if any, to which the capacity of the defendant to understand the proceedings against the defendant or to assist in the defendant's own defense is impaired as a result of physical or mental disease, disorder, or defect.

(c) When an examiner testifies on the issue of the defendant's responsibility for conduct alleged or the issue of the defendant's capacity to have a particular state of mind that is necessary to establish an element of the offense charged, the examiner shall be permitted to make a statement as to the nature of the examiner's examination, the examiner's diagnosis of the physical or mental condition of the defendant at the time of the conduct alleged, and the examiner's opinion of the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law or to have a particular state of mind that is necessary to establish an element of the offense charged was impaired as a result of physical or mental disease, disorder, or defect at that time.

(d) When an examiner testifies, the examiner shall be permitted to make any

explanation reasonably serving to clarify the examiner's diagnosis and opinion and may be cross-examined as to any matter bearing on the examiner's competency or credibility or the validity of the examiner's diagnosis or opinion.

§ 511. Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing.

(a) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court, on the basis of the report made pursuant to 17 PNC section 504, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, shall order that:

(1) The defendant shall be committed to the custody of the Minister of Health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant:

(A) Is affected by a physical or mental disease, disorder, or defect;

(B) Presents a risk of danger to self or others; and

(C) Is not a proper subject for conditional release;

(2) The Bureau of Public Safety shall provide to the Minister of Health and the defendant copies of all police reports from cases filed against the defendant that have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to 17 PNC section 500, or by the entry of a plea of guilty or no contest made pursuant to Part I of 17 PNC Chapter 6 of this Penal Code, so long as the disclosure to the Minister of Health and the defendant does not frustrate a legitimate function of the Bureau of Public Safety; provided that expunged records or records of or pertaining to any adjudication or disposition rendered in the case of a juvenile shall not be provided. The Bureau of Public Safety shall redact from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with the investigation or who were of investigatory interest. Records shall not be further disseminated except to the extent permitted by law;

(3) The defendant shall be granted conditional release with conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that the defendant presents a danger to self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition. For any defendant granted conditional release pursuant to this paragraph, and who was charged with a petty misdemeanor or misdemeanor, the period of conditional release shall be no longer than one year; or

(4) The defendant shall be discharged if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect or, if so affected, that the defendant no longer presents a danger to self or others and is not in need of care, supervision, or treatment.

(b) The court, upon its own motion or on the motion of the attorney general or the defendant, shall order a separate post-acquittal hearing for the purpose of taking evidence on the issue of physical or mental disease, disorder, or defect and the risk of danger that the defendant presents to self or others.

(c) When ordering a hearing pursuant to subsection (b):

(1) The court shall appoint a qualified psychiatrist or psychologist to examine

and report upon the physical and mental condition of the defendant. The examiner shall be appointed from a list of certified examiners as determined by the Ministry of Health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. The examination may be conducted on an out-patient basis or, in the court's discretion, when necessary the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or such longer period as the court determines to be necessary for the purpose. The court may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness the examination.

(d) Whether the court's order under subsection (a) is made on the basis of the medical or psychological evidence given at the trial, or on the basis of the report made pursuant to 17 PNC section 504, or the medical or psychological evidence given at a separate hearing, the burden shall be upon the Republic of Palau to prove, by a preponderance of the evidence, that the defendant is affected by a physical or mental disease, disorder, or defect and may not safely be discharged and that the defendant should be either committed or conditionally released as provided in subsection (a).

(e) In any proceeding governed by this section, the defendant's fitness shall not be an issue.

§ 512. Committed person; application for conditional release or discharge; by the minister of health; by the person.

(a) After the expiration of at least ninety days following an original order of commitment pursuant to 17 PNC section 511(a)(1), or after the expiration of at least sixty days following the revocation of conditional release pursuant to 17 PNC section 513, if the Minister of Health is of the opinion that the person committed is still affected by a physical or mental disease, disorder, or defect and may be granted conditional release or discharged without danger to self or to the person or property of others or that the person is no longer affected by a physical or mental disease, disorder, or defect, the Minister of Health shall make an application for either the conditional release or discharge of the person, as appropriate. In such a case, the Minister of Health shall submit a report to the court by which the person was ordered committed and shall transmit copies of the application and report to the attorney general.

(b) After the expiration of ninety days from the date of the order of commitment pursuant to 17 PNC section 511, or after the expiration of sixty days following the revocation of conditional release pursuant to 17 PNC section 513, the person committed may apply to the court from which the person was committed for an order of discharge upon the ground that the person is no longer affected by a physical or mental disease, disorder, or defect. The person committed may apply for conditional release or discharge upon the ground that, though still affected by a physical or mental disease, disorder, or defect, the person may be released without danger to self or to the person or property of others. A copy of the application shall be transmitted to the attorney general. If the court denies the application, the person shall not be permitted to file another application for either conditional release or discharge until one year after the date of the hearing held on the immediate prior application.

(c) Upon application to the court by either the Minister of Health or the person committed, the court shall complete the hearing process and render a decision within sixty days of the application; provided that for good cause the court may extend the sixty-day time frame upon the request of the Minister of Health or the person committed.

§ 513. Conditional release; application for modification or discharge; termination of conditional release and commitment.

(a) Any person granted conditional release pursuant to this chapter shall continue to receive mental health or other treatment and care deemed appropriate by the Minister of Health until discharged from conditional release. The person shall follow all prescribed treatments and take all prescribed medications according to the instructions of the person's treating mental health professional. If a mental health professional who is treating a person granted conditional release believes that either the person is not complying with the requirements of this section or there is other evidence that hospitalization is appropriate, the mental health professional shall report the matter to the court that granted conditional release. The court may order the person granted conditional release to be hospitalized pursuant to 34 PNC Chapter V, sub-chapter III, for a period not to exceed seventy-two hours if the court has probable cause to believe the person has violated the requirements of this subsection. No person shall be hospitalized beyond the seventy-two-hour period, unless a hearing has been held pursuant to subsection (d); provided that on or before the expiration of the seventy-two-hour period, the court may conduct a hearing to determine whether the person would benefit from further hospitalization, which may render a revocation of conditional release unnecessary. If satisfied, the court may order further temporary hospitalization for a period not to exceed ninety days, subject to extension as appropriate, but in no event for a period longer than one year. At any time within that period, the court may determine that a hearing pursuant to subsection (d) should be conducted.

(b) The Minister of Health may apply to the court ordering any person released pursuant to this chapter, for the person's discharge from, or modification of, the order granting conditional release; provided that the person receives mental health services from or contracted by the Ministry of Health, and the Minister of Health is of the opinion that the person on conditional release is no longer affected by a physical or mental disease, disorder, or defect and may be discharged, or the order may be modified, without danger to the person or to others. The Minister of Health shall make an application for the discharge from, or modification of, the order of conditional release in a report to the court from which the order was issued. The Minister of Health shall transmit a copy of the application and report to the attorney general, to the person's treating mental health professionals, and to the probation officer supervising the conditional release. The person on conditional release shall be given notice of the application.

(c) Any person granted conditional release pursuant to this chapter may apply to the court ordering the conditional release for discharge from, or modification of, the order granting conditional release on the ground that the person is no longer affected by a physical or mental disease, disorder, or defect and may be discharged, or the order may be modified, without danger to the person or to others. The application shall be accompanied by a letter from or supporting affidavit of a qualified physician or licensed psychologist. A copy of the application and letter or affidavit shall be transmitted to the attorney general and to any persons supervising the release, and the hearing on the application shall be held following notice to such persons. If the court denies the application, the person shall not be permitted to file another application for either discharge or modification of conditional release until one year after the date of the denial.

(d) If, at any time after the order pursuant to this chapter granting conditional release, the court determines, after hearing evidence, that:

(1) The person is still affected by a physical or mental disease, disorder, or defect, and the conditions of release have not been fulfilled; or

(2) For the safety of the person or others, the person's conditional release should be revoked, the court may forthwith modify the conditions of release or order the person to be committed to the custody of the Ministry of Health, subject to discharge or release in accordance with the procedure prescribed in 17 PNC section 512.

(e) Upon application for discharge from, or modification of, the order of conditional release by either the Minister of Health or the person, the court shall complete the hearing process and render a decision within sixty days of the application, provided that for good cause the court may extend the sixty day time frame upon the request of the Minister of Health or the person.

§ 514. Procedure upon application for discharge, conditional release, or modification of conditions of release.

Upon filing of an application pursuant to 17 PNC Section 512 for discharge or conditional release, or upon the filing of an application pursuant to 17 PNC Section 513 for discharge or for modification of conditions of release, the court shall appoint a qualified examiner to examine and report upon the physical and mental condition of the defendant. The examiner shall be appointed from a list of certified examiners as determined by the Ministry of Health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified physicians or psychologists retained by the defendant be permitted to witness the examination. The examination and report and the compensation of the person making or assisting in the examination shall be in accord with 17 PNC sections 504(c), (d)(1) and (2), (f), (g), (h), and (i).

§ 515. Disposition of application for discharge, conditional release, or modification of conditions of release.

(a) If the court is satisfied from the report filed pursuant to 17 PNC section 514, and such testimony of the reporting examiner(s) as the court deems necessary, that:

(1) The person is affected by a physical or mental disease, disorder, or defect and the discharge, conditional release, or modification of conditions of release applied for may be granted without danger to the committed or conditionally released person or to the person or property of others; or

(2) The person is no longer affected by a physical or mental disease, disorder, or defect, the court shall grant the application and order the relief. If the court is not so satisfied, it shall promptly order a hearing.

(b) Any such hearing shall be deemed a civil proceeding and the burden shall be upon the applicant to prove that the person is no longer affected by a physical or mental disease, disorder, or defect or may safely be either released on the conditions applied for or discharged. According to the determination of the court upon the hearing, the person shall be:

(1) Discharged;

(2) Released on such conditions as the court determines to be necessary; or

(3) Recommitted to the custody of the Minister of Health, subject to discharge or release only in accordance with the procedure prescribed in 17 PNC section 512.

§ 516. Statements for purposes of examination or treatment inadmissible except on issue of physical or mental condition.

A statement made by a person subjected to examination or treatment pursuant to this chapter for the purposes of such examination or treatment shall not be admissible in evidence against the person in any penal proceeding on any issue other than that of the person's physical or mental condition, but it shall be admissible upon that issue, whether or not it would otherwise be deemed a privileged communication, unless such statement constitutes an admission of guilt of the offense charged.

§ 517. Supervision of person on conditional release.

(a) Any person hospitalized under this chapter who is subsequently placed on conditional release shall be subject to the supervision of a probation officer until such time as that supervision is terminated by order of the court.

(b) The probation officer shall report, as the court may order, whether the conditionally released person is complying with the conditions of the release.

§ 518. Use of out-of-state institutions.

The term “appropriate institution” includes any institution within or without the Republic of Palau to which the defendant may be eligible for admission and treatment for physical or mental disease, disorder, or defect.

CHAPTER 6  
DISPOSITION OF CONVICTED DEFENDANTS  
PART I.

DEFERRED ACCEPTANCE OF GUILTY PLEA, NO CONTEST PLEA

§ 600. Deferred acceptance of guilty plea or no contest plea; discharge and dismissal, expungement of records.

§ 601. Plea of guilty or no contest; procedure.

§ 602. Violation of terms and conditions during deferment; result.

§ 603. Chapter not applicable; when.

§ 600. Deferred acceptance of guilty plea or no contest plea; discharge and dismissal, expungement of records.

(a) Upon proper motion as provided by this chapter:

(1) When a defendant voluntarily pleads guilty or no contest, prior to commencement of trial, to a felony, misdemeanor, or petty misdemeanor;

(2) It appears to the court that the defendant is not likely again to engage in a criminal course of conduct; and

(3) The ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court, without accepting the plea of no contest or entering a judgment of guilt and with the consent of the defendant and after considering the recommendations, if any, of the attorney general, may defer further proceedings.

(b) The proceedings may be deferred upon any of the conditions specified by 17 PNC Section 634. The court may defer the proceedings for a period of time as the court shall direct but in no case to exceed the maximum sentence allowable; provided that, if the defendant has entered a plea of guilty or no contest to a petty misdemeanor, the court may defer the proceedings for a period not to exceed one year. The defendant may be subject to bail or recognizance at the court’s discretion during the period during which the proceedings are deferred.

(c) Upon the defendant’s completion of the period designated by the court and in compliance with the terms and conditions established, the court shall discharge the defendant and dismiss the charge against the defendant.

(d) Discharge of the defendant and dismissal of the charge against the defendant under this section shall be without adjudication of guilt, shall eliminate any civil admission of guilt, and is not a conviction.

(e) Upon discharge of the defendant and dismissal of the charge against the defendant under this section, the defendant may apply for expungement not less than one year following discharge.

(f) Upon meeting the requirements set forth above, such person may apply to the

court for an order to expunge from all official records, other than the non-public records to be retained by the court solely for use by the courts in determining whether or not in subsequent proceedings such person qualifies under this section, all recordation relating to the persons arrest, filing of charges, plea of guilty or no contest, dismissal and the proceedings against him or her have been discharged, the court shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he or she occupied before such arrest or filing of charges. No person as to whom such order has been entered shall be held thereafter under any provisions of any law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest or filing of charges in response to any inquiry made of him or her for any purpose.

§ 601. Plea of guilty or no contest; procedure.

Upon motion made before sentence by the defendant, the attorney general, or on its own motion, the court will either proceed in accordance with 17 PNC Section 600, or deny the motion and accept the defendant's plea of guilty or no contest, or allow the defendant to withdraw the defendant's plea of guilty or no contest, only however, upon finding of good cause.

§ 602. Violation of terms and conditions during deferment; result.

Upon violation of a term or condition set by the court for a deferred acceptance of guilty plea or deferred acceptance of no contest plea, the court may enter an adjudication of guilt and proceed as otherwise provided.

§ 603. Chapter not applicable; when.

This chapter shall not apply when:

(a) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;

(b) The offense charged is:

(1) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or

(2) A misdemeanor or petty misdemeanor involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;

(c) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;

(d) The offense charged is a class A felony;

(e) The offense charged is non-probationable;

(f) The defendant has been convicted of any offense defined as a felony by this Penal Code or other statute within the Palau National Code or has been convicted for any conduct that if perpetrated in the Republic of Palau would be punishable as a felony;

(g) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by this Penal Code or other statute within the Palau National Code or for any conduct that if perpetrated in the Republic of Palau would constitute a felony;

(h) The defendant has a prior conviction for a felony committed in any foreign jurisdiction;

(i) A firearm was used in the commission of the offense charged;

(j) The defendant is charged with the distribution of a controlled substance to a minor;

(k) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea or deferred acceptance of no contest plea status for a prior offense, regardless of whether the period of deferral has already expired;

(l) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea or deferred acceptance of no contest plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;

(m) The offense charged is:

- (1) Escape in the first degree;
- (2) Escape in the second degree;
- (3) Promoting prison contraband in the first degree;
- (4) Promoting prison contraband in the second degree;
- (5) Bail jumping in the first degree;
- (6) Bail jumping in the second degree;
- (7) Bribery;
- (8) Bribery of or by a witness;
- (9) Intimidating a witness;
- (10) Bribery of or by a juror;
- (11) Intimidating a juror;
- (12) Jury tampering;
- (13) Promoting prostitution in the first degree;
- (14) Promoting prostitution in the second degree;
- (15) Abuse of family or household members;
- (16) Sexual assault in the second degree;
- (17) Sexual assault in the third degree;
- (18) A violation of a temporary restraining order or protective order;
- (19) Promoting child exploitation in the second degree;
- (20) Promoting child exploitation in the third degree;
- (21) Electronic enticement of a child in the first degree; or
- (22) Electronic enticement of a child in the second degree.

The court may adopt by rule other criteria in this area.

## PART II.

### PRE-SENTENCE INVESTIGATION AND REPORT, AUTHORIZED DISPOSITION, AND CLASSES OF FELONIES

§ 610. Sentence in accordance with this chapter.

§ 611. Definitions of terms in this chapter.

§ 612. Time of release.

§ 613. Pre-sentence diagnosis and report.

§ 614. Pre-sentence diagnosis, notice to victims, and report.

§ 615. Opportunity to be heard with respect to sentence; notice of pre-sentence report; opportunity to controvert or supplement; transmission of report.

§ 616. Authorized disposition of convicted defendants.

§ 617. Factors to be considered in imposing a sentence.

§ 618. Penalties against corporations and unincorporated associations; forfeiture of corporate charter or revocation of license authorizing foreign corporation to do business in the Republic of Palau.

§ 619. Resentence for the same offense or for offense based on the same conduct not to be more severe than prior sentence.

§ 620. Classes of felonies.

§ 610. Sentence in accordance with this chapter.

All sentences shall be imposed in accordance with this chapter unless otherwise

provided by statute outside of this Penal Code.

§ 611. Definitions of terms in this chapter.

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

- (1) “Day” means a twenty-four-hour period of time.
- (2) “Month” means a thirty-day period of time.
- (3) “Secure drug treatment facility” means a facility employing security protocols modeled after a minimum-security detention center, including continuous direct supervision.
- (4) “Year” means a three hundred sixty-five-day period of time.

§ 612. Time of release.

A person imprisoned whose term of imprisonment ends between the hours of 9:00 P.M. to 12:00 midnight, may be released at 9:00 P.M. A person imprisoned whose term of imprisonment ends between the hours of 12:00 midnight to 7:00 A.M. may be released at 9:00 P.M. the day before the person’s scheduled release.

§ 613. Pre-sentence diagnosis and report.

(a) The court shall order a pre-sentence correctional diagnosis of the defendant and accord due consideration to a written report of the diagnosis before imposing sentence where the defendant has been convicted of a felony.

(b) The court may order a pre-sentence diagnosis in any other case.

(c) With the consent of the court, the requirement of a pre-sentence diagnosis may be waived by agreement of both the defendant and the attorney general.

§ 614. Pre-sentence diagnosis, notice to victims, and report.

(a) The pre-sentence diagnosis and report shall be made by personnel assigned to the court, and shall include:

- (1) An analysis of the circumstances attending the commission of the crime;
- (2) The defendant’s history of delinquency or criminality, physical and mental condition, family situation and background, economic status and capacity to make restitution or to make reparation to the victim or victims of the defendant’s crimes for loss or damage caused thereby, education, occupation, and personal habits;
- (3) Information made available by the victim or other source concerning the effect that the crime committed by the defendant has had upon said victim, including but not limited to, any physical or psychological harm or financial loss suffered;
- (4) Any other matters that the reporting person deems relevant or the court directs to be included.

(b) The court personnel shall give notice of the possibility of restitution by the defendant to all victims of the convicted defendant’s criminal acts.

§ 615. Opportunity to be heard with respect to sentence; notice of pre-sentence report; opportunity to controvert or supplement; transmission of report.

(a) Before imposing sentence, the court shall afford a fair opportunity to the defendant to be heard on the issue of the defendant’s sentence.

(b) The court shall furnish to the defendant or the defendant’s counsel and to the

attorney general a copy of the report of any pre-sentence diagnosis and afford fair opportunity, if the defendant or the attorney general so requests, to controvert or supplement them. The court shall amend or order the amendment of the report upon finding that any correction, modification, or addition is needed and, where appropriate, shall require the prompt preparation of an amended report in which material required to be deleted is completely removed or other amendments, including additions, are made.

(c) The court shall afford a fair opportunity to the victim to be heard on the issue of the defendant's sentence, before imposing sentence. The court or personnel who prepare the pre-sentence diagnosis and report shall inform the victim of the sentencing date and of the victim's opportunity to be heard. In the case of a homicide or where the victim is otherwise unable to appear at the sentencing hearing, the victim's family shall be afforded the fair opportunity to be heard.

(d) If the defendant is sentenced to imprisonment, a copy of the pre-sentence diagnosis shall be transmitted immediately to the Bureau of Public Safety.

(e) If the defendant is sentenced to probation, a copy of the pre-sentence diagnosis shall be transmitted immediately to the probation office.

(f) Except for those agencies entitled to receive a copy of the pre-sentence report under this section, the pre-sentence diagnosis report shall be treated as a confidential record that may not be further disseminated without a court order.

§ 616. Authorized disposition of convicted defendants.

(a) The court may sentence a convicted defendant to one or more of the following dispositions:

(1) To be placed on probation as authorized by part III;

(2) To pay a fine as authorized by part IV;

(3) To be imprisoned for a term as authorized by part V; or

(4) To perform services for the community under the supervision of a governmental agency or benevolent or charitable organization or other community service group or appropriate supervisor; provided that the convicted person who performs such services shall not be deemed to be an employee of the governmental agency or assigned work site for any purpose. All persons sentenced to perform community service shall be screened and assessed for appropriate placement by a governmental agency coordinating public service work placement as a condition of sentence.

(b) The court shall not sentence a defendant to probation and imprisonment except where a term of imprisonment is included as a condition of probation pursuant to 17 PNC section 634(b)(1).

(c) In addition to any disposition authorized in subsection (a), the court may sentence a person convicted of a misdemeanor or petty misdemeanor to a suspended sentence. The court shall state on the record its reasoning for suspending any sentence.

(d) The court may sentence a person who has been convicted of a violation to any disposition authorized in subsection (a) except imprisonment.

(e) The court shall sentence a corporation or unincorporated association that has been convicted of an offense in accordance with 17 PNC section 618.

(f) When a defendant is ordered to make monetary payments as part of his or her sentence, payments by the defendant shall be made in the following order of priority:

(1) Restitution;

(2) Fines;

(3) Other fees.

(g) The court shall order the defendant to make restitution for losses as provided in 17 PNC section 656. In ordering restitution, the court shall not consider the defendant's financial ability to make restitution in determining the amount of restitution to order. The court, however, shall consider the defendant's financial ability to make restitution for the purpose of establishing the time and manner of payment.

(h) This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

(i) If the interests of the people of the Republic will be served, the court, at the time of sentencing, may order any non-citizen who is convicted of a felony, other than an offense punishable by life imprisonment, to be permanently deported after serving no less than one-third of the term of imprisonment that would otherwise be imposed and paying any fine imposed by the court. It shall be unlawful for any person who is deported pursuant to this section to subsequently re-enter the Republic, and any person who violates this provision shall be required to serve the maximum sentence that could have been imposed on that person for the crime for which the person was deported.

§ 617. Factors to be considered in imposing a sentence.

The court, in determining the particular sentence to be imposed, shall consider:

(a) The nature and circumstances of the offense and the history and characteristics of the defendant;

(b) The need for the sentence imposed:

(1) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;

(2) To afford adequate deterrence to criminal conduct;

(3) To protect the public from further crimes of the defendant; and

(4) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(c) The kinds of sentences available; and

(d) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

(e) Due recognition shall be given to the customs of the inhabitants of the Republic in accordance with 1 PNC section 414.

§ 618. Penalties against corporations and unincorporated associations; forfeiture of corporate charter or revocation of license authorizing foreign corporation to do business in the Republic of Palau.

(a) The court may sentence a corporation or an unincorporated association that has been convicted of an offense to be placed on probation as authorized by part III of this chapter or to be fined as authorized by part IV of this chapter.

(b) When a corporation is convicted of a crime or a high managerial agent of a corporation, as defined in 17 PNC section 229(c) of this Penal Code, is convicted of a crime committed in the conduct of the affairs of the corporation, the court, in sentencing the corporation or the agent, may order the charter of a corporation organized under the laws of the Republic of Palau forfeited or the license of a foreign corporation authorizing it to do business in the Republic of Palau revoked upon finding:

(1) That the board of directors or a high managerial agent acting in behalf of the corporation has, in conducting the corporation's affairs, intentionally engaged in a persistent course of criminal conduct, and

(2) That for the prevention of future criminal conduct of the same character, the public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the certificate to be revoked.

(c) The proceedings authorized by subsection (b) shall be conducted in accordance with the procedures authorized by law for the involuntary dissolution of a corporation or the revocation of any license authorizing a foreign corporation to conduct business in the Republic of Palau. Such proceedings shall be deemed additional to any other proceedings authorized by law for the purpose of forfeiting the charter of a corporation or revoking the certificate of a foreign corporation.

§ 619. Resentence for the same offense or for offense based on the same conduct not to be more severe than prior sentence.

When a conviction or sentence is set aside on direct or collateral attack, the court shall not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence.

§ 620. Classes of felonies.

(a) Apart from first and second degree murder and attempted first and second degree murder, felonies defined by this Penal Code are classified, for sentencing purposes, into three classes, as follows:

(1) Class A felonies;

(2) Class B felonies; and

(3) Class C felonies.

(b) A felony is a class A, class B, or class C felony when it is so designated by this Penal Code. Except for first and second degree murder and attempted first and second degree murder, a crime declared to be a felony, without specification of class, is a class C felony.

(c) A felony defined by any statute of the Republic of Palau other than this Penal Code shall constitute for the purpose of sentence a class C felony, except if another provision of law specifically defines a felony to be of a specified class as defined by this Penal Code, such felony shall be treated for the purpose of sentence as provided by this chapter for that class of felony.

### PART III.

#### SUSPENSION OF SENTENCE AND PROBATION

§ 630. Authority to withhold sentence of imprisonment.

§ 631. Factors to be considered in imposing a term of probation.

§ 632. Requirement of probation; exception.

§ 633. Terms of probation.

§ 634. Conditions of probation.

§ 635. Revocation, modification of probation conditions.

§ 636. Summons or arrest of defendant on probation; commitment without bail.

§ 637. Tolling of probation.

§ 638. Calculation of multiple dispositions involving probation and imprisonment, or multiple terms of probation.

§ 639. Discharge of defendant.

§ 640. Probation is a final judgment for other purposes.

§ 630. Authority to withhold sentence of imprisonment.

A defendant who has been convicted of a crime may be sentenced to a term of probation unless:

(a) The crime is first or second degree murder or attempted first or second degree murder; or

(b) The defendant is a firearm offender.

§ 631. Factors to be considered in imposing a term of probation.

The court, in determining whether to impose a term of probation, shall consider:

(a) The factors set forth in 17 PNC section 617 to the extent that they are applicable;

(b) The following factors, to be accorded weight in favor of withholding a sentence of imprisonment:

(1) The defendant's criminal conduct neither caused nor threatened serious harm;

(2) The defendant acted under a strong provocation;

(3) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

(4) The victim of the defendant's criminal conduct induced or facilitated its commission;

(5) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(6) The defendant's criminal conduct was the result of circumstances unlikely to recur;

(7) The character and attitudes of the defendant indicate that the defendant is unlikely to commit another crime;

(8) The defendant is particularly likely to respond affirmatively to a program of restitution or a probationary program or both;

(9) The imprisonment of the defendant would entail excessive hardship to the defendant or the defendant's dependents; and

(10) Due recognition shall be given to the customs of the inhabitants of the Republic of Palau.

§ 632. Requirement of probation; exception.

When a person who has been convicted of a felony is not sentenced to imprisonment, the court shall place the person on probation. Nothing in this part shall prohibit the court from suspending any sentence imposed upon persons convicted of a crime other than a felony.

§ 633. Terms of probation.

(a) When the court has sentenced a defendant to be placed on probation, the period of probation shall be as follows, unless the court enters reasons on the record for departing from this section and sentences the defendant to a shorter period of probation:

- (1) Ten years upon conviction of a class A felony;
- (2) Five years upon conviction of a class B or class C felony;
- (3) One year upon conviction of a misdemeanor; or
- (4) Six months upon conviction of a petty misdemeanor.

The court, on application of a probation officer, on application of the defendant, or on its own motion, may discharge the defendant at any time. Prior to granting early discharge, the court shall afford the attorney general an opportunity to be heard.

(b) When a defendant who is sentenced to probation has previously been detained following arrest for the crime for which sentence is imposed, the period of detention following arrest shall be deducted from the term of imprisonment if the term is given as a condition of probation. The pre-sentence report shall contain a certificate showing the length of such detention of the defendant prior to sentence in any correctional or other institution, and the certificate shall be annexed to the official records of the defendant's sentence.

§ 634. Conditions of probation.

(a) Mandatory conditions. The court shall provide, as an explicit condition of a sentence of probation, that:

- (1) The defendant shall not commit another crime or engage in criminal conduct in the Republic of Palau or any jurisdiction that would constitute a crime under the law of the Republic of Palau during the term of probation;
- (2) The defendant shall report to a probation officer as directed by the court or the probation officer;
- (3) The defendant shall remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;
- (4) The defendant shall notify a probation officer prior to any change in address or employment;
- (5) The defendant shall notify a probation officer promptly if arrested or questioned by a law enforcement officer;
- (6) The defendant shall permit a probation officer to visit the defendant at the defendant's home or elsewhere as specified by the court; and
- (7) The defendant shall make restitution for losses suffered by the victim or victims if the court has ordered restitution pursuant to 17 PNC section 656.

(b) Discretionary conditions. The court may provide, as further conditions of a sentence of probation, to the extent that the conditions are reasonably related to the factors set forth in 17 PNC section 617 and to the extent that the conditions involve only deprivations of liberty or property as are reasonably necessary for the purposes indicated in 17 PNC section 617(b), that the defendant:

- (1) Serve a term of imprisonment not exceeding two years in class A felony

cases, eighteen months in class B felony cases, one year in class C felony cases, six months in misdemeanor cases, and five days in petty misdemeanor cases;

(2) Perform a specified number of hours of services to the community as described in 17 PNC section 616(a)(4);

(3) Support the defendant's dependents and meet other family responsibilities;

(4) Pay a fine imposed pursuant to 17 PNC section 616(a)(2);

(5) Work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip the defendant for suitable employment;

(6) Refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the crime or engage in the specified occupation, business, or profession only to a stated degree or under stated circumstances;

(7) Refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons, including but not limited to the victim of the crime, any witnesses, regardless of whether they actually testified in the prosecution, law enforcement officers, co-defendants, or other individuals with whom contact may adversely affect the rehabilitation or reformation of the person convicted;

(8) Refrain from use of alcohol or any use of narcotic drugs or controlled substances without a prescription;

(9) Refrain from possessing any destructive device or dangerous weapon;

(10) Undergo available medical or mental health treatment, including treatment for substance abuse dependency, and remain in a specified facility if required for that purpose;

(11) Reside in a specified place or area or refrain from residing in a specified place or area;

(12) Submit to periodic urinalysis or other similar testing procedure;

(13) Refrain from entering specified geographical areas without the court's permission;

(14) Comply with a specified curfew; or

(15) Satisfy other reasonable conditions as the court may impose.

(c) The court may require the defendant to contribute to the cost of conducting urinalysis or other similar testing procedure and the cost of substance abuse treatment.

(d) Written statement of conditions. The court shall order the defendant at the time of sentencing to sign a written acknowledgment of receipt of conditions of probation. The defendant shall be given a written copy of any requirements imposed pursuant to this section, stated with sufficient specificity to enable the defendant to comply with the conditions accordingly.

§ 635. Revocation, modification of probation conditions.

(a) The court, on application of a probation officer, the attorney general, the defendant, or on its own motion, after a hearing, may revoke probation, reduce or enlarge the conditions of a sentence of probation, pursuant to the provisions applicable to the initial setting of the conditions and the provisions of 17 PNC section 634.

(b) The attorney general, the defendant's probation officer, and the defendant shall be notified by the movant in writing of the time, place, and date of any such hearing, and of the grounds upon which action under this section is proposed. The attorney general, the defendant's probation officer, and the defendant may appear in the hearing to oppose or support the application, and may submit evidence for the court's consideration. The defendant shall have the right to be represented by counsel. For purposes of this section the court shall not be bound by the Rules of Evidence, except for the rules pertaining to privileges.

(c) The court shall revoke probation if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or has been convicted of a felony. The court may revoke the suspension of sentence or probation if the defendant has been convicted of another crime other than a felony.

(d) The court may modify the requirements imposed on the defendant or impose further requirements, if it finds that such action will assist the defendant in leading a law-abiding life.

(e) When the court revokes probation, it may impose on the defendant any sentence that might have originally been imposed for the crime of which the defendant was convicted.

(f) As used in this section, "conviction" means that a judgment has been pronounced upon the verdict.

§ 636. Summons or arrest of defendant on probation; commitment without bail.

At any time before the discharge of the defendant or the termination of the period of probation:

(a) The court may, in connection with the probation, summon the defendant to appear before it or may issue a warrant for the defendant's arrest;

(b) A probation or law enforcement officer, having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of the order, may arrest the defendant without a warrant and the defendant shall be held in custody pending the posting of bail pursuant to a bail schedule established by the court, or until a hearing date is set; provided that when the punishment for the original offense does not exceed one year, the probation or law enforcement officer may admit the probationer to bail; or

(c) The court, if there is probable cause to believe that the defendant has committed another crime or has been held to answer for another crime, may commit the defendant without bail, pending a determination of the new charge by the court having jurisdiction thereof.

§ 637. Tolling of probation.

(a) Upon the filing of a motion to revoke probation or a motion to enlarge the conditions of probation, the period of probation shall be tolled pending the hearing upon the motion and the decision of the court. The period of tolling shall be computed from the filing date of the motion through and including the filing date of the written decision of the court concerning the motion for purposes of computation of the remaining period of probation, if any. In the event the court fails to file a written decision upon the motion, the period shall be computed by reference to the date the court makes a decision upon the motion in open court. During the period of tolling of the probation, the defendant shall remain subject to all terms and

conditions of the probation except as otherwise provided by this chapter.

(b) In the event the court, following hearing, refuses to revoke the probation or grant the requested enlargement of conditions of probation because the defendant's failure to comply therewith was excusable, the defendant may be granted the period of tolling of the probation for purposes of computation of the remaining probation, if any.

§ 638. Calculation of multiple dispositions involving probation and imprisonment, or multiple terms of probation.

(a) When the disposition of a defendant involves more than one crime:

(1) The court shall not impose a sentence of probation and a sentence of imprisonment except where the term of imprisonment is a condition of probation as authorized by 17 PNC section 634(b)(1); and

(2) Multiple periods of probation shall run concurrently from the date of the first such disposition.

(b) When a defendant, already under sentence, is convicted for another crime committed prior to the former disposition:

(1) The court shall not sentence to probation a defendant who is under sentence of imprisonment with more than six months to run;

(2) Multiple periods of probation shall run concurrently from the date of the first such disposition; and

(3) When a defendant, already under sentence of probation, is sentenced to imprisonment, the service of imprisonment shall not toll the prior sentence of probation.

(c) When a defendant is convicted of a crime committed while on probation and such probation is not revoked:

(1) If the defendant is sentenced to imprisonment, the service of such sentence shall not toll the prior sentence of probation; and

(2) If the defendant is sentenced to probation, the period of such probation shall run concurrently with or consecutively to the remainder of the prior period, as the court determines at the time of disposition.

§ 639. Discharge of defendant.

Upon the termination of the period of the probation or the earlier discharge of the defendant, the defendant shall be relieved of any obligations imposed by the order of the court and shall have satisfied the disposition of the court, except as to any action under this chapter to collect unpaid fines, restitution, attorney's fees, costs, or interest.

§ 640. Probation is a final judgment for other purposes.

A judgment sentencing a defendant to be placed on probation shall be deemed tentative, to the extent provided in this chapter, but for all other purposes shall constitute a final judgment.

#### PART IV. FINES AND RESTITUTION

§ 650. Authorized fines.

§ 651. Criteria for imposing fines.

§ 652. Time and method of payment.

§ 653. Disposition of funds.

§ 654. Consequences of nonpayment; imprisonment for contumacious nonpayment; summary collection.

§ 655. Revocation of fine or restitution.

§ 656. Victim restitution.

§ 657. Civil enforcement.

§ 658. Probation services fee.

§ 650. Authorized fines.

(a) A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

(1) Fifty thousand dollars (\$50,000), when the conviction is of a class A felony, murder in the first or second degree, or attempted murder in the first or second degree;

(2) Twenty five thousand dollars (\$25,000), when the conviction is of a class B felony;

(3) Ten thousand dollars (\$10,000), when the conviction is of a class C felony;

(4) One thousand dollars (\$1,000), when the conviction is of a misdemeanor;

(5) Five hundred dollars (\$500), when the conviction is of a petty misdemeanor or a violation;

(6) Any higher amount equal to double the pecuniary gain derived from the offense by the defendant;

(7) Any higher or lower amount specifically authorized by statute.

(b) Consequences for nonpayment of a fine shall be governed by 17 PNC section 654.

§ 651. Criteria for imposing fines.

(a) The court shall not sentence a defendant only to pay a fine, when any other disposition is authorized by law, except in misdemeanor and petty misdemeanor cases.

(b) The court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment or probation unless:

(1) The defendant has derived a pecuniary gain from the crime; or

(2) The court is of the opinion that a fine is specially adapted to the deterrence of the crime involved or to the correction of the defendant.

(c) The court shall not sentence a defendant to pay a fine unless:

(1) The defendant is or will be able to pay the fine; and

(2) The fine will not prevent the defendant from making restitution to the victim of the offense.

(d) In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

§ 652. Time and method of payment.

(a) When a defendant is sentenced to pay a fine, the court may grant permission for

the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine shall be payable forthwith by cash, check, or by a credit card approved by the court.

(b) When a defendant sentenced to pay a fine is also sentenced to probation, the court may make the payment of the fine a condition of probation.

(c) When a defendant sentenced to pay a fine is also ordered to make restitution or reparation to the victim or victims, or to the person or party who has incurred loss or damage because of the defendant's crime, the payment of restitution or reparation shall have priority over the payment of the fine. No fine shall be collected until the restitution or reparation order has been satisfied.

§ 653. Disposition of funds.

(a) The defendant shall pay a fine or any installment thereof to the clerk of the court. In the event of default in payment, the clerk of the court shall notify the attorney general and, if the defendant is on probation, the probation officer.

(b) All fines and other final payments received by a clerk or other officer of a court shall be accounted for, with the names of persons making payment, and the amount and date thereof, being recorded. All such funds shall be deposited into the national treasury.

§ 654. Consequences of nonpayment; imprisonment for contumacious nonpayment; summary collection.

(a) When a defendant is sentenced pursuant to 17 PNC section 616, or granted a deferred plea pursuant to Part I of 17 PNC Chapter 6 of this Penal Code, and the defendant is ordered to pay a fee, fine, or restitution, whether as an independent order, as part of a judgment and sentence, or as a condition of probation or deferred plea, and the defendant defaults in the payment thereof or of any installment, the court, upon the motion of the attorney general or upon its own motion, may require the defendant to show cause why the defendant's default should not be treated as contumacious and may issue a summons or a warrant of arrest for the defendant's appearance. Unless the defendant shows that the defendant's default was not attributable to an intentional refusal to obey the order of the court, or to a failure on the defendant's part to make a good faith effort to obtain the funds required for the payment, the court shall find that the defendant's default was contumacious and may order the defendant committed until the fee, fine, restitution, or a specified part thereof is paid.

(b) When a fee, fine, or restitution is imposed on a corporation or unincorporated association, it is the duty of the person or persons authorized to make disbursement from the assets of the corporation or association to pay it from those assets, and their failure to do so may be held contumacious unless they make the showing required in subsection (a).

(c) The term of imprisonment for nonpayment of fee, fine, or restitution shall be specified in the order of commitment, and shall not exceed one day for each twenty five dollars (\$25) of the fee or fine, thirty days if the fee or fine was imposed upon conviction of a violation or a petty misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fee or fine shall be given credit toward payment of the fee or fine for each day of imprisonment, at the rate of twenty five dollars (\$25) per day.

(d) If it appears that the defendant's default in the payment of a fee, fine, or restitution is not contumacious, the court may make an order allowing the defendant additional time for payment, reducing the amount of each installment, or revoking the fee, fine, or the unpaid portion thereof in whole or in part, or converting the unpaid portion of the fee or fine to community service. A defendant shall not be

discharged from an order to pay restitution until the full amount of the restitution has actually been collected or accounted for.

(e) Unless discharged by payment or, in the case of a fee or fine, service of imprisonment pursuant to subsection (c), an order to pay a fee, fine, or restitution, whether as an independent order, as a part of a judgment and sentence, or as a condition of probation or deferred plea pursuant to Part I of 17 PNC Chapter 6 of this Penal Code, may be collected in the same manner as a judgment in a civil action. The Republic of Palau or the victim named in the order may collect the restitution, including costs, interest, and attorney's fees, pursuant to 17 PNC section 656. The Republic of Palau may collect the fee or fine, including costs, interest, and attorney's fees pursuant to 17 PNC section 657.

(f) Attorney's fees, costs, and interest shall not be deemed part of the penalty, and no person shall be imprisoned under this section in default of payment of attorney's fees, costs, and interest.

§ 655. Revocation of fine or restitution.

(a) A defendant who has been sentenced to pay a fine or restitution and who is not in contumacious default in the payment thereof may at any time petition the court that sentenced the defendant for a revocation of the fine or restitution or of any unpaid portion thereof.

(b) If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine or restitution have changed, or that it would otherwise be unjust to require payment, the court may revoke the fine or restitution or the unpaid portion thereof in whole or in part. Prior to revocation, the court shall afford the attorney general an opportunity to be heard.

§ 656. Victim restitution.

(a) As used in this section, "victim" includes any of the following:

- (1) The direct victim of a crime including a business entity, trust, or governmental entity;
- (2) If the victim dies as a result of the crime, a surviving relative of the victim as defined in 25 PNC Chapter 2; or
- (3) A governmental entity that has reimbursed the victim for losses arising as a result of the crime.

(b) The court shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victims as a result of the defendant's offense when requested by the victim. If the court orders payment of a fine in addition to restitution or a compensation fee, or both, the payment of restitution and compensation fee shall have priority over the payment of the fine, and payment of restitution shall have priority over payment of a compensation fee.

(c) In ordering restitution, the court shall not consider the defendant's financial ability to make restitution in determining the amount of restitution to order. The court, however, shall consider the defendant's financial ability to make restitution for the purpose of establishing the time and manner of payment. The court shall specify the time and manner in which restitution is to be paid. Restitution shall be a dollar amount that is sufficient to reimburse any victim fully for losses, including but not limited to:

- (1) Full value of stolen or damaged property, as determined by replacement costs of like property, or the actual or estimated cost of repair, if repair is possible;

(2) Medical expenses; and

(3) Funeral and burial expenses incurred as a result of the crime.

(d) The restitution ordered shall not affect the right of a victim to recover in any manner provided by law; provided that any amount of restitution actually recovered by the victim under this section shall be deducted from any award.

§ 657. Civil enforcement.

(a) A certified or exemplified copy of an order of any court of the Republic of Palau for payment of a fine or restitution pursuant to 17 PNC section 616 may be filed with the clerk of the court as a special proceeding without the assessment of a filing fee. The order, whether as an independent order, as part of a judgment and sentence, or as a condition of probation or deferred plea, shall be enforceable in the same manner as a civil judgment.

§ 658. Probation services fee.

(a) The court, when sentencing a defendant to probation, may order the defendant to pay a probation services fee. The amount of the fee shall not exceed:

(1) One hundred fifty dollars (\$150.00) when the term of probation is for more than one year; or

(2) Seventy five dollars (\$75) when the term of probation is for one year or less; provided that no fee shall be ordered when the court determines that the defendant is unable to pay the fee.

(b) The entire fee ordered or assessed shall be payable forthwith by cash, check, or by a credit card approved by the court. When a defendant is also ordered to pay a fine, make restitution, or pay other fees in addition to the probation services fee under subsection (a), payments by the defendant shall be made in the following order of priority:

(1) Restitution;

(2) Probation services fee;

(3) Other fees; and

(4) Fines.

(c) The defendant shall pay the probation services fee to the clerk of the court. The fee shall be deposited into a special fund within the National Treasury for use by the probation office to offset the costs associated with probation supervision.

## PART V. IMPRISONMENT

§ 660. Terms of imprisonment for first and second degree murder and attempted first and second degree murder.

§ 661. Sentence of imprisonment for class A felony.

§ 662. Sentence of imprisonment for class B and C felonies; ordinary terms.

§ 663. Sentence of imprisonment for misdemeanor and petty misdemeanor.

§ 664. Former conviction in another jurisdiction.

§ 665. Definition of proof of conviction.

§ 666. Multiple sentence of imprisonment.

§ 667. Procedure for determining minimum term of imprisonment.

§ 668. Parole procedure; release on parole; terms of parole, recommitment and reparole; final unconditional release.

§ 669. Credit for time of detention prior to sentence; credit for imprisonment under earlier sentence for same crime.

§ 670. Place of imprisonment.

§ 660. Terms of imprisonment for first and second degree murder and attempted first and second degree murder.

(a) Persons convicted of first degree murder or first degree attempted murder shall be sentenced to life imprisonment without possibility of parole.

As part of such sentence the court shall order the Ministry of Justice and the paroling authority to prepare an application for the President of the Republic of Palau to commute the sentence to life imprisonment with parole at the end of twenty years of imprisonment.

(b) Persons convicted of second degree murder and attempted second degree murder shall be sentenced to life imprisonment with possibility of parole. The minimum length of imprisonment shall be determined by the paroling board in accordance with 17 PNC section 667.

§ 661. Sentence of imprisonment for class A felony.

A person who has been convicted of a class A felony may be sentenced to an indeterminate term of imprisonment of twenty five years without the possibility of suspension of sentence. The minimum length of imprisonment shall be determined by the parole board in accordance with 17 PNC section 667.

§ 662. Sentence of imprisonment for class B and C felonies; ordinary terms.

A person who has been convicted of a class B or class C felony may be sentenced to an indeterminate term of imprisonment as follows:

(a) For a class B felony—ten years; and

(b) For a class C felony—five years.

The minimum length of imprisonment shall be determined by the parole board in accordance with 17 PNC section 667.

§ 663. Sentence of imprisonment for misdemeanor and petty misdemeanor.

After consideration of the factors set forth in 17 PNC sections 617 and 630, the court may sentence a person who has been convicted of a misdemeanor or a petty misdemeanor to imprisonment for a definite term to be fixed by the court and not to exceed one year in the case of a misdemeanor or thirty days in the case of a petty misdemeanor.

§ 664. Former conviction in another jurisdiction.

For sentencing purposes, a conviction of the commission of a crime in another jurisdiction shall constitute a previous conviction. Such conviction shall be deemed to have been of a felony if sentence of death or of imprisonment in excess of one year was authorized under the law of such other jurisdiction. Such a conviction shall be graded, for purposes of 17 PNC section 620 of this Penal Code by comparing the maximum imprisonment authorized under the law of such other jurisdiction with the maximum imprisonment authorized for the relevant grade of felony.

§ 665. Definition of proof of conviction.

(a) An adjudication by a court of competent jurisdiction that the defendant committed a crime constitutes a conviction for sentencing purposes, although sentence or the execution thereof was suspended, provided that the defendant was not pardoned on the ground of actual innocence.

(b) Prior conviction may be proved by any evidence, including fingerprint records made in connection with arrest, conviction, or imprisonment, that reasonably satisfies the court that the defendant was convicted.

§ 666. Multiple sentence of imprisonment.

(a) If multiple terms of imprisonment are imposed on a defendant, whether at the same time or at different times, or if a term of imprisonment is imposed on a defendant who is already subject to an unexpired term of imprisonment, the terms may run concurrently or consecutively. Multiple terms of imprisonment run concurrently unless the court orders or the statute mandates that the terms run consecutively.

(b) The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider the factors set forth in 17 PNC section 617.

§ 667. Procedure for determining minimum term of imprisonment.

(a) When a person has been sentenced to an indeterminate term of imprisonment, the parole board shall hold a hearing as soon as practicable, but no later than three months after commitment to the custody of the Bureau of Public Safety, and on the basis of the hearing make an order fixing the minimum term of imprisonment to be served before the prisoner shall become eligible for parole.

(b) Before holding the hearing, the authority shall obtain a complete report regarding the prisoner's life before entering the institution and a full report of the prisoner's progress in the institution. The report shall be a complete personality evaluation for the purpose of determining the prisoner's degree of propensity toward criminal activity.

(c) The prisoner shall be given reasonable notice of the hearing under subsection (a) and shall be permitted to be heard by the authority on the issue of the minimum term to be served before the prisoner becomes eligible for parole. In addition, the prisoner shall:

- (1) Be permitted to consult with any persons the prisoner reasonably desires, including the prisoner's legal counsel, in preparing for the hearing;
- (2) Be permitted to be represented and assisted by counsel at the hearing;
- (3) Have counsel appointed to represent and assist the prisoner if the prisoner so requests and cannot afford to retain counsel; and
- (4) Be informed of the prisoner's rights under (a), (b), and (c).

(d) The authority in its discretion may, in any particular case and at any time, impose a special condition that the prisoner will not be considered for parole unless and until the prisoner has a record of continuous exemplary behavior.

(e) After sixty days notice to the attorney general, the authority in its discretion may reduce the minimum term fixed by its order pursuant to subsection (a).

(f) An audio recording of the hearing shall be made and preserved in transcribed or untranscribed form.

(g) The Republic of Palau shall have the right to be represented at the hearing by the attorney general, who may present written testimony and make oral comments and the authority shall consider such testimony and comments in reaching its decision. The parole board shall notify the attorney general of the hearing at the time the prisoner is given notice of the hearing. The hearing shall be opened to victims or their designees or surviving immediate family members who may present a written statement or make oral comments.

(h) The parole board shall establish guidelines for the uniform determination of

minimum sentences that shall take into account both the nature and degree of the offense of the prisoner and the prisoner's criminal history and character. The guidelines shall be public records and shall be made available to the prisoner and to the attorney general and other interested government agencies.

§ 668. Parole procedure; release on parole; terms of parole, recommitment, and reparole; final unconditional release.

(a) Parole hearing. A person sentenced to an indeterminate term of imprisonment shall receive an initial parole hearing at least one month before the expiration of the minimum term of imprisonment determined by the Parole Board pursuant to 17 PNC section 667. If parole is not granted at that time, additional hearings shall be held at twelve month intervals or less until parole is granted or the maximum period of imprisonment expires. The Republic of Palau shall have the right to be represented at the initial parole hearing and all subsequent parole hearings by the attorney general, who may present written testimony and make oral comments, and the authority shall consider the testimony and comments in reaching its decision. The authority shall notify the appropriate attorney general of the hearing at the time the prisoner is given notice of the hearing.

(b) Parole conditions. The authority, as a condition of parole, may impose reasonable conditions on the prisoner as provided under 17 PNC section 634.

(c) Prisoner's plan and participation. Each prisoner shall be given reasonable notice of the prisoner's parole hearing and shall prepare a parole plan, setting forth the manner of life the prisoner intends to lead if released on parole, including specific information as to where and with whom the prisoner will reside and what occupation or employment the prisoner will follow. The prisoner shall be paroled in the state where the prisoner had a permanent residence or occupation or employment prior to the prisoner's incarceration, unless the prisoner will: reside in the state in which the committed person has the greatest family or community support, opportunities for employment, job training, education, treatment, and other social services; or be released for immediate departure or deportation from the Republic of Palau. The parole officer assigned to monitor the prisoner upon release shall render reasonable aid to the prisoner in the preparation of the prisoner's plan and in securing information for submission to the parole board. In addition, the prisoner shall:

- (1) Be permitted to consult with any persons whose assistance the prisoner reasonably desires, including the prisoner's legal counsel, in preparing for a hearing before the authority;
- (2) Be permitted to be represented and assisted by counsel at the hearing;
- (3) Have counsel appointed to represent and assist the prisoner if the prisoner so requests and cannot afford to retain counsel; and
- (4) Be informed of the prisoner's rights as set forth in this subsection.

(d) Parole Board's decision; initial minimum term of parole. The authority shall render its decision regarding a prisoner's release on parole within a reasonable time after the parole hearing. A grant of parole shall not be subject to acceptance by the prisoner. If the Parole Board denies parole after the hearing, it shall state its reasons in writing. An audio recording of the parole hearing shall be made and preserved in transcribed or untranscribed form. The Parole Board, in its discretion, may order a reconsideration or rehearing of the case at any time and shall provide reasonable notice of the reconsideration or rehearing to the attorney general. If parole is granted by the Parole Board, the Parole Board shall set the initial minimum length of the parole term.

(e) Release upon expiration of maximum term. If the authority fixes no earlier release date, a prisoner's release shall become mandatory at the expiration of the

prisoner's maximum term of imprisonment.

(f) Sentence of imprisonment includes separate parole term. A sentence to an indeterminate term of imprisonment under this chapter includes as a separate portion of the sentence a term of parole or of recommitment for violation of the conditions of parole.

(g) Revocation hearing. When a parolee has been recommitment, the Parole Board shall hold a hearing within sixty days after the parolee's return to determine whether parole should be revoked. The parolee shall have reasonable notice of the grounds alleged for revocation of the parolee's parole. The parole officer who was assigned to monitor the prisoner upon release shall render reasonable aid to the parolee in preparation for the hearing. In addition, the parolee shall have, with respect to the revocation hearing, those rights set forth in subsections (c)(1), (c)(2), (c)(3), and (c)(4). A record of the hearing shall be made and preserved as provided in subsection (d).

(h) Length of recommitment and reparole after revocation of parole. If a parolee's parole is revoked, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the Parole Board but shall not exceed in aggregate length the unserved balance of the maximum term of imprisonment.

(i) Final unconditional release. When the prisoner's maximum parole term has expired or the prisoner has been sooner discharged from parole, a prisoner shall be deemed to have served the prisoner's entire sentence and shall be released unconditionally.

§ 669. Credit for time of detention prior to sentence; credit for imprisonment under earlier sentence for same crime.

(a) When a defendant who is sentenced to imprisonment has previously been detained in any correctional or other institution following the defendant's arrest for the crime for which sentence is imposed, such period of detention following the defendant's arrest shall be deducted from the minimum and maximum terms of such sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the length of such detention of the defendant prior to sentence in any correctional or other institution, and the certificate shall be annexed to the official records of the defendant's commitment.

(b) When a judgment of conviction or a sentence is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the minimum and maximum terms of the new sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the period of imprisonment served under the original sentence, and the certificate shall be annexed to the official records of the defendant's new commitment.

§ 670. Place of imprisonment.

When a person is sentenced to imprisonment, the court shall commit the person to the custody of the Bureau of Public Safety for the term of the person's sentence and until released in accordance with law. The Bureau of Public Safety shall determine the proper program of redirection and any place of confinement of the committed person. Such place of confinement may be within the Republic of Palau or outside of the Republic of Palau.

## CHAPTER 7 FORFEITURE

§ 700. Short title.

§ 701. Definitions.

§ 702. Jurisdiction.

- § 703. Covered offenses.
- § 704. Property subject to forfeiture; exemption.
- § 705. Excessive forfeitures.
- § 706. Seizure of property.
- § 707. Powers and duties of law enforcement officers and agencies.
- § 708. Notice of forfeiture proceedings.
- § 709. Commencement of proceedings.
- § 710. Administrative forfeiture.
- § 711. Judicial forfeiture proceedings; general.
- § 712. Judicial in rem forfeiture proceedings; judicial forfeiture proceedings against property.
- § 713. Judicial in personam forfeiture proceedings; judicial forfeiture proceedings against a specific person.
- § 714. Supplemental remedies.
- § 715. Disposition of claims by court.
- § 716. Disposition of property forfeited.
- § 717. Limitation of actions.
- § 718. Victim restitution.
- § 719. Construction.

§ 700. Short title.

This chapter may be cited as the “Criminal Forfeiture Act.”

§ 701. Definitions.

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

- (1) “Attorney general” means the attorney general or assistants attorneys general of the Republic of Palau, or other designated prosecuting entity.
- (2) “Contraband” means any property the possession of which is illegal.
- (3) “Controlled substances” means a drug, substance, or immediate precursor in Schedules I through V of 34 PNC Chapter 31.
- (4) “Covered offense” means any crime set forth in 17 PNC section 703 of Chapter 7 of this Penal Code or any other offense for which forfeiture is provided by the law relating to a particular offense.
- (5) “Enterprise” includes any sole proprietorship, partnership, corporation, association, or any group of individuals associated for a particular purpose although not a legal entity.
- (6) “Interest-holder” means a person in whose favor there is a security interest or who is the beneficiary of a perfected encumbrance pertaining to an interest in property.
- (7) “Law enforcement officer” means any public servant, whether employed by the Republic of Palau, state, municipality, or subdivisions thereof, vested by law with a duty to maintain public order, to make arrests for offenses, or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses. The attorney general, assistant attorneys general, or other prosecuting agency engaged in the enforcement of criminal laws are included in the definition of the term law enforcement officer.
- (8) “Owner” means a person who is not a secured party and who has an interest in property, whether legal or equitable. A purported interest that is not in compliance with any statute requiring its recordation or reflection in public records in order to perfect the interest against a bona fide purchaser for value shall not be recognized as an interest against the Republic of Palau in

an action pursuant to this chapter. An owner with power to convey property binds other owners, and a spouse binds the person's spouse, by any act or omission.

(9) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property.

(10) "Person known to have an interest" means a person whose interest in property is reflected in the public records in which the person's interest is required by law to be recorded or reflected in order to perfect the person's interest. If a person's interest in property is not required by law to be reflected in public records in order to perfect the person's interest in the property, a person shall be known to have an interest only if such interest can be readily ascertained at the time of the commencement of the forfeiture action pursuant to this chapter.

(11) "Proceeds" means anything of value, derived directly or indirectly from or realized through unlawful activity.

(12) "Property" means real property, including things growing on, affixed to, and found on land; tangible and intangible personal property, including currency, instruments, vehicles, boats, aircraft or any other kind of conveyance; legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such assets, including but not limited to bank credits, deposits and other financial resources, travelers checks, bank checks, money orders, securities, bonds, drafts, letters of credits; and all rights, privileges, interests, dividends, claims, and securities pertaining to such property whether such property is situated in the Republic of Palau or elsewhere.

(13) "Seizing agency" means any bureau or agency of the Republic of Palau, states, municipalities, or any subdivisions thereof, which regularly employs law enforcement officers, and that employed the law enforcement officer who seized property for forfeiture, or such other agency as the seizing agency may designate in a particular case by its chief executive officer or designee.

(14) "Seizure for evidence" means seizure of property by a law enforcement officer.

(15) "Seizure for forfeiture" means seizure of property by a law enforcement officer coupled with an assertion by the seizing agency or by the attorney general that the property is subject to forfeiture.

#### § 702. Jurisdiction.

(a) The Republic of Palau may commence civil in rem forfeiture proceedings in the trial division of the Supreme Court of the Republic of Palau if the property for which forfeiture is sought is within the Republic of Palau at the time of the filing of the action.

(b) The Republic of Palau may commence civil in personam forfeiture proceedings in the trial division of the Supreme Court of the Republic of Palau if the courts of the Republic of Palau have jurisdiction of an owner of or interest-holder in the property.

(c) The Republic of Palau may commence a criminal forfeiture proceeding in the trial division of the Supreme Court of the Republic of Palau that has jurisdiction of an owner of or interest-holder in the property.

#### § 703. Covered offenses.

Offenses for which property is subject to forfeiture under this chapter are:

(a) All offenses that specifically authorize forfeiture;

(b) Murder; kidnapping; terrorism; labor trafficking; gambling; criminal property damage; robbery; bribery; extortion; theft; unauthorized entry into motor vehicle; burglary; money laundering; trademark counterfeiting; insurance fraud; the possession, trafficking, or manufacture of controlled substances as set forth in 34 PNC Chapter 33; promoting child exploitation, or electronic enticement of a child; and that which is chargeable as a felony offense under the laws of the Republic of Palau;

(c) Promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under the laws of the Republic of Palau; and

(d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.

§ 704. Property subject to forfeiture; exemption.

(a) The following is subject to forfeiture:

(1) Property described in a statute authorizing forfeiture;

(2) Property used or intended for use in the commission of, attempt to commit, or conspiracy to commit a covered offense, or which facilitated or assisted such activity;

(3) Any firearm that is subject to forfeiture under any section of the PNC or that is visibly carried during, or used in furtherance, of the commission, attempt to commit, or conspiracy to commit a covered offense, or any firearm found in proximity to contraband or to instrumentalities of an offense;

(4) Contraband shall be seized and summarily forfeited to the Republic of Palau without regard to the procedures set forth in this chapter;

(5) Any proceeds or other property acquired, maintained, or produced by means of or as a result of the commission of the covered offense;

(6) Any property derived from any proceeds that were obtained directly or indirectly from the commission of a covered offense;

(7) Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that has been established, participated in, operated, controlled, or conducted in order to commit a covered offense;

(8) All books, records, bank statements, accounting records, microfilms, tapes, computer data, or other data which are used, intended for use, or which facilitated or assisted in the commission of a covered offense, or which document the use of the proceeds of a covered offense.

(b) Except that:

(1) Real property, or an interest therein, may be forfeited under the provisions of this chapter only in cases in which the covered offense is chargeable as a felony offense under the laws of the Republic of Palau;

(2) No property shall be forfeited under this chapter to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge and consent of that owner;

(3) No conveyance used by any person as a common carrier in the transaction of a business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(4) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent; and

(5) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.

(c) A person who knowingly violates a seizure for forfeiture order by conveying, disposing of or otherwise dealing with property that is subject to the order commits Class C felony and may be fined a maximum fine of \$20,000.

(d) Where a seizure for forfeiture order is entered against property and the property is disposed of, or otherwise dealt with, in violation of the order, the attorney general may apply to the court for an order that the disposition, conveyance or dealing be set aside unless the disposition, conveyance or dealing was for sufficient consideration or in favor of a person who acted in good faith and without notice.

(e) Where the attorney general makes an application under subsection (d) in relation to a disposition, conveyance or dealing, the court may set aside the disposition, conveyance or dealing as from the day on which the disposition, conveyance or dealing took place; or as from the day of the order was issued and declare the respective rights of any person who acquired interests in the property on or after the day on which the disposition, conveyance or dealing took place and before the day of the order under this section was issued.

#### § 705. Excessive forfeitures.

The court shall limit the scope of a forfeiture judgment issued pursuant to 17 PNC section 704(a)(2) to the extent the court finds the effect of the forfeiture is grossly disproportionate to the nature and severity of the owner's conduct. In determining whether forfeiture is grossly disproportionate, the court may consider:

(a) The degree to which the property was used to facilitate the conduct that subjects property to forfeiture and the importance of the property to the conduct;

(b) The gain received or expected by an owner from the conduct that subjects property to forfeiture and the value of the property subject to forfeiture;

(c) The nature and extent of the owner's culpability; and

(d) The owner's effort to prevent the conduct or assist in prosecution.

#### § 706. Seizure of property.

(a) Personal property subject to forfeiture under this chapter may be seized for forfeiture by a law enforcement officer:

(1) On process issued pursuant to the rules of civil procedure or the provisions of this chapter including a seizure warrant;

(2) By making a seizure for forfeiture on property seized on process issued pursuant to law; or

(3) By making a seizure for forfeiture without court process as follows:

(A) The seizure for forfeiture is of property seized incident to an arrest or search;

(B) The property subject to seizure for forfeiture has been the subject of a prior judgment in favor of the Republic of Palau or any state thereof in forfeiture proceeding;

(C) The law enforcement officer has probable cause to believe that the property seized for forfeiture is directly or indirectly dangerous to health or safety;

(D) The law enforcement officer has probable cause to believe that the property is subject to forfeiture; or

(E) The seizure for forfeiture is of perishable natural resources, which may be sold prior to forfeiture proceedings, and the proceeds deposited with the Forfeited Property Fund established pursuant to 17 PNC section 716.

(b) Real property subject to forfeiture under this chapter may be seized for forfeiture by a law enforcement officer pursuant to court order following a pre-seizure hearing in the trial division of the Supreme Court. Notice of the pre-seizure hearing is to be made to the owners and interest-holders pursuant to 17 PNC section 708. The court shall order the real property in question to be seized for forfeiture if it finds probable cause that the real property is subject to forfeiture under any provision of the laws of the Republic of Palau.

(c) In determining probable cause for seizure, the fact that a firearm, money, or any negotiable instrument was found in proximity to contraband or to instrumentalities of an offense gives rise to an inference that the money, or instrument was the proceeds of contraband or that the firearm, money or instrument was used or intended to be used to facilitate commission of the offense.

§ 707. Powers and duties of law enforcement officers and agencies.

(a) In the event of a seizure for forfeiture under 17 PNC section 706, the property is not subject to replevin, conveyance, sequestration, or attachment but is deemed to be in the custody of the law enforcement agency making the seizure for forfeiture. The seizing agency or the attorney general may authorize the release of the seizure for forfeiture on the property if forfeiture or retention is unnecessary, may transfer the property to any other national, state, or municipal agency or may transfer the action to another prosecuting agency by discontinuing forfeiture proceedings in favor of forfeiture proceedings initiated by the other agency. An action pursuant to this chapter shall be consolidated with any other action or proceeding pursuant to this chapter relating to the same property upon motion by the attorney general or prosecuting agency in either action.

(b) If property is seized for forfeiture under 17 PNC section 706 pending forfeiture and final disposition, the seizing agency may do any of the following:

(1) Place the property under constructive seizure by posting notice of seizure for forfeiture on the property or by filing notice of seizure for forfeiture or notice of pending forfeiture in any appropriate public record relating to the property;

(2) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, deposit it in an interest bearing account;

(3) Remove the property to a place designated by the court; or

(4) Provide for another agency to take custody of the property and remove it

to an appropriate location within the jurisdiction of the court.

(c) As soon as practicable after seizure for forfeiture, the seizing agency shall conduct an inventory and estimate the value of the property seized. Within twenty days after seizure for forfeiture the seizing agency shall make reasonable efforts to give notice of seizure for forfeiture in the manner provided in 17 PNC section 708(a) or 708(b) to all parties known to have an interest in the seized property.

(d) In the event of a seizure for forfeiture under 17 PNC section 706, the seizing agency shall send to the attorney general a written request for forfeiture within thirty days, which shall include a statement of facts and circumstances of the seizure, the appraised or estimated value of the property, and a summary of the facts relied on for forfeiture.

§ 708. Notice of forfeiture proceedings.

Unless otherwise provided, whenever notice is required under this chapter it shall be given in one of the following ways:

(a) If the owner's or interest-holder's name and current address are known:

(1) By personal service; or

(2) By mail;

(b) If the owner's or interest-holder's interest is required by law to be on record with an agency of the Republic of Palau in order to perfect an interest in the property, but the person's current address is not known, by mailing a copy of the notice by certified mail to any address on the record; or

(c) If the owner's or interest-holder's address is not known, and is not on record pursuant to paragraph (b), or if the person's interest is not known, by publication in one issue of a newspaper of general circulation in the Republic of Palau.

§ 709. Commencement of proceedings.

(a) The attorney general shall determine whether it is probable that the property is subject to forfeiture and, if so, shall initiate administrative or judicial proceedings against the property within forty-five days of receipt of a written request for forfeiture from a seizing agency. If, on inquiry and examination, the attorney general determines, with sole discretion, that the proceedings probably cannot be sustained or that justice does not require the institution of proceedings, the attorney general shall notify the seizing agency, and as soon as practicable authorize the release of the seizure for forfeiture on the property or on any specified interest in it. A determination by the attorney general to forego initiation of proceedings shall not be a bar to initiation of proceedings against the same property based on the same circumstances at a later time.

(b) If the property sought to be forfeited is real property, including fixtures, the attorney general shall file a lis pendens with respect to the property but shall not be required to pay a filing fee.

(c) The attorney general shall initiate administrative or judicial proceedings against the property within three years of the date the defendant was convicted for an offense.

(d) Where an administrative or judicial forfeiture proceeding is initiated before the defendant is convicted or sentenced, the court may defer passing sentence until resolution of the administrative or judicial forfeiture proceeding.

§ 710. Administrative forfeiture.

The attorney general may initiate administrative forfeiture of property other than real

property, the estimated value of which is less than one hundred thousand dollars (\$100,000), or of any vehicle or conveyance, regardless of value. Administrative forfeiture shall be processed in the following manner:

(a) The attorney general shall file a petition with the trial division of the Supreme Court of the Republic of Palau, pursuant to rules adopted by the attorney general pursuant to 6 PNC Chapter 1, the Administrative Procedures Act.

(b) The attorney general shall give notice of pending forfeiture by making reasonable efforts to serve a copy of the petition in a manner provided in 17 PNC section 708(a) or 708(b) on all persons known to have an interest in the property, together with instructions for filing a claim or a petition for remission or mitigation.

(c) The attorney general shall give notice of intention to forfeit the property administratively by publication in the manner provided in 17 PNC section 708(c). Notice by publication shall include:

- (1) A description of the property;
- (2) The estimated value of the property;
- (3) The date and place of the seizure;
- (4) The offense for which the property is subject to forfeiture;
- (5) Instructions for filing a claim or a petition for remission or mitigation; and
- (6) Notice that the property will be forfeited to the Republic of Palau if a claim or petition for remission or mitigation is not filed in substantial compliance with this section.

(d) Persons claiming an interest in the property may file either a petition for remission or mitigation of forfeiture, or a claim, but not both, with the attorney general, within thirty days of notice by publication or receipt of written notice, whichever is earlier. The thirty-day time period prescribed herein is computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded, and the thirty-day time period runs until the end of the next day that is not a Saturday, Sunday, or a holiday. "Holiday" includes any day designated as a holiday pursuant to 1 PNC Chapter 7 or pursuant to Executive Order.

(e) Any person claiming seized property may seek remission or mitigation of the forfeiture by timely filing a petition with the attorney general. A petition for remission or mitigation shall not be used to challenge the sufficiency of the evidence to support the forfeiture or the actions of any government official but shall presume a valid forfeiture and ask the attorney general to invoke the executive power to pardon the property, in whole or in part. The petition shall be signed by the petitioner and sworn on oath before a notary public and shall contain the following:

- (1) A reasonably complete description of the property;
- (2) A statement of the interest of the petitioner in the property, as owner or interest-holder that may be supported by bills of sale, contracts, or mortgages, or other documentary evidence; and
- (3) Facts and circumstances sufficient to show whether the petitioner:
  - (A) Owns or holds an interest in the seized property as defined by 17 PNC section 701;
  - (B) Had any knowledge that the property was or would be involved in any violation of the law;
  - (C) Had any knowledge of the particular violation that subjected the

property to seizure and forfeiture;

(D) Had any knowledge that the user of the property had any criminal record, including arrests, except when the person was acquitted or the charges dismissed due to lack of evidence, for the violation that subjected the property to seizure and forfeiture or for any crime that is similar in nature.

Any subsequent pleadings or written communications alleging matters pertaining to subparagraph (2) or (3) of this paragraph must also be signed by the petitioner and sworn on oath, subject to penalty of perjury, before a notary public.

(f) If the attorney general, with sole discretion, determines that remission is not warranted, the attorney general may discretionarily mitigate the forfeiture where the petitioner has not met the minimum requirements for remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be granted where the minimum requirements for remission have been met but the overall circumstances are such that the attorney general determines that complete relief is not warranted. Mitigation shall take the form of a money penalty imposed upon the petitioner that shall be deposited into the Forfeited Property Fund established under 17 PNC section 716. Extenuating circumstances include:

- (1) Language or culture barrier;
- (2) Humanitarian factors such as youth or extreme age;
- (3) Presence of physical or mental disease, disorder, or defect;
- (4) Limited or peripheral criminal culpability;
- (5) Cooperation with the seizing agency or the attorney general; and
- (6) Any contributory error on the part of government officials.

(g) It shall be the duty of the attorney general to inquire into the facts and circumstances alleged in a petition for remission or mitigation of forfeiture. However, no petitioner is entitled to a hearing on the petition for remission or mitigation. Hearings, if any, shall be held at the discretion of the attorney general.

(h) The attorney general shall provide the seizing agency and the petitioner a written decision on each petition for remission or mitigation within sixty days of receipt of the petition unless the circumstances of the case require additional time, in which case the attorney general shall notify the petitioner in writing and with specificity within the sixty-day period that the circumstances of the case require additional time and further notify the petitioner of the expected decision date.

(i) Any person claiming seized property may seek judicial review of the seizure and proposed forfeiture by timely filing with the attorney general a claim and cost bond to the Republic of Palau in the amount of ten per cent (10%) of the estimated value of the property or in the sum of two thousand five hundred dollars (\$2,500), whichever is greater, with sureties to be approved by the attorney general, upon condition that if the claimant fails to prove that claimant's interest is exempt from forfeiture under 17 PNC section 704, the claimant shall pay the Republic of Palau's costs and expenses, including reasonable attorneys fees incurred in connection with a judicial proceeding. The claim shall be signed by the claimant and sworn on oath before a notary public and shall comply with the requirements of 17 PNC section 712(e). Upon receipt of the claim and bond, the attorney general may discretionarily continue to seek forfeiture by petitioning the trial division of the Supreme Court for forfeiture of the property within forty-five days of receipt of notice that a proper claim and bond has been filed. The attorney general may also elect to honor the claim in which case the attorney general shall notify the seizing agency and authorize the release of the seizure for forfeiture on the property or on any specified interest in it.

(j) If a judicial forfeiture proceeding is instituted subsequent to notice of administrative forfeiture pursuant to paragraph (i), no duplicate or repetitive notice shall be required. The judicial proceeding, if any, shall adjudicate all timely filed claims. At the judicial proceeding, the claimant may testify, present evidence and witnesses on the claimant's behalf, and cross-examine witnesses who appear at the hearing. The Republic of Palau may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. The Republic of Palau has the initial burden of showing by a preponderance of the evidence that the claimant's interest in the property is subject to forfeiture. On such a showing by the Republic of Palau, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture.

(k) In the event a claim has not been filed in substantial compliance with this section, or if the attorney general determines that remission or mitigation is not warranted, the attorney general shall order forfeited all property seized for forfeiture. In the event the attorney general determines that remission or mitigation is warranted, the attorney general shall notify the seizing agency and order the release of the seizure for forfeiture on the property or on any specified interest in it.

(l) The attorney general shall promulgate rules and regulations to effect the purposes of this Act pursuant to 6 PNC Chapter 1, the Administrative Procedures Act. Such rules and regulations shall have the force and effect of law.

§ 711. Judicial forfeiture proceedings; general.

(a) In any judicial or administrative proceeding pursuant to this chapter, the court, on application of the Republic of Palau, may enter any restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, appraisers, accountants or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this chapter, including a warrant for its seizure, whether before or after the filing of a petition for forfeiture or complaint or information.

(b) If property is seized for forfeiture without a seizure warrant, a prior judicial order of forfeiture, or a hearing pursuant to 17 PNC section 713, a court, on an application filed by an owner or interest-holder within fifteen days after notice of its seizure for forfeiture or actual knowledge of it, whichever is earlier, and complying with the requirements for claims in 17 PNC section 712, may issue an order to show cause to the seizing agency, with thirty days notice to the attorney general, for a hearing on the issue of whether probable cause for forfeiture of the applicant's interest then exists, provided that, the order to show cause shall be set aside upon the filing of a petition for either administrative or judicial forfeiture prior to the hearing, in which event forfeiture proceedings shall be in accordance with this chapter.

(c) There shall be a rebuttable presumption that any property of a person is subject to forfeiture under this chapter if the Republic of Palau establishes, by the standard of proof applicable to that proceeding, all of the following:

(1) That the person has engaged in criminal conduct for which property is subject to forfeiture;

(2) That the property was acquired by the person during the period of the criminal conduct or within a reasonable time after that period; and

(3) That there was no likely source for the property other than the criminal conduct giving rise to forfeiture.

(d) A finding that property is the proceeds of criminal conduct giving rise to forfeiture does not require proof that the property is the proceeds of any particular exchange or transaction.

(e) A defendant convicted in any criminal proceeding shall be precluded from subsequently denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding pursuant to this chapter. For the purposes of this chapter, a conviction may result from a verdict or plea, including a no contest plea, or deferred acceptance of guilty plea, or no contest plea.

(f) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this chapter.

(g) In any judicial forfeiture proceeding pursuant to this chapter, if a defense is based on an exemption provided for in this chapter, the burden of proving the existence of the exemption is on the claimant or party raising the defense, and it is not necessary to negate the exemption in any petition, application, complaint or information.

(h) For good cause shown, on motion by the attorney general, the court may stay discovery against the Republic of Palau in civil forfeiture proceedings prior to trial on a criminal information arising from the same conduct and against a claimant who is a defendant in the criminal proceeding after making provision to prevent loss to any party resulting from the delay. The stay provided by this subsection shall not be available pending appeal of any order or judgment in the criminal proceeding.

(i) The court shall receive and consider, at any hearing held pursuant to this chapter, except the hearing on claims pursuant to 17 PNC sections 712(d) through (h) and 713(g), evidence and information that would be admissible at a probable cause hearing.

(j) All property, including all interest in such property, declared forfeited under this chapter vests in the Republic of Palau on the commission of the act or omission giving rise to forfeiture under this chapter together with the proceeds of the property after the act or omission. Any property or proceeds transferred to any person after the act or omission are subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing pursuant to this chapter the showings set out in 17 PNC section 704.

§ 712. Judicial in rem forfeiture proceedings; judicial forfeiture proceedings against property.

(a) If a forfeiture is authorized by law, it shall be ordered by a court on an action in rem brought by the attorney general on a verified petition for forfeiture filed in the criminal or civil division of the Supreme Court.

(b) A civil in rem action may be brought in addition to or in lieu of the civil and criminal in personam forfeiture procedures set forth in 17 PNC sections 713 and 714 or the administrative forfeiture as set forth in 17 PNC section 710. Judicial in rem forfeiture proceedings are in the nature of an action in rem and are governed by the rules of civil procedure whether brought in the criminal or civil division of the Supreme Court, unless a different procedure is provided by law.

(c) On the filing of a civil in rem action by the Republic of Palau in the Supreme Court the clerk of the court in which the action is filed shall give notice of the filing of the action in the manner provided by 17 PNC section 708 unless the files of the clerk of the court reflect that notice has previously been given.

(d) An owner of or interest-holder in the property may file a claim against the property, within thirty days after the notice, for a hearing to adjudicate the validity of the claimed interest in the property. The hearing shall be held by the court without a jury.

(e) The claim shall be signed by the claimant and sworn on oath before a notary public and shall set forth all the following:

- (1) The name of the claimant;
- (2) The address at which the claimant will accept future mailings from the court or the attorney general;
- (3) The nature and extent of the claimant's interest in the property;
- (4) The time, transferor and circumstances of the claimant's acquisition of the interest in the property;
- (5) The specific provisions of this chapter relied on in asserting that the property seized for forfeiture is not subject to forfeiture;
- (6) Facts supporting each assertion that the property is not subject to forfeiture;
- (7) Any additional facts supporting the claimant's claim; and
- (8) The precise relief sought.

(f) Copies of the claim shall be mailed to the seizing agency and to the attorney general. One extension of thirty days for filing of the claim may be granted upon a written request demonstrating good cause provided that the request is received within the thirty-day period for filing of a claim.

(g) The hearing on the claim, to the extent practicable and consistent with the interest of justice, shall be held within sixty days after the filing of the petition. The court may consolidate the hearing on the claim with a hearing on any other claim concerning the same property.

(h) At the hearing, the claimant may testify, present evidence and witnesses on the claimant's behalf, and cross-examine witnesses who appear at the hearing. The Republic of Palau may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing.

(i) The Republic of Palau has the initial burden of showing by a preponderance of the evidence that the claimant's interest in the property is subject to forfeiture. On such a showing by the Republic, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture.

(j) In accordance with its findings at the hearing, the court shall order an interest in property returned or conveyed to the claimant, if any, who has established by a preponderance of the evidence that the claimant's interest is not subject to forfeiture. The court shall order all other property, including all interests in the property, forfeited to the Republic of Palau and proceed pursuant to 17 PNC sections 715 and 716.

§ 713. Judicial in personam forfeiture proceedings; judicial forfeiture proceedings against a specific person.

(a) If a forfeiture is authorized by law, it shall be ordered by a court on a petition for forfeiture filed by the attorney general in an in personam civil or criminal action. In any civil in personam action brought under this section, the owner or interest-holder may testify, present evidence and witnesses on the owner or interest-holder's behalf, and cross-examine witnesses who appear at the hearing. The Republic of Palau may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. The Republic of Palau has the initial burden of showing by a preponderance of the evidence that the owner or interest-holder's interest in the property is subject to forfeiture. On such a showing

by the Republic, the owner or interest-holder has the burden of showing by a preponderance of the evidence that the owner or interest-holder's interest in the property is not subject to forfeiture.

(b) In any proceeding pursuant to this section, the court, on application of the attorney general, may enter any order authorized by 17 PNC section 711 or take any other action to seize, secure, maintain or preserve the availability of property subject to forfeiture under this chapter, including a warrant for its seizure, whether before or after the filing of a petition for forfeiture or criminal information.

(c) A temporary restraining order under this section may be entered on petition of the Republic of Palau without notice or an opportunity for a hearing if the Republic of Palau demonstrates that:

(1) There is probable cause to believe that the property with respect to which the order is sought would, in the event of final judgment or conviction, be subject to forfeiture; and

(2) Provision of notice will jeopardize the availability of the property subject to forfeiture.

(d) A temporary restraining order expires within fifteen days after the date on which it is entered unless the party against whom it is entered consents to an extension for a longer period or unless after commencing a hearing the court enters or is considering a preliminary injunction.

(e) Notice of the issuance of the temporary restraining order and an opportunity for a hearing shall be afforded to persons known to have an interest in the property. The hearing, however, is limited to the issues required to be demonstrated in subsection (c)(1) and (2) of this section.

(f) A hearing requested by any owner or interest-holder concerning a temporary restraining order entered under this section shall be held at the earliest practicable time and before the expiration of a temporary order.

(g) On a determination of liability or the conviction of a person for conduct giving rise to forfeiture under this title, the court shall enter a judgment of forfeiture of the property described in the petition for forfeiture, and shall also authorize the attorney general, their agents or any other law enforcement officer to seize all property ordered forfeited that was not previously seized or is not then under seizure. Following the entry of an order declaring the property forfeited, the court, on application of the Republic of Palau, may enter any order authorized by 17 PNC section 711 or take any other action to protect the interest of the Republic of Palau or political subdivision thereof in the property ordered forfeited. The filing of the order of forfeiture in the appropriate public records perfects the interest of the Republic of Palau in the property described in the order as of the date that a notice of pending forfeiture was first filed in the records, which entitles the Republic of Palau to all rights of a secured party as to that property in addition to any other rights or remedies of the Republic in relation to the property. Any income accruing to, or derived from, an enterprise or any interest in an enterprise or other property interest that is forfeited under this chapter is also forfeited from the time of the conduct giving rise to forfeiture. Such income may be used pending procedures subsequent to a verdict or finding of liability to offset ordinary and necessary expenses of the enterprise or property as required by law or that are necessary to protect the interests of the Republic of Palau or political subdivision thereof.

(h) Procedures subsequent to the verdict or finding of liability and order of forfeiture shall be as follows:

(1) Following the entry of an order of forfeiture, the clerk of the court shall

give notice of pending forfeiture to owners and interest-holders who have not previously been given notice, if any, in the manner provided in 17 PNC section 708;

(2) Any owner or interest-holder, other than a party or a defendant in the underlying in personam action, asserting an interest in property that has been ordered forfeited pursuant to such action, within thirty days after initial notice of pending forfeiture or after notice under paragraph (1) of this subsection, whichever is earlier, may file a claim as described in 17 PNC section 712(e), in the court for a hearing to adjudicate the validity of the person's claimed interest in the property;

(3) The hearing on the claim, to the extent practicable and consistent with the interest of justice, shall be held within sixty days after the order of forfeiture. The court may consolidate the hearing on the claim with a hearing on any other claim filed by a person other than a party or defendant in the underlying action and concerning the same property;

(4) The hearing shall be conducted in the manner provided for in rem judicial forfeiture actions including the provisions of 17 PNC section 712(g) and (h). In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the underlying civil or criminal action that resulted in the order of forfeiture; and

(5) In accordance with its findings at the hearing, the court may amend the order of forfeiture if it determines that any claimant has established by a preponderance of the evidence that the claimant has a legal interest in the property, and the claimant's interest is property designated as not subject to forfeiture by 17 PNC section 704.

(i) Except as provided in 17 PNC section 711(b) and subsection (g)(2) of this section, a person claiming an interest in property subject to forfeiture under this section may not:

(1) Intervene in a trial or an appeal of a criminal or in personam civil case involving the forfeiture of such property; or

(2) Commence or maintain any action against the Republic of Palau concerning the validity of the alleged interest other than as provided in this chapter.

(j) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of filed or subsequent claims pursuant to this section the court, on application of the Republic of Palau, may order that the testimony of any witness relating to the property forfeited or alleged to be subject to forfeiture be taken by deposition and that any designated book, paper, document, record, recording, electronic or otherwise, or other material that is not privileged be produced at the same time and place and in the same manner as that provided for the taking of depositions under the rules of civil procedure.

§ 714. Supplemental remedies.

(a) The court shall order the forfeiture of any other property of an in personam civil or criminal defendant up to the value of the subject property if any of the property subject to forfeiture:

(1) cannot be located;

(2) has been transferred or conveyed to, sold to, or deposited with a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value by any act or omission of a defendant, or a defendant's agent or assignee;

(5) has been commingled with other property which cannot be divided without difficulty.

(b) In addition to any other remedy provided for by law, if property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of notice or provision of notice of pending forfeiture or after the filing and notice of a civil proceeding or criminal proceeding alleging forfeiture under this chapter, whichever is earlier, the Republic of Palau or seizing agency, on behalf of the Republic of Palau, may institute an action in the trial division of the Supreme Court against the person named in the filed notice or notice of pending forfeiture or the defendant in the civil proceeding or criminal proceeding, and the court shall enter final judgment against the person named in the filed notice or notice of pending forfeiture or the defendant in the civil proceeding or criminal proceeding in an amount equal to the fair market value of the property, together with reasonable investigative expenses and attorney fees. If a civil proceeding is pending, such action shall be filed only in the court where the civil proceeding is pending.

(c) This section does not limit the right of the Republic of Palau to obtain any order or injunction, receivership, writ, attachment, garnishment, or other remedy authorized under this chapter or appropriate to protect the interests of the Republic of Palau or available under other applicable law.

§ 715. Disposition of claims by court.

(a) Following the court's disposition of all claims filed under this chapter, or if no such claims are filed, following the expiration of the period provided in this chapter for the filing of such claims, the Republic of Palau has clear title to property that is the subject of the in rem or in personam petition and the court shall so order. Title to the forfeited property and its proceeds is deemed to have vested in the Republic of Palau on the commission of the act or omission giving rise to the forfeiture.

(b) The court, on motion of the attorney general, may release or convey forfeited personal property to an interest-holder who has satisfied both the attorney general and the court that all of the following are true:

(1) The interest-holder has an interest that was acquired in the regular course of business as a financial institution and that is not subject to forfeiture pursuant to 17 PNC section 704;

(2) The amount of the interest-holder's encumbrance and the fair market value of the property are readily determinable and both amounts have been reasonably established by proof made available by the attorney general to the court;

(3) There are no encumbrances on the property other than encumbrances held by the interest-holder seeking possession; and

(4) The interest-holder has satisfied the Republic of Palau's interest by tendering the fair market value of the property and the expenses of its sale or disposal by the interest-holder.

(c) Upon order of the court forfeiting the subject property the attorney general may transfer good and sufficient title to any subsequent purchaser or transferee, and the title shall be recognized by all courts, by the Republic of Palau, and by all bureaus and agencies of the Republic of Palau and any political subdivision thereof.

(d) Upon entry of judgment for a claimant or claimants in any proceeding to forfeit property under this chapter such property or interest in property shall be returned or conveyed to the claimant or claimants designated by the court. If it appears that there was reasonable cause for the seizure for forfeiture or the filing of the complaint or information, the court shall cause a finding to be entered, and the claimant is not, in such case, entitled to costs or damages. Nor, in such case, is the person or seizing agency, or its agents, who made the seizure, or the attorney general liable to suit or judgment on account of such seizure, suit, or prosecution.

(e) The court shall order any claimant who fails to establish that the claimant's entire interest is exempt from forfeiture under 17 PNC section 704 to pay the costs of any claimant who establishes that the entire interest is exempt from forfeiture under 17 PNC section 704, and the Republic of Palau's costs and expenses of the investigation and prosecution of the matter, including reasonable attorney fees.

§ 716. Disposition of property forfeited.

(a) There is hereby established a Forfeited Property Fund within the National Treasury. There shall be placed in the Forfeited Property Fund:

(1) all property seized by order of forfeiture;

(2) any sums of money allocated to it by appropriation from the Olbiil Era Kelulau;

(3) any voluntary payment, grant or gift made for the purposes of the Forfeited Property Fund; and

(4) money paid to the Republic of Palau by a foreign country in connection with assistance provided by the Republic of Palau in relation to the recovery by that country of the proceeds of unlawful activity or the investigation or prosecution of unlawful activity.

(b) All property forfeited to the Republic of Palau under this chapter shall be transferred to the attorney general who:

(1) Shall transfer all currency to the Forfeited Property Fund;

(2) May sell forfeited property to the public by public sale; proceeds from the sale shall be transferred to the Forfeited Property Fund;

(3) May transfer property, other than currency, which shall be distributed in accordance with subsection (b) to any national government entity, state government entity, municipality, or law enforcement agency within the Republic of Palau;

(4) May sell or destroy all raw materials, products, and equipment of any kind used or intended for use in manufacturing, compounding, or processing a controlled substance;

(5) May compromise and pay valid claims against property forfeited pursuant to this chapter; or

(6) May make any other disposition of forfeited property as authorized by law.

(c) All forfeited property and the sale proceeds thereof, not previously transferred pursuant to subsection (b)(3) of this section, shall, after payment of expenses of administration and sale, be distributed as follows:

(1) Fifty percent (50%) shall be distributed to the unit or units of the Republic

of Palau, or state or local government whose officers or employees conducted the investigation and caused the arrest of the person whose property was forfeited or seizure of the property for forfeiture;

(2) Twenty five percent (25%) shall be distributed to the attorney general who instituted the action producing the forfeiture; and

(3) Twenty five percent (25%) shall be deposited into the Forfeited Property Fund established by this chapter.

(d) Property and money distributed to units of the Republic of Palau, or state and local government shall be used for law enforcement purposes, and shall complement but not supplant the funds regularly appropriated for such purposes.

(e) The funds maintained in the Forfeited Property Fund shall be expended by the attorney general for the following purposes:

(1) The payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to this chapter or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property and such contract services and payments to reimburse any national or state agency for any expenditures made to perform the foregoing functions;

(2) The payment of awards for information or assistance leading to a civil or criminal proceeding;

(3) The payment of supplemental sums to national, state or foreign agencies for law enforcement purposes; and

(4) The payment of expenses arising in connection with programs for training and education of law enforcement officers.

(f) The attorney general shall promulgate rules and regulations pursuant to 6 PNC Chapter 1, the Administrative Procedures Act, concerning the disposition of property, the use of the fund, and paying valid claims against property forfeited pursuant to this chapter.

(g) Not less than thirty days prior to the close of each fiscal year, the attorney general shall provide a report to the President of the Republic of Palau and the Olbiil Era Kelulau on the status of the Forfeited Property Fund. The report shall include, but is not limited to:

(1) The total amount and type of property seized by law enforcement agencies;

(2) The total number of administrative and judicial actions filed by the office of the attorney general and the disposition thereof;

(3) The total number of claims or petitions for remission or mitigation filed in administrative actions and the dispositions thereof;

(4) The total amount and type of property forfeited and the sale proceeds thereof;

(5) The total amount and type of property distributed to units of national or state government;

(6) The amount of money deposited into the Forfeited Property Fund; and

(7) The amount of money expended by the attorney general from the Forfeited Property Fund and the reason for the expenditures.

(h) The Forfeited Property Fund shall be subject to annual audit pursuant to 40 PNC Chapter 2, the Public Auditing Act.

§ 717. Limitation of actions.

Notwithstanding any other provision of law, forfeiture proceedings under this chapter may be commenced at any time within the period in which a criminal proceeding may be instituted for a covered offense pursuant to 17 PNC section 106 of this Penal Code.

§ 718. Victim restitution.

Nothing herein precludes a court from ordering restitution or reparation to a victim by the defendant as part of a sentence imposed for a violation of a covered offense.

§ 719. Construction.

It is the intent of the legislature that this chapter be liberally construed so as to give effect to the purposes of this chapter.

DIVISION TWO  
INCHOATE CRIMES  
INTRODUCTORY COMMENTARY

This Division deals with conduct that is designed to culminate in the commission of a substantive offense but fails to do so. The failure may be due to apprehension or intervention by law enforcement officials or it may be due to some other miscalculation on the part of the defendant. In this sense attempt, solicitation, and conspiracy are predominantly inchoate in nature and are grouped in this chapter for unified and integrated treatment.

CHAPTER 8  
CRIMINAL ATTEMPT

§ 800. Criminal attempt.

§ 801. Criminal attempt; attempting to aid another.

§ 802. Grading of criminal attempt.

§ 800. Criminal attempt.

(a) A person is guilty of an attempt to commit a crime if the person:

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

(2) Intentionally engages in conduct that, under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct intended to culminate in the person's commission of the crime.

(b) When causing a particular result is an element of the crime, a person is guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, the person intentionally engages in conduct that is a substantial step in a course of conduct intended or known to cause such a result.

(c) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

§ 801. Criminal attempt; attempting to aid another.

(a) A person who engages in conduct intended 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 the other person, provided his or her conduct would establish his or her complicity under 17 PNC sections 222 through 226 of this Penal Code if the crime

were committed or attempted by the other person.

(b) It is not a defense to a prosecution under this section that under the circumstances it was impossible for the defendant to aid the other person in the commission of the offense, provided he or she could have done so had the circumstances been as he or she believed them to be.

§ 802. Grading of criminal attempt.

An attempt to commit a crime is an offense of the same class and grade as the most serious offense that is attempted.

## CHAPTER 9 CRIMINAL SOLICITATION

§ 900. Criminal solicitation.

§ 901. Immunity, irresponsibility, or incapacity of a party to criminal solicitation.

§ 902. Grading of criminal solicitation.

§ 900. Criminal solicitation.

(a) A person is guilty of criminal solicitation if, with the intent to promote or facilitate the commission of a crime, the person commands, encourages, or requests another person to engage in conduct or cause the result specified by the definition of an offense or to engage in conduct that would be sufficient to establish complicity in the specified conduct or result.

(b) It is immaterial under subsection (a) that the defendant fails to communicate with the person the defendant solicits if the defendant's conduct was designed to effect such communication.

§ 901. Immunity, irresponsibility, or incapacity of a party to criminal solicitation.

(a) A person shall not be liable under 17 PNC section 900 for criminal solicitation of another if under 17 PNC sections 224(a) and (b) and 225(a) of this Penal Code he or she would not be legally accountable for the conduct of the other person.

(b) It is not a defense to a prosecution under 17 PNC section 900 that the person solicited could not be guilty of committing the crime because:

(1) He or she is, by definition of the offense, legally incapable in an individual capacity of committing the offense solicited;

(2) He or she is penally irresponsible or has immunity to prosecution or conviction for the commission of the crime;

(3) He or she is unaware of the criminal nature of the conduct in question or of the defendant's criminal intent; or

(4) He or she does not have the state of mind sufficient for the commission of the offense in question.

(c) It is not a defense to a prosecution under 17 PNC section 900 that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense solicited.

§ 902. Grading of criminal solicitation.

Criminal solicitation is an offense one class or grade, as the case may be, less than the offense solicited; provided that criminal solicitation to commit murder in any degree is a class A felony.

## CHAPTER 10 CRIMINAL CONSPIRACY

§ 1000. Criminal conspiracy.

- § 1001. Scope of conspiratorial relationship.
- § 1002. Conspiracy with multiple criminal objectives.
- § 1003. Immunity, irresponsibility, or incapacity of a party to criminal conspiracy.
- § 1004. Venue in criminal conspiracy prosecutions.
- § 1005. Duration of conspiracy.
- § 1006. Grading of criminal conspiracy.

§ 1000. Criminal conspiracy.

A person is guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a crime:

(a) He or she agrees with one or more persons that they or one or more of them will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense; and

(b) He or she, or another person with whom he or she conspired commits an overt act in pursuance of the conspiracy.

§ 1001. Scope of conspiratorial relationship.

If a person guilty of criminal conspiracy, as defined in 17 PNC section 1000, knows that a person with whom he or she conspires to commit a crime has conspired with another person or persons to commit the same crime, he or she is guilty of conspiring to commit the crime with such other person or persons, whether or not he or she knows their identity.

§ 1002. Conspiracy with multiple criminal objectives.

If a person conspires to commit a number of crimes, the person is guilty of only one conspiracy if the multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

§ 1003. Immunity, irresponsibility, or incapacity of a party to criminal conspiracy.

(a) A person shall not be liable under 17 PNC Section 1000 for criminal conspiracy if under 17 PNC Sections 224(a) and (b) and 225(a) of this Penal Code he or she would not be legally accountable for the conduct of the other person.

(b) It is not a defense to a prosecution under 17 PNC Section 1000 that a person with whom the defendant conspires could not be guilty of committing the crime because:

(1) He or she is, by definition of the offense, legally incapable in an individual capacity of committing the offense;

(2) He or she is penally irresponsible or has immunity to prosecution or conviction for the commission of the crime;

(3) He or she is unaware of the criminal nature of the conduct in question or of the defendant's criminal intent; or

(4) He or she does not have the state of mind sufficient for the commission of the offense in question.

(c) It is not a defense to a prosecution under 17 PNC Section 1000 that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense that is the object of the conspiracy.

§ 1004. Venue in criminal conspiracy prosecutions.

For purposes of determining venue in a prosecution for criminal conspiracy, a criminal conspiracy is committed in the jurisdiction in which the defendant enters into the conspiracy and in the jurisdiction in which the defendant or person with whom the defendant conspires does an overt act.

§ 1005. Duration of conspiracy.

For purposes of 17 PNC Section 106, the following apply:

(a) Conspiracy is a continuing course of conduct that terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom the defendant conspired.

(b) It is prima facie evidence that the agreement has been abandoned if neither the defendant nor anyone with whom the defendant conspired did any overt act in pursuance of the conspiracy during the applicable period of limitation.

(c) If an individual abandons the agreement, the conspiracy is terminated as to that individual only if and when the individual advises those with whom the individual conspired of the individual's abandonment; or the individual informs the law-enforcement authorities of the existence of the conspiracy and of the individual's participation therein.

§ 1006. Grading of criminal conspiracy.

(a) A conspiracy to commit murder in any degree is a class A felony.

(b) Except as provided in subsection (a), a conspiracy to commit a class A felony is a class B felony.

(c) Except as provided in subsections (a) and (b), conspiracy to commit a crime is an offense of the same class and grade as the most serious offense that is an object of the conspiracy.

## CHAPTER 11

### GENERAL PROVISIONS RELATING TO INCHOATE OFFENSES

§ 1100. Renunciation of attempt, solicitation, or conspiracy; affirmative defense.

§ 1101. Multiple convictions.

§ 1100. Renunciation of attempt, solicitation, or conspiracy; affirmative defense.

(a) In a prosecution for criminal attempt, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result that is the object of the attempt.

(b) In a prosecution for criminal solicitation, it is an affirmative defense that the defendant, under circumstances manifesting a complete and voluntary renunciation of the defendant's criminal intent:

(1) First notified the person solicited of the defendant's renunciation,

(2) Gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result solicited.

(c) In a prosecution for criminal conspiracy, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result that is the object of the conspiracy.

(d) A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by:

(1) A belief that circumstances exist that increase the probability of detection or apprehension of the accused or another participant in the criminal enterprise, or that render more difficult the accomplishment of the criminal purpose; or

(2) A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

(e) A warning to law-enforcement authorities is not “timely” within the meaning of this section unless the authorities, reasonably acting upon the warning, would have the opportunity to prevent the conduct or result. An effort is not “reasonable” within the meaning of this section unless the defendant, under reasonably foreseeable circumstances, would have prevented the conduct or result.

§ 1101. Multiple convictions.

A person may not be convicted of more than one offense defined by this chapter for conduct designed to commit or culminate in the commission of the same substantive crime.

DIVISION THREE  
OFFENSES AGAINST THE PERSON  
CHAPTER 12  
GENERAL PROVISIONS RELATING TO OFFENSES AGAINST THE PERSON

§ 1200. Definitions of terms in this division.

§ 1200. Definitions of terms in this division.

In this chapter, 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) “Emergency worker” means any:

(A) Law enforcement officer, including but not limited to any police officer, public safety officer, marshal, parole or probation officer, or any other officer of any state or military agency authorized to exercise law enforcement or police powers;

(B) Firefighter, emergency medical services personnel, emergency medical technician, ambulance crewmember, or any other emergency response personnel;

(C) Person engaged in civil defense functions or disaster relief as authorized by 34 PNC Chapter 53.

(6) “Incompetent person” means a person who because of disease, disorder or defect is unable to care for himself or herself.

(7) “Labor” means work of economic or financial value.

(8) “Married” includes persons legally married or solemnized in accordance with recognized custom, and a male and female living together as husband and wife regardless of their legal status, but does not include spouses living apart.

(9) “Mentally defective” means a person suffering from a disease, disorder, or defect that renders the person incapable of appraising the nature of the person’s conduct.

(10) “Mentally incapacitated” means a person rendered temporarily incapable of appraising or controlling the person’s conduct as a result of the influence of a substance administered to the person without the person’s consent.

(11) “Person” means a human being who has been born and is alive.

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

(13) “Relative” means parent, ancestor, brother, sister, uncle, aunt, or legal guardian.

(14) “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.

(15) “Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(16) “Services” means a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Prostitution-related and obscenity-related activities as set forth in 17 PNC Division Seven of this Penal Code are forms of “services” under this section. Nothing in this chapter shall be construed to legitimize or legalize prostitution.

(17) “Sexual contact” means any touching, other than acts of “sexual penetration”, 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.

(18) “Sexual penetration” means:

(A) Vaginal intercourse, anal intercourse, fellatio, 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. As used in this definition, “genital opening” includes the

anterior surface of the vulva or labia majora; or

(B) Cunnilingus or anilingus, whether or not actual penetration has occurred. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.

(19) “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.

(20) “Substantial bodily injury” means bodily injury which causes:

(A) A major avulsion, laceration, or penetration of the skin;

(B) A burn of at least second degree severity;

(C) A bone fracture;

(D) A serious concussion; or

(E) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.

## CHAPTER 13 CRIMINAL HOMICIDE

§ 1300. Murder in the first degree.

§ 1301. Murder in the second degree.

§ 1302. Manslaughter.

§ 1303. Negligent homicide in the first degree.

§ 1304. Negligent homicide in the second degree.

§ 1305. Negligent homicide in the third degree.

§ 1306. Negligent injury in the first degree.

§ 1307. Negligent injury in the second degree.

§ 1308. Duty to report wounds or deaths.

§ 1309. Abortion.

§ 1300. Murder in the first degree.

(a) A person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of:

(1) More than one person in the same or separate incident;

(2) A law enforcement officer, judge, or prosecutor arising out of the performance of official duties;

(3) A person known by the defendant to be a witness in a criminal prosecution and the killing is related to the person’s status as a witness;

(4) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this section;

(5) A person while the defendant was imprisoned;

(b) Murder in the first degree is a felony for which the defendant shall be sentenced to imprisonment as provided in 17 PNC section 660.

§ 1301. Murder in the second degree.

(a) Except as provided in section 1300, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person.

(b) Murder in the second degree is a felony for which the defendant shall be sentenced to imprisonment as provided in 17 PNC section 660.

§ 1302. Manslaughter.

(a) A person commits the offense of manslaughter if:

- (1) The person recklessly causes the death of another person; or
- (2) The person intentionally causes another person to commit suicide.

(b) In a prosecution for murder or attempted murder in the first and second degrees it is an affirmative defense, which reduces the offense to manslaughter or attempted manslaughter, that the defendant was, at the time the defendant caused the death of the other person, under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation. The reasonableness of the explanation shall be determined from the viewpoint of a reasonable person in the circumstances as the defendant believed them to be.

(c) Manslaughter is a class A felony.

§ 1303. Negligent homicide in the first degree.

(a) A person is guilty of the offense of negligent homicide in the first degree if that person causes the death of another person by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol.

(b) Negligent homicide in the first degree is a class B felony.

§ 1304. Negligent homicide in the second degree.

(a) A person is guilty of the offense of negligent homicide in the second degree if that person causes the death of another person by the operation of a vehicle in a negligent manner.

(b) Negligent homicide in the second degree is a class C felony.

§ 1305. Negligent homicide in the third degree.

(a) A person is guilty of the offense of negligent homicide in the third degree if that person causes the death of another person by the operation of a vehicle in a manner that is simple negligence.

(b) "Simple negligence" as used in this section:

- (1) A person acts with simple negligence with respect to the person's conduct when the person should be aware of a risk that the person engages in that conduct.
- (2) A person acts with simple negligence with respect to attendant circumstances when the person should be aware of a risk that those circumstances exist.
- (3) A person acts with simple negligence with respect to a result of the person's conduct when the person should be aware of a risk that the person's

conduct will cause that result.

(4) A risk is within the meaning of this subsection if the person's failure to perceive it, considering the nature and purpose of the person's conduct and the circumstances known to the person, involves a deviation from the standard of care that a law-abiding person would observe in the same situation.

(c) Negligent homicide in the third degree is a misdemeanor.

§ 1306. Negligent injury in the first degree.

(a) A person is guilty of the offense of negligent injury in the first degree if that person causes serious bodily injury to another person by the operation of a motor vehicle in a negligent manner.

(b) Negligent injury in the first degree is a class C felony.

§ 1307. Negligent injury in the second degree.

(a) A person is guilty of the offense of negligent injury in the second degree if that person causes substantial bodily injury to another person by the operation of a motor vehicle in a negligent manner.

(b) Negligent injury in the second degree is a misdemeanor.

§ 1308. Duty to report wounds or deaths.

(a) A 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 violence or poisoning, shall make a report thereof immediately upon obtaining such knowledge, to the nearest law enforcement official or to any police officer or to the Director of the Bureau of Public Safety. Said report shall state:

(1) the name and location of injured or deceased person;

(2) the date of injury or death, or date of gaining knowledge thereof by informant, if date of injury or death is unknown;

(3) the cause and manner of injury or death;

(4) the name of the person causing injury or death, if known.

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

(c) Any person violating subsection (a) of this section shall be guilty of a misdemeanor.

§ 1309. Abortion.

(a) A person is guilty of the offense of abortion if that person intentionally causes a woman to miscarry or prematurely deliver a fetus.

(b) Abortion is a class C felony.

#### CHAPTER 14 CRIMINAL ASSAULTS AND RELATED OFFENSES

§ 1400. Assault in the first degree.

§ 1401. Assault in the second degree.

§ 1402. Assault in the third degree.

§ 1403. Assault against a law enforcement officer in the first degree.

§ 1404. Assault against a law enforcement officer in the second degree.

§ 1405. Reckless endangering in the first degree.

§ 1406. Reckless endangering in the second degree.

§ 1407. Terroristic threatening, defined.

§ 1408. Terroristic threatening in the first degree.

§ 1409. Terroristic threatening in the second degree.

§ 1400. Assault in the first degree.

(a) A person commits the offense of assault in the first degree if the person intentionally or knowingly causes serious bodily injury to another person.

(b) Assault in the first degree is a class B felony.

§ 1401. Assault in the second degree.

(a) A person commits the offense of assault in the second degree if:

(1) The person intentionally or knowingly causes substantial bodily injury to another;

(2) The person recklessly causes serious or substantial bodily injury to another;

(3) The person intentionally or knowingly causes bodily injury to a correctional worker, as defined in 17 PNC section 4011(b) of this Penal Code, who is engaged in the performance of duty or who is within a correctional facility; or

(4) The person intentionally or knowingly causes bodily injury to another with a dangerous instrument.

(b) Assault in the second degree is a class C felony.

§ 1402. Assault in the third degree.

(a) A person commits the offense of assault in the third degree if the person:

(1) Intentionally, knowingly, or recklessly causes bodily injury to another person; or

(2) Negligently causes bodily injury to another person with a dangerous instrument.

(b) Assault in the third degree is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

§ 1403. Assault against a law enforcement officer in the first degree.

(a) A person commits the offense of assault against a law enforcement officer in the first degree if the person:

(1) Intentionally or knowingly causes bodily injury to a law enforcement officer who is engaged in the performance of duty; or

(2) Recklessly or negligently causes, with a dangerous instrument, bodily injury to a law enforcement officer who is engaged in the performance of duty.

(b) Assault of a law enforcement officer in the first degree is a class C felony.

§ 1404. Assault against a law enforcement officer in the second degree.

(a) A person commits the offense of assault against a law enforcement officer in the second degree if the person recklessly causes bodily injury to a law enforcement officer who is engaged in the performance of duty.

(b) Assault of a law enforcement officer in the second degree is a misdemeanor.

§ 1405. Reckless endangering in the first degree.

(a) A person commits the offense of reckless endangering in the first degree if the person employs widely dangerous means in a manner that recklessly places another person in danger of death or serious bodily injury.

(b) Reckless endangering in the first degree is a class C felony.

§ 1406. Reckless endangering in the second degree.

(a) A person commits the offense of reckless endangering in the second degree if the person engages in conduct that recklessly places another person in danger of death or serious bodily injury.

(b) Reckless endangering in the second degree is a misdemeanor.

§ 1407. Terroristic threatening, defined.

A person commits the offense of terroristic threatening if the person threatens, by word or conduct, to cause bodily injury to another person or serious damage to property of another or to commit a felony:

(a) With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person; or

(b) With intent to cause, or in reckless disregard of the risk of causing evacuation of a building, place of assembly, or facility of public transportation.

§ 1408. Terroristic threatening in the first degree.

(a) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

(1) By threatening another person on more than one occasion for the same or a similar purpose;

(2) By threats made in a common scheme against different persons;

(3) Against a public servant arising out of the performance of the public servant's official duties. For the purposes of this paragraph, "public servant" includes but is not limited to civil service employees and educational workers; or

(4) With the use of a dangerous instrument.

(b) Terroristic threatening in the first degree is a class C felony.

§ 1409. Terroristic threatening in the second degree.

(a) A person commits the offense of terroristic threatening in the second degree if the person commits terroristic threatening other than as provided in 17 PNC section 1408.

(b) Terroristic threatening in the second degree is a misdemeanor.

CHAPTER 15  
KIDNAPPING AND RELATED OFFENSES;  
CRIMINAL COERCION

§ 1500. Kidnapping.

§ 1501. Unlawful imprisonment in the first degree.

§ 1502. Unlawful imprisonment in the second degree.

§ 1500. Kidnapping.

(a) A person commits the offense of kidnapping if the person intentionally or knowingly restrains another person with intent to:

(1) Hold that person for ransom or reward;

(2) Use that person as a shield or hostage;

(3) Facilitate the commission of a felony or flight thereafter;

(4) Inflict bodily injury upon that person or subject that person to a sexual offense;

(5) Terrorize that person or a third person;

(6) Interfere with the performance of any governmental or political function;  
or

(7) Unlawfully obtain the labor or services of that person, regardless of whether related to the collection of a debt.

(b) Except as provided in subsection (c) below, kidnapping is a class A felony.

(c) In a prosecution for kidnapping, it is a defense which reduces the offense to a class B felony that the defendant voluntarily released the victim, alive and not suffering from serious or substantial bodily injury, in a safe place prior to trial.

§ 1501. Unlawful imprisonment in the first degree.

(a) A person commits the offense of unlawful imprisonment in the first degree if the person knowingly restrains another person under circumstances that expose the person to the risk of serious bodily injury.

(b) Unlawful imprisonment in the first degree is a class C felony.

§ 1502. Unlawful imprisonment in the second degree.

(a) A person commits the offense of unlawful imprisonment in the second degree if the person knowingly restrains another person.

(b) In any prosecution under this section it is an affirmative defense, that (1) the person restrained was less than eighteen years old, (2) the defendant was a relative of the victim, and (3) the defendant's sole purpose was to assume custody over the victim. In that case, the liability of the defendant shall be governed by Title 21 PNC and may be convicted under Title 21 PNC even if charged under this section.

(c) In any prosecution under this section it is an affirmative defense, that the person restrained (1) was on or in the immediate vicinity of the premises of a retail establishment for the purpose of investigation or questioning as to the ownership of any merchandise; (2) was restrained in a reasonable manner and for not more than a reasonable time; (3) was restrained to permit such investigation or questioning by a police officer or by the owner of the retail establishment, the owner's authorized employee or agent; and (4) that such police officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit theft of merchandise on the premises.

(d) Unlawful imprisonment in the second degree is a misdemeanor.

CHAPTER 16  
SEXUAL OFFENSES

§ 1600. Definitions of terms in this chapter.

§ 1601. Incest.

§ 1602. Sexual assault in the first degree.

§ 1603. Sexual assault in the second degree.

§ 1604. Sexual assault in the third degree.

§ 1605. Sexual assault in the fourth degree.

§ 1606. Continuous sexual assault of a minor under the age of fifteen years.

§ 1607. Sexual harassment.

§ 1608. Indecent exposure.

§ 1600. Definitions of terms in this chapter.

In this chapter, 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) “Incompetent person” means a person who because of disease, disorder or defect is unable to care for himself or herself.

(6) “Law enforcement officer” means any public servant, whether employed by the Republic of Palau or political subdivisions thereof, or any state thereof, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.

(7) “Married” includes persons legally married or solemnized in accordance with recognized custom, and a male and female living together as husband and wife regardless of their legal status, but does not include spouses living apart.

(8) “Mentally defective” means a person suffering from a disease, disorder, or defect that renders the person incapable of appraising the nature of the person’s conduct.

(9) “Mentally incapacitated” means a person rendered temporarily incapable of appraising or controlling the person’s conduct as a result of the influence of a substance administered to the person without the person’s consent.

(10) “Person” means a human being who has been born and is alive.

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

(12) “Relative” means parent, ancestor, brother, sister, uncle, aunt, or legal guardian.

(13) “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.

(14) “Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(15) “Sexual contact” means any touching, other than acts of “sexual penetration”, 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.

(16) “Sexual penetration” means:

(A) Vaginal intercourse, anal intercourse, fellatio, 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. As used in this definition, “genital opening” includes the anterior surface of the vulva or labia majora; or

(B) Cunnilingus or anilingus, whether or not actual penetration has occurred. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.

(17) “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.

(18) “Substantial bodily injury” means bodily injury which causes:

(A) A major avulsion, laceration, or penetration of the skin;

(B) A burn of at least second degree severity;

(C) A bone fracture;

(D) A serious concussion; or

(E) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.

§ 1601. Incest.

(a) A person commits the offense of incest if the person commits an act of sexual penetration with another who is within the degrees of consanguinity or affinity within which marriage is prohibited by law or custom.

(b) Incest is a strict liability offense.

(c) Incest is a felony and upon conviction thereof shall be imprisoned for a period of not more than twenty-five years, or fined up to fifty thousand dollars (\$50,000), or both.

§ 1602. Sexual assault in the first degree.

(a) A person commits the offense of sexual assault in the first degree if:

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

(2) The person knowingly engages in sexual penetration with another person who is less than fifteen years old;

(3) The person knowingly engages in sexual penetration with a person who is at least fifteen years old but less than seventeen years old; provided that:

(A) The person is not less than five years older than the minor; and

(B) The person is not legally married to the minor;

(4) The person knowingly subjects to sexual penetration another person who is mentally defective; or

(5) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent.

Paragraphs (2) and (3) shall not be construed to prohibit licensed medical practitioners from performing any act within their respective practices.

(b) Sexual assault in the first degree is a felony and upon conviction thereof shall be imprisoned for a period of not more than twenty-five years, or fined up to fifty thousand dollars (\$50,000), or both.

§ 1603. Sexual assault in the second degree.

(a) A person commits the offense of sexual assault in the second degree if:

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

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

(3) The person, while employed:

(A) In a Republic of Palau correctional facility or a community-based residential facility;

(B) By a private company providing services at a correctional facility;

(C) By a private company providing community-based residential

services to persons committed to the Bureau of Public Safety and having received notice of this statute;

(D) By a private correctional facility operating in the Republic of Palau; or

(E) As a law enforcement officer, knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person committed to the Bureau of Public Safety, a person residing in a private correctional facility operating in the Republic of Palau, or a person in custody; provided that paragraph (2) and this paragraph shall not be construed to prohibit licensed medical practitioners from performing any act within their respective practices; and 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) Sexual assault in the second degree is a felony and upon conviction thereof shall be imprisoned for a period of not more than ten years, or fined up to twenty-five thousand dollars (\$25,000), or both.

§ 1604. Sexual assault in the third degree.

(a) A person commits the offense of sexual assault in the third degree if:

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

(2) The person knowingly subjects to sexual contact another person who is less than fifteen years old or causes such a person to have sexual contact with the person;

(3) The person knowingly engages in sexual contact with a person who is at least fifteen years old but less than seventeen years old or causes the minor to have sexual contact with the person; provided that:

(A) The person is not less than five years older than the minor; and

(B) The person is not legally married to the minor;

(4) 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;

(5) The person, while employed:

(A) In a Republic of Palau correctional facility or a community-based residential facility;

(B) By a private company providing services at a correctional facility;

(C) By a private company providing community-based residential services to persons committed to the Bureau of Public Safety and having received notice of this statute;

(D) By a private correctional facility operating in the Republic of Palau; or

(E) As a law enforcement officer, knowingly subjects to sexual contact an imprisoned person, a person confined to a detention

facility, a person committed to the Bureau of Public Safety, a person residing in a private correctional facility operating in the Republic of Palau, or a person in custody, or causes the person to have sexual contact with the actor; or

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

Paragraphs (2), (3), (4), and (5) shall not be construed to prohibit licensed medical practitioners from performing any act within their respective practices; provided further that paragraph (5)(E) shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or an exception to the warrant clause.

(b) Sexual assault in the third degree is a felony and upon conviction thereof shall be imprisoned for a period of not more than five years, or fined up to ten- thousand dollars (\$10,000), or both.

§ 1605. Sexual assault in the fourth degree.

(a) A person commits the offense of sexual assault in the fourth degree if:

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

(2) 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

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

(b) Sexual assault in the fourth degree is a misdemeanor and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined up to one- thousand dollars (\$1,000), or both.

§ 1606. Continuous sexual assault of a minor under the age of fifteen years.

(a) A person commits the offense of continuous sexual assault of a minor under the age of fifteen years if the person:

(1) Either resides in the same home with a minor under the age of fifteen years or has recurring access to the minor; and

(2) Engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of fifteen years.

(b) 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 period 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.

(c) Continuous sexual assault of a minor under the age of fifteen years is a felony and upon conviction thereof shall be imprisoned for a period of not more than twenty-five years, or fined up to fifty thousand dollars (\$50,000), or both.

§ 1607. Sexual harassment.

(a) A person commits the offense of sexual harassment if the person intentionally, knowingly or recklessly subjects a person to:

- (1) Unwelcome sexual advances;
- (2) Unwelcome requests for sexual favors; or
- (3) Unwelcome verbal or physical conduct of a sexual nature.

(b) Sexual harassment is a misdemeanor and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined up to one-thousand dollars (\$1,000), or both.

§ 1608. Indecent exposure.

(a) 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.

(b) Indecent exposure is a misdemeanor and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined up to one-thousand dollars (\$1,000), or both.

CHAPTER 17  
REGISTRATION OF SEX OFFENDERS  
AND OTHER COVERED OFFENDERS AND  
PUBLIC ACCESS TO REGISTRATION INFORMATION

§ 1700. Definitions.

§ 1701. Registration requirements.

§ 1702. Access to registration information.

§ 1703. Duties upon discharge, parole, or release of covered offender.

§ 1704. Requirement to register a change of registration information; verification by the attorney general.

§ 1705. Notification by the attorney general of changes in registration information.

§ 1706. Good faith immunity.

§ 1707. Failure to comply with covered offender registration requirements.

§ 1708. Termination of registration requirements.

§ 1709. Tolling.

§ 1700. Definitions.

As used in this chapter, unless the context clearly requires otherwise:

(1) "Agency having jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of incarceration or place a person on probation, supervised release, or parole and includes the Bureau of Public Safety, the paroling authority, the courts, and the ministry of health.

(2) "Clean record" means no conviction for a felony or covered offense, if placed on probation or parole, completion of probation or parole without more than one revocation, and, for sex offenders, successful completion of an appropriate sex offender treatment program, if such program was ordered.

(3) "Conviction" means a judgment on the verdict, or a finding of guilt after a plea of guilty or no contest, excluding the adjudication of a minor.

(4) "Covered offender" means a "sex offender" or an "offender against minors", as defined in this section.

(5) “Covered offense” means a criminal offense that is:

(A) A crime within the definition of “crimes against minors” in this section; or

(B) A crime within the definition of “sexual offense” in this section.

(6) “Crime against minors” excludes “sexual offenses” as defined in this section and means a criminal offense that consists of:

(A) Kidnapping of a minor, by someone other than a parent;

(B) Unlawful imprisonment in the first or second degree that involves the unlawful imprisonment of a minor by someone other than a parent;

(C) An act, as described in 17 PNC Division Two of this Penal Code, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraph (A) or (B); or

(D) A criminal offense that is comparable to or which exceeds one of the offenses designated in paragraphs (A) through (C), if the criminal offense was committed in another jurisdiction.

(7) “Mental abnormality” means a condition involving a disposition to commit criminal sexual offenses with a frequency that makes the person a menace to others.

(8) “Offender against minors” means a person who is not a “sex offender”, as defined in this section, and is or has been:

(A) Convicted at any time of a “crime against minors” as defined in this section; or

(B) Charged at any time with a “crime against minors” as defined in this section and who is found unfit to proceed and is released into the community or who is acquitted due to a physical or mental disease, disorder, or defect pursuant to Chapter 5 of this Penal Code and is released into the community.

(9) “Parent” means a parent, legal guardian, or a person who has a substantial familial or relationship based on custom, with the minor.

(10) “Personality disorder” shall have the same meaning as the term is used in the Diagnostic and Statistical Manual of Mental Health Disorders: DSM-IV, American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994).

(11) “Predatory” means an act directed at:

(A) A stranger; or

(B) A person with whom a relationship has been established or promoted for the primary purpose of victimization.

(12) “Registration information” means the information specified in 17 PNC section 1701(d) and (e).

(13) “Release” means release from:

- (A) Incarceration;
- (B) Incarceration and placed on parole;
- (C) Incarceration and placed on work release or furlough;
- (D) Any form of commitment, custody, or confinement resulting from an order made pursuant to 17 PNC Chapter 5 of this Penal Code; or
- (E) A halfway house or other equivalent facility, whichever is later.

(14) “Repeat covered offender” means:

- (A) A person who is or has been convicted at any time of more than one covered offense as defined in this section, except that a conviction for multiple counts within a single charging document that allege covered offenses against the same victim and that allege the same date of the covered offense against that single victim shall be considered, for the purposes of this definition, a single covered offense; or
- (B) A person who is or has been charged at any time with more than one covered offense as defined in this section and who has been, more than once, either:
  - (i) Convicted;
  - (ii) Found unfit to proceed pursuant to 17 PNC Chapter 5 of this Penal Code; or
  - (iii) Acquitted due to a physical or mental disease, disorder, or defect pursuant to 17 PNC Chapter 5 of this Penal Code.

(15) “Sex offender” means:

- (A) A person who is or has been convicted at any time of a “sexual offense”; or
- (B) A person who is or has been charged at any time with a “sexual offense” and is or has been found unfit to proceed and is or has been released into the community or who is acquitted due to a physical or mental disease, disorder, or defect pursuant to 17 PNC Chapter 5 of this Penal Code and is released into the community.

(16) “Sexual offense” means an offense that is:

- (A) Set forth in 17 PNC chapter 16, 17 PNC sections 4802(a)(1), 4802(a)(2), 4803(a), or 21 PNC sections 602 and 608, but excludes conduct that is criminal only because of the age of the victim, as provided in 17 PNC chapter 16 if the perpetrator is under eighteen years of age;
- (B) An act defined in 17 PNC section 1500 if the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (C) An act that consists of:
  - (i) Criminal sexual conduct toward a minor, including but not limited to an offense set forth in 17 PNC section 1807;

(ii) Solicitation of a minor who is less than eighteen years old to engage in sexual conduct;

(iii) Use of a minor in a sexual performance;

(iv) Production, distribution, or possession of child pornography chargeable as a felony under 17 PNC section 1801, 1802, or 1803;

(v) Electronic enticement of a child chargeable under 17 PNC section 1805 if the offense was committed with the intent to promote or facilitate the commission of another covered offense as defined in this section; or

(vi) Solicitation of a minor to practice prostitution;

(D) Convicted at any time of a violation of privacy under 17 PNC section 4412; or charged at any time with a violation of privacy under 17 PNC section 4412, who is currently or was previously found unfit to proceed against the charges, and is currently or was previously released into the community or who is currently or was previously acquitted due to a physical or mental disease, disorder, or defect pursuant to 17 PNC Chapter 5 of this Penal Code, and is currently or was previously released into the community;

(E) A criminal offense that is comparable to or that exceeds a sexual offense as defined in paragraphs (A) through (D) if the criminal offense was committed in another jurisdiction; or

(F) An act, as described in 17 PNC Division Two of this Penal Code, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (A) through (E).

(G) Or any predecessor offenses of the above.

§ 1701. Registration requirements.

(a) A covered offender shall register with the attorney general and comply with the provisions of this chapter for life or for a shorter period of time as provided in this chapter. A covered offender shall be eligible to petition the court in a civil proceeding for an order that the covered offender's registration requirements under this chapter be terminated, as provided in 17 PNC section 1708.

(b) A person who establishes or maintains a residence in the Republic of Palau and who has not been designated as a covered offender by a court of the Republic of Palau but who has been designated as a covered offender, sex offender, offender against minors, repeat covered offender, sexually violent predator, or any other sexual offender designation in another jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a covered offender, shall register in the manner provided in this section and shall be subject to community and public notification as provided in 17 PNC section 1702. A person who meets the criteria of this subsection is subject to the requirements and penalty provisions of 17 PNC section 1707 until the person successfully petitions the attorney general for termination of registration requirements by:

(1) Providing an order issued by the court that designated the person as a covered offender, sex offender, offender against minors, repeat covered offender, sexually violent predator, or any other sexual offender designation

in the jurisdiction in which the order was issued, which states that such designation has been removed or demonstrates to the attorney general that such designation, if not imposed by a court, has been removed by operation of law or court order in the jurisdiction in which the designation was made, and such person does not meet the criteria for registration as a covered offender under the laws of the Republic of Palau; or

(2) Demonstrating that the convictions upon which the sexual offender designation was established in another jurisdiction are not covered offenses under 17 PNC section 1700, thereby showing that such person does not meet the criteria for registration as a covered offender under the laws of the Republic of Palau.

If the covered offender is not satisfied with the decision of the attorney general on the request for termination of registration requirements, the covered offender may appeal the decision pursuant to 6 PNC sections 147-148, the Administrative Procedure Act.

(c) Each provision of this chapter applicable to sex offenders shall also be applicable to offenders against minors, unless offenders against minors are specifically excluded. Whenever a covered offender's public information is made publicly accessible, separate registries shall be maintained for:

(1) Sex offenders; and

(2) Offenders against minors.

(d) Registration information for each covered offender shall include a signed statement by the covered offender containing:

(1) The name, all prior names, nicknames and pseudonyms, and all aliases used by the covered offender or under which the covered offender has been known and other identifying information, including date of birth and any alias date of birth, social security number and any alias social security number, sex, race, height, weight, and hair and eye color;

(2) The actual address and telephone number of the covered offender's residence or any current, temporary address where the covered offender resides, or if an address is not available, a description of the place or area in which the covered offender resides for at least thirty nonconsecutive days within a sixty-day period, and for each address or place where the covered offender resides, how long the covered offender has resided there;

(3) The actual address or description of the place or area, the actual length of time of the stay, and telephone number where the covered offender is staying for a period of more than ten days, if other than the residence stated in subsection (b) above;

(4) If known, the future address and telephone number where the covered offender is planning to reside, if other than the residence stated in subsection (b) above;

(5) Any electronic mail address, any instant message name, any internet designation or moniker, and any internet address used for routing or self-identification;

(6) Any cellular phone number and other designations used for routing or self-identification in telephonic communications;

(7) Names and, if known, actual business addresses of current and known

future employers, including information for any place where the covered offender works as a volunteer or otherwise works without remuneration, and the starting and ending dates of any such employment;

(8) For covered offenders who may not have a fixed place of employment, a description of the places where such a covered offender works, such as information about normal travel routes or the general area or areas in which the covered offender works;

(9) Professional licenses held by the covered offender;

(10) Names and actual addresses of current and known future educational institutions with which the covered offender is affiliated in any way, whether or not compensated, including but not limited to affiliation as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;

(11) The year, make, model, color, and license or registration or other identifying number of all vehicles, including automobiles, watercrafts, and aircrafts, currently owned or operated by the covered offender and the address or description of the place or places where the covered offender's vehicle or vehicles are habitually parked, docked, or otherwise kept;

(12) Passports and information about the passports, if the covered offender has passports, and documents establishing immigration status and information about these documents, if the covered offender is an alien;

(13) A statement listing all covered offenses for which the covered offender has been convicted or found unfit to proceed or acquitted pursuant to 17 PNC Chapter 5 of this Penal Code;

(14) A statement indicating whether the covered offender has received or is currently receiving treatment ordered by a court of competent jurisdiction or by the probation or paroling authority;

(15) A statement indicating whether the covered offender is a citizen of the Republic of Palau; and

(16) Any additional identifying information about the covered offender.

(e) The following information shall also be included in the registry for each covered offender:

(1) A current photograph of the covered offender;

(2) A physical description of the covered offender, including a description of particular identifying characteristics such as scars or tattoos;

(3) Confirmation that the covered offender has provided his or her fingerprints and palm prints;

(4) Judgment of conviction, judgment of acquittal, or judicial determination of unfitness to proceed documenting the criminal offense or offenses for which the covered offender is registered;

(5) The text of the provision of law defining the criminal offense or offenses for which the covered offender is registered;

(6) The criminal history of the covered offender, including the date of all arrests and convictions, the status of parole, probation, or supervised release,

registration status, and the existence of any outstanding arrest warrants for the covered offender;

(7) Color copies of a valid driver's license or identification card issued to the covered offender; and

(8) Color copies of passports and documents establishing immigration status.

(f) Whenever a covered offender provides registration information, during initial registration as a covered offender or when providing notice of a change in registration information, the covered offender also shall sign a statement verifying that all of the registration information is accurate and current.

(g) In addition to the requirement under subsection (a) to register with the attorney general and comply with the provisions of this chapter until a court relieves the covered offender of the registration requirements of this chapter, each covered offender shall also register in person with the Bureau of Public Safety where the covered offender resides or is present. Registration under this subsection is for the purpose of providing the covered offender's photograph, fingerprints, and registration information. Registration under this subsection is required whenever the covered offender, whether or not a resident of the Republic of Palau, remains in the Republic of Palau for more than ten days or for an aggregate period exceeding thirty days in one calendar year. Covered offenders required to register in person with the Bureau of Public Safety under this subsection shall register no later than three working days after the earliest of:

(1) Arrival in the Republic of Palau;

(2) Release from incarceration;

(3) Release from commitment;

(4) Work release or furlough;

(5) Conviction for a covered offense, unless incarcerated;

(6) Release on probation;

(7) Placement on parole; or

(8) Arrival in a county in which the covered offender resides or expects to be present for a period exceeding ten days.

In addition to any other requirement to register under this subsection or subsection (a), each covered offender shall report every year, within the thirty-day period following the offender's date of birth, to the Bureau of Public Safety where the covered offender resides, or to such other bureau or agency that may be designated by the attorney general in rules adopted pursuant to 6 PNC Chapter 1, the Administrative Procedure Act, for purposes of the administration of this subsection, and shall review the existing information in the registry that is within the offender's knowledge, correct any information that has changed or is inaccurate, provide any new information that may be required, and allow the police and such other bureau or agency designated by the attorney general to take a current photograph of the offender.

(h) The registration provisions of this section shall apply to all covered offenders without regard to:

(1) The date of the covered offender's conviction;

(2) The date of finding, pursuant to 17 PNC Chapter 5 of this Penal Code, of the covered offender's unfitness to proceed; or

(3) The date of the covered offender's acquittal due to mental disease, disorder, or defect, pursuant to 17 PNC Chapter 5 of this Penal Code.

§ 1702. Access to registration information.

(a) Registration information shall be disclosed as follows:

(1) The information shall be disclosed to law enforcement agencies for law enforcement purposes;

(2) The information shall be disclosed to government agencies conducting confidential background checks; and

(3) The attorney general and the Bureau of Public Safety shall release public information as provided in subsection (b) below concerning a specific person required to register under this chapter; provided that the identity of a victim of an offense that requires registration under this chapter shall not be released.

(b) For purposes of this section, "public information" means:

(1) Name, prior names, nicknames and pseudonyms, and all aliases used by the covered offender or under which the covered offender has been known;

(2) The year of the covered offender's date of birth and the year of the covered offender's alias dates of birth;

(3) A physical description of the covered offender, including a description of particular identifying characteristics such as scars or tattoos;

(4) The actual address where the covered offender resides or any current, temporary address where the covered offender resides or, if an address is not available, a description of any place or area in which the covered offender resides for at least thirty nonconsecutive days within a sixty-day period, and, for each address or place where the covered offender resides, how long the covered offender has resided there;

(5) The actual address or description of the place or area where the covered offender is staying for more than ten days, if other than the stated residence, and the actual length of time of the stay;

(6) The future actual address, if known, where the covered offender is planning to reside, if other than the residence stated in 17 PNC 1701(d)(2);

(7) The street name or description of the covered offender's current locations of employment, including information for any place where the covered offender works as a volunteer or otherwise works without remuneration;

(8) For covered offenders who may not have a fixed place of employment, a description of the places where such a covered offender works;

(9) Professional licenses held by the covered offender;

(10) Names and actual addresses of current and known future educational institutions with which the covered offender is affiliated as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;

(11) The year, make, model, color, and license number of all vehicles, including automobiles, watercrafts, and aircrafts, currently owned or operated by the covered offender, excluding vehicles operated exclusively for purposes of work;

(12) A statement listing all covered offenses for which the covered offender has been convicted or found unfit to proceed or acquitted pursuant to 17 PNC Chapter 5 of this Penal Code;

(13) Judgment of conviction, judgment of acquittal, or judicial determination of unfitness to proceed documenting the criminal offense or offenses for which the covered offender is registered;

(14) The text of the provision of law defining the criminal offense or offenses for which the covered offender is registered; and

(15) A recent photograph of the covered offender.

The identity of any victim of a sexual offense shall not be disclosed and any documentation containing such information shall be redacted to prevent disclosure.

(c) To facilitate community notification, after a covered offender registers or updates a registration, the attorney general may provide public information in the registry about that offender to any organization, company, or individual who requests such notification pursuant to procedures established by the attorney general through rules adopted pursuant to 6 PNC Chapter 1, the Administrative Procedure Act.

(d) A covered offender may seek correction of erroneous public information by petitioning the attorney general to make the correction. If the covered offender is not satisfied with the decision of the attorney general on the request for correction, the covered offender may appeal the decision pursuant to 6 PNC sections 147-148, the Administrative Procedure Act.

(e) Public access to a covered offender's public information shall be permitted with regard to each covered offender beginning the next working day following the filing of a judgment of conviction, a finding of unfitness to proceed or an acquittal due to mental disease, disorder, or defect, for a covered offense, or as soon thereafter as is practical. When a notice of appeal has been filed, the public information shall note that the covered offender has filed a notice of appeal. The public information shall be removed upon the reversal of the covered offender's conviction or the granting of a pardon to the covered offender.

(f) Public access authorized by this section shall be provided by both public internet access and on-site public access; provided that on-site public access shall be provided for each covered offender at the office of the attorney general and at one or more designated police stations in the Republic of Palau, to be designated by the attorney general through rules adopted pursuant to 6 PNC Chapter 1, the Administrative Procedure Act, between the hours of 8:00 A.M. and 4:30 P.M. on weekdays, excluding holidays.

(g) Public access to the public information for each covered offender shall be permitted while the covered offender is subject to sex offender registration, except that after forty years have elapsed after release or sentencing, whichever is later, a covered offender may petition the court in a civil proceeding to terminate public access. In the civil proceeding to terminate public access, the Republic of Palau shall be represented by the attorney general. For covered offenders who have never been convicted of a covered offense within the Republic of Palau, the attorney general shall represent the Republic of Palau. The court may order this termination upon substantial evidence and more than proof by a preponderance of the evidence that:

(1) The covered offender has had no new convictions for covered offenses;

(2) The covered offender is very unlikely to commit a covered offense ever again; and

(3) Public access to the covered offender's public information will not assist in protecting the safety of the public or any member thereof; provided that a denial by the court for relief pursuant to a petition under this section shall preclude the filing of another petition for five years from the date of the last denial.

(h) If a covered offender has been convicted of only one covered offense and that covered offense is a misdemeanor, the covered offender shall not be subject to the public access requirements set forth in this section.

(i) The following message shall be posted at both the site of internet access and on-site public access locations:

“Information regarding covered offenders is permitted pursuant 17 PNC sections 1700 to 1709. Public access to this information is based solely on the fact of each offender's criminal conviction and is not based on an estimate of the offender's level of dangerousness. By allowing public access to this information, the Republic of Palau makes no representation as to whether the covered offenders listed are dangerous. Any person who uses the information in this registry to injure, harass, or commit a criminal act against any person included in the registry may be subject to criminal prosecution, civil liability, or both.”

(i) The public access provisions of this section shall apply to all covered offenders without regard to the date of conviction.

(j) “Conviction” as used in this section means:

(1) A judgment on the verdict, or a finding of guilt after a plea of guilty or no contest, excluding the adjudication of a minor;

(2) A finding of unfitness to proceed resulting in the release of the covered offender into the community, excluding such a finding as to a minor; or

(3) An acquittal due to a physical or mental disease, disorder, or defect pursuant to 17 PNC Chapter 5 of this Penal Code resulting in the release of the covered offender into the community, excluding such acquittal as to a minor.

§ 1703. Duties upon discharge, parole, or release of covered offender.

(a) Each person, or that person's designee, in charge of a jail, prison, hospital, school, or other institution to which a covered offender has been committed pursuant to a conviction, or an acquittal or finding of unfitness to proceed pursuant to 17 PNC Chapter 5 of this Penal Code, for a covered offense, and each judge, or that judge's designee, who continues bail for or releases a covered offender following a guilty verdict or a plea of guilty or no contest, who releases a covered offender on probation or who discharges a covered offender upon payment of a fine, and each agency having jurisdiction, shall, prior to the discharge, parole, or release of the covered offender:

(1) Explain to the covered offender the duty to register and the consequences of failing to register under this chapter;

(2) Obtain from the covered offender all of the registration information

required by this chapter;

(3) Inform the covered offender that if at any time the covered offender changes any of the covered offender's registration information, the covered offender shall notify the attorney general of the new registration information in writing within three working days;

(4) Inform the covered offender that, if at any time the covered offender changes residence to another jurisdiction, the covered offender shall register the new address with the attorney general and also with a designated law enforcement agency in the new jurisdiction, if the new jurisdiction has a registration requirement, within the period of time mandated by the new jurisdiction's sex offender registration laws;

(5) Obtain and verify fingerprints and a photograph of the covered offender, if these have not already been obtained or verified in connection with the offense that triggers the registration;

(6) Require the covered offender to sign a statement indicating that the duty to register has been explained to the covered offender; and

(7) Give a copy of the signed statement and a copy of the registration information to the covered offender.

(b) No covered offender required to register under this chapter shall be discharged, released from any incarceration, or placed on parole or probation unless the requirements of subsection (a) above have been satisfied and all registration information required under 17 PNC section 1701 has been obtained.

(c) Notwithstanding any law to the contrary, a copy of the signed statement and a copy of the registration information shall be transmitted to the attorney general within three working days after the statement has been signed and registration information has been obtained.

(d) Following receipt of the information from the agency having jurisdiction over the covered offender, the attorney general shall immediately ensure the information has been entered into the Republic of Palau's criminal record-keeping system, and notify the nearest police station or appropriate law enforcement agency having jurisdiction where the covered offender expects to reside.

(e) The Bureau of Public Safety shall transmit any covered offender registration information required by this chapter to the attorney general, by entering the information into the Republic of Palau's criminal record-keeping system, if the information has not previously been entered into the system, and also shall provide the attorney general with a photograph and fingerprints of the covered offender, taken at the time the covered offender registers with the Bureau of Public Safety.

The covered offender shall report in person every year, within the thirty-day period following the offender's date of birth, to the nearest police station where the covered offender's residence is located, or to such other bureau or agency that may be designated by the attorney general in rules adopted pursuant 6 PNC Chapter 1, the Administrative Procedure Act, for purposes of the administration of this subsection, and shall review the existing information in the registry that is within the offender's knowledge, correct any information that has changed or is inaccurate, provide any new information that may be required, and allow the police and such other bureau or agency designated by the attorney general to take a current photograph of the offender.

§ 1704. Requirement to register a change of registration information; verification by the attorney general.

(a) A covered offender required to register under this chapter, who changes any of

the covered offender's registration information after an initial registration with the attorney general, shall notify the attorney general of the new registration information in writing within three working days of the change. For purposes of this section, a person shall be deemed to have established a new residence during any period in which the person is absent from the person's registered residence for ten or more days. If, at any time, a covered offender required to register under this chapter is absent from the person's registered residence for ten or more days and fails to establish a new residence within the ten days that the covered offender is absent from their registered residence, the covered offender, in addition to notifying the attorney general in writing within three working days that the covered offender no longer resides at the covered offender's registered residence, shall also report to any police station in the Republic of Palau by the last day of every month for verification of identity by photograph and fingerprint impression until the covered offender establishes a new residence and notifies the attorney general in writing of the actual address of the new residence. Each time the covered offender reports to a police station, the covered offender shall disclose every location where the covered offender has slept in the previous month. If the new residence is in another jurisdiction that has a registration requirement, the person shall register with the designated law enforcement agency in the jurisdiction to which the person moves, within the period of time mandated by the new jurisdiction's sex offender registration laws.

(b) If the attorney general cannot verify the address of or locate a covered offender required to be registered under this chapter, the attorney general shall immediately notify the Bureau of Public Safety.

§ 1705. Notification by the attorney general of changes in registration information. Immediately, and in no event, not later than ten days after receiving notice of a change of registration information, the attorney general shall report the change of registration information by a covered offender required to register under this chapter to the police station nearest to where the covered offender is residing. In the event the covered offender changes residence to another jurisdiction, the attorney general also shall notify the law enforcement agency with which the person must register in the new jurisdiction, if the new jurisdiction has a registration requirement.

§ 1706. Good faith immunity.

Law enforcement agencies, employees of law enforcement agencies, and government officials of the Republic of Palau shall be immune from liability for good faith conduct under this chapter.

§ 1707. Failure to comply with covered offender registration requirements.

(a) A person commits the offense of failure to comply with covered offender registration requirements if the person is required to register under this chapter and the person intentionally, knowingly, or recklessly:

- (1) Fails to register with the attorney general by failing to provide the attorney general with the person's registration information;
- (2) Fails to report in person once every year, during the thirty-day period following the offender's date of birth, to the nearest police station where the covered offender's residence is located, or to such other department or agency designated by the attorney general;
- (3) While reporting to the nearest police station or such other department or agency designated by the attorney general, fails to correct information in the registry within the offender's knowledge that has changed or is inaccurate regarding information required by 17 PNC section 1701(d);
- (4) While reporting to the nearest police station or such other department or agency designated by the attorney general, fails to provide new information

that may be required by 17 PNC section 1701(d);

(5) While reporting to the nearest police station or such other department or agency designated by the attorney general, does not allow the police or other designated department or agency to take a current photograph of the person;

(6) Fails to register in person with the nearest police station having jurisdiction of the area where the covered offender resides or is present within three working days whenever the provisions of 17 PNC section 1701(d) require the person to do so;

(7) Fails to notify the attorney general of a change of any of the covered offender's registration information in writing within three working days of the change;

(8) Provides false registration information to the attorney general or the Bureau of Public Safety;

(9) Signs a statement verifying that all of the registration information is accurate and current when any of the registration information is not substantially accurate and current;

(10) Having failed to establish a new residence within the ten days while absent from the person's registered residence for ten or more days:

(A) Fails to notify the attorney general in writing within three working days that the person no longer resides at the person's registered residence; or

(B) Fails to report to a police station in the Republic of Palau by the last day of every month.

(b) Failure to comply with covered offender registration requirements is a class C felony.

§ 1708. Termination of registration requirements.

(a) Tier 3 offenses. A covered offender whose covered offense is any of the following offenses shall register for life and, except as provided in subsection (e), may not petition the court, in a civil proceeding, for termination of registration requirements:

(1) Any offense set forth in 17 PNC section 1602, 1603, 1606, or 21 PNC sections 602 and 608;

(2) An offense set forth in 17 PNC section 1500; provided that the offense involves kidnapping of a minor by someone other than a parent;

(3) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1) or (2);

(4) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), or (3); or

(5) Any offense committed in another jurisdiction that is comparable to one of the offenses in paragraph (1), (2), or (3).

(b) A repeat covered offender shall register for life and, except as provided in subsection (e), may not petition the court, in a civil proceeding, for termination of registration requirements.

(c) Tier 2 offenses. A covered offender who has maintained a clean record for the previous twenty-five years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous twenty-five years, or for the portion of that twenty-five years that this chapter has been applicable, and who is not a repeat covered offender may petition the court, in a civil proceeding, for termination of registration requirements; provided that the covered offender's most serious covered offense is one of the following:

- (1) Any offense set forth in 17 PNC section 1601, 1604, 1801, 1802, or 4802(a)(2);
- (2) An offense set forth in 17 PNC section 1500; provided that the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An offense set forth in 17 PNC section 1805 that includes an intent to promote or facilitate the commission of another felony covered offense as defined in 17 PNC section 1700;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
- (5) Any criminal offense that is comparable to one of the offenses in paragraphs (1), (2), (3), or (4); or
- (6) Any offense committed in another jurisdiction that is comparable to one of the offenses in paragraph (1), (2), (3), or (4).

(d) Tier 1 offenses. A covered offender who has maintained a clean record for the previous ten years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous ten years, or for the portion of that ten years that this chapter has been applicable, and who is not a repeat covered offender may petition the court, in a civil proceeding, for termination of registration requirements; provided that the covered offender's most serious covered offense is one of the following:

- (1) Any offense set forth in 17 PNC section 1605, 1608, 1803, 1807, 4412, 4802(a)(1), or 4803(a);
- (2) An offense set forth in 17 PNC section 1501 or 1502; provided that the offense involves unlawful imprisonment of a minor by someone other than a parent;
- (3) An offense set forth in 17 PNC section 1806 that includes an intent to promote or facilitate the commission of another covered offense as defined in 17 PNC section 1700;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
- (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
- (6) Any offense committed in another jurisdiction that is comparable to one of the offenses in paragraph (1), (2), (3), or (4).

(e) Notwithstanding any other provisions in this section, any covered offender, forty years after the covered offender's date of release or sentencing, whichever is later, for the covered offender's most recent covered offense, may petition the court, in a

civil proceeding, for termination of registration requirements.

(f) In the civil proceeding for termination of registration requirements, the Republic of Palau shall be represented by the attorney general. For covered offenders who have never been convicted of a covered offense within the Republic of Palau, the attorney general shall represent the Republic of Palau. The court may order this termination upon substantial evidence and more than proof by a preponderance of the evidence that:

- (1) The covered offender has met the statutory requirements of eligibility to petition for termination;
- (2) The covered offender has substantially complied with registration requirements;
- (3) The covered offender is very unlikely to commit a covered offense ever again; and
- (4) Registration by the covered offender will not assist in protecting the safety of the public or any member thereof.

(g) A denial by the court for relief pursuant to a petition under this section shall preclude the filing of another petition for five years from the date of the last denial.

§ 1709. Tolling.

The time periods provided for in this chapter shall be tolled during any period of time the covered offender is committed or recommitted to prison or confined to a halfway house, or an equivalent facility, pursuant to a parole or probation violation.

## CHAPTER 18 CHILD EXPLOITATION

§ 1800. Definitions.

§ 1801. Promoting child exploitation in the first degree.

§ 1802. Promoting child exploitation in the second degree.

§ 1803. Promoting child exploitation in the third degree.

§ 1804. Affirmative defense to promoting child exploitation.

§ 1805. Electronic enticement of a child in the first degree.

§ 1806. Electronic enticement of a child in the second degree.

§ 1807. Indecent electronic display to a child.

§ 1800. Definitions.

For purposes of this chapter:

(1) “Child pornography” means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

(A) The pornographic production of such visual representation involves the use of a minor engaging in sexual conduct; or

(B) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

(2) “Community standards” means the standards of the Republic of Palau.

(3) “Computer” means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related

to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

(4) “Disseminate” means to publish, sell, distribute, transmit, exhibit, present material, mail, ship, or transport by any means, including by computer, or to offer or agree to do the same.

(5) “Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

(6) “Material” means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

(7) “Minor” means any person less than eighteen years old.

(8) “Performance” means any play, motion picture film, dance, or other exhibition performed before any audience.

(9) “Pornographic” shall have the same meaning as in 17 PNC section 4900.

(10) “Produces” means to produce, direct, manufacture, issue, publish, or advertise.

(11) “Sodomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

(12) “Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sodomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

(13) “Visual representation” refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

§ 1801. Promoting child exploitation in the first degree.

(a) A person commits the offense of promoting child exploitation in the first degree if, knowing or having reason to know its character and content, the person:

(1) Produces or participates in the preparation of child pornography;

(2) Produces or participates in the preparation of pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or

(3) Engages in a pornographic performance that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(b) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material or the performance produced, directed, or participated in. The fact that the person who was employed, used, or otherwise contained in the pornographic material or performance, was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

(c) Promoting child exploitation in the first degree is a class A felony.

§ 1802. Promoting child exploitation in the second degree.

(a) A person commits the offense of promoting child exploitation in the second degree if, knowing or having reason to know its character and content, the person:

- (1) Disseminates child pornography;
- (2) Reproduces child pornography with intent to disseminate;
- (3) Disseminates any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or
- (4) Disseminates any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(b) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

(c) Promoting child exploitation in the second degree is a class B felony.

§ 1803. Promoting child exploitation in the third degree.

(a) A person commits the offense of promoting child exploitation in the third degree if, knowing or having reason to know its character and content, the person possesses:

- (1) Child pornography;
- (2) Any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography; or
- (3) Any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(b) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(c) Promoting child exploitation in the third degree is a class C felony.

§ 1804. Affirmative defense to promoting child exploitation.

It shall be an affirmative defense to a charge of promoting child exploitation in the third degree that the defendant:

- (a) Possessed less than three images of child pornography; and
- (b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof:
  - (1) Took reasonable steps to destroy each such image; or
  - (2) Reported the matter to a law enforcement agency and afforded that agency access to each such image.

§ 1805. Electronic enticement of a child in the first degree.

(a) Any person who, using a computer or any other electronic device:

(1) Intentionally or knowingly communicates:

(A) With a minor known by the person to be under the age of eighteen years;

(B) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or

(C) With another person who represents that person to be under the age of eighteen years;

(2) With the intent to promote or facilitate the commission of a felony:

(A) That is a murder in the first or second degree;

(B) That is a class A felony; or

(C) That is another covered offense as defined in 17 PNC section 1700, agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and

(3) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time, is guilty of electronic enticement of a child in the first degree.

(b) Electronic enticement of a child in the first degree is a class B felony.

§ 1806. Electronic enticement of a child in the second degree.

(a) Any person who, using a computer or any other electronic device:

(1) Intentionally or knowingly communicates:

(A) With a minor known by the person to be under the age of eighteen years;

(B) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or

(C) With another person who represents that person to be under the age of eighteen years; and

(2) With the intent to promote or facilitate the commission of a felony, agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and

(3) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time; is guilty of electronic enticement of a child in the second degree.

(b) Electronic enticement of a child in the second degree is a class C felony.

§ 1807. Indecent electronic display to a child.

(a) Any person who intentionally masturbates or intentionally exposes the genitals in a lewd or lascivious manner live over a computer online service, internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or other electronic device by:

- (1) A minor known by the person to be under the age of eighteen years;
- (2) Another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or
- (3) Another person who represents that person to be under the age of eighteen years, is guilty of indecent electronic display to a child.

(b) Indecent electronic display to a child is a misdemeanor.

## CHAPTER 19 EXTORTION

§ 1900. Definitions.

§ 1901. Extortionate extension of credit; prima facie evidence.

§ 1902. Financing extortionate extensions of credit.

§ 1903. Collection of extensions of credit by extortionate means.

§ 1904. Extortion.

§ 1905. Extortion in the first degree.

§ 1906. Extortion in the second degree.

§ 1907. Extortion in the third degree.

§ 1908. Firearms, explosives, and dangerous weapons.

§ 1909. Defenses to extortion.

§ 1900. Definitions.

For the purposes of this chapter:

(1) “An extortionate means” is any means that involves the use, or an express or implicit threat of the use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(2) “Creditor”, with reference to any given extension of credit, refers to any person making that extension of credit, or to any person claiming by, under, or through any person making that extension of credit.

(3) “Debtor”, with reference to any given extension of credit, refers to any person to whom that extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

(4) “Repayment of any extension of credit” includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(5) “To collect an extension of credit” means to induce in any way any person to make repayment thereof.

(6) “To extend credit” means to make or renew any loan or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

§ 1901. Extortionate extension of credit; prima facie evidence.

(a) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of

violence or other criminal means to cause harm to the person, reputation, or property of any person.

(b) In any prosecution under this part, if it is shown that all of the following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate, but this section is nonexclusive and in no way limits the effect or applicability of subsection (a):

(1) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable, through civil judicial processes against the debtor:

(A) In the jurisdiction within which the debtor, if a natural person, resided; or

(B) In every jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business at the time the extension of credit was made;

(2) The extension of credit was made at a rate of interest in excess of a yearly rate of forty-five per cent (45%) calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which payment is applied first to the accumulated interest and the balance applied to the unpaid principal;

(3) At the time the extension of credit was made, the debtor reasonably believed that either:

(A) One or more extensions of credit by the creditor had been collected or attempted to be collected by extortionate means, or the nonrepayment thereof had been punished by extortionate means; or

(B) The creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the nonrepayment thereof;

(4) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded one hundred dollars (\$100).

(c) In any prosecution under this part, if evidence has been introduced tending to show the existence of any of the circumstances described in subparagraph (b)(1) or (b)(2) of this section, and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made, the court may in its discretion allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension.

§ 1902. Financing extortionate extensions of credit.

"Financing extortionate extensions of credit" includes willfully advancing money or property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit-sharing agreement, or otherwise to any person, with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced directly or indirectly for the purpose of making extortionate extensions of credit.

§ 1903. Collection of extensions of credit by extortionate means.

(a) "Collection of extensions of credit by extortionate means" includes knowingly participating in any way, or conspiring to do so, in the use of any extortionate means:

(1) To collect or attempt to collect any extension of credit; or

(2) To punish any person for the nonrepayment thereof.

(b) In any prosecution under this part, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

(c) In any prosecution under this part, if evidence has been introduced tending to show the existence, at the time the extension of credit in question was made, of the circumstances described in subsection (b)(1) or subsection (b)(2) of 17 PNC section 1901 and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing that words or other means of communication, shown to have been employed as a means of collection, in fact carried an express or implicit threat, the court may in its discretion allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of collection or attempt at collection.

§ 1904. Extortion.

A person commits extortion if the person does any of the following:

(a) Obtains, or exerts control over, the property, labor, or services of another with intent to deprive another of property, labor, or services by threatening by word or conduct to:

(1) Cause bodily injury in the future to the person threatened or to any other person;

(2) Cause damage to property or cause damage, as defined in 17 PNC section 3100, to a computer, computer system, or computer network;

(3) Subject the person threatened or any other person to physical confinement or restraint;

(4) Commit a penal offense;

(5) Accuse some person of any offense or cause a penal charge to be instituted against some person;

(6) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair the threatened person's credit or business repute;

(7) Reveal any information sought to be concealed by the person threatened or any other person;

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

(9) Take or withhold action as a public servant, or cause a public servant to take or withhold such action;

(10) Bring about or continue a strike, boycott, or other similar collective action, to obtain property that is not demanded or received for the benefit of the group that the defendant purports to represent;

(11) Destroy, conceal, remove, confiscate, or possess any actual or purported passport, or any other actual or purported government identification document, or other immigration document, of another person; or

(12) Do any other act that would not in itself substantially benefit the defendant but that is calculated to harm substantially some person with respect to the threatened person's health, safety, business, calling, career, financial condition, reputation, or personal relationships;

(b) Intentionally compels or induces another person to engage in conduct from which another has a legal right to abstain or to abstain from conduct in which another has a legal right to engage by threatening by word or conduct to do any of the actions set forth in paragraph (a)(1) through (12); or

(c) Makes or finances any extortionate extension of credit, or collects any extension of credit by extortionate means.

§ 1905. Extortion in the first degree.

(a) A person commits the offense of extortion in the first degree if the person commits extortion:

(1) Of property, labor, or services the value of which exceeds two hundred dollars (\$200) in total during any twelve-month period; or

(2) By making or financing any extortionate extension of credit, or by collecting any extension of credit by extortionate means.

(b) Extortion in the first degree is a class B felony.

§ 1906. Extortion in the second degree.

(a) A person commits the offense of extortion in the second degree if the person commits extortion:

(1) Of property, labor, or services the value of which exceeds fifty dollars (\$50) during any twelve-month period; or

(2) As set forth in 17 PNC section 1904(b).

(b) Extortion in the second degree is a class C felony.

§ 1907. Extortion in the third degree.

(a) A person commits the offense of extortion in the third degree if the person commits extortion of property, labor, or services.

(b) Extortion in the third degree is a misdemeanor.

§ 1908. Firearms, explosives, and dangerous weapons.

Extortion in any degree is a class A felony when a firearm, explosive, or any dangerous weapon is immediately available and is physically used as part of the threat.

§ 1909. Defenses to extortion.

(a) It is a defense to a prosecution for extortion as defined by subsection (a) of 17 PNC section 1904 that the defendant:

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

(2) Believed that the defendant was entitled to the property or services under

a claim or right or that the defendant was authorized, by the owner or by law, to obtain or exert control as the defendant did.

(b) If the owner of the property is the defendant's spouse, it is a defense to a prosecution for extortion under subsection (a) of 17 PNC section 1904 that:

(1) The property that is obtained or over which unauthorized control is exerted constitutes household belongings; and

(2) The defendant and the defendant's spouse were living together at the time of the conduct.

(c) "Household belongings" means furniture, personal effects, vehicles, or money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.

(d) It is an affirmative defense to a prosecution for extortion, as defined in 17 PNC section 1904, that the defendant believed the threatened accusation, penal charge, or exposure to be true, or the proposed action of a public servant was justified, and that the defendant's sole intention was to compel or induce the victim to give property or services to the defendant due the defendant as restitution or indemnification for harm done, or as compensation for property obtained or lawful services performed, or to induce the victim to take reasonable action to prevent or to remedy the wrong which was the subject of the threatened accusation, charge, exposure, or action of a public servant in circumstances to which the threat relates.

(e) In a prosecution for extortion as defined in 17 PNC section 1904, it is not a defense that the defendant has an interest in the property if the owner has an interest in the property to which the defendant is not entitled.

## CHAPTER 20 LABOR TRAFFICKING

§ 2000. Definitions.

§ 2001. Labor trafficking in the first degree.

§ 2002. Labor trafficking in the second degree.

§ 2003. Additional sentencing considerations; victims held in servitude.

§ 2004. Restitution for victims of labor trafficking.

§ 2005. Nonpayment of wages.

§ 2006. Unlawful conduct with respect to documents.

§ 2000. Definitions.

As used in this chapter:

(1) "Deadly force" means force that the actor uses with the intent of causing or that the actor knows to create a substantial risk of causing death or serious bodily harm. Intentionally using a weapon capable of producing death or serious bodily injury constitutes deadly force. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's intent is limited to creating an apprehension that the actor will use deadly force if necessary, does not constitute deadly force.

(2) "Force" means any bodily impact, restraint, or confinement, or the threat thereof.

(3) "Labor" means work of economic or financial value. Prostitution-related and obscenity-related activities as set forth in 17 PNC Division Seven of this Penal Code are not forms of "labor" under this part.

(4) "Services" means a relationship between a person and the actor in which

the person performs activities under the supervision of or for the benefit of the actor or a third party. Prostitution-related and obscenity-related activities as set forth in 17 PNC Division Seven of this Penal Code are not forms of “services” under this part.

(5) “Unlawful force” means force that is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or would constitute an offense except for a defense not amounting to a justification to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious or substantial bodily injury.

(6) “Venture” means a business relationship between two or more parties to undertake economic activity together.

(7) “Victim” means the person against whom an offense specified in 17 PNC section 2001 or 2002 has been committed.

§ 2001. Labor trafficking in the first degree.

(a) A person commits the offense of labor trafficking in the first degree if the person intentionally or knowingly provides or obtains, or attempts to provide or obtain, another person for labor or services by any of the following means committed against the other person:

(1) Any of the acts constituting extortion as described in 17 PNC section 1904, except that for purposes of this paragraph “labor” and “services” shall be as defined in 17 PNC section 2000 above;

(2) The acts constituting kidnapping as described in 17 PNC section 1500(a)(1) through (7), except that for purposes of this paragraph “labor” and “services” shall be as defined in 17 PNC section 2000 above;

(3) The acts described in 17 PNC section 1501(a) or 1502, relating to unlawful imprisonment;

(4) The acts described in 17 PNC section 1602, 1603, or 1604, relating to sexual assault in the first, second, or third degree;

(5) Force, deadly force, or unlawful force;

(6) The acts described in the definition of deception pursuant to 17 PNC section 2300, or fraud, which means making material false statements, misstatements, or omissions to induce or maintain the person to engage or continue to engage in the labor or services;

(7) Requiring that labor or services be performed to retire, repay, or service a real or purported debt, if performing the labor or services is the exclusive method allowed to retire, repay, or service the debt and the indebted person is required to repay the debt with direct labor in place of currency; provided that this shall not include labor or services performed by a child for the child’s parent or guardian;

(8) The acts described in either 17 PNC section 1400, 1401, or 1402, relating to assault;

(9) Withholding any of the person’s government-issued identification documents with the intent to impede the movement of the person;

(10) Using any scheme, plan, or pattern intended to cause the person to

believe that if the person did not perform the labor or services, then the person or a friend or a member of the person's family would suffer serious harm, serious financial loss, or physical restraint; or

(11) Using or threatening to use any form of domination, restraint, or control over the person that, given the totality of the circumstances, would have the reasonably foreseeable effect of causing the person to engage in or to remain engaged in the labor or services.

(b) Labor trafficking in the first degree is a class A felony.

§ 2002. Labor trafficking in the second degree.

(a) A person commits the offense of labor trafficking in the second degree if the person knowingly:

(1) Acts as an individual or uses a licensed business or business enterprise to aid another in a venture knowing that the other person in that venture is committing the offense of labor trafficking in the first degree; or

(2) Benefits, financially or by receiving something of value, from participation in a venture knowing or in reckless disregard of the fact that another person has engaged in any act described in paragraph (a) in the course of that venture or that another person in that venture is committing the offense of labor trafficking in the first degree.

(b) Labor trafficking in the second degree is a class B felony; provided that if a violation of subsection (a) involves kidnapping or an attempt to kidnap, sexual assault in the first, sexual assault in the second, or sexual assault in the third degree, or the attempt to commit sexual assault in the first, second, or third degree, or an attempt to cause the death of a person, or if a death results, the offense shall be a class A felony.

(c) Upon conviction of a defendant for an offense under subsection (a), the court shall also order that any and all business licenses issued by the Republic of Palau be revoked for the business or enterprise that the defendant used to aid in the offense of labor trafficking in the second degree; provided that the court, in its discretion, may reinstate a business license upon petition to the court by any remaining owner or partner of the business or enterprise who was not convicted of an offense under this section or section 2001.

§ 2003. Additional sentencing considerations; victims held in servitude.

(a) In addition to the factors set forth in 17 PNC sections 617 and 631, when determining the particular sentence to be imposed on a defendant convicted under 17 PNC section 2001 or 2002, the court shall consider:

(1) The time for which the victim was held in servitude; and

(2) The number of victims involved in the offense for which the defendant is convicted.

§ 2004. Restitution for victims of labor trafficking.

(a) In addition to any other penalty, and notwithstanding a victim's failure to request restitution under 17 PNC section 656(b), the court shall order restitution to be paid to the victim, consisting of an amount that is the greater of:

(1) The total gross income or value to the defendant of the victim's labor or services; or

(2) The value of the victim's labor or services, as guaranteed under the minimum wage provision of 30 PNC section 125, whichever is greater.

(b) The return of the victim to the victim's home country or other absence of the victim from the jurisdiction shall not relieve the defendant of the defendant's restitution obligation.

§ 2005. Nonpayment of wages.

(a) A person commits the offense of nonpayment of wages if the person, in the capacity as an employer of an employee, intentionally or knowingly or with intent to defraud fails or refuses to pay wages to the employee, except where required by statute or by court process. In addition to any other penalty, a person convicted of nonpayment of wages shall be fined not less than two thousand dollars (\$2,000) nor more than ten thousand dollars (\$10,000) for each offense.

(b) Nonpayment of wages is:

(1) A class C felony, if the amount owed to the employee is equal to or greater than two thousand dollars (\$2,000) or if the defendant convicted of nonpayment of wages falsely denies the amount or validity of the wages owed; or

(2) A misdemeanor, if the amount owed to the employee is less than two thousand dollars (\$2,000).

(c) A person commits a separate offense under this section for each pay period during which the employee earned wages that the person failed or refused to pay the employee. If no set pay periods were agreed upon between the person and the employee at the time the employee commenced the work, then each "pay period" shall be deemed to be bi-weekly.

(d) In addition to any other penalty, the court shall order restitution to be paid to the employee, consisting of an amount that is the greater of:

(1) The wages earned by the employee that were unpaid by the person convicted of nonpayment of wages; or

(2) The value of the employee's labor or services, as guaranteed under the minimum wage provisions of 30 PNC section 125, whichever is greater.

(e) An employee who is the victim of nonpayment of wages may bring a civil action to recover all wages owed by the defendant convicted of nonpayment of wages.

(f) For purposes of this section:

(1) "Employee" means any person working for another for hire, including an individual employed in domestic service or at a family's or person's home, any individual employed by the individual's spouse, or by an independent contractor.

(2) "Person" includes any individual, partnership, association, joint-stock company, trust, corporation, the personal representative of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any persons.

(3) "Wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

§ 2006. Unlawful conduct with respect to documents.

(a) A person commits unlawful conduct with respect to documents if the person knowingly:

(1) Destroys, conceals, removes, confiscates, or possesses any actual or purported government identification document of another person:

(A) In the course of a violation or attempt to commit an offense under 17 PNC section 2001 or 2002; or

(B) To prevent or restrict, or in an attempt to prevent or restrict, without lawful authority, the ability of the other person to move or travel in order to maintain the labor or services of the other person, when the person is or has been the victim of an offense under 17 PNC section 2001 or 2002; or

(2) Destroys, conceals, removes, or confiscates any actual or purported government identification document of an employee.

(b) Unlawful conduct with respect to documents is a class C felony.

CHAPTER 21  
ANTI-PEOPLE SMUGGLING AND TRAFFICKING

...  
CHAPTER 22  
TERRORISM

...  
DIVISION FOUR  
OFFENSES AGAINST PROPERTY RIGHTS  
CHAPTER 23

GENERAL PROVISIONS RELATING TO  
OFFENSES AGAINST PROPERTY RIGHTS

§ 2300. Definitions of terms in this division.

§ 2301. Valuation of property or services.

§ 2302. Property recovered in offenses against property rights.

§ 2300. Definitions of terms in this division.

In this chapter, unless a different meaning plainly is required, the following definitions apply:

(1) “Agricultural equipment, supplies, or products” mean any agricultural equipment, supplies, or commercial agricultural products or commodities raised, grown, or maintained by a commercial agricultural enterprise or educational entity while owned by the enterprise or entity.

(2) “Apartment building” means any structure containing one or more dwelling units that is not a hotel or a single-family residence.

(3) “Aquacultural equipment, supplies, or products” means any equipment, supplies, products, or commodities used, raised, grown, or maintained for the production of fish, shellfish, mollusk, crustacean, algae, or other aquatic plant or animal by an aquaculture enterprise or research agency while owned by the enterprise or agency.

(4) “Building” includes any structure, and the term also includes any vehicle, shipping container, aircraft, or watercraft used for lodging of persons therein; each unit of a building consisting of two or more units separately secured or occupied is a separate building.

(5) “Cable operator” means any person who provides cable television service by means of a set of closed transmission paths and associated signal generation, reception, and control equipment designed to deliver such

programming to multiple subscribers.

(6) “Cable service” means one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection of video programming or other programming service.

(7) “Cable television service” means one-way transmission of programming provided by, or generally considered comparable to programming provided by, a television broadcast station or other information made available by a cable operator to all subscribers generally.

(8) “Cable television service device” means any mechanical or electronic instrument, apparatus, equipment or device that can be used to obtain cable television services without payment of applicable charges therefor. A “cable television service device” does not include any instrument, apparatus, equipment, device, facility or any component thereof furnished by a cable operator in the ordinary course of its business.

(9) “Cardholder” means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

(10) “Confidential personal information” means information in which an individual has a significant privacy interest, including but not limited to a driver’s license number, a social security number, an identifying number of a depository account, a bank account number, a password or other information that is used for accessing information, or any other name, number, or code that is used, alone or in conjunction with other information, to confirm the identity of a person.

(11) “Control over the property” means the exercise of dominion over the property and includes, but is not limited to, taking, carrying away, or possessing the property, or selling, conveying, or transferring title to or an interest in the property.

(12) “Credit card” means any instrument or device, whether known as a credit card, credit plate, debit card, electronic benefits transfer card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value.

(13) “Dealer” means a person in the business of buying and selling goods.

(14) “Deception” occurs when a person knowingly:

(A) Creates or confirms another’s impression that is false and that the defendant does not believe to be true;

(B) Fails to correct a false impression that the person previously has created or confirmed;

(C) Prevents another from acquiring information pertinent to the disposition of the property involved;

(D) Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(E) Promises performance that the person does not intend to perform

or knows will not be performed, but a person's intention not to perform a promise shall not be inferred from the fact alone that the person did not subsequently perform the promise.

(F) However, the term "deception" does not include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or services in communications addressed to the public or to a class or group.

(15) "Deprive" means:

(A) To withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstance that a significant portion of its economic value, or of the use and benefit thereof, is lost to the person; or

(B) To dispose of the property so as to make it unlikely that the owner will recover it; or

(C) To retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(D) To sell, give, pledge, or otherwise transfer any interest in the property; or

(E) To subject the property to the claim of a person other than the owner.

(16) "Distributes" means to sell, transfer, give or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.

(17) "Dwelling" means a building that is used or usually used by a person for lodging.

(18) "Encoding" means making, changing, altering, erasing, adding, creating, or manipulating a credit card number electronically, or magnetically, or both.

(19) "Enter or remain unlawfully" means to enter or remain in or upon premises when the person is not licensed, invited, or otherwise privileged to do so. A person who, regardless of the person's intent, enters or remains in or upon premises that are at the time open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated to the person by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building that is only partly open to the public is not a license or privilege to enter or remain in that part of the building that is not open to the public.

(20) "Expired credit card" means a credit card which is no longer valid because the term shown on the credit card has elapsed.

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

(22) "Government" means the Republic of Palau, or any state within the Republic of Palau, or any ministry, agency, or subdivision of any of the

foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to the compact of free association or international treaty.

(23) “Hotel” means a structure in which a majority of the tenants are roomers or boarders.

(24) “Intent to defraud” means:

(A) An intent to use deception to injure another’s interest that has value; or

(B) Knowledge by the defendant that the defendant is facilitating an injury to another’s interest that has value.

(25) “Issuer” means the business organization or financial institution that issues a credit card or its agent.

(26) “Master key” means a key that will operate two or more locks to different apartments, offices, hotel rooms, or motel rooms in a common physical location.

(27) “Obtain” means:

(A) When used in relation to property, to bring about a transfer of possession or other interest, whether to the obtainer or to another; and

(B) When used in relation to services, to secure the performance of services.

(28) “Owner” means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest.

(29) “Personal information” means information associated with an actual person or a fictitious person that is a name, an address, a telephone number, an electronic mail address, a driver’s license number, a social security number, an employer, a place of employment, information related to employment, an employee identification number, a mother’s maiden name, an identifying number of a depository account, a bank account number, a password used for accessing information, or any other name, number, or code that is used, alone or in conjunction with other information, to confirm the identity of an actual or a fictitious person.

(30) “Premises” includes any building and any real property.

(31) “Property” means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a utility such as gas, electricity, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

(32) “Property of another” means property that any person, other than the defendant, has possession of or any other interest in, even though that possession or interest is unlawful; however, a security interest is not an interest in property, even if title is in the secured party pursuant to the security agreement.

(33) “Receives” or “receiving” includes but is not limited to acquiring possession, control, or title, and taking a security interest in the property.

(34) “Revoked credit card” means a credit card that is no longer valid because permission to use the credit card has been suspended or terminated by the issuer.

(35) “Services” includes but is not limited to labor, professional services, transportation, telephone, public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use.

(36) “Stolen” means obtained by theft or robbery.

(37) “Telecommunication service” means the offering of transmission between or among points specified by a user, of information of the user’s choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium, and does not include cable service.

(38) “Telecommunication service device” means any mechanical or electronic instrument, apparatus, equipment, or device that can be used to obtain telecommunication services without payment of applicable charges therefor and shall include any such device that is capable of, or has been altered, modified, programmed, or reprogrammed alone or in conjunction with another device or other equipment so as to be capable of acquiring or facilitating the acquisition of any electronic serial number, mobile identification number, personal identification number, or any telecommunication service without payment of the applicable charges therefor. A “telecommunication service device” includes telecommunication devices altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or clone microchips, scanning receivers of wireless telecommunication service of a telecommunication service provider, and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider. A “telecommunication service device” does not include any telephone or telegraph instrument, equipment, device, facility, or any component thereof furnished by a provider of telecommunication services in the ordinary course of its business nor any device operated by a law enforcement agency in the normal course of its activities.

(39) “Telecommunication service provider” means any person that owns, operates, manages, or controls any facility used to furnish telecommunication services for profit to the public, or to classes of users as to be effectively available to the public, engaged in the provision of services, such as voice, data, image, graphics, and video services, that make use of all or part of their transmission facilities, switches, broadcast equipment, signaling, or control devices.

(40) “Unauthorized control over property” means control over property of another that is not authorized by the owner.

(41) “Widely dangerous means” includes explosion, flood, avalanche, collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.

§ 2301. Valuation of property or services.

Whenever the value of property or services is determinative of the class or grade of an offense, or otherwise relevant to a prosecution, the following shall apply:

(a) Except as otherwise specified in this section, value means the market value of the property or services at the time and place of the offense, or the replacement cost if the market value of the property or services cannot be determined.

(b) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertained market value, shall be evaluated as follows:

(1) The value of an instrument constituting an evidence of debt, such as a check, traveler's check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof that has been satisfied;

(2) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) When property or services have value but that value cannot be ascertained pursuant to the standards set forth above, the value shall be deemed to be an amount not exceeding one hundred dollars (\$100).

(d) When acting intentionally or knowingly with respect to the value of property or services is required to establish an element of an offense, the value of property or services shall be prima facie evidence that the defendant believed or knew the property or services to be of that value. When acting recklessly with respect to the value of property or services is sufficient to establish an element of an offense, the value of the property or services shall be prima facie evidence that the defendant acted in reckless disregard of the value.

(e) When acting intentionally or knowingly with respect to the value of property or services is required to establish an element of an offense, it is a defense that reduces the class or grade of the offense to a class or grade of offense consistent with the defendant's state of mind, that the defendant believed the valuation of the property or services to be less. When acting recklessly with respect to the value of property or services is required to establish an element of an offense, it is a defense that the defendant did not recklessly disregard a risk that the property was of the specified value.

(f) Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether the property taken belongs to one person or several persons, may be aggregated in determining the class or grade of the offense. Amounts involved in offenses of criminal property damage committed pursuant to one scheme or course of conduct, whether the property damaged belongs to one person or several persons, may be aggregated in determining the class or grade of the offense.

§ 2302. Property recovered in offenses against property rights.

Identification of an item of property recovered for violation of this chapter may be made by photographing the item and authentication of the content of the photograph. Such photograph shall be deemed competent evidence of the item photographed and admissible in any proceeding, hearing, or trial for violation of the chapter.

§ 2400. Burglary offenses; intent to commit therein a crime against a person or against property rights.

§ 2401. Burglary in the first degree.

§ 2402. Burglary in the second degree.

§ 2403. Unauthorized entry in a dwelling.

§ 2404. Criminal trespass in the first degree.

§ 2405. Criminal trespass in the second degree.

§ 2406. Simple trespass.

§ 2400. Burglary offenses; intent to commit therein a crime against a person or against property rights.

For purposes of this part, a person engages in conduct “with intent to commit therein a crime against a person or against property rights” if the person formed the intent to commit within the building a crime against a person or property rights before, during, or after unlawful entry into the building.

§ 2401. Burglary in the first degree.

(a) A person commits the offense of burglary in the first degree if the person intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:

(1) The person is armed with a dangerous instrument in the course of committing the offense; or

(2) The person intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone in the course of committing the offense; or

(3) The person recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

(b) An act occurs “in the course of committing the offense” if it occurs in effecting entry or while in the building or in immediate flight therefrom.

(c) Burglary in the first degree is a class B felony.

§ 2402. Burglary in the second degree.

(a) A person commits the offense of burglary in the second degree if the person intentionally enters or remains unlawfully in a building with intent to commit therein a crime against a person or against property rights.

(b) Burglary in the second degree is a class C felony.

§ 2403. Unauthorized entry in a dwelling.

(a) A person commits the offense of unauthorized entry in a dwelling if the person intentionally or knowingly enters unlawfully into a dwelling and another person was lawfully present in the dwelling.

(b) Unauthorized entry in a dwelling is a class C felony.

(c) It shall be an affirmative defense that reduces this offense to a misdemeanor if, at the time of the unlawful entry:

(1) There was a social gathering of invited guests at the dwelling the defendant entered;

(2) The defendant intended to join the social gathering; and

(3) The defendant had no intent to commit any unlawful act other than the entry.

§ 2404. Criminal trespass in the first degree.

(a) A person commits the offense of criminal trespass in the first degree if:

(1) The person knowingly enters or remains unlawfully:

(A) In a dwelling; or

(B) In or upon the premises of a hotel or apartment building; or

(C) In or upon premises that are enclosed in a manner designed to exclude intruders or are fenced.

(2) The person enters or remains unlawfully in or upon the premises of any public or non-public school as referenced in Title 22 of the Palau National Code, after reasonable warning or request to leave by school authorities or a police officer; provided however, such warning or request to leave shall be unnecessary between 10:00 P.M. and 5:00 A.M.

(b) Criminal trespass in the first degree is a misdemeanor.

§ 2405. Criminal trespass in the second degree.

(a) A person commits the offense of criminal trespass in the second degree if:

(1) The person enters or remains unlawfully in or upon commercial premises after a reasonable warning or request to leave by the owner or lessee of the commercial premises, the owner's or lessee's authorized agent, or a police officer.

(2) For the purposes of this section, "reasonable warning or request" includes a warning or request communicated in writing at any time within a one-year period inclusive of the date the incident occurred, which may contain but is not limited to the following information:

(A) A warning statement advising the person that the person's presence is no longer desired on the property for a period of one year from the date of the notice, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to 17 PNC section 2405(a)(1), and that criminal trespass in the second degree is a petty misdemeanor;

(B) The legal name, any aliases, and a photograph, if practicable, or a physical description, including but not limited to sex, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics of the person warned;

(C) The name of the person giving the warning along with the date and time the warning was given; and

(D) The signature of the person giving the warning, the signature of a witness or police officer who was present when the warning was given and, if possible, the signature of the violator;

(3) The person enters or remains unlawfully on agricultural lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, and the agricultural lands:

(A) Have a sign or signs displayed on the unenclosed cultivated or uncultivated agricultural land sufficient to give notice and reading as follows: "Private Property". The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line

of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line; or

(B) At the time of entry, are fallow or have a visible presence of livestock or a crop:

(i) Under cultivation; or

(ii) In the process of being harvested; or

(iii) That has been harvested; or

(4) The person enters or remains unlawfully on unimproved or unused lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, and the lands:

(A) Are fenced, enclosed, or secured in a manner designed to exclude the general public; or

(B) Have a sign or signs displayed on the unenclosed, unimproved, or unused land sufficient to give reasonable notice and reads as follows: "Private Property – No Trespassing", "Government Property – No Trespassing", or a substantially similar message; provided that the sign or signs shall contain letters not less than two inches in height and shall be placed at reasonable intervals along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line.

(5) For the purposes of this section, "unimproved or unused lands" means any land upon which there is no improvement; construction of any structure, building, or facility; or alteration of the land by grading, dredging, or mining that would cause a permanent change in the land or that would change the basic natural condition of the land. Land remains "unimproved or unused land" under this paragraph notwithstanding minor improvements, including the installation or maintenance of utility poles, signage, and irrigation facilities or systems; minor alterations undertaken for the preservation or prudent management of the unimproved or unused land, including the installation or maintenance of fences, trails, or pathways; maintenance activities, including forest plantings and the removal of weeds, brush, rocks, boulders, or trees; and the removal or securing of rocks or boulders undertaken to reduce risk to downslope properties.

(b) Criminal trespass in the second degree is a petty misdemeanor.

§ 2406. Simple trespass.

(a) A person commits the offense of simple trespass if the person knowingly enters or remains unlawfully in or upon premises.

(b) Simple trespass is a violation.

## CHAPTER 25

### CRIMINAL DAMAGE TO PROPERTY

§ 2500. Criminal property damage in the first degree.

§ 2501. Criminal property damage in the second degree.

§ 2502. Criminal property damage in the third degree.

§ 2503. Criminal property damage in the fourth degree.

§ 2504. Graffiti; sentencing.

§ 2505. Failure to control widely dangerous means.

§ 2506. Criminal tampering; definitions of terms.

§ 2507. Criminal tampering in the first degree.

§ 2508. Criminal tampering in the second degree.

§ 2509. Criminal littering.

§ 2500. Criminal property damage in the first degree.

(a) A person commits the offense of criminal property damage in the first degree if:

(1) The person intentionally or knowingly damages property by means other than arson and thereby recklessly places another person in danger of death or bodily injury; or

(2) The person intentionally or knowingly damages the property of another by means other than arson, without the other's consent, in an amount exceeding twenty thousand dollars (\$20,000); or

(3) The person intentionally or knowingly damages the agricultural equipment, supplies, or products or aquacultural equipment, supplies, or products of another, including trees, bushes, or any other plant and livestock of another by means other than arson, without the other's consent, in an amount exceeding one thousand five hundred dollars (\$1,500). In calculating the amount of damages to agricultural products, the amount of damages includes future losses and the loss of future production.

(b) Criminal property damage in the first degree is a class B felony.

§ 2501. Criminal property damage in the second degree.

(a) A person commits the offense of criminal property damage in the second degree if:

(1) The person intentionally or knowingly damages the property of another by means other than arson, without the other's consent, by the use of widely dangerous means; or

(2) The person intentionally or knowingly damages the property of another by means other than arson, without the other's consent, in an amount exceeding one thousand five hundred dollars (\$1,500); or

(3) The person intentionally or knowingly damages the agricultural equipment, supplies, or products or aquacultural equipment, supplies, or products of another, including trees, bushes, or any other plant and livestock of another by means other than arson, without the other's consent, in an amount exceeding five hundred dollars (\$500). In calculating the amount of damages to agricultural products, the amount of damages includes future losses and the loss of future production.

(b) Criminal property damage in the second degree is a class C felony.

§ 2502. Criminal property damage in the third degree.

(a) A person commits the offense of criminal property damage in the third degree if:

(1) The person recklessly damages the property of another by means other than arson, without the other's consent, by the use of widely dangerous means; or

(2) The person intentionally or knowingly damages the property of another by means other than arson, without the other's consent, in an amount exceeding five hundred dollars (\$500); or

(3) The person intentionally damages the agricultural equipment, supplies, or products or aquacultural equipment, supplies, or products of another, including trees, bushes, or any other plant and livestock of another by means

other than arson, without the other's consent, in an amount exceeding one hundred dollars (\$100). In calculating the amount of damages to agricultural products, the amount of damages includes future losses and the loss of future production.

(b) Criminal property damage in the third degree is a misdemeanor.

§ 2503. Criminal property damage in the fourth degree.

(a) A person commits the offense of criminal property damage in the fourth degree if the person intentionally or knowingly damages the property of another, by means other than arson, without the other's consent.

(b) Criminal property damage in the fourth degree is a petty misdemeanor.

§ 2504. Graffiti; sentencing.

(a) Whenever a person is sentenced under 17 PNC section 2501, 2502, or 2503 for an offense in which the damage is caused by graffiti, in addition to any penalty prescribed by those sections, the person shall be required to remove the graffiti from the damaged property within thirty days of sentencing, if it has not already been removed and where consent from the respective property owner or owners has been obtained, provided that removal of graffiti shall not place the person or others in physical danger nor inconvenience the public.

(b) In lieu of performing graffiti removal pursuant to subsection (a) above, the court may require a person to perform one hundred hours of community service.

(c) For purposes of this section, "graffiti" means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances.

§ 2505. Failure to control widely dangerous means.

(a) A person commits the offense of failure to control widely dangerous means if, knowing that widely dangerous means are endangering life or property, the person negligently fails to take measures to prevent or mitigate the danger and:

(1) The person knows that the person is under an official, contractual, or other legal duty to take measures to prevent, control, or mitigate the danger; or

(2) The means were employed by the person or with the person's assent, or on premises in the person's custody or control.

(b) Failure to control widely dangerous means is a misdemeanor.

§ 2506. Criminal tampering; definitions of terms.

In sections 2506 and 2507:

(a) To "tamper with" means to interfere improperly with something, meddle with it, or make unwarranted alterations in its existing condition;

(b) "Utility" means an enterprise that provides gas, electric, water or communications services, and any common carrier; it may be either publicly or privately owned or operated.

§ 2507. Criminal tampering in the first degree.

(a) A person commits the offense of criminal tampering in the first degree if, and with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, the person damages or tampers with, without the consent of the utility or institution, its property or facilities and thereby causes substantial interruption or impairment of

service.

(b) Criminal tampering in the first degree is a misdemeanor.

§ 2508. Criminal tampering in the second degree.

(a) A person commits the offense of criminal tampering in the second degree if the person intentionally tampers with property of another person, without the other person's consent, with intent to cause substantial inconvenience to that person or to another.

(b) Criminal tampering in the second degree is a petty misdemeanor.

§ 2509. Criminal littering.

(a) A person commits the offense of criminal littering if that person knowingly places, throws, or drops litter on any public or private property or in any public or private waters, except:

(1) In a place designated by the Republic of Palau for the disposal of garbage and refuse; or

(2) Into a litter receptacle.

(b) "Litter" means rubbish, refuse, waste material, garbage, trash, offal, or debris of whatever kind or description, and whether or not it is of value, and includes improperly discarded paper, metal, plastic, glass, or solid waste.

(c) Criminal littering is a petty misdemeanor.

## CHAPTER 26 THEFT AND RELATED OFFENSES

§ 2600. Theft.

§ 2601. Theft in the first degree.

§ 2602. Theft in the second degree.

§ 2603. Theft in the third degree.

§ 2604. Theft in the fourth degree.

§ 2605. Defenses: unawareness of ownership; claim of right; household belongings; co-interest not a defense.

§ 2606. Proof of theft offense.

§ 2607. Unauthorized control of propelled vehicle.

§ 2608. Unauthorized entry into motor vehicle in the first degree.

§ 2609. Unauthorized entry into motor vehicle in the second degree.

§ 2610. Failure to return a rental motor vehicle; penalty.

§ 2611. Failure to return leased or rented personal property; penalty.

§ 2612. Removal of identification marks.

§ 2613. Theft of utility services.

§ 2614. Theft of government property in the first degree.

§ 2615. Theft of government property in the second degree.

§ 2616. Unauthorized possession of confidential personal information.

§ 2600. Theft.

A person commits theft if the person does any of the following:

(a) Obtains or exerts unauthorized control over property. A person obtains or exerts unauthorized control over the property of another with intent to deprive the other of the property.

(b) Property obtained or control exerted through deception. A person obtains, or exerts control over, the property of another by deception with intent to deprive the other of the property.

(c) Appropriation of property. A person obtains, or exerts control over, the property of another that the person knows to have been lost or mislaid or to have been delivered under a mistake as to the nature or amount of the property, the identity of the recipient, or other facts, and, with the intent to deprive the owner of the property, the person fails to take reasonable measures to discover and notify the owner.

(d) Obtaining services by deception. A person intentionally obtains services, known by the person to be available only for compensation, by deception, false token, or other means to avoid payment for the services. When compensation for services is ordinarily paid immediately upon the rendering of them, absconding without payment or offer to pay is prima facie evidence that the services were obtained by deception.

(e) Diversion of services. Having control over the disposition of services of another to which a person is not entitled, the person intentionally diverts those services to the person's own benefit or to the benefit of a person not entitled thereto.

(f) Failure to make required disposition of funds.

(1) A person intentionally obtains property from anyone upon an agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from the property or its proceeds or from the person's own property reserved in equivalent amount, and deals with the property as the person's own and fails to make the required payment or disposition. It does not matter that it is impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition. A person's status as an officer or employee of the government or a financial institution is prima facie evidence that the person knows the person's legal obligations with respect to making payments and other dispositions. If the officer or employee fails to pay or account upon lawful demand, or if an audit reveals a falsification of accounts, it shall be prima facie evidence that the officer or employee has intentionally dealt with the property as the officer's or employee's own.

(2) A person obtains personal services from an employee upon agreement or subject to a known legal obligation to make a payment or other disposition of funds to a third person on account of the employment, and the person intentionally fails to make the payment or disposition at the proper time.

(g) Receiving stolen property. A person intentionally receives, retains, or disposes of the property of another, knowing that it has been stolen, with intent to deprive the owner of the property. It is prima facie evidence that a person knows the property to have been stolen if, being a dealer in property of the sort received, the person acquires the property for a consideration that the person knows is far below its reasonable value.

(h) Shoplifting.

(1) A person conceals or takes possession of the goods or merchandise of any store or retail establishment, with intent to defraud.

(2) A person alters the price tag or other price marking on goods or merchandise of any store or retail establishment, with intent to defraud.

(3) A person transfers the goods or merchandise of any store or retail establishment from one container to another, with intent to defraud.

The unaltered price or name tag or other marking on goods or merchandise, duly identified photographs or photocopies thereof, or printed register receipts shall be prima facie evidence of value and ownership of such goods or merchandise.

Photographs of the goods or merchandise involved, duly identified in writing by the arresting police officer as accurately representing such goods or merchandise, shall be deemed competent evidence of the goods or merchandise involved and shall be admissible in any proceedings, hearings, and trials for shoplifting to the same extent as the goods or merchandise themselves.

§ 2601. Theft in the first degree.

(a) A person commits the offense of theft in the first degree if the person commits theft of property or services, the value of which exceeds twenty thousand dollars (\$20,000);

(b) Theft in the first degree is a class B felony.

§ 2602. Theft in the second degree.

(a) A person commits the offense of theft in the second degree if the person commits theft:

(1) Of property from the person of another;

(2) Of property or services the value of which exceeds three hundred dollars (\$300);

(3) Of an aquacultural product or part thereof from premises that is fenced or enclosed in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: "Private Property"; or

(4) Of agricultural equipment, supplies, or products, or part thereof, the value of which exceeds one hundred dollars (\$100) but does not exceed twenty thousand dollars (\$20,000), or of agricultural products that exceed twenty-five pounds, from premises that are fenced, enclosed, or secured in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: "Private Property". The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land in a manner and in such position as to be clearly noticeable from outside the boundary line. Possession of agricultural products without documentation of ownership, where such a document would be required, is prima facie evidence that the products are or have been stolen.

(b) Theft in the second degree is a class C felony.

§ 2603. Theft in the third degree.

(a) A person commits the offense of theft in the third degree if the person commits theft of property or services the value of which exceeds one hundred dollars (\$100).

(b) Theft in the third degree is a misdemeanor.

§ 2604. Theft in the fourth degree.

(a) A person commits the offense of theft in the fourth degree if the person commits theft of property or services of any value not in excess of one hundred dollars (\$100).

(b) Theft in the fourth degree is a petty misdemeanor.

§ 2605. Defenses: unawareness of ownership; claim of right; household belongings; co-interest not a defense.

(a) It is a defense to a prosecution for theft that the defendant:

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

(2) Reasonably believed that the defendant was entitled to the property or

services under a claim of right or that the defendant was authorized, by the owner or by law, to obtain or exert control as the defendant did.

(b) If the owner of the property is the defendant's spouse, it is a defense to a prosecution for theft of property that:

(1) The property that is obtained or over which unauthorized control is exerted constitutes household belongings; and

(2) The defendant and the defendant's spouse were living together at the time of the conduct.

(c) "Household belongings" means furniture, personal effects, vehicles, money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.

(d) In a prosecution for theft, it is not a defense that the defendant has an interest in the property if the owner has an interest in the property to which the defendant is not entitled.

§ 2606. Proof of theft offense.

A charge of an offense of theft in any degree may be proved by evidence that it was committed in any manner that would be theft under 17 PNC section 2600, notwithstanding the specification of a different manner in the information, or other charge, subject only to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

§ 2607. Unauthorized control of propelled vehicle.

(a) A person commits the offense of unauthorized control of a propelled vehicle if the person intentionally or knowingly exerts unauthorized control over another's propelled vehicle by operating the vehicle without the owner's consent or by changing the identity of the vehicle without the owner's consent.

(b) "Propelled vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

(c) It is an affirmative defense to a prosecution under this section that the defendant:

(1) Received authorization to use the vehicle from an agent of the owner where the agent had actual or apparent authority to authorize such use; or

(2) Is a lien holder or legal owner of the propelled vehicle, or an authorized agent of the lien holder or legal owner, engaged in the lawful repossession of the propelled vehicle.

(d) For the purposes of this section, "owner" means the registered owner of the propelled vehicle or the unrecorded owner of the vehicle pending transfer of ownership; provided that if there is no registered owner of the propelled vehicle or unrecorded owner of the vehicle pending transfer of ownership, "owner" means the legal owner.

(e) Unauthorized control of a propelled vehicle is a class C felony.

§ 2608. Unauthorized entry into motor vehicle in the first degree.

(a) A person commits the offense of unauthorized entry into motor vehicle in the first degree if the person intentionally or knowingly enters or remains unlawfully in a motor vehicle, without being invited, licensed, or otherwise authorized to enter or remain within the vehicle, with the intent to commit a crime against a person or against property rights.

(b) Unauthorized entry into motor vehicle in the first degree is a class C felony.

§ 2609. Unauthorized entry into motor vehicle in the second degree.

(a) A person commits the offense of unauthorized entry into a motor vehicle in the second degree if the person intentionally or knowingly enters into a motor vehicle without being invited, licensed, or otherwise authorized to do so.

(b) Unauthorized entry into a motor vehicle in the second degree is a misdemeanor.

§ 2610. Failure to return a rental motor vehicle; penalty.

(a) A person commits the offense of failure to return a rental motor vehicle when he or she intentionally does not return the motor vehicle to the person, or his or her agent, from whom the vehicle was rented within forty-eight hours after the time stated on the rental agreement, unless the person renting the vehicle gives notice during the rental agreement period or as soon as practical before the expiration of the forty-eight hour period, that he or she will not be able to return the vehicle in the stated time and extends the time in which the vehicle will be returned.

(b) Failure to return a rental motor vehicle is a misdemeanor.

§ 2611. Failure to return leased or rented personal property; penalty.

(a) A person commits the offense of failure to return leased or rented personal property other than a rental motor vehicle, when he or she knowingly or intentionally does not return the leased or rented personal property to the person, or his or her agent, from whom the personal property was leased or rented within fourteen days after the return date stated in the lease or rental contract, unless the person leasing or renting the personal property gives notice before the return date stated in the lease or rental contract, that he or she will not be able to return the leased or rented personal property by the date stated and with the permission of the owner of the property or his or her agent extends the date by which the personal property will be returned.

(b) Failure to return leased or rented personal property is a petty misdemeanor.

§ 2612. Removal of identification marks.

(a) A person commits the offense of removal of identification marks if the person intentionally or knowingly, to conceal the true ownership of the property of another, defaces, erases, or otherwise alters any serial number or identification mark placed or inscribed by the manufacturer on any moveable or immovable object, equipment, appliance, merchandise, or other article or component parts thereof, with a value of more than twenty-five dollars (\$25).

(b) A person removes identification marks if the person attempts to or succeeds in erasing, defacing, altering, or removing a serial number or identification mark or part thereof, on the property of another.

(c) Removal of identification marks is a misdemeanor.

§ 2613. Theft of utility services.

(a) For purposes of this section:

(1) "Customer" means the person in whose name the utility service is provided.

(2) "Divert" means to change the intended course or path of utility services without the authorization or consent of the utility.

(3) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(4) "Reconnection" means the reconnection of utility service by a customer or other person after service has been lawfully disconnected by the utility.

(5) "Utility" means any person that provides electricity, gas, water or sewer services.

(6) "Utility service" means the provision of electricity, gas, water, sewer or any other service provided by the utility for compensation.

(b) A person commits the offense of theft of utility services if the person, with intent to obtain utility services for the person's own or another's use without paying the full lawful charge therefor, or with intent to deprive any utility of any part of the full lawful charge for utility services it provides, commits, authorizes, solicits, aids, or abets any of the following:

(1) Diverts, or causes to be diverted utility services, by any means whatsoever;

(2) Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function;

(3) Makes or causes to be made any connection or reconnection with property owned or used by the utility to provide utility services, without the authorization or consent of the utility; or

(4) Uses or receives the direct benefit of all or a portion of utility services with knowledge or reason to believe that a diversion, prevention of accurate measuring function, or unauthorized connection existed at the time of use or that the use or receipt was otherwise without the authorization or consent of the utility.

(c) In any prosecution under this section, the presence of any of the following objects, circumstances, or conditions on premises controlled by the customer, or by the person using or receiving the direct benefit of all or a portion of utility services obtained in violation of this section, shall create a rebuttable presumption that the customer or person intended to and did violate this section:

(1) Any instrument, apparatus, or device primarily designed to be used to obtain utility services without paying the full lawful charge; or

(2) Any meter that has been diverted or prevented from accurately performing its measuring function so as to cause no measurement or inaccurate measurement of utility services.

(d) A person commits the offense of theft of utility services in the first degree in cases where the theft:

(1) Accrues to the benefit of any commercial trade or business, including any commercial trade or business operating in a residence, home, or dwelling;

(2) Is obtained through the services of a person hired to commit the theft of utility services; in which event, both the person hired and the person responsible for the hiring shall be punished under this section as a class C felony; or

(3) Accrues to the benefit of a residence, home, or dwelling where the value of the theft of utility services exceeds three hundred dollars (\$300).

Theft of utility services in the first degree is a class C felony.

(e) A person commits theft of utility services in the second degree if the person commits theft of utility services other than as provided in subsection (d). Theft of utility services in the second degree is a misdemeanor.

§ 2614. Theft of government property in the first degree.

(a) A person commits the offense of theft of government property in the first degree if the person intentionally or knowingly embezzles, steals, purloins, converts, sells, conveys or disposes of any money, funds, or thing of value of the national government of the Republic, its political subdivisions, state or municipal governments, or of any ministry, bureau or agency thereof; or whoever receives, conceals, or retains the same with intent to convert it to his or her use or gain, knowing it to have been embezzled, stolen, purloined or converted.

(b) Theft of government property is a class C felony if the value of the government property is three hundred dollars (\$300) or less. Theft of government property is a class B felony if the value of the government property is more than three hundred dollars (\$300) but less than twenty thousand dollars (\$20,000). Theft of government property is a class A felony if the value of the government property is twenty thousand dollars (\$20,000) or more.

§ 2615. Theft of government property in the second degree.

(a) A person commits the offense of theft of government property in the second degree if that person without proper authority intentionally or knowingly possesses or removes from its location any property of any kind, wherever situated, of the government of the Republic, its political subdivisions, states or municipal governments.

(b) Theft of government property in the second degree is a misdemeanor.

§ 2616. Unauthorized possession of confidential personal information.

(a) A person commits the offense of unauthorized possession of confidential personal information if that person intentionally or knowingly possesses, without authorization, any confidential personal information of another in any form, including but not limited to mail, physical documents, identification cards, or information stored in digital form.

(b) It is an affirmative defense that the person who possessed the confidential personal information of another did so under the reasonable belief that the person in possession was authorized by law or by the consent of the other person to possess the confidential personal information.

(c) Unauthorized possession of confidential personal information is a class C felony.

## CHAPTER 27 ROBBERY

§ 2700. Robbery in the first degree.

§ 2701. Robbery in the second degree.

§ 2702. Definition.

§ 2700. Robbery in the first degree.

(a) A person commits the offense of robbery in the first degree if, in the course of committing theft or non-consensual taking of a motor vehicle:

(1) The person attempts to kill another or intentionally or knowingly inflicts or attempts to inflict serious bodily injury upon another;

(2) The person is armed with a dangerous instrument and:

(A) The person uses force against the person of anyone present with intent to overcome that person's physical resistance or physical power

of resistance; or

(B) The person threatens the imminent use of force against the person of anyone present with intent to compel acquiescence to the taking of or escaping with the property.

(b) As used in this section, “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 threatened to be used is capable of producing death or serious bodily injury.

(c) Robbery in the first degree is a class A felony.

§ 2701. Robbery in the second degree.

(a) A person commits the offense of robbery in the second degree if, in the course of committing theft or nonconsensual taking of a motor vehicle:

(1) The person uses force against the person of anyone present with the intent to overcome that person’s physical resistance or physical power of resistance;

(2) The person threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property; or

(3) The person recklessly inflicts serious bodily injury upon another.

(b) Robbery in the second degree is a class B felony.

§ 2702. Definition.

For purposes of sections 2700 and 2701 of this chapter, an act shall be deemed “in the course of committing a theft or non-consensual taking of a motor vehicle” if it occurs in an attempt to commit theft or non-consensual taking of a motor vehicle, in the commission of theft or non-consensual taking of a motor vehicle, or in the flight after the attempt or commission.

## CHAPTER 28 FORGERY AND RELATED OFFENSES

§ 2800. Definitions of terms in this part.

§ 2801. Forgery in the first degree.

§ 2802. Forgery in the second degree.

§ 2803. Forgery in the third degree.

§ 2804. Criminal possession of a forgery device.

§ 2805. Criminal simulation.

§ 2806. Obtaining signature by deception.

§ 2807. Negotiating a worthless negotiable instrument.

§ 2808. Suppressing a testamentary or recordable instrument.

§ 2809. Counterfeiting.

§ 2800. Definitions of terms in this part.

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

(1) “Written instrument” means:

(A) Any paper, document, or other instrument containing written or printed matter or its equivalent; or

(B) Any token, coin, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification;

(2) “Complete written instrument” means a written instrument that purports

to be genuine and fully drawn with respect to every essential feature thereof;

(3) "Incomplete written instrument" means a written instrument that contains some matter by way of content or authentication but that requires additional matter in order to render it a complete written instrument;

(4) "Falsely make," in relation to a written instrument, means to make or draw a complete written instrument, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or issuing commercial establishment, but that is not either because the ostensible maker, or issuing commercial establishment is fictitious or because, if real, the same did not authorize the making or drawing thereof;

(5) "Falsely complete," in relation to a written instrument, means to transform, by adding, inserting, or changing matter, an incomplete written instrument into a complete one, without the authority of the ostensible maker, drawer, or issuing commercial establishment, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker, authorized by the maker, or issuing commercial establishment;

(6) "Falsely alter," in relation to a written instrument, means to change, without the authority of the ostensible maker, drawer, or issuing commercial establishment, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker, authorized by the maker, or issuing commercial establishment;

(7) "Forged instrument" means a written instrument that has been falsely made, completed, endorsed, or altered;

(8) "Utter," in relation to a forged instrument, means to offer, whether accepted or not, a forged instrument with representation by acts or words, oral or in writing, that the instrument is genuine;

(9) "Falsely endorse," in relation to a written instrument, means to endorse, without the authority of the ostensible maker, drawer, or issuing commercial establishment, any part of a written instrument, whether complete or incomplete, so that the written instrument so endorsed falsely appears or purports to be authorized by the ostensible maker, drawer, or issuing commercial establishment; and

(10) "Fraudulently encode magnetic ink character recognition numbers," in relation to a written instrument, means to change, alter, erase, add, create, tamper with, or manipulate the magnetic ink character recognition numbers, or symbols representing to be magnetic ink character recognition numbers, from the issuing commercial establishment.

§ 2801. Forgery in the first degree.

(a) A person commits the offense of forgery in the first degree if, with intent to defraud, the person falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument, or fraudulently encodes the magnetic ink character recognition numbers, which is or purports to be, or which is calculated to become or to represent if completed:

(1) Part of an issue of stamps, securities, or other valuable instruments issued by a government or governmental agency; or

(2) Part of an issue of stock, bonds, or other instruments representing

interests in or claims against a corporate or other organization or its property.

(b) Forgery in the first degree is a class B felony.

§ 2802. Forgery in the second degree.

(a) A person commits the offense of forgery in the second degree if, with intent to defraud, the person falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument, or fraudulently encodes the magnetic ink character recognition numbers, which is or purports to be, or which is calculated to become or to represent if completed, a deed, will, codicil, contract, assignment, commercial instrument, or other instrument that does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status.

(b) Forgery in the second degree is a class C felony.

§ 2803. Forgery in the third degree.

(a) A person commits the offense of forgery in the third degree if, with intent to defraud, the person falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument.

(b) Forgery in the third degree is a misdemeanor.

§ 2804. Criminal possession of a forgery device.

(a) A person commits the offense of criminal possession of a forgery device if:

(1) The person makes or possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed or adapted for use in forging written instruments; or

(2) The person makes or possesses any device, apparatus, equipment, or article capable of or adaptable to use in forging written instruments with intent to use it oneself, or to aid or permit another to use it, for purposes of forgery.

(b) Criminal possession of a forgery device is a class C felony.

§ 2805. Criminal simulation.

(a) A person commits the offense of criminal simulation if, with intent to defraud, the person makes, alters, or utters any object, so that it appears to have an antiquity, rarity, source, or authorship that it does not in fact possess.

(b) In subsection (a) above, “utter” means to offer, whether accepted or not, an object with representation by acts or words, oral or in writing, relating to its antiquity, rarity, source, or authorship.

(c) Criminal simulation is a misdemeanor.

§ 2806. Obtaining signature by deception.

(a) A person commits the offense of obtaining a signature by deception if, with intent to defraud, the person:

(1) Causes another, by deception, to sign or execute a written instrument; or

(2) Utters the written instrument specified in subparagraph (1).

(b) Obtaining a signature by deception is a misdemeanor.

§ 2807. Negotiating a worthless negotiable instrument.

(a) The definitions of the following terms shall apply to this section:

(1) “Issue” means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(2) “Negotiable Instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(A) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(B) Is payable on demand or at a definite time; and

(C) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain:

(i) An undertaking or power to give, maintain, or protect collateral to secure payment;

(ii) An authorization or power to the holder to confess judgment or realize on or dispose of collateral; or

(iii) A waiver of the benefit of any law intended for the advantage or protection of an obligor.

(3) “Instrument” means a negotiable instrument.

(4) An instrument is a “note” if it is a promise and is a “draft” if it is an order. If an instrument falls within the definition of both “note” and “draft”, a person entitled to enforce the instrument may treat it as either.

(5) “Check” means:

(A) A draft, other than a documentary draft, payable on demand and drawn on a bank;

(B) A cashier’s check or teller’s check; or

(C) A demand draft.

An instrument may be a check even though it is described on its face by another term, such as “money order”.

(6) “Cashier’s check” means a draft with respect to which the drawer and the drawee are the same bank or branches of the same bank.

(7) “Teller’s check” means a draft drawn by a bank:

(A) On another bank; or

(B) Payable at or through a bank.

(8) “Traveler’s check” means an instrument that:

(A) Is payable on demand;

(B) Is drawn on or payable at or through a bank;

(C) Is designated by the term “traveler’s check” or by a substantially

similar term; and

(D) Requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(9) “Certificate of deposit” means an instrument containing an acknowledgement by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

(10) “Demand draft” means a writing not signed by a customer that is created by a third party under the purported authority of the customer for the purpose of charging the customer’s account with a bank. A demand draft may contain any of all of the following:

(A) The customer’s printed or typewritten name or account number;

(B) A notation that the customer authorized the draft; or

(C) The statement “No Signature Required” or words to that effect.

(11) “Negotiation” means:

(A) A transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(B) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its endorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

(12) “Notice of dishonor” means:

(A) The obligation of an endorser and the obligation of a drawer may not be enforced unless the endorser or drawer is given notice of dishonor of the instrument complying with this section; or notice of dishonor is excused.

(B) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(C) With respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument; or by any other person within thirty days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within thirty days following the day on which dishonor occurs.

(b) A person commits the offense of negotiating a worthless negotiable instrument if that person intentionally issues or negotiates a negotiable instrument knowing that it will not be honored by the maker or drawee.

(c) For the purpose of this section, as well as in any prosecution for theft committed by means of a worthless negotiable instrument, either of the following shall be prima facie evidence that the drawer knew that the negotiable instrument would not be honored upon presentation:

(1) The drawer had no account with the drawee at the time the negotiable instrument was negotiated; or

(2) Payment was refused by the drawee for lack of funds upon presentation within thirty days after date or issue, whichever is later, and the drawer failed to make good within ten days after actual receipt of a notice of dishonor.

(d) Negotiating a worthless negotiable instrument is a misdemeanor.

§ 2808. Suppressing a testamentary or recordable instrument.

(a) A person commits the offense of suppressing a testamentary instrument if, with intent to defraud, the person destroys, removes, or conceals any will, codicil, or other testamentary instrument.

(b) A person commits the offense of suppressing a recordable instrument if, with intent to defraud, the person destroys, removes, or conceals any deed, mortgage, security instrument, or other written instrument for which the law provides public recording.

(c) Suppressing a testamentary or recordable instrument is a class C felony.

§ 2809. Counterfeiting.

(a) Every person who, with intent to defraud, falsely makes, forges, photographs, counterfeits or alters any currency or obligation or security of any country, shall be guilty of counterfeiting.

(b) 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 or obligation or security of any country shall be guilty of counterfeiting.

(c) Every person who knowingly buys, sells, exchanges, transfers, receives, or delivers any false, forged, photographed, counterfeited or altered currency or obligation or security of any country, with the intent that the same shall be passed, published, or used as true and genuine, shall be guilty of counterfeiting.

(d) Counterfeiting is a class B felony.

## CHAPTER 29 BUSINESS, COMMERCIAL AND LAND FRAUDS

§ 2900. Deceptive business practices.

§ 2901. False advertising.

§ 2902. Falsifying business records.

§ 2903. Defrauding secured creditors.

§ 2904. Misapplication of entrusted property.

§ 2905. Trademark counterfeiting.

§ 2906. Fraudulent land conveyance.

§ 2907. Fraudulent recording.

§ 2900. Deceptive business practices.

(a) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession the person knowingly or recklessly:

(1) Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(2) Sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

(3) Takes or attempts to take more than the represented quantity of any commodity or service when as buyer the person furnishes the weight or measure; or

(4) Sells or offers for sale adulterated commodities; or

(5) Sells or offers or exposes for sale mislabeled commodities.

(b) “Adulterated” means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative rule or regulation, or if none, as set by established commercial usage.

(c) “Mislabeled” means:

(1) Varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative rule or regulation, or if none, as set by established commercial usage; or

(2) Represented as being another person’s product, though otherwise labeled accurately as to quality and quantity.

(d) Deceptive business practices is a misdemeanor.

(e) This section does not apply to deceptive business practices, as defined in subsection (1) of this section, for which a specific penalty is provided by a statute other than this Penal Code.

§ 2901. False advertising.

(a) A person commits the offense of false advertising if, in connection with the promotion of the sale of property or services, the person knowingly or recklessly makes or causes to be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons.

(b) “Misleading statement” includes an offer to sell property or services if the offeror does not intend to sell or provide the advertised property or services:

(1) At the price equal to or lower than the price offered; or

(2) In a quantity sufficient to meet the reasonably- expected public demand, unless quantity is specifically stated in the advertisement; or

(3) At all.

(c) False advertising is a misdemeanor.

§ 2902. Falsifying business records.

(a) A person commits the offense of falsifying business records if, with intent to defraud, the person:

(1) Makes or causes a false entry in the business records of an enterprise; or

(2) Alters, erases, obliterates, deletes, removes, or destroys a true entry in the business records of an enterprise; or

(3) Omits to make a true entry in the business records of an enterprise in violation of a duty to do so that the person knows to be imposed upon the person by law, other than for the information of the government, or by the nature of the person's position; or

(4) Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

(b) "Enterprise" means any entity of one or more persons, corporate or otherwise, engaged in business, commercial, professional, industrial, charitable, or social activity.

(c) "Business record" means any writing or article kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity.

(d) Falsifying business records is a misdemeanor.

§ 2903. Defrauding secured creditors.

(a) A person commits the offense of defrauding secured creditors if the person destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to hinder enforcement of that interest.

(b) Defrauding secured creditors is a misdemeanor.

§ 2904. Misapplication of entrusted property.

(a) A person commits the offense of misapplication of entrusted property if, with knowledge that he or she is misapplying property and that the misapplication involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted, he or she misapplies or disposes of property that has been entrusted to him or her as a fiduciary or that is property of the government or a financial institution.

(b) "Fiduciary" includes a trustee, guardian, personal representative, receiver, or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization that is a fiduciary.

(c) To "misapply property" means to deal with the property contrary to law or governmental regulation relating to the custody or disposition of that property; "governmental regulation" includes administrative and judicial rules and regulations and orders as well as statutes.

(d) Misapplication of property is a misdemeanor.

§ 2905. Trademark counterfeiting.

(a) A person commits the offense of trademark counterfeiting who knowingly manufactures, produces, displays, advertises, distributes, offers for sale, sells, or possesses with the intent to sell or distribute any item bearing or identified by a counterfeit mark, knowing that the mark is counterfeit.

(b) As used in this section:

(1) "Counterfeit mark" means any spurious mark that is identical to or confusingly similar to any print, label, trademark, service mark, or trade name registered in accordance with registered on the Principal Register of the United States Patent and Trademark Office.

(2) "Sale" includes resale.

(3) "Trademark" means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the goods of

the person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown.

(c) Trademark counterfeiting is a class C felony.

(d) In any action brought under this section resulting in a conviction or a plea of no contest, the court shall order the forfeiture and destruction of all counterfeit marks and the forfeiture and destruction or other disposition of all items bearing a counterfeit mark, and all personal property, including any items, objects, tools, machines, equipment, instrumentalities, or vehicles of any kind, employed or used in connection with a violation of this section, in accordance with the procedures set forth in 17 PNC Chapter 7 of this Penal Code.

§ 2906. Fraudulent conveyance of land.

(a) A person commits the offense of fraudulent conveyance of land if the person intentionally or knowingly conveys land that has previously been conveyed to another.

(b) Fraudulent conveyance of land is a class C felony.

§ 2907. Fraudulent recording.

(a) A person commits the offense of fraudulent recording if the person knowingly submits to the Clerk of Courts for recording, or records a document establishing or purporting to be evidence of an interest in land, which document the person knows to be forged or fraudulent.

(b) Fraudulent recording is a class C felony.

## CHAPTER 30

### OFFENSES AFFECTING OCCUPATIONS

§ 3000. Commercial bribery.

§ 3000. Commercial bribery.

(a) A person commits the offense of commercial bribery if:

(1) The person confers or offers or agrees to confer, directly or indirectly, any benefit upon:

(A) An agent with intent to influence the agent to act contrary to a duty to which, as an agent, he or she is subject; or

(B) An appraiser with intent to influence the appraiser in his or her selection, appraisal, or criticism; or

(2) Being an agent, an appraiser, or agent in charge of employment, he or she solicits, accepts, or agrees to accept, directly or indirectly, any benefit from another person with intent:

(A) In the case of an agent, that he or she will thereby be influenced to act contrary to a duty to which, as an agent, he or she is subject; or

(B) In the case of an appraiser, that he or she will thereby be influenced in his or her selection, appraisal, or criticism; or

(C) In the case of an agent in charge of employment, that he or she will thereby be influenced in the exercise of his or her discretion or power with respect to hiring someone, or retaining someone in employment, or discharging or suspending someone from employment.

(b) For purposes of this section:

(1) "Agent" means:

(A) An agent or employee of another;

(B) A trustee, guardian, or other fiduciary;

(C) A lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(D) An officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(E) An arbitrator or other purportedly disinterested adjudicator or referee.

(2) "Appraiser" means a person who holds himself or herself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services.

(3) "Agent in charge of employment" does not include any person conducting a private employment agency licensed and operating in accordance with law.

(c) Commercial bribery is a misdemeanor, except in the event that the value of the benefit referred to in subsection (a) exceeds \$1,000, in which case commercial bribery shall be a class C felony.

## CHAPTER 31 COMPUTER CRIMES

§ 3100. Definitions.

§ 3101. Computer fraud in the first degree.

§ 3102. Computer fraud in the second degree.

§ 3103. Computer damage in the first degree.

§ 3104. Computer damage in the second degree.

§ 3105. Use of a computer in the commission of a separate crime.

§ 3106. Forfeiture of property used in computer crimes.

§ 3107. Jurisdiction.

§ 3108. Unauthorized computer access in the first degree.

§ 3109. Unauthorized computer access in the second degree.

§ 3110. Unauthorized computer access in the third degree.

§ 3100. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Access" means to gain entry to, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

(2) "Computer" means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

(3) "Computer equipment" means any equipment or devices, including all input, output, processing, storage, software, or communications facilities,

intended to interface with the computer.

(4) “Computer network” means two or more computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.

(5) “Computer program” or “software” means a set of computer-readable instructions or statements and related data that, when executed by a computer system, causes the computer system or the computer network to which it is connected to perform computer services.

(6) “Computer services” includes but is not limited to the use of a computer system, computer network, computer program, data prepared for computer use, and data contained within a computer system or computer network.

(7) “Computer system” means a set of interconnected computer equipment intended to operate as a cohesive system.

(8) “Damage” means any impairment to the integrity or availability of data, a program, a system, a network, or computer services.

(9) “Data” means information, facts, concepts, software, or instructions prepared for use in a computer, computer system, or computer network.

(10) “Obtain information” includes but is not limited to mere observation of the data.

(11) “Property” includes financial instruments, data, computer software, computer programs, documents associated with computer systems, money, computer services, or anything else of value.

(12) “Rule of court” means any rule adopted by the Supreme Court of the Republic of Palau.

(13) “Statute” includes the Constitution of the Republic of Palau and any local law or regulation of a political subdivision of the Republic of Palau, and any State Constitution and any State law or regulation of a political subdivision of any State of the Republic of Palau.

(14) “Without authorization” means without the permission of or in excess of the permission of an owner, lessor, or rightful user or someone licensed or privileged by an owner, lessor, or rightful user to grant the permission.

§ 3101. Computer fraud in the first degree.

(a) A person commits the offense of computer fraud in the first degree if the person knowingly, and with intent to defraud, accesses a computer without authorization and, by means of such conduct, obtains or exerts control over the property of another.

(b) In a prosecution for computer fraud in the first degree, it is a defense that the object of the fraud and the property obtained consists only of the use of the computer and the value of such use is not more than three hundred dollars (\$300) in any one-year period.

(c) Computer fraud in the first degree is a class B felony.

§ 3102. Computer fraud in the second degree.

(a) A person commits the offense of computer fraud in the second degree if the person knowingly, and with the intent to defraud, transfers, or otherwise disposes of, to another, or obtains control of, with the intent to transfer or dispose of, any

password or similar information through which a computer, computer system, or computer network may be accessed.

(b) Computer fraud in the second degree is a class C felony.

§ 3103. Computer damage in the first degree.

(a) A person commits the offense of computer damage in the first degree if:

(1) The person knowingly causes the transmission of a program, information, code, or command, and thereby knowingly causes unauthorized damage to a computer, computer system, or computer network; or

(2) The person intentionally accesses a computer, computer system, or computer network without authorization and thereby knowingly causes damage.

(b) As used in this section, the “damage” must:

(1) Result in a loss aggregating at least five thousand dollars (\$5,000) in value, including the costs associated with diagnosis, repair, replacement, or remediation, during any one-year period to one or more individuals;

(2) Result in the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of one or more individuals;

(3) Result in physical injury to any person;

(4) Threaten public health or safety; or

(5) Impair the administration of justice.

(c) Computer damage in the first degree is a class B felony.

§ 3104. Computer damage in the second degree.

(a) A person commits the offense of computer damage in the second degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby recklessly causes damage.

(b) Computer damage in the second degree is a class C felony.

§ 3105. Use of a computer in the commission of a separate crime.

(a) A person commits the offense of use of a computer in the commission of a separate crime if the person:

(1) Intentionally uses a computer to obtain control over the property of the victim to commit theft in the first or second degree; or

(2) Knowingly uses a computer to identify, select, solicit, persuade, coerce, entice, induce, or procure the victim or intended victim of the following offenses:

(A) 21 PNC section 804, relating to custodial interference in the first degree;

(B) 21 PNC section 805, relating to custodial interference in the second degree;

(C) 17 PNC section 1601, relating to sexual assault in the second degree;

(D) 17 PNC section 1602, relating to sexual assault in the third degree;

(E) 17 PNC section 1603, relating to sexual assault in the fourth degree;

(F) 17 PNC section 1802, relating to promoting child exploitation in the second degree; or

(G) 17 PNC section 4904, relating to promoting pornography for minors.

(b) Use of a computer in the commission of a separate crime is an offense one class or grade, as the case may be, greater than the offense facilitated. Notwithstanding any other law to the contrary, a conviction under this section shall not merge with a conviction for the separate crime.

§ 3106. Forfeiture of property used in computer crimes.

Any property used or intended for use in the commission of, attempt to commit, or conspiracy to commit an offense under this part, or which facilitated or assisted such activity, shall be forfeited subject to the requirements of 17 PNC Chapter 7 of this Penal Code.

§ 3107. Jurisdiction.

For purposes of prosecution under this part, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

§ 3108. Unauthorized computer access in the first degree.

(a) A person commits the offense of unauthorized computer access in the first degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby obtains information, and:

(1) The offense was committed for the purpose of commercial or private financial gain;

(2) The offense was committed in furtherance of any other crime;

(3) The value of the information obtained exceeds five thousand dollars (\$5,000); or

(4) The information has been determined by statute or rule of court to require protection against unauthorized disclosure.

(b) Unauthorized computer access in the first degree is a class B felony.

§ 3109. Unauthorized computer access in the second degree.

(a) A person commits the offense of unauthorized computer access in the second degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby obtains information.

(b) Unauthorized computer access in the second degree is a class C felony.

§ 3110. Unauthorized computer access in the third degree.

(a) A person commits the offense of unauthorized computer access in the third degree if the person knowingly accesses a computer, computer system, or computer network without authorization.

(b) Unauthorized computer access in the third degree is a misdemeanor.

## CHAPTER 32 CREDIT CARD OFFENSES

§ 3200. Fraudulent use of a credit card.

- § 3201. Fraudulent encoding of a credit card.
- § 3202. Making a false statement to procure issuance of a credit card.
- § 3203. Theft, forgery, etc., of credit cards.
- § 3204. Credit card fraud by a provider of goods or services.
- § 3205. Possession of unauthorized credit card machinery or incomplete cards.
- § 3206. Credit card lists prohibited; penalty.
- § 3207. Defenses not available.

§ 3200. Fraudulent use of a credit card.

(a) A person commits the offense of fraudulent use of a credit card, if with intent to defraud the issuer, or another person or organization providing money, goods, services, or anything else of value, or any other person, the person:

- (1) Uses or attempts or conspires to use, for the purpose of obtaining money, goods, services, or anything else of value a credit card obtained or retained in violation of 17 PNC section 3203 or a credit card that the person knows is forged, expired, or revoked;
- (2) Obtains or attempts or conspires to obtain money, goods, services, or anything else of value by representing without the consent of the cardholder that the person is the holder of a specified card or by representing that the person is the holder of a card and such card has not in fact been issued; or
- (3) Uses or attempts or conspires to use a credit card number without the consent of the cardholder for the purpose of obtaining money, goods, services, or anything else of value.

(b) Fraudulent use of a credit card is a class C felony if the value of all money, goods, services, and other things of value obtained or attempted to be obtained exceeds three hundred dollars (\$300) in any six-month period. For purposes of this section, each separate use of a credit card that exceeds three hundred dollars (\$300) constitutes a separate offense.

(c) Fraudulent use of a credit card is a misdemeanor, if the value of all money, goods, services, and other things of value obtained or attempted to be obtained does not exceed three hundred dollars (\$300) in any six-month period.

(d) Knowledge of revocation of a credit card shall be presumed to have been received by a cardholder ten days after it has been mailed to the cardholder at the address set forth on the credit card or at the last known address.

§ 3201. Fraudulent encoding of a credit card.

(a) A person commits the offense of fraudulent encoding of a credit card if, with the intent to defraud the issuer, or another person or organization providing money, goods, services or anything else of value, the person:

- (1) Intentionally changes, alters, erases, adds, creates, tampers with, or manipulates a credit card number by encoding credit card numbers onto the magnetic strip of the credit card;
- (2) Knowingly uses, utters, or offers a credit card with changed, altered, erased, added, tampered with, or manipulated magnetically or electronically encoded credit numbers on the magnetic strip of a credit card for the purpose of obtaining money, goods, services, or anything else of value; or
- (3) Knowingly sells, or distributes any credit card with changed, altered, erased, added, tampered with, or manipulated magnetically or electronically encoded credit card numbers on the magnetic strip of the credit card.

(b) Fraudulent encoding of a credit card is a class B felony.

§ 3202. Making a false statement to procure issuance of a credit card.

(a) A person commits the offense of making a false statement to procure issuance of a credit card if the person makes or causes to be made, either directly or indirectly, any false statement in writing, knowing it to be false and with intent that it be relied on, respecting the person's identity or that of any other person, firm, or corporation, for the purpose of procuring the issuance of a credit card.

(b) Making a false statement to procure issuance of a credit card is a misdemeanor.

§ 3203. Theft, forgery, etc., of credit cards.

(a) A person who takes a credit card from the person, possession, custody, or control of another without the cardholder's consent or who, with knowledge that it has been so taken, receives the credit card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder commits the offense of credit card theft. If a person has in the person's possession or under the person's control credit cards issued in the names of two or more other persons, which have been taken or obtained in violation of this subsection, it is prima facie evidence that the person knew that the credit cards had been taken or obtained without the cardholder's consent.

(b) A person who receives a credit card that the person knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder commits the offense of credit card theft.

(c) A person, other than the issuer, who sells a credit card or a person who buys a credit card from a person other than the issuer commits the offense of credit card theft.

(d) A person who, with intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, obtains control over a credit card as security for a debt commits the offense of credit card theft.

(e) A person, other than the issuer, who during any twelve-month period, receives credit cards issued in the names of two or more persons that the person has reason to know were taken or retained under circumstances that constitute credit card theft or a violation of 17 PNC section 3202, commits the offense of credit card theft.

(f) A person who, with intent to defraud a purported issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, falsely makes or falsely embosses a purported credit card or utters such a credit card, or possesses such a credit card with knowledge that the same has been falsely made or falsely embossed commits the offense of credit card forgery. If a person other than the purported issuer possesses two or more credit cards that have been made or embossed in violation of this subsection, it is prima facie evidence that the person intended to defraud or that the person knew the credit cards had been so made or embossed. A person falsely makes a credit card when the person makes or draws, in whole or in part, a device or instrument that purports to be the credit card of a named issuer but that is not such a credit card because the issuer did not authorize the making or drawing, or alters a credit card that was validly issued. A person falsely embosses a credit card who, without authorization of the named issuer, completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.

(g) A person other than the cardholder or a person authorized by the cardholder who, with intent to defraud the issuer, or a person or organization providing money,

goods, services, or anything else of value, or any other person, signs a credit card, commits the offense of credit card forgery.

(h) Credit card theft is a class C felony.

(i) Credit card forgery is a class C felony.

§ 3204. Credit card fraud by a provider of goods or services.

(a) A person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employees of such person, who, with intent to defraud the issuer or cardholder, furnishes money, goods, services, or anything else of value upon presentation of a credit card obtained or retained in violation of 17 PNC section 3203 or a credit card that the person knows is forged, expired, or revoked commits the offense of credit card fraud by a provider of goods or services.

(b) A person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer or the cardholder, fails to furnish money, goods, services, or anything else of value that the person represents in writing to the issuer that the person has furnished commits the offense of credit card fraud by a provider of goods or services.

(c) Credit card fraud by a provider of goods or services is a class C felony.

§ 3205. Possession of unauthorized credit card machinery or incomplete cards.

(a) A person, other than the cardholder possessing an incomplete credit card, with intent to complete it without the consent of the issuer or a person possessing, with knowledge of its character, machinery, plates, or any other contrivance designed to reproduce instruments purporting to be the credit cards of the issuer who has not consented to the preparation of such credit cards, commits the offense of possession of unauthorized credit card machinery or incomplete cards.

A credit card is incomplete if part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder, has not yet been stamped, embossed, imprinted, or written on it.

If a person, other than the cardholder or issuer, possesses two or more incomplete credit cards, it is prima facie evidence that the person intended to complete them without the consent of the owner.

(b) Possession of unauthorized credit card machinery or incomplete cards is a class C felony.

§ 3206. Credit card lists prohibited; penalty.

(a) It is unlawful for any person, business, corporation, partnership, or other agency to make available, lend, donate, or sell any list or portion of a list of any credit cardholders and their addresses and account numbers to any third party without the express written permission of the issuer and the cardholders; except that a credit card issuer may make a list of its cardholders, including names, addresses, and account numbers, available, without the permission of the cardholders, to a third party pursuant to a contract, if the contract contains language requiring the third party to bind through contract each of its subcontractors by including language prohibiting the divulging of any part of the list for any purpose by the subcontractors except to fulfill and service orders pursuant to the contract between the credit card issuer and the authorized third party.

Notwithstanding the provisions of this section, it is lawful for any corporation to make available, lend, donate, or sell any list or portion of a list of any credit cardholders and their addresses and account numbers to a subsidiary or the parent

corporation of such corporation or to another subsidiary of the common parent corporation.

(b) Violation of this section is a misdemeanor.

§ 3207. Defenses not available.

In any prosecution for violation of this part, the prosecution is not required to establish and it is no defense:

(a) That a person other than the defendant who violated this part has not been convicted, apprehended, or identified; or

(b) That some of the acts constituting the offense did not occur in the Republic of Palau or were not a crime or element of a crime where they did occur.

CHAPTER 33  
MONEY LAUNDERING  
PART I  
MONEY LAUNDERING

§ 3300. Definitions.

§ 3301. Money laundering.

§ 3302. Court authority to restrict business.

§ 3303. Increased penalties.

§ 3304. Decreased penalties.

§ 3305. Forfeiture.

§ 3300. Definitions.

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

(1) “Account” means any facility or arrangement by which a financial institution or Designated Non-financial Business or Profession accepts deposits of funds; allows withdrawals or transfers of funds; or pays negotiable or transferable instruments or orders drawn on, or collects negotiable or transferable instruments or payment orders on behalf of, any other person; and includes any facility or arrangement for a safety deposit box for any other form of safe deposit.

(2) “Beneficial owner” means the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those natural persons who exercise ultimate effective control over a legal person or arrangement.

(3) “Benefit” means any advantage, gain, profit, or payment of any kind that a person derives or obtains or that accrue to him, including those that another person derives, obtains or that otherwise accrue to such other person, if the other person is under the control of, or is directed or requested by, the first person.

(4) “Business relationship” means a business, professional or commercial relationship which is connected with the professional activities of a financial institution or a designated non-financial business or profession and which is expected, at the time when the contact is established, to have an element of duration.

(5) “Control” in relation to property means the exercise of practical control over the property whether or not that control is supported by any property interest or other legally enforceable power.

(6) “Controlled” in relation to a legal person, group or entity includes any of

the following:

(A) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person, group or entity;

(B) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person, group or entity who have held office during the present and previous financial year;

(C) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person, group or entity, a majority of shareholders' or members' voting rights in that legal person, group or entity;

(D) having the right to exercise a dominant influence over a legal person, group or entity, pursuant to an agreement entered into with that legal person, group or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person, group or entity permits its being subject to such agreement or provision;

(E) having the power to exercise a dominant influence referred to in paragraph(D), without being the holder of that right;

(F) having the right to use all or part of the property of a legal person, group or entity;

(G) managing the business of a legal person, group or entity on a unified basis, while publishing consolidated accounts;

(H) sharing jointly and severally the financial liabilities of a legal person, group or entity, or guaranteeing them.

(7) “Correspondent relationship” means the provision of banking, payment and other services by one financial institution (“the correspondent institution”) to another financial institution (“the respondent institution”) to enable the latter to provide services and products to its own customers.

(8) “Currency” means a coin and paper money of Palau or of any foreign country that is designated as legal tender or customarily used and accepted as a medium of exchange.

(9) “Customer” means any person for whom a transaction or account is arranged, opened or undertaken; who is a signatory to a transaction or account; to whom an account or right or obligation under a transaction has been assigned or transferred; who is authorized to conduct a transaction or control an account; who attempts to take any of the actions set out under this definition; and any person as may be prescribed by regulation as set forth by the Financial Intelligence Unit.

(10) “Designated Non-financial Business or Profession” means any of the following:

(A) Casinos, including internet casinos and other businesses engaged in operating online games involving gambling;

(B) Real estate agents, and any person involved in the transfer of real property in the regular course of business;

(C) Dealers in precious metals and precious stones, including, but not limited to, gold, silver, platinum bullion, rare coins, diamonds, emeralds, rubies or sapphires;

(D) Lawyers and other independent legal professionals when they prepare for, engage in, or carry out transactions for a client concerning the buying or selling of real estate; managing of client money, securities or other property; management of a bank, savings, or securities accounts; organization of contributions for the creation, operation, or management of legal persons; creation, operation or management of legal persons or arrangements, and buying and selling of business entities;

(E) Trust and company service providers not otherwise covered by this law which, as a business, prepare for or carry out transactions on behalf of customers in relation to any of the following services to third parties: acting as formation, registration or management agent of legal persons; acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership, or to hold a similar position in relation to other legal persons; providing a registered office, business address or accommodation, correspondence of administrative address for a company, a partnership of any other legal person or arrangement; acting as, or arranging for another to act as a trustee of an express trust or other similar arrangement; acting as or arranging for another person to act as a nominee, shareholder for another person; and

(F) Other such companies, institutions, and persons as may be prescribed by regulation as set forth by the Financial Intelligence Unit.

(11) “Director” means the Director of the Financial Intelligence Unit.

(12) “Financial Institution” means any bank or banking association, commercial bank or trust company, any private bank, industrial savings bank, savings or thrift institution, savings and loan association, building and loan association, credit union, agency, agent or branch of a foreign bank, currency dealer or exchange, business engaged primarily in the cashing of checks, person engaged in the issuing, selling or redeeming of traveler’s checks, money orders or similar instruments, any broker or dealer in securities, licensed transmitters of funds or other person regularly engaged in transmitting funds to a foreign nation for others, any investment banker or investment company, any insurer, any pawnbroker, any telegraph company, any person regularly engaged in the delivery, transmittal, or holding of mail or packages, vehicle, vessel, or aircraft, any personal property broker, any person or business acting as a real property securities dealer, and any natural or legal person that conducts as a business any of the following activities:

(A) Acceptance of deposits and other repayable funds from the public, including private banking;

(B) Lending, including but not limited to, consumer credit, mortgage credit, factoring, and financing of commercial transactions, including forfeiting;

(C) Financial leasing other than with respect to arrangements relating to consumer products;

(D) The transfer of money or value;

(E) Issuing and managing means of payment, including but not limited to credit and debit cards, traveler's checks, money orders and bankers' drafts, and electronic money;

(F) Issuing financial guarantees and commitments;

(G) Trading in money market instruments, including but not limited to checks, bills, certificates of deposit and derivatives; foreign exchange; exchange, interest rate and index instruments; transferable securities; and commodity futures;

(H) Participation in securities issues and the provision of financial services related to such issues; individual and collective portfolio management;

(I) Safekeeping and administration of cash or liquid securities on behalf of other persons;

(J) Investing, administering of cash or liquid securities on behalf of other persons;

(K) Underwriting and placement of life insurance and other investment related insurances; and

(L) Money and currency changing;

(M) Any other activity as prescribed by regulation as set forth by the Financial Intelligence Unit.

(13) "Freezing" in relation to property or funds means prohibiting any moving, transfer, conversion, disposition, alteration, use of, dealing with or movement of property or funds in any way that would result in any change in its volume, amount, location, ownership, possession, character, destination or any other change that would enable the use of the property or funds, including for portfolio management, or to obtain goods, property or funds, or services in any way, including but not limited to, selling, hiring or mortgaging them.

(14) "Money Laundering" means the offense as defined in 17 PNC Section 3301.

(15) "Originator" means the account holder, or whether there is no account, the person that places the order with a financial institution to perform a wire transfer.

(16) "Person" means any natural or legal person.

(17) "Politically exposed person" means any person who is or has been entrusted with prominent public functions in Palau or in a foreign country, for example Head of State or of government, a senior politician, a senior government, judicial or military official, and any person who is or has been a senior executive of a national or state owned company or a senior political party official. This definition is deemed to include categories of family members and business associates as set forth in regulations promulgated by the Financial Intelligence Unit.

(18) "Proceeds of Crime" or "proceeds" means any property or economic advantage derived from or obtained, directly or indirectly, wholly or partially, through the commission of an offense, including economic gains from the

property and property converted or transformed, in full or in part, into other property.

(19) “Property” or “funds” means asset of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to currency, bank credits, deposits and other financial resources, travelers checks, bank checks, money orders, shares, securities, bonds, drafts and letters of credit, whether situated in Palau or elsewhere, and any interest, dividends, or other income on or value accruing from or generated by such assets.

(20) “Transaction” means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, or the arrangement thereof, and includes but is not limited to opening of an account; any deposit, withdrawal, exchange or transfer of funds in any currency whether in cash or by check, payment order, or other instrument or by electronic or other non-physical means; the use of a safe deposit box or any other form of safe deposit; entering into any fiduciary relationship; any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation; any payment made in respect of a lottery, bet or other game of chance; establishing or creating a legal person or legal arrangement; and any such other transaction as may be prescribed by regulation.

(21) “Transfer” means any transaction carried out on behalf of an originator through a financial institution by electronic means with a view to making an amount of money available to a beneficiary at another financial institution. The originator and beneficiary may be the same person.

(22) “United Nations Sanctions Committee” means the Committees of the Security Council of the United Nations established by Security Council Resolution 1267 (1999) of October 15, 1999 and Security Council Resolution 1988 (2011).

§ 3301. Money laundering.

(a) Any person commits the offense of money laundering who knowing, suspecting or having reasonable grounds to suspect that property is the proceeds of crime,

(1) acquires, possesses or uses such property;

(2) conceals or disguises the true nature, source, location, disposition, movement, ownership or any rights with respect to such property;

(3) converts, transfers or engages in a transaction of such property; or

(4) enters into or becomes concerned in an arrangement with the intention to facilitate, by whatever means, the acquisition, retention, use or control of such property.

(b) Money laundering is a Class A felony.

(c) Notwithstanding 17 PNC section 650, any person convicted of an offense under this chapter shall be subject to a maximum fine of twice the amount laundered, twice the value of the benefit derived by the commission of the offense, or \$500,000, whichever is greater.

(d) In assessing the value of the benefit derived by a defendant from the commission of an offense, the court may treat as property of the defendant any property that the court finds is subject to the effective control of the defendant, whether or not the

defendant has any legal or equitable interest in the property, or any right, power or privilege in connection with the property. The court may take into consideration, *inter alia*, shareholdings in, debentures over, or directorships in any company, corporation or commercial enterprise that has an interest, whether direct or indirect, in the property, and any trust that has any relationship to the property.

(e) Any element of the offense of money laundering that occurs outside the national territory of the Republic of Palau may be utilized to prove the offense of money laundering, and a predicate offense may include actions committed outside the national territory of the Republic of Palau, if such actions would have constituted an offense in the Republic of Palau.

§ 3302. Court authority to restrict business.

Pursuant to 17 PNC section 618, when a high managerial agent as defined by 17 PNC section 229(c) is convicted of money laundering, the court may:

- (a) terminate a person's business that is connected to the commission of the offense;
- (b) impose a temporary or permanent prohibition to directly or indirectly engage in the certain types of businesses connected with the commission of the offense;
- (c) impose a temporary or permanent prohibition of the use of premises connected with the commission of the offense;
- (d) place such person under supervision pursuant to the conditions prescribed by the court.

§ 3303: Increased penalties.

The penalties imposed under 17 PNC section 3301 may be increased by one third in the following cases:

- (a) if the offense underlying the money laundering offense carries a penalty of deprivation of liberty for a term exceeding two times that specified for the money laundering offense;
- (b) if the money laundering offense is perpetrated in the pursuit of a trade or occupation;
- (c) if the money laundering offense is perpetrated as part of the activities of an organized criminal group;
- (d) if the amount of property laundered exceeds \$1,000,000.
- (e) if the purpose of the commission of the money laundering offense is to make profit;
- (f) if the purpose of the commission of the money laundering offense is to promote further criminal activity or to conceal the true nature or origin of illicit funds.

§ 3304: Decreased penalties.

The penalties imposed under 17 PNC section 3301 may be reduced by one third if the perpetrator of the money laundering offense provides the judicial authorities with information they would not have otherwise obtained so as to assist them in:

- (a) preventing or limiting the effects of the money laundering offense;
- (b) identifying or prosecuting other perpetrators of the money laundering

offense;

(c) obtaining evidence;

(d) preventing the commission of other money laundering offenses; or

(e) depriving organized criminal groups of property over which the defendant has no interest or control.

§ 3305. Forfeiture.

Any property offered, conferred, agreed to be conferred, or accepted as a benefit, pecuniary benefit, or compensation in the commission of money laundering is forfeited to the Republic of Palau, subject to the requirements of 17 PNC Chapter 7 of this Penal Code.

## PART II PREVENTIVE MEASURES AND MONITORING

§ 3310. Anonymous accounts.

§ 3311. Customer due diligence.

§ 3312. Measures to identify politically exposed persons.

§ 3313. Complex patterns in transactions.

§ 3314. Third party due diligence.

§ 3315. Misuse of information technology.

§ 3316. Physical presence of financial institutions.

§ 3317. Wire transfers.

§ 3318. Penalties.

§ 3310. Anonymous accounts.

Financial institutions and designated non-financial business and professions are not permitted to establish or maintain anonymous accounts or accounts in fictitious names.

§ 3311. Customer due diligence.

(a) Financial institutions and designated non-financial business and professions shall apply customer due diligence measures.

(b) In relation to cross border correspondent relationships, in addition to performing due diligence measures under subsection (a), financial institutions and designated non-financial business and professions shall gather information about the institution's business, its reputation, and the nature and quality of the supervision to which it is subject, before establishing a new correspondent relationship, and conduct an assessment of the quality of Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) controls applicable to the foreign respondent institution's and designated non-financial business and professions' business.

(c) The respective Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) responsibilities of each financial institution and designated non-financial business and profession shall be documented.

(d) The Financial Intelligence Unit shall promulgate rules and regulations in furtherance of this section.

§ 3312. Measures to identify politically exposed persons.

Financial institutions and designated non-financial business and professions shall have in place measures to identify politically exposed persons and other customers who may pose a high risk of money laundering or financing of terrorism and to manage the risk associated with such persons as prescribed by regulations set forth by the Financial Intelligence Unit.

§ 3313. Complex patterns in transactions.

(a) Financial institutions and designated non-financial business and professions shall pay special attention to all complex, unusual large transactions or unusual patterns of transactions, which have no apparent or visible economic or lawful purpose, and to business relationships and transactions with persons, including legal persons and other financial businesses, from or in countries which do not sufficiently apply the Financial Action Task Force (FATF) Recommendations.

(b) Financial institutions and designated non-financial business and professions will be advised of concerns about weaknesses in the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) controls of other countries by the Financial Intelligence Unit.

(c) Financial institutions and designated non-financial business and professions shall set forth in writing the specific information regarding transactions described in this section, including the identity of all of the parties involved, the origin and destination of the funds, and the purpose of the transaction. The report shall be maintained by the financial institution or designated non-financial business and profession and a suspicious transaction report or reports shall be filed immediately with the Financial Intelligence Unit.

(d) The measures under this Section shall be in accordance with the requirements prescribed by regulation set forth by the Financial Intelligence Unit.

§ 3314. Third party due diligence.

(a) Financial institutions and designated non-financial business and professions may rely on an intermediary or third party to perform some of the elements of the customer due diligence measures under 17 PNC section 3311 or to introduce business.

(b) The ultimate responsibility for customer identification and verification shall remain with the financial institution and designated non-financial business and professions relying on the third party.

(c) The Financial Intelligence Unit shall promulgate regulations in regards to this section.

§ 3315. Misuse of information technology.

(a) Financial institutions and designated non-financial business and professions shall have in place measures to prevent the misuse of information technology in the commission of an offense and to address any specific risks associated with the conducting of business relationships or executing transactions for clients that are not physically present.

(b) The measures under this Section shall be in accordance with the requirements prescribed by regulation set forth by the Financial Intelligence Unit.

§ 3316. Physical presence of financial institutions.

(a) No bank may be established in the Republic of Palau if it maintains no physical presence within Palau and is not affiliated with a regulated financial group subject to effective consolidated supervision.

(b) Financial institutions and designated non-financial business and professions shall not enter into or continue business relations with banks in jurisdictions where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision.

(c) Financial institutions and designated non-financial business and professions shall not enter into or continue business relations with a financial business in a foreign country that permits its accounts to be used by banks that are registered in

jurisdictions where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision.

§ 3317. Wire transfers.

(a) Financial institutions and designated non-financial business and professions whose activities include wire transfers shall obtain and verify the information and maintain, manage and transmit the information as prescribed by regulation set forth by the Financial Intelligence Unit.

(b) If the financial institution or designated non-financial business and profession referred to in subsection (a) receives a wire transfer that does not contain the complete originator information, it shall take reasonable measures to obtain and verify the missing information from the ordering institution or the beneficiary.

(c) In the case that the missing information cannot be obtained, the transfer shall be refused and a suspicious transaction report shall be filed with the Financial Intelligence Unit.

§ 3318. Penalties.

(a) Any person who intentionally or by criminal negligence violates or fails to comply with or to act in accordance with the provisions of Part II of this Chapter, or any regulation implemented by the Financial Intelligence Unit in furtherance thereof, shall be guilty of a Class C felony or a maximum fine of \$10,000, or both.

(b) In addition to the penalties provided for under subsection (a), any person found guilty of an offense under subsection (a) may also be banned permanently or temporarily from pursuing the business or profession which provided opportunity for the offense to be committed.

### PART III TRANSACTION REPORTING AND RECORD KEEPING

§ 3320. Reporting of suspected terrorism.

§ 3321. Reporting of transactions.

§ 3322. Structuring.

§ 3323. Foreign branches.

§ 3324. Internal monitoring.

§ 3325. Bookkeeping.

§ 3326. Penalties.

§ 3327. Supervising authorities.

§ 3328. Administrative violation.

§ 3320. Reporting of suspected terrorism.

(a) Financial institutions and designated non-financial business and professions and their respective directors, principals, officers, partners, professionals and employees that suspect or have reasonable grounds to suspect that a transaction involves property that is the proceeds of crime; that is related or linked to or is to be used for a terrorism offense or a terrorist act, by a terrorist, or terrorist organization, or by those who finance terrorism as such terms are defined in 17 PNC Chapter 22, shall submit a report to the Financial Intelligence Unit setting forth this suspicion.

(b) The obligation under subsection (a) also applies to attempted transactions.

(c) A transaction under subsection (a) shall not be carried out until ten (10) business days after a report has been submitted to the Financial Intelligence Unit in relation to such a transaction, unless refraining from the carrying out of the transaction is impossible or likely to frustrate the efforts to investigate the transaction, in which case the transaction may be executed and the suspicion must be reported immediately thereafter.

(d) Reports under this Section shall be in accordance with the form prescribed by and contain the information set out in the rules and regulations promulgated by the Financial Intelligence Unit.

§ 3321. Reporting of transactions.

(a) Financial institutions and designated non-financial business and professions shall submit a report to the Financial Intelligence Unit for any currency transaction in an amount above \$10,000 whether conducted as a single transaction or several transactions that appear to be linked. The Financial Intelligence Unit shall issue rules on the procedures for and form in which the reports shall be submitted and shall publish guidance to assist financial institutions to fulfill their obligations under this Chapter. Reports shall be made without delay and at least within the timeframe set forth in the rules issued.

(b) Financial institutions and designated non-financial business and professions shall submit a report to the Financial Intelligence Unit for any request by a person to conduct a transaction to create a legal person, legal entity, or other legal arrangement; to manage a legal person, legal entity, or other legal arrangement; or to utilize a legal person, legal entity, or other legal arrangement to conduct a transaction described in subsection (a), if the person making the request fails to provide the necessary information to allow the financial institution or designated non-financial business and profession to comply with sections 3310, 3311, 3312, 3314, or 3316 of this Chapter, or if the request implicates section 3313.

(c) No financial institution or designated non-financial business and profession, including employees and agents of such financial institutions and designated non-financial business and professions shall disclose to any customer or third party that a report or any other information will be, is being or has been submitted to the Financial Intelligence Unit in accordance with the provisions of this Chapter, or that a money laundering or financing of terrorism investigation is being or has been carried out.

(d) Subsection (c) does not apply in relation to disclosures or communications between and among directors, officers and employees of the financial institutions; or in the case of a lawyer or other independent legal professional when seeking to dissuade a client from engaging in illegal activity.

(e) Except for the purpose of the due administration of this Law, no person shall disclose any information that will identify or is likely to identify the person who prepared or made a report made in accordance with the provisions of this Chapter, or handled the underlying transaction.

(f) No person shall be required to disclose a report made in accordance with the provisions of this Chapter or any information contained in such a report or provided in connection with it, or the identity of the person preparing or making such report or handling the underlying transaction in any judicial proceeding unless the judge is satisfied that the disclosure of the information is necessary in the interests of justice.

(g) No criminal, civil, disciplinary or administrative proceeding for breach of banking or professional secrecy or contract may be instituted against a financial institution, or its respective directors, principals, officers, partners, professionals or employees who in good faith submit a report or provide information in accordance with the provisions of this section.

(h) No criminal action for money laundering or financing of terrorism shall be brought against a financial institution and designated non-financial business and professions, or its directors, officers or employees in connection with an action undertaken in good faith to execute a transaction if a report was made in good faith and in a timely manner.

(i) Lawyers and other independent legal professionals have no obligation to report information required to be reported by this section that they receive or obtain from a client in the course of developing a legal position for a client, or performing the task of defending a client or representing a client in, or concerning a judicial proceeding, including rendering advice on how to avoid such judicial proceedings, regardless of whether such information is received or obtained before, during, or after such judicial proceedings. The reporting required of lawyers and other legal professionals by this Division is hereby deemed to be in accordance with American Bar Association Rule of Professional Conduct No. 1.6(b)(2) and (3) as a permissible disclosure to prevent, mitigate, or rectify a crime, fraud, or substantial injury to the financial interests or property of another that is reasonably certain to occur, or that has occurred, and in furtherance of which the lawyer's legal services have been utilized by the client.

§ 3322. Structuring.

Any person who carries out two or more transactions below the threshold set out in 17 PNC section 3321 so as to ensure or attempting to ensure that no report in accordance with this Section is made commits the offense of structuring and shall be guilty of a Class C felony or a maximum fine of \$10,000, or both.

§ 3323. Foreign branches.

(a) Financial institutions shall require their foreign branches and majority owned subsidiaries to implement the requirements under this Law and any regulations issued in execution of this Law to the extent that local applicable laws and regulations so permit.

(b) If the law of the country where the majority owned subsidiary or branch is situated prohibits compliance with any of these obligations, the financial institution in Palau shall so advise its competent supervisory authority.

§ 3324. Internal monitoring.

Financial institutions shall develop and implement internal policies, procedures and programs for the prevention of money laundering and financing of terrorism and the proper implementation of the provisions of this Law. Such policies, procedures and programs shall include, amongst others:

(a) customer identification and verification of identity measures, including identification and verification of beneficial owners, ongoing due diligence and anti-money laundering and countering financing of terrorism risk management procedures, to successfully comply with the requirements under this Law and any regulation issued in execution of this Law;

(b) procedures to ensure compliance with the property freezing obligations under 17 PNC Chapter 33, Part V.

(c) appropriate compliance management arrangements and adequate screening procedures to ensure high standards when hiring employees;

(d) ongoing training for officials and employees including training to assist them in recognizing transactions and actions that may be linked to money laundering or financing of terrorism; and

(e) internal audit arrangements to check conformity, compliance with and effectiveness of the measures taken in execution of this Law.

§ 3325. Bookkeeping.

(a) Financial institutions and designated non-financial business and professions shall maintain all books and records with respect to their customers and transactions as set forth in subsection (b) and shall ensure that such records and the underlying information are available on a timely basis to the Financial Intelligence Unit, the

Financial Institution Commission and other competent authorities.

(b) The books and records referenced in subsection (a) shall include, at a minimum:

(1) account files, business correspondence, and copies of documents evidencing the identities of customers and beneficial owners obtained in accordance with the provisions in this Law, which shall be maintained for not less than five years after the business relationship has ended;

(2) records on transactions sufficient to reconstruct each individual transaction for both account holders and non-account holders, which shall be maintained for not less than five years from the date of the transaction;

(3) copies of all suspicious transaction reports made pursuant to 17 PNC section 3320 or 3321, including any accompanying documentation, which shall be maintained for at least five years from the date the report was made to the Financial Intelligence Unit.

(4) a written record of findings with respect to the transactions referenced in 17 PNC section 3313, which shall be maintained for not less than five years from the date of the transaction.

(c) This section shall not apply to lawyers and other legal professionals, except for subsection (b)(3) and (4) and the appropriate record keeping sufficient to provide proof to the Financial Intelligence Unit of compliance with the Preventive Measures and Monitoring required by Part II of this Division.

(d) Where it is necessary and reasonable for the execution of this Law, the Financial Intelligence Unit shall have the power to extend the record retention period set out in subsection (b) in relation to a specific customer or transaction.

§ 3326. Penalties.

(a) Any person who intentionally or by criminal negligence fails to comply with Part III of Chapter 33 of 17 PNC shall be guilty of a Class C felony or a maximum fine of \$10,000, or both.

(b) In addition to the sanctions provided for under subsection (a), any person found guilty of an offense under subsection (a) may also be banned permanently or temporarily from pursuing the business or profession which provided opportunity for the offense to be committed.

(c) In addition to the penalties provided for under subsections (a) and (b), a financial institution or designated non-financial business and profession that intentionally or by criminal negligence fails to comply with the obligations under this Chapter or any regulation issued in execution of this Chapter may be subject to the measures and sanctions provided for under 17 PNC section 3328.

§ 3327. Supervising authorities.

(a) The following authorities shall have the powers and duties to monitor and supervise compliance by financial institutions and designated non-financial business and professions with the provisions of this Law and any regulation issued on the basis thereof:

(1) the Financial Institutions Commission;

(2) the Financial Intelligence Unit;

(3) any authority designated by way of regulation.

(b) To properly carry out their supervisory mandate, the authorities listed in

subsection (a) shall have the following duties and powers:

- (1) to regulate, monitor and supervise financial institutions and designated non-financial business and professions for compliance with the provisions of this Law and any regulation issued in execution of this Law, including through regular on-site examinations, based on and in accordance with the perceived risk of money laundering and financing of terrorism;
- (2) to issue instructions, guidelines and recommendations to assist financial institutions and designated non-financial business and professions to comply with their obligations under the provisions of this Law and any regulation issued in execution of this Law;
- (3) to establish and apply fit and proper criteria for owning, controlling, or participating, directly or indirectly, in the directorship, management or operation of financial institutions;
- (4) to provide information and assistance to competent authorities in investigating, prosecuting or conducting proceedings relating to any offense;
- (5) to apprise the Financial Intelligence Unit whenever it appears that a financial institution or designated non-financial business and profession or any of their respective directors, officers or employees, is not complying or has not complied with the obligations set out in this Law or any regulation issued in execution of this Law;
- (6) to report promptly to the Financial Intelligence Unit any information concerning suspicious transactions or facts that could be related to money laundering or financing of terrorism, or to the implementation of the obligations under Part III of this Chapter;
- (7) to enter into cooperation and information sharing arrangements with other competent domestic authorities and to provide prompt and effective cooperation to such competent authorities, including in the absence of a cooperation and information sharing arrangement;
- (8) to ensure that financial institutions and designated non-financial business and professions of the Republic of Palau apply and enforce measures consistent with the provisions of this Law and any Implementing Regulations issued in accordance with this Law to their foreign branches and majority-owned subsidiaries, to the extent permitted by local laws and regulations;
- (9) to compel the production or obtain access to all documents, records and information relevant to monitor and supervise compliance with the provisions of this Law and any regulation issued in execution of this Law by financial institutions;
- (10) to enter into cooperation and information sharing arrangements and to provide prompt and effective cooperation to agencies that perform similar functions in other nations, including in the absence of a cooperation and information sharing arrangement; and
- (11) to maintain statistics concerning measures adopted and sanctions imposed by it in enforcing the provisions of this Law and any Implementing Regulation issued in execution of this Law.
- (12) The duties and powers set out in subsection one (1) to (10) may be further described by regulation.

§ 3328. Administrative violation.

A supervisory authority that discovers an administrative violation by a financial institution it supervises of the obligations established under this Chapter 33 of 17 PNC or any regulation issued in execution of the provisions of this Chapter, may impose one or more of the following measures and sanctions:

- (a) Written warnings;
- (b) Order to comply with specific instructions;
- (c) Order to submit regular reports on the measures the financial institution is taking to remedy the administrative violation;
- (d) Issue a fine as provided for in regulations promulgated pursuant to this Chapter.
- (e) Replace or restrict the power of managers, directors or controlling owners and appoint an ad hoc administrator, if necessary;
- (f) Impose conservatorship or suspend, restrict or withdraw the license and prohibit the continuation of the business of the financial institution;
- (g) Publish information on the measures taken pursuant to subsections (a) to (f); or
- (h) Take any other measures that may be provided for through regulation as set forth by the Financial Intelligence Unit.

#### PART IV THE FINANCIAL INTELLIGENCE UNIT

§ 3330. Financial Intelligence Unit.

§ 3331. Director.

§ 3332. Candidates for director.

§ 3333. Powers, duties and obligations of Financial Intelligence Unit

§ 3334. Disclosure.

§ 3335. Budget.

§ 3330. Financial Intelligence Unit.

(a) The Financial Intelligence Unit established by the Money Laundering and Proceeds of Crime Act 2001 shall continue to be established as if established by this Act.

(b) The Financial Intelligence Unit shall be an independent agency responsible for receiving, analyzing, investigating and disseminating information concerning suspected proceeds of crime and terrorist property, as provided for under this Law.

§ 3331. Director.

The Director of the Financial Intelligence Unit shall be appointed by the Governing Board of the Financial Institutions Commission on such terms and conditions as the Board may determine in consultation with the Money Laundering Working Group (MLWG).

(a) The Director may exercise all of the functions, powers and duties of the Financial Intelligence Unit under this Act, and any regulations promulgated under the authority of the Money Laundering and Proceeds of Crime Act of 2001, such regulations shall remain in full force and effect as if promulgated under this Act.

(b) The Director shall report to the Governing Board of the Financial Institutions Commission on the exercise of his or her powers and the performance of his or her duties under this Chapter.

(c) The Director may appoint such other officers and employees of the Financial Intelligence Unit as are necessary for the efficient exercise of the duties, functions and powers of the Financial Intelligence Unit.

(d) The Director may authorize any person subject to any terms and conditions that the Director may specify, to carry out any power, duty, or function conferred on the Director under this Chapter.

(e) The Director shall ensure that an officer, employee or agent of the Financial Intelligence Unit received training or will receive training in the investigation of financial crimes, intelligence analysis and financial auditing as are necessary for the efficient exercise of the duties, functions and powers of the Financial Intelligence Unit.

(f) To assist with the creation, organization, training and operation of the Financial Intelligence Unit, the Director of the Financial Intelligence Unit may obtain technical assistance from foreign countries or international organizations, including but not limited to, the temporary employment of foreign law enforcement and intelligence consultants.

(g) The Director shall ensure that an officer, employee or consultant of the Financial Intelligence Unit, or any other person acting on behalf of the Financial Intelligence Unit, shall take an oath of confidentiality and shall receive credentials that identify that person has been authorized to act on behalf of the Financial Intelligence Unit.

(h) The Director may generally or particularly, delegate to any employee or agent of the Financial Intelligence Unit, as he or she thinks fit, all or any of the powers in the same manner and with the same effect as if they had been conferred to him or her directly by this Chapter and not by delegation.

(1) Subject to any general or specific directions given or conditions attached by the Director, the employee or agent to whom those powers are delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him or her directly by this Chapter and not by delegation.

(2) Until a delegation is revoked in writing, it continues in force according to its tenor and in the event of the Director ceasing to hold office, the delegation continues to have effect as if made by the person for the time being holding office as Director.

(3) Every delegation made under this Section is revocable at will and no delegation prevents the exercise of any power by the Director.

(i) Any officer, employee or agent of the Financial Intelligence Unit may at any time be removed or suspended from office by the Director for disability affecting the performance of duty, neglect of duty, incompetence or misconduct proven to the satisfaction of the Director.

§ 3332. Candidates for director.

(a) The Director must not be –

(1) a member of Congress;

(2) a member of a local authority, except for the Bureau of Public Safety;

(3) a director, officer or employee of, or holds any shares in any financial institution or designated non-financial business and professions, or

(4) hold any other office or carry out any other professional activity without prior approval from the Governing Board of the Financial Institutions Commission.

(b) The Director may at any time be removed or suspended from office by the Governing Board of the Financial Institutions Commission for disability affecting the performance of duty, neglect of duty, incompetence or misconduct proven to the satisfaction of the Board.

§ 3333. Powers, duties and obligations of Financial Intelligence Unit.

To properly implement its functions under this Law, the Financial Intelligence Unit shall have the following powers and duties:

(a) to receive information and reports in accordance with its functions and, in relation to any information or report it has received, to make inquiries with or obtain from any financial institution any additional information the Financial Intelligence Unit deems necessary to carry out its functions, regardless of whether the requested person has made a report. The information requested shall be provided within the time limits and the form specified by the Financial Intelligence Unit;

(b) to analyze and assess any report or information received in accordance with its functions;

(c) for transactions or attempted transactions that occurred prior to the entry into force of this Act, to require financial institutions and designated non-financial business and professions to disclose records in the financial institution's or the designated non-financial business and profession's control, that pertain to the transaction or attempted transaction for a particular account for or by a particular person, and for a particular time period, if such disclosure would have been required to be reported under the provisions of this Act if it had been in effect during the particular time period in question;

(d) to enter the premises of any financial institution or designated non-financial business and profession during ordinary business hours to inspect any records kept pursuant to this Act and that are necessary to the fulfillment of the functions of the Financial Intelligence Unit, and to ask any questions and make enquiries relating to and make notes and take copies of such records;

(e) in relation to any report or information it has received in accordance with its functions, to obtain or collect any information it deems necessary to carry out its function, whether or not publicly available, including commercially available databases or information and information stored in databases maintained by other government agencies that may hold relevant information such as Bureau of Revenue, Customs and Taxation, Bureau of Public Safety, Office of the Attorney General or other competent supervisory authorities;

(f) to act on behalf of the Republic of Palau in seeking information from any foreign government agency, foreign law enforcement agency, foreign supervisory authority and foreign auditing authority for purposes of this Law;

(g) to refer any report or information it has received in accordance with its functions to the appropriate law enforcement agency in the Republic of Palau if, on the basis of its analysis and assessment, the Financial Intelligence Unit has reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime, or is related to or intended for financing of terrorism, or is terrorist property;

(h) to apprise the competent supervisory authority whenever it appears that a

financial institution or designated non-financial business and profession, or any of its respective directors, officers or employees, is not complying or has not complied with the obligations under this Law or any regulation issued in execution of this Law;

(i) to destroy a suspicious transaction report received or collected on the expiry of six years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report, or six years from the date of the last activity relating to the person or report, whichever date is later;

(j) to instruct any financial institution or designated non-financial business and profession to take such steps as may be appropriate in relation to any information or report received by the Financial Intelligence Unit to enforce compliance with this Law or to facilitate any investigation anticipated by the Financial Intelligence Unit or a law enforcement agency;

(k) based on reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime, or is related to or intended for financing of terrorism, or is terrorist property, to direct in writing that the financial institution or designated non-financial business and profession involved in the transaction either proceed or refrain from proceeding with the transaction or attempted transaction, for a period to be determined by the Financial Intelligence Unit.

(1) Any direction must not exceed five working days if the direction is in writing.

(2) Any direction given orally must not exceed 24 hours and must be confirmed in writing within 24 hours of the oral direction.

(3) Before the expiration of five days of giving the direction, the Financial Intelligence Unit may apply to the Supreme Court for an order to extend the period of the direction.

(l) to issue guidelines to financial institutions and designated non-financial business and professions on the manner of transaction reporting under Part III of this Chapter, including specification of reporting forms, content of transaction reports and the procedures that should be followed when reporting transactions;

(m) to provide feedback to the financial institution, designated non-financial business or profession and any relevant government department, office, agency or institution regarding outcomes relating to the reports or information provided by it under the provisions of this Law;

(n) to provide training programs for financial institutions and designated non-financial business and professions in relation to reporting obligations, and the identification of suspicious transactions;

(o) to conduct research into and compile and provide information and statistics on trends and developments in the area of money laundering, the financing of terrorism, and ways to detect, prevent and deter such activities;

(p) to educate the public and create awareness on matters relating to money laundering and the financing of terrorism;

(q) to cooperate and share information with other domestic competent authorities;

- (r) to assist competent authorities to investigate or prosecute any offense;
- (s) to provide information to and assist competent authorities to apply seizing and confiscation measures pursuant to 17 PNC Chapter 7; or to freeze property under 17 PNC Chapter 33, Part V;
- (t) to advise financial institutions and designated non-financial business and professions of concerns about weaknesses in the anti-money laundering and countering financing of terrorism (AML/CFT) systems of other countries;
- (u) to cooperate, share information and enter into agreements or arrangements with foreign government institution or agency, or any international organization, in accordance with 17 PNC section 3334; and
- (v) to report in writing to the Governing Board of the Financial Institutions Commission of the Republic of Palau prior to the end of each fiscal year on the activities of the Financial Intelligence Unit during the previous year and the expected activities of the Financial Intelligence Unit during the subsequent year, without disclosing confidential information or information that may jeopardize an ongoing investigation or prosecution.
- (w) to promulgate any rules and regulations as may be necessary to give effect to the intent of Chapter 33 of this title of the Palau National Code; in addition, any regulations previously promulgated by the Financial Intelligence Unit under the authority of the Money Laundering and Proceeds of Crime Act of 2001 shall remain in full force and effect as if promulgated under the authority of this Act.

§ 3334. Disclosure.

(a) The Financial Intelligence Unit may disclose any report or information to a foreign government agency or institution, or an international organization, that performs similar functions and is subject to similar secrecy obligations as the Financial Intelligence Unit –

- (1) on such terms and conditions as are set out in an agreement or arrangement between the Financial Intelligence Unit and the foreign government institution or agency, or international organization, regarding the exchange of such information; or
- (2) where such an agreement or arrangement has not been entered into, on such terms and conditions as may be agreed upon by the Financial Intelligence Unit and the foreign institution, agency or organization at the time of disclosure.

(b) The Financial Intelligence Unit, with the approval of the Governing Board of the Financial Institutions Commission, may enter into a formal agreement or arrangement, in writing, with a foreign government institution or agency, or international organization, with powers and duties similar to the Financial Intelligence Unit regarding the exchange of information between the Financial Intelligence Unit and that institution, agency or organization.

(c) Agreements or arrangements entered into under subsection (a) or the terms and conditions under subsection (b) shall include a stipulation that

- (1) any information provided under this Section shall be used by the foreign institution, agency or organization only for the purpose of combating money laundering, financing of terrorism or any other felony. Any other use shall require consent of the Palauan authority providing the information; and
- (2) any information provided under this Section may not be further disclosed

or disseminated by the foreign institution, agency or organization to other authorities in the receiving State or elsewhere without the express consent of the Financial Intelligence Unit.

(d) A decision by the director of the Financial Intelligence Unit to analyze a matter or disseminate information under 17 PNC section 3333 is not subject to review except by the Governing Board of the Financial Institutions Commission.

(e) Any person who has duties for or within the Financial Intelligence Unit is required to keep confidential any information obtained or matter disclosed to him or her within the scope of these duties, even after the cessation of those duties, except as otherwise provided by this Law or any regulation issued in execution thereof, or as ordered by the court. Such persons may only use such information for purposes provided for and in accordance with this Law.

(f) Any person or past employee of the Financial Intelligence Unit or other person who has duties for or within the Financial Intelligence Unit who willfully discloses information in contravention of subsection (e) shall be guilty of a Class C felony or a maximum fine of \$10,000, or both.

§ 3335. Budget.

(a) The Financial Intelligence Unit shall be responsible for its own budget to be determined by the Director of the Financial Intelligence Unit.

(b) The Financial Intelligence Unit shall prepare for each new financial year an annual budget of revenue and expenditure which shall be submitted to the Olbil Era Kelulau at least two months prior to the commencement of the financial year.

(c) The Financial Intelligence Unit is subject to examination and audit by the Office of the Public Auditor.

## PART V FREEZING OF PROPERTY

§ 3340. Freezing of property.

§ 3341. Financial support of frozen assets.

§ 3342. Reporting.

§ 3343. Listing of suspected terrorists.

§ 3344. Publication of UN Sanctions Committee actions.

§ 3345. Application for de-listing.

§ 3346. Procedure to unfreeze property.

§ 3347. Notice.

§ 3348. Authorization for limited use of frozen property.

§ 3349. Promulgation of rules.

§ 3350. Penalties.

§ 3340. Freezing of property.

(a) Any person shall freeze the property belonging to or wholly or jointly owned, held or controlled, directly or indirectly, by a person, group or entity designated by the United Nations Sanctions Committee, or belonging to or acting on behalf or at the direction of such a person, group or entity.

(b) Any person shall freeze the property belonging to or wholly or jointly owned, held or controlled, directly or indirectly, by any person, group or entity listed by the attorney general under 17 PNC section 3343, or any person, group or entity acting on behalf or at the direction of such person, group or entity listed under 17 PNC section 3343.

(c) Freezing measures pursuant to subsections (a) and (b) shall be taken without delay and prior notice to the person, group or entity designated by a United Nations

Sanctions Committee or listed by the attorney general under 17 PNC section 3343.

§ 3341. Financial support of frozen assets.

(a) No person shall make property available, directly or indirectly, to or for the benefit of a person, group, or entity designated by a United Nations Sanctions Committee or listed by the attorney general under 17 PNC section 3343.

(b) Subject to 17 PNC section 3348, no person shall provide financial services to a person, group or entity designated by a United Nations Sanctions Committee or listed by the attorney general under 17 PNC section 3343.

§ 3342. Reporting.

(a) Within twenty-four (24) hours a person shall inform the Financial Intelligence Unit:

(1) of any freezing measures they took pursuant to 17 PNC section 3340;

(2) that they know or suspect that a person with whom they have dealings with is a person, group or entity designated by a United Nations Sanctions Committee or listed by the attorney general under 17 PNC section 3343;

(b) When providing information to the Financial Intelligence Unit pursuant to subsection (a), a person shall:

(1) describe the status of the property;

(2) describe any actions taken with respect to the property;

(3) describe the nature and amount or quantity of the property frozen;

(4) provide any other information relevant to the property.

(c) A person shall cooperate with the Financial Intelligence Unit to verify the information provided under this section.

(d) The Financial Intelligence Unit shall provide any information received under subsection (a) to the competent law enforcement authority for further investigation.

§ 3343. Listing of suspected terrorists.

(a) The Financial Intelligence Unit, either at its own initiative or at the request of the Financial Institutions Commission, attorney general, Ministry of State, Ministry of Justice, Bureau of Revenue, Customs and Taxation, or the competent authority of a foreign State, shall determine the persons, groups and entities who commit or attempt to commit a terrorist act or participate in or facilitate the commission of a terrorist act, place the names of such persons, groups and entities on a list and, as appropriate, amend that list.

(b) A decision under subsection (a) to list a person, group or entity in accordance with this section shall be made based on the attorney general's determination that there are reasonable grounds to suspect or believe that such person, group or entity commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act, and may be issued irrespective of the existence of a criminal investigation or proceeding.

(c) A decision to list a person, group or entity under subsection (a) shall come into effect upon publication in the official gazette and such publication shall occur without delay. The decision may also come into effect in relation to any person who receives notice of the listing decision before such publication and upon the service of a copy of the decision to such person.

(d) The attorney general shall forward a copy of any decision to the Financial Institutions Commission. The Financial Institutions Commission shall forward the list to all financial institutions and designated non-financial business and professions, the Land Court, Bureau of Revenue, Customs and Taxation, Registrar of Corporations, the Foreign Investment Board and to other supervisory authorities listed in subsection (a), and publish any decision on the Financial Institutions Commission's official website.

(e) The attorney general may revoke its decision to list a person, group or entity under this Section at any time, and in such case the de-listing and publication of the de-listing shall occur in the same manner as the listing. The attorney general shall review the list every year to ensure there are grounds for retaining the name of a person, group or entity on the list.

(f) The admission of a matter, collection of information or evidence, and listing procedures under this Section shall be in accordance with the rules prescribed by the attorney general.

§ 3344. Publication of UN Sanctions Committee actions.

(a) The Financial Intelligence Unit shall make reasonable efforts to ensure that designations by a United Nations Sanctions Committee, and any amendments thereof are readily available to monitoring entities, other persons involved in monitoring, the Financial Institutions Commission, Land Court, Registrar of Corporations, Bureau of Revenue, Customs and Taxation and the Foreign Investment Board.

(b) The attorney general shall undertake efforts to ensure that the designations by a United Nations Sanction Committee, and any amendments thereof are readily available to financial institutions and designated non-financial business and professions, the Land Court, Foreign Investment Board, Registrar of Corporations, Bureau of Revenue, Customs and Taxation and the Financial Institutions Commission.

§ 3345. Application for de-listing.

(a) The attorney general, either on its own initiative or upon application by an affected person, may determine that a freezing measure under this Chapter does not apply because the person, group or entity in relation to whom the measure has been taken is not the person, group or entity designated by a United Nations Sanctions Committee or listed by the attorney general under 17 PNC section 3343.

(b) Any person, group or entity designated by a United Nations Sanctions Committee that is located in or a national or resident of Palau may submit an application for de-listing to the Ministry of Foreign Affairs for forwarding to the focal point established within the United Nations Secretariat. A freezing measure under 17 PNC section 3340 may be revoked by the Countering Financing of Terrorism Committee only based on a decision by the relevant Sanctions Committee.

(c) Any person listed by the attorney general under 17 PNC section 3343 may file a written application with the attorney general to be removed from the list. Such proceedings shall be in accordance with the rules prescribed by the attorney general.

§ 3346. Procedure to unfreeze property.

(a) The attorney general may in the interest of justice direct that a specific freezing measure 17 PNC section 3340 be lifted or altered.

(b) The attorney general must lift a freezing measure if there is a request by a competent Palauan authority or any person, group or entity claiming to be affected by such measure, and it is established that 17 PNC section 3340 does not apply with respect to the property subject to the measure.

(c) A direction by the attorney general that the person freezing the property should

lift or alter a specific freezing measure shall be published in the Government Gazette. Such proceedings shall be in accordance with the rules prescribed by the attorney general.

§ 3347. Notice.

(a) Where the attorney general has listed a person, group or entity under 17 PNC section 3343, it shall make all reasonable efforts to provide the person, group or entity written notice of the listing within 5 days. The notice shall inform the person, group or entity of publicly-releasable information concerning the reasons for listing, de-listing procedures and the procedures by which the person, group or entity can challenge the listing. The notice may be given:

(1) for a natural person, by posting it to the last known address;

(2) for a legal person or entity, by posting it to its registered or principal office or local agent within two weeks or, in the absence of a registered or principal office or local agent, to its last known address; or

(3) for a group, by whatever possible means.

(b) If the person, group or entity referenced in subsection (a) is domiciled outside Palau, the attorney general shall forward a copy of the written notice to the government of the State where the person, group or entity is domiciled or located and request that service be made at the first available opportunity. If the whereabouts of the person, group or entity are unknown, the attorney general shall forward a copy of the written notice to the government of the State of which the person is a national and request that service be made at the first available opportunity.

§ 3348. Authorization for limited use of frozen property.

(a) Upon written request of the person, group or entity whose property was frozen, the attorney general may grant specific authorization, under such conditions as it deems appropriate to prevent the financing of terrorism, for the use of frozen property or the provision of property for:

(1) taxes, insurance payments, public utility service fees such as water, electricity, gas, and telecommunications, and of charges due to a financial institution for the maintenance of accounts;

(2) essential basic necessities of life of a natural person or a member of his/her family, including in particular payments for foodstuffs, medicines, reasonable rent or mortgage for the family residence and reasonable fees and charges concerning medical treatment of members of that family;

(3) the payment of reasonable fees and reimbursement of incurred expenses associated with the provision of legal services.

(b) Having determined that property frozen pursuant to 17 PNC section 3340 is to be used for purposes listed in subsection (a), the attorney general shall notify the United Nations Sanctions Committee that has made the designation of its intention to authorize an exemption under this provision. In the absence of a negative decision from the United Nations Sanctions Committee within 3 business days of the notification, the attorney general may order the exclusion of the property under subsection (a) from the freezing obligation.

(c) Upon written request of the person, group or entity whose property was frozen pursuant to 17 PNC section 3340, the attorney general may grant specific authorization, under such conditions as it deems appropriate to prevent the financing of terrorism, for the use or provision of such property upon determination that such property is necessary to cover extraordinary expenses. An authorization for necessary extraordinary expenses may be granted only upon express authorization by

the United Nations Sanctions Committee that has made the designation.

(d) The following payments or credits may be made into a frozen account provided such payments or credits are or become immediately subject to the property freeze:

(1) those due to a person, group or entity listed by the attorney general under 17 PNC section 3343 under contract, agreement or obligation that were concluded or arose before the date the account became subject to the property freeze;

(2) interest or other earnings due on the account and payments into such account in favor of a person, group or entity listed by the attorney general under 17 PNC section 3343.

(e) Upon receipt of a request for an authorization referred to in subsections (a) or (c) above, the attorney general shall notify the requestor within 30 days of the receipt of such request, the grounds upon which it intends either to grant or reject the request, and if granted set forth the conditions that the attorney general considers necessary to prevent the financing of terrorism. The attorney general may vary or revoke an authorization at any time.

§ 3349. Promulgation of rules.

The attorney general shall prescribe such procedures and rules as are necessary or expedient for the implementation of the provisions under this Part V of Chapter 33 of 17 PNC, including rules pertaining to the custody and administration of property subject to a freezing measure, the collection of information or evidence, and listing procedures, and other actions, proceedings and requests made under Part V of this Chapter.

§ 3350. Penalties.

(a) Any person who intentionally or by criminal negligence fails to comply with a freeze obligation set forth in this Chapter, shall be guilty of a Class C felony or a maximum fine of \$10,000, or both.

(b) It shall also be an offense under this Section to participate intentionally or by criminal negligence in any activity the object or effect of which is, directly or indirectly, to circumvent the provisions of this Law.

(c) A financial institution or designated non-financial business and profession who commits an offense under this Section also commits an administrative violation and may be subject to the measures and sanctions provided for under 17 PNC section 3328.

(d) A person shall not be responsible for a loss or claim resulting from the freezing of property or the refusal to make property available or to provide financial services where such an act is carried out in good faith, unless criminal negligence or reckless or intentional misconduct is proven.

#### CHAPTER 34 CABLE TELEVISION AND TELECOMMUNICATION SERVICE OFFENSES

§ 3400. Cable television service fraud in the first degree.

§ 3401. Cable television service fraud in the second degree.

§ 3402. Telecommunication service fraud in the first degree.

§ 3403. Telecommunication service fraud in the second degree.

§ 3404. Forfeiture of telecommunication service device and cable television service device.

§ 3400. Cable television service fraud in the first degree.

(a) A person commits cable television service fraud in the first degree if the person knowingly:

(1) Distributes written instructions or plans to make or assemble a cable television service device and knows that the written plans or instructions are intended to be used to make or assemble a device to obtain cable television service without payment of applicable charges; or

(2) Distributes a cable television service device and knows that the device is intended to be used to obtain cable television service without payment of applicable charges.

(b) Cable television service fraud in the first degree is a class C felony.

§ 3401. Cable television service fraud in the second degree.

(a) A person commits the offense of cable television service fraud in the second degree if the person knowingly:

(1) Possesses a cable television service device with the intent to obtain cable television service without payment of applicable charges; or

(2) Possesses written instructions or plans to make or assemble a cable television service device with the intent to use the written plans or instructions to make or assemble a device to obtain cable television service without payment of applicable charges.

(b) Cable television service fraud in the second degree is a misdemeanor.

§ 3402. Telecommunication service fraud in the first degree.

(a) A person commits the offense of telecommunication service fraud in the first degree if the person:

(1) Knowingly publishes plans or instructions for making, assembling, or using a telecommunication service device, or sells, offers to sell, distributes, transfers, or otherwise makes available written instructions, plans, or materials including hardware, cables, tools, data, computer software, or other information or equipment to make or assemble a telecommunication service device and knows that the written plans, instructions, or materials are intended to be used to make or assemble a device to obtain telecommunication service without payment of applicable charges;

(2) Knowingly makes, assembles, sells, offers to sell, advertises, distributes, transports, transfers, or otherwise makes available a telecommunication service device and knows that the device is intended to be used to obtain telecommunication service without payment of applicable charges; or

(3) With the intent to defraud another of the lawful charge for any telecommunication service that is provided for a charge or compensation:

(A) Publishes, sells, offers for sale, or otherwise makes available an access device, without obtaining the consent of the holder of the access device or the telecommunication service provider;

(B) Uses an access device, without obtaining the consent of the holder of the access device or the telecommunication service provider, resulting in obtaining services, the value of which exceeds three hundred dollars (\$300) in any six-month period;

(C) Engages in a scheme constituting a systematic and continuing course of conduct to obtain an access device from another by false or

fraudulent pretenses, representations, or promises and does obtain an access device from the other person; or

(D) Uses a telecommunication service device for the purpose of obtaining telecommunication services, the value of which exceeds three hundred dollars (\$300) in any six-month period, without obtaining the consent of the holder of the telecommunication service device or the telecommunication service provider.

(b) For the purpose of 17 PNC section 3402:

(1) "Access device" means any number or code of an existing, canceled, revoked, or nonexistent telephone number, telephone calling card number, credit card number, account number, personal identification number, or other credit device or method of numbering or coding that is employed in the issuance of telephone numbers, credit numbers, or other credit devices that can be used to obtain telecommunication service.

(2) "Holder of access device" means a person or organization to which an access device has been issued by a telecommunication service provider.

(3) "Publish" means the communication or dissemination of information to any one or more persons, either orally, in person, or by telephone, radio, television, or computer, or in a writing of any kind, including without limitation a letter, memorandum, circular, handbill, newspaper, magazine article, or book.

(c) Telecommunication service fraud in the first degree is a class C felony.

§ 3403. Telecommunication service fraud in the second degree.

(a) A person commits the offense of telecommunication service fraud in the second degree if the person:

(1) Knowingly possesses a telecommunication service device with the intent to obtain telecommunication service without payment of applicable charges;

(2) Knowingly possesses written instructions or plans to make or assemble a telecommunication service device with the intent to use the written plans or instructions to make or assemble a device to obtain telecommunication service without payment of applicable charges; or

(3) With the intent to defraud another of the lawful charge for any telecommunication service, which is provided for a charge or compensation:

(A) Uses an access device without obtaining the consent of the holder of the access device or the telecommunication service provider, resulting in obtaining services, the value of which does not exceed three hundred dollars (\$300) in any six-month period; or

(B) Uses a telecommunication service device for the purpose of obtaining telecommunication services, the value of which does not exceed three hundred dollars (\$300) in any six-month period, without obtaining the consent of the holder of the telecommunication service device or the telecommunication service provider.

(b) For the purposes of 17 PNC section 3403:

(1) "Access device" means any number or code of an existing, canceled, revoked, or nonexistent telephone number, telephone calling card number, credit card number, account number, personal identification number, or other

credit device or method of numbering or coding that is employed in the issuance of telephone numbers, credit numbers, or other credit devices that can be used to obtain telecommunication service.

(2) "Holder of access device" means a person or organization to which an access device has been issued by a telecommunication service provider.

(c) Telecommunication service fraud in the second degree is a misdemeanor.

§ 3404. Forfeiture of telecommunication service device and cable television service device.

Any telecommunication service device, cable television service device, or instructions or plans therefor, or any materials for making or assembling a telecommunication service device possessed or used in violation of 17 PNC sections 3400 to 3403 may be ordered forfeited to the Republic of Palau for destruction or other disposition, subject to the requirements of 17 PNC Chapter 7 of this Penal Code.

## CHAPTER 35 ARSON

§ 3500. Arson in the first degree.

§ 3501. Arson in the second degree.

§ 3502. Arson in the third degree.

§ 3503. Arson in the fourth degree.

§ 3500. Arson in the first degree.

(a) A person commits the offense of arson in the first degree if the person intentionally or knowingly sets fire to or causes to be burned property and:

(1) Knowingly places another person in danger of death or bodily injury; or

(2) Knowingly or recklessly damages the property of another, without the other's consent, in an amount exceeding twenty thousand dollars (\$20,000).

(b) Arson in the first degree is a class A felony.

§ 3501. Arson in the second degree.

(a) A person commits the offense of arson in the second degree if the person intentionally or knowingly sets fire to or causes to be burned property and:

(1) Recklessly places another person in danger of death or bodily injury; or

(2) Knowingly or recklessly damages the property of another, without the other's consent, in an amount exceeding one thousand five hundred dollars (\$1,500).

(b) Arson in the second degree is a class B felony.

§ 3502. Arson in the third degree.

(a) A person commits the offense of arson in the third degree if the person intentionally or knowingly sets fire to or causes to be burned property and:

(1) Negligently places another person in danger of death or bodily injury; or

(2) Knowingly or recklessly damages the property of another, without the other's consent, in an amount exceeding five hundred dollars (\$500).

(b) Arson in the third degree is a class C felony.

§ 3503. Arson in the fourth degree.

(a) A person commits the offense of arson in the fourth degree if the person intentionally, knowingly, or recklessly sets fire to, or causes to be burned property and thereby damages the property of another without the other's consent.

(b) Arson in the fourth degree is a misdemeanor.

CHAPTER 36  
CASH COURIER DISCLOSURE

...  
CHAPTER 37  
SMUGGLING

...  
DIVISION FIVE  
OFFENSES AGAINST PUBLIC ADMINISTRATION  
CHAPTER 38  
GENERAL PROVISIONS RELATING TO OFFENSES  
AGAINST PUBLIC ADMINISTRATION

§ 3800. Definitions of terms in this division.

§ 3801. Forfeiture of property used or obtained as benefit or pecuniary benefit in the commission of an offense defined in this division.

§ 3800. Definitions of terms in this division.

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

(1) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals.

(2) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested.

(3) "Custody" means restraint by a public servant pursuant to arrest, detention, or order of a court.

(4) "Detention facility" means any place used for the confinement of a person:

(A) Arrested for, charged with, or convicted of a criminal offense; or

(B) Confined juvenile pursuant to adjudication as delinquent; or

(C) Held for extradition; or

(D) Otherwise confined pursuant to an order of a court;.

(5) "Government" includes any branch, subdivision, or agency of the national government of the Republic of Palau or any locality within it.

(6) "Governmental function" includes any activity that a public servant is legally authorized to undertake on behalf of the government.

(7) "Harm" means loss, disadvantage, or injury, or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person or entity in whose welfare the person affected is interested.

(8) "Juror" means any person who is a member of any jury impaneled by any court of the Republic of Palau or by any public servant authorized by law to

impanel a jury, and also includes any person who has been drawn or summoned to attend as a prospective juror.

(9) "Law enforcement officer" means any public servant, whether employed by the Republic of Palau or political subdivisions thereof, or any state thereof, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.

(10) "Materially false statement" means any false statement, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a falsification is material in a given factual situation is a question of law.

(11) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated, and, for the purposes of this chapter, written statements shall be treated as if made under oath if:

(A) The statement was made on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable; or

(B) The statement recites that it was made under oath or affirmation, the declarant was aware of such recitation at the time the declarant made the statement and intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto.

(12) "Oath required or authorized by law" means an oath the use of which is specifically provided for by statute or appropriate regulatory provision.

(13) "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding.

(14) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(15) "Public servant" means any officer or employee of any branch of government, whether elected, appointed, or otherwise employed, and any person participating as advisor, consultant, or otherwise, in performing a governmental function, but the term does not include jurors or witnesses.

(16) "Statement" means any representation, but includes a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts that are the subject of the representation.

(17) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

§ 3801. Forfeiture of property used or obtained as benefit or pecuniary benefit in the commission of an offense defined in this division.

Any property offered, conferred, agreed to be conferred, or accepted as a benefit, pecuniary benefit, or compensation in the commission of an offense defined in this division is forfeited, subject to the requirements of 17 PNC Chapter 7 of this Penal

Code, to the Republic of Palau.

CHAPTER 39  
OBSTRUCTION OF PUBLIC ADMINISTRATION

- § 3900. Obstructing government operations.
- § 3901. Interference with reporting an emergency or crime.
- § 3902. Compounding a crime.
- § 3903. Rendering a false alarm.
- § 3904. Misuse of 911 emergency telephone service.
- § 3905. False reporting to law-enforcement authorities.
- § 3906. Impersonating a public servant.
- § 3907. Obtaining a government-issued identification document under false pretenses in the first degree.
- § 3908. Obtaining a government-issued identification document under false pretenses in the second degree.
- § 3909. Impersonating a law enforcement officer in the first degree.
- § 3910. Impersonating a law enforcement officer in the second degree.
- § 3911. Presumptions.
- § 3912. Defense.
- § 3913. Tampering with a government record.
- § 3914. Tampering with mail.
- § 3915. Sale or manufacture of deceptive identification document; penalties.
- § 3916. Securing the proceeds of an offense.
- § 3917. Misconduct in public office.

§ 3900. Obstructing government operations.

(a) A person commits the offense of obstructing government operations if, by using or threatening to use violence, force, or physical interference or obstacle, the person intentionally obstructs, impairs, or hinders:

(1) The performance of a governmental function by a public servant acting under color of the public servant's official authority;

(2) The enforcement of the penal law or the preservation of the peace by a law enforcement officer acting under color of the law enforcement officer's official authority; or

(3) The operation of a radio, telephone, television, or other telecommunication system owned or operated by the National Government or one of its political subdivisions.

(b) This section does not apply to the obstruction, impairment, or hindrance of the making of an arrest, which is covered by other sections of this Penal Code.

(c) Obstruction of government operations is a misdemeanor.

§ 3901. Interference with reporting an emergency or crime.

(a) A person commits the offense of interference with reporting an emergency or crime if the person intentionally or knowingly prevents a victim or witness to a criminal act from calling a 911-emergency telephone system, obtaining medical assistance, or making a report to a law enforcement officer.

(b) Interference with the reporting of an emergency or crime is a petty misdemeanor.

§ 3902. Compounding a crime.

(a) A person commits the offense of compounding a crime if the person intentionally accepts or agrees to accept any pecuniary benefit as consideration for:

(1) Refraining from seeking prosecution of an offense; or

(2) Refraining from reporting to law-enforcement authorities the commission or suspected commission of any offense or information relating to the offense.

(b) It is an affirmative defense to a prosecution under subsection (a) that the pecuniary benefit did not exceed an amount that the defendant believed to be due as restitution or indemnification for harm caused by the offense.

(c) Compounding a crime is a misdemeanor.

§ 3903. Rendering a false alarm.

(a) A person commits the offense of rendering a false alarm if the person knowingly causes a false alarm of fire or other emergency to be transmitted to or within an official or volunteer fire department, any other government agency, or any public or private utility that deals with emergencies involving danger to life or property.

(b) Rendering a false alarm is a misdemeanor.

§ 3904. Misuse of 911 emergency telephone service.

(a) A person commits the offense of misuse of 911 emergency telephone service if the person accesses the telephone number 911 and:

(1) Knowingly causes a false alarm; or

(2) Makes a false complaint or a report of false information in reckless disregard of the risk that a public safety agency will respond by dispatching emergency services.

(b) Misuse of 911 emergency telephone service is a misdemeanor.

(c) For purposes of this section, “public safety agency” means any national or state, or community police, fire, emergency medical service, or civil defense emergency agency.

§ 3905. False reporting to law-enforcement authorities.

(a) A person commits the offense of false reporting to law-enforcement authorities if the person intentionally makes a report or causes the transmission of a report to law-enforcement authorities relating to a crime or other incident within the concern of the law-enforcement authorities when the person knows that the information contained in the report is false.

(b) False reporting to law-enforcement authorities is a misdemeanor.

§ 3906. Impersonating a public servant.

(a) A person commits the offense of impersonating a public servant if the person pretends to be a public servant, other than a law enforcement officer, and engages in any conduct in that capacity with intent to deceive anyone.

(b) It is no defense to a prosecution under this section that the office the person pretended to hold did not in fact exist.

(c) Impersonating a public servant is a misdemeanor.

§ 3907. Obtaining a government-issued identification document under false pretenses in the first degree.

(a) A person commits the offense of obtaining a government-issued identification document under false pretenses in the first degree if that person, with intent to mislead a public servant and intent to facilitate a felony, obtains an identification document issued by the Republic of Palau by:

(1) Making any statement, oral or written, that the person does not believe to be true, in an application for any identification document issued by the Republic of Palau; or

(2) Submitting or inviting reliance on any writing that the person knows to be falsely made, completed, or altered.

(b) Obtaining a government-issued identification document under false pretenses in the first degree is a class C felony.

§ 3908. Obtaining a government-issued identification document under false pretenses in the second degree.

(a) A person commits the offense of obtaining a government-issued identification document under false pretenses in the second degree if that person, with intent to mislead a public servant, obtains an identification document issued by the Republic of Palau:

(1) Making any statement, oral or written, that the person does not believe to be true, in an application for any identification document issued by the Republic of Palau; or

(2) Submitting or inviting reliance on any writing that the person knows to be falsely made, completed, or altered.

(b) Obtaining a government-issued identification document under false pretenses in the second degree is a misdemeanor.

§ 3909. Impersonating a law enforcement officer in the first degree.

(a) A person commits the offense of impersonating a law enforcement officer in the first degree if, with intent to deceive, the person pretends to be a law enforcement officer and is armed with a firearm, whether loaded or not, and whether operable or not.

(b) Impersonating a law enforcement officer in the first degree is a class C felony.

§ 3910. Impersonating a law enforcement officer in the second degree.

(a) A person commits the offense of impersonating a law enforcement officer in the second degree if, with intent to deceive, the person pretends to be a law enforcement officer.

(b) Impersonating a law enforcement officer in the second degree is a misdemeanor.

§ 3911. Presumptions.

Any person, other than a law enforcement officer, who wears the uniform or displays the badge or identification card of a law enforcement officer, or who wears a uniform or displays a badge or identification card resembling the uniform, badge or identification card of a law enforcement officer, or a badge or identification card purported to be a law enforcement officer's badge or identification card, shall be presumed to be pretending to be a law enforcement officer.

§ 3912. Defense.

(a) Employment by the Republic of Palau or political subdivision thereof, or any state thereof, as a law enforcement officer at the time of the conduct charged is an affirmative defense to a prosecution for impersonating a law enforcement officer.

(b) It is no defense to a prosecution for impersonating a law enforcement officer that the office the person pretended to hold did not in fact exist.

§ 3913. Tampering with a government record.

(a) A person commits the offense of tampering with a government record if:

(1) The person knowingly and falsely makes, completes, or alters, or knowingly makes a false entry in, a written instrument that is or purports to be a government record or a true copy thereof; or

(2) The person knowingly presents or uses a written instrument that is or purports to be a government record or a true copy thereof, knowing that it has been falsely made, completed, or altered, or that a false entry has been made therein, with intent that it be taken as genuine; or

(3) The person knowingly records, registers, or files, or offers for recordation, registration, or filing, in a governmental office or agency, a written statement that has been falsely made, completed, or altered, or in which a false entry has been made, or that contains a false statement or false information; or

(4) Knowing the person lacks the authority to do so:

(A) The person intentionally destroys, mutilates, conceals, removes, or otherwise impairs the availability of any government records; or

(B) The person refuses to deliver up a government record in the person's possession upon proper request of a public servant entitled to receive such record for examination or other purposes.

(b) For the purpose of this section, "government record" includes all official books, papers, written instruments, or records created, issued, received, or kept by any governmental office or agency or required by law to be kept by others for the information of the government.

(c) Tampering with government records is a misdemeanor.

§ 3914. Tampering with mail.

(a) A person commits the offense of tampering with mail if the person intentionally, knowingly or recklessly opens or destroys mail not directed to him or her.

(b) Tampering with mail is a misdemeanor.

§ 3915. Sale or manufacture of deceptive identification document; penalties.

(a) A person commits the offense of sale or manufacture of deceptive identification document if the person intentionally or knowingly manufactures, sells, offers for sale, furnishes, offers to be furnished, transports, offers to be transported, or imports or offers to be imported into the Republic of Palau a deceptive identification document.

(b) As used in this section, "deceptive identification document" means any identification document not issued by a governmental agency that purports to be, or that might deceive a reasonable person into believing that it is, an identification document issued by a governmental agency, including a driver's license, identification card, birth certificate, passport, or social security card.

(c) The sale or manufacture of a deceptive identification document is a class C felony.

(d) Any property used or intended for use in the commission of, attempt to commit, or conspiracy to commit an offense under this section, or that facilitated or assisted such activity, shall be subject to forfeiture under 17 PNC Chapter 7 of this Penal Code.

§ 3916. Securing the proceeds of an offense.

(a) A person commits the offense of securing the proceeds of an offense if, with

intent to assist another in profiting or benefiting from the commission of a crime, he or she aids the person in securing the proceeds of the crime.

(b) Securing the proceeds of an offense is a class C felony if the person assisted committed a class A or B felony or murder of any degree; otherwise it is a misdemeanor.

§ 3917. Misconduct in public office.

(a) A person who, being a public official as defined in 33 PNC section 601, does any illegal acts under the color of office, or who willfully neglects to perform the duties of his or her office as provided by law, shall be guilty of misconduct in public office.

(b) Misconduct in public office is a class B felony.

#### CHAPTER 40 ESCAPE AND OTHER OFFENSES RELATED TO CUSTODY

§ 4000. Escape in the first degree.

§ 4001. Escape in the second degree.

§ 4002. Promoting prison contraband in the first degree.

§ 4003. Promoting prison contraband in the second degree.

§ 4004. Bail jumping in the first degree.

§ 4005. Bail jumping in the second degree.

§ 4006. Resisting arrest.

§ 4007. Resisting an order to stop a motor vehicle.

§ 4008. Hindering prosecution; definition of rendering assistance.

§ 4009. Hindering prosecution in the first degree.

§ 4010. Hindering prosecution in the second degree.

§ 4011. Intimidating a correctional worker.

§ 4000. Escape in the first degree.

(a) A person commits the offense of escape in the first degree if the person intentionally employs physical force, the threat of physical force, or a dangerous instrument against the person of another in escaping from a correctional or detention facility or from custody.

(b) Escape in the first degree is a class B felony.

§ 4001. Escape in the second degree.

(a) A person commits the offense of escape in the second degree if the person intentionally escapes from a correctional or detention facility or from custody.

(b) Escape in the second degree is a class C felony.

§ 4002. Promoting prison contraband in the first degree.

(a) A person commits the offense of promoting prison contraband in the first degree if:

(1) The person intentionally conveys a dangerous instrument or drug to any person confined in a correctional or detention facility; or

(2) Being a person confined in a correctional or detention facility, the person intentionally makes, obtains, or possesses a dangerous instrument or drug.

(b) A “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. A dangerous instrument may only be possessed by or conveyed to a confined person with the facility administrator’s express prior approval.

(c) A “drug” shall include all controlled substances as listed in schedules I through V of 34 PNC Chapter 31. A drug may only be possessed by or conveyed to a confined person with the facility administrator’s express prior approval and under medical supervision.

(d) Promoting prison contraband in the first degree is a class B felony.

§ 4003. Promoting prison contraband in the second degree.

(a) A person commits the offense of promoting prison contraband in the second degree if:

(1) The person intentionally conveys known contraband to any person confined in a correctional or detention facility; or

(2) Being a person confined in a correctional or detention facility, the person intentionally makes, obtains, or possesses known contraband.

(b) “Contraband” means any article or thing, other than a dangerous instrument or drug as defined in 17 PNC section 4002(b) and (c) of this Part, that a person confined in a correctional or detention facility is prohibited from obtaining or possessing by statute, rule, or order.

(c) Promoting prison contraband in the second degree is a class C felony.

§ 4004. Bail jumping in the first degree.

(a) A person commits the offense of bail jumping in the first degree if, having been released from custody by court order with or without bail, upon condition that the person will subsequently appear as ordered in connection with a charge of having committed a felony, the person knowingly fails to appear as ordered.

(b) Bail jumping in the first degree is a class C felony.

§ 4005. Bail jumping in the second degree.

(a) A person commits the offense of bail jumping in the second degree if, having been released from custody by court order with or without bail, upon condition that the person will subsequently appear as ordered in connection with a charge of having committed a misdemeanor or a petty misdemeanor, the person knowingly fails to appear as ordered.

(b) Bail jumping in the second degree is a misdemeanor.

§ 4006. Resisting arrest.

(a) A person commits the offense of resisting arrest if the person intentionally prevents a law enforcement officer acting under color of the law enforcement officer’s official authority from effecting an arrest by:

(1) Using or threatening to use physical force against the law enforcement officer or another; or

(2) Using any other means creating a substantial risk of causing bodily injury to the law enforcement officer or another.

(b) Resisting arrest is a misdemeanor.

§ 4007. Resisting an order to stop a motor vehicle.

(a) A person commits the offense of resisting an order to stop a motor vehicle if the person intentionally fails to obey a direction of a law enforcement officer, acting under color of the law enforcement officer’s official authority, to stop the person’s vehicle.

(b) Resisting an order to stop a motor vehicle is a misdemeanor.

§ 4008. Hindering prosecution; definition of rendering assistance.

For the purposes of 17 PNC sections 4009 and 4010 of this Part, a person renders assistance to another if he or she:

(a) Harbors or conceals such person;

(b) Warns such person of impending discovery, apprehension, prosecution, or conviction, except this does not apply to a warning given in connection with an effort to bring another into compliance with the law;

(c) Provides such person with money, transportation, weapon, disguise, or other means of avoiding discovery, apprehension, prosecution, or conviction;

(d) Prevents or obstructs, by means of force, deception, or intimidation, anyone from performing an act that might aid in the discovery, apprehension, prosecution, or conviction of such person; or

(e) Suppresses by an act of concealment, alteration, or destruction any physical evidence that might aid in the discovery, apprehension, prosecution, or conviction of such person.

§ 4009. Hindering prosecution in the first degree.

(a) A person commits the offense of hindering prosecution in the first degree if, with the intent to hinder the apprehension, prosecution, conviction, or punishment of another for a class A, B, or C felony or murder in any degree, the person renders assistance to the other person.

(b) Hindering prosecution in the first degree is a class C felony.

§ 4010. Hindering prosecution in the second degree.

(a) A person commits the offense of hindering prosecution in the second degree if, with the intent to hinder the apprehension, prosecution, conviction, or punishment of another for a crime, he or she renders assistance to such person.

(b) Hindering prosecution in the second degree is a misdemeanor.

§ 4011. Intimidating a correctional worker.

(a) A person commits the offense of intimidation of a correctional worker if the person uses force upon or a threat of force directed to a correctional worker, or the correctional worker's immediate family, with intent to influence such worker's conduct, decision, action or abstention from action as a correctional worker.

(b) "Correctional worker," as used in this section means any employee of the Republic of Palau who works in a correctional or detention facility, a court, a probation or paroling authority or who by law has jurisdiction over any legally committed offender or any person placed on probation or parole.

(c) "Threat" as used in this section means any threat proscribed by 17 PNC section 1904(a) of this Penal Code.

(d) Intimidation of a correctional worker is a class B felony.

## CHAPTER 41 BRIBERY

§ 4100. Bribery.

§ 4100. Bribery.

(a) A person commits the offense of bribery if:

(1) The person confers, or offers or agrees to confer, directly or indirectly, any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in the public servant's official capacity; or

(2) While a public servant, the person solicits, accepts, or agrees to accept, directly or indirectly, any pecuniary benefit with the intent that the person's vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced.

(b) It is a defense to a prosecution under subsection (a) that the accused conferred or agreed to confer the pecuniary benefit as a result of extortion or coercion.

(c) For purposes of this section, "public servant" includes in addition to persons who occupy the position of public servant as defined in 17 PNC section 3800, persons who have been elected, appointed, or designated to become a public servant although not yet occupying that position.

(d) Bribery is a class B felony. A person convicted of violating this section, notwithstanding any law to the contrary, shall not be eligible for a deferred acceptance of guilty plea or no contest plea under Part 1 of 17 PNC Chapter 6 of this Penal Code.

#### CHAPTER 42 PERJURY AND RELATED OFFENSES

§ 4200. Perjury.

§ 4201. False swearing in official matters.

§ 4202. False swearing.

§ 4203. Unsworn falsification to authorities.

§ 4204. Retraction.

§ 4205. Inconsistent statements.

§ 4206. No prosecution based on previous denial of guilt.

§ 4207. Corroboration.

§ 4208. Irregularities no defense.

§ 4209. Misrepresenting a notarized document in the first degree.

§ 4210. Misrepresenting a notarized document in the second degree.

§ 4200. Perjury.

(a) A person commits the offense of perjury if in any official proceeding the person makes, under an oath required or authorized by law, a false statement that the person does not believe to be true.

(b) No person shall be convicted under this section unless the court rules that the false statement is a "materially false statement" as defined by 17 PNC section 3800 of this Penal Code. It is not a defense that the declarant mistakenly believed the false statement to be immaterial.

(c) Perjury is a class C felony.

§ 4201. False swearing in official matters.

(a) A person commits the offense of false swearing in official matters if the person makes, under an oath required or authorized by law, a false statement that the person does not believe to be true, and:

(1) The statement is made in an official proceeding; or

(2) The statement is intended to mislead a public servant in the performance

of the public servant's official duty.

(b) False swearing in official matters is a misdemeanor.

§ 4202. False swearing.

(a) A person commits the offense of false swearing if the person makes, under oath required or authorized by law, a false statement that the person does not believe to be true.

(b) False swearing is a petty misdemeanor.

§ 4203. Unsworn falsification to authorities.

(a) A person commits the offense of unsworn falsification to authorities if, with intent to mislead a public servant in the performance of the public servant's duty, the person:

(1) Makes any written statement, which the person does not believe to be true, in an application for any pecuniary or other benefit or in a record or report required by law to be submitted to any governmental agency;

(2) Submits or invites reliance on any writing that the person knows to be falsely made, completed, or altered; or

(3) Submits or invites reliance on any sample, specimen, map, boundary-mark, or other object the person knows to be false.

(b) Unsworn falsification to authorities is a misdemeanor.

§ 4204. Retraction.

(a) It is a defense to a prosecution under this part that the defendant retracted the defendant's falsification:

(1) If the falsification was made in an official proceeding, in the course of the same proceeding before discovery of the falsification became known to the defendant; or

(2) If the falsification was not made in an official proceeding, before reliance upon the falsification by the person or body for whom it was intended.

(b) "In the course of the same proceeding" includes separate hearings at separate stages of the same official or administrative proceeding but does not include any stage of the proceeding after the close of the evidence.

§ 4205. Inconsistent statements.

(a) Where a person has made inconsistent statements, each of which if made with the requisite state of mind and under the requisite circumstances would constitute an offense specified in this part, and both statements have been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false; it shall only be necessary for the prosecution to prove:

(1) That one or the other was false and not believed by the defendant to be true; and

(2) The attendant circumstances and states of mind necessary to constitute each statement, if false, as an offense.

(b) The most serious offense that a person may be convicted in such an instance shall

be determined by hypothetically assuming each statement to be false. If offenses of different classes or grades would be established by the making of the two statements, the person may only be convicted of the lesser class or grade.

§ 4206. No prosecution based on previous denial of guilt.  
No prosecution shall be brought:

- (a) Under this part, if the substance of the defendant's false statement is the defendant's denial of guilt of an offense for which the defendant has previously been put in jeopardy; or
- (b) For a substantive offense, the denial of which was the basis of a former prosecution under this part.

§ 4207. Corroboration.

In any prosecution under this part, except a prosecution based upon inconsistent statements pursuant to 17 PNC section 4205 of this Penal Code, falsity of a statement may not be established solely through contradiction by the testimony of a single witness.

§ 4208. Irregularities no defense.

It is not a defense to a prosecution under this part:

- (a) That the defendant was not competent, for reasons other than lack of penal responsibility, to make the false statement alleged; or
- (b) That the statement was inadmissible under the rules of evidence; or
- (c) That the oath was administered or taken in an irregular manner; or
- (d) That the person administering the oath lacked authority to do so, if the taking of the oath was required or authorized by law.

§ 4209. Misrepresenting a notarized document in the first degree.

(a) A person commits the offense of misrepresenting a notarized document in the first degree if the person submits or invites reliance on a document that the person knows has been altered after the document had been notarized by a notary public in this or any other jurisdiction, and:

- (1) The offense was committed with intent to mislead a public servant; or
- (2) The offense was committed for purpose of commercial or private financial gain.

(b) Misrepresenting a notarized document in the first degree is a class C felony.

§ 4210. Misrepresenting a notarized document in the second degree.

(a) A person commits the offense of misrepresenting a notarized document in the second degree if, with intent to mislead another, the person submits or invites reliance on a document that the person knows has been altered after the document had been notarized by a notary public in this or any other jurisdiction.

(b) Misrepresenting a notarized document in the second degree is a misdemeanor.

#### CHAPTER 43 OFFENSES RELATED TO JUDICIAL AND OTHER PROCEEDINGS

§ 4300. Bribery of or by a witness.

§ 4301. Intimidating a witness.

§ 4302. Tampering with a witness.

- § 4303. Retaliating against a witness.
- § 4304. Obstruction of justice.
- § 4305. Bribery of or by a juror.
- § 4306. Intimidating a juror.
- § 4307. Jury tampering.
- § 4308. Retaliating against a juror.
- § 4309. Tampering with physical evidence.
- § 4310. Criminal contempt of court.

§ 4300. Bribery of or by a witness.

(a) A person commits the offense of bribing a witness if he or she confers, or offers or agrees to confer, directly or indirectly, any benefit upon a witness or a person he or she believes is about to be called as a witness in any official proceeding with intent to:

- (1) Influence the testimony of that person;
- (2) Induce that person to avoid legal process summoning him or her to testify;  
or
- (3) Induce that person to absent himself or herself from an official proceeding to which he or she has been legally summoned.

(b) A witness or a person believing he or she is about to be called as a witness in any official proceeding commits the offense of bribe-receiving by a witness if he or she intentionally solicits, accepts, or agrees to accept, directly or indirectly, any benefit as consideration:

- (1) That will influence his or her testimony;
- (2) For avoiding or attempting to avoid legal process summoning him or her to testify; or
- (3) For absenting or attempting to absent himself or herself from an official proceeding, to which he or she has been legally summoned.

(c) The offenses defined in this section are class C felonies.

§ 4301. Intimidating a witness.

(a) A person commits the offense of intimidating a witness if he or she uses force upon or a threat directed to a witness or a person he or she believes is about to be called as a witness in any official proceeding, with intent to:

- (1) Influence the testimony of that person;
- (2) Induce that person to avoid legal process summoning him or her to testify;  
or
- (3) Induce that person to absent himself or herself from an official proceeding to which he or she has been legally summoned.

(b) "Threat" as used in this section means any threat proscribed by 17 PNC section 1904(a) of this Penal Code.

(c) Intimidating a witness is a class C felony.

§ 4302. Tampering with a witness.

(a) A person commits the offense of tampering with a witness if he or she intentionally engages in conduct to induce a witness or a person he or she believes is about to be called as a witness in any official proceeding to:

(1) Testify falsely or withhold any testimony that he or she is not privileged to withhold; or

(2) Absent himself or herself from any official proceeding to which he or she has been legally summoned.

(b) Tampering with a witness is a misdemeanor.

§ 4303. Retaliating against a witness.

(a) A person commits the offense of retaliating against a witness if the person uses force upon or threatens a witness or another person or damages the property of a witness or another person because of the attendance of the witness, or any testimony given, or any record, document, or other object produced, by the witness in an official proceeding.

(b) “Threaten” as used in this section means any threat proscribed by 17 PNC sections 1904(a) and 1904(b) of this Penal Code.

(c) Retaliating against a witness is a class C felony.

§ 4304. Obstruction of justice.

(a) A person commits the offense of obstruction of justice if the person intentionally engages in the following conduct: When called as a witness and having been granted immunity by the court before or after having been qualified as a witness, shall refuse to testify or be qualified as a witness when duly directed to testify or be qualified as a witness.

(b) Obstruction of justice is a class C felony.

§ 4305. Bribery of or by a juror.

(a) A person commits the offense of bribing a juror if the person confers, or offers or agrees to confer, directly or indirectly, any benefit upon a juror with intent to influence the juror’s vote, opinion, decision, or other action as a juror.

(b) A person is guilty of the offense of bribe-receiving by a juror if the person intentionally solicits, accepts, or agrees to accept, directly or indirectly, any benefit as consideration that will influence the person’s vote, opinion, decision, or other action as a juror.

(c) The offenses defined in this section are class C felonies.

§ 4306. Intimidating a juror.

(a) A person commits the offense of intimidating a juror if the person uses force or a threat with intent to influence a juror’s vote, opinion, decision, or other action as a juror.

(b) “Threat” as used in this section means any threat proscribed by 17 PNC section 1904(a) of this Penal Code.

(c) Intimidating a juror is a class B felony.

§ 4307. Jury tampering.

(a) A person commits the offense of jury tampering if, with intent to influence a juror’s vote, opinion, decision, or other action in a case, the person attempts directly or indirectly to communicate with a juror other than as part of the proceedings in the trial of the case.

(b) Jury tampering is a class C felony.

§ 4308. Retaliating against a juror.

(a) A person commits the offense of retaliating against a juror if the person uses force upon or threatens a juror or another person because of the vote, opinion, decision, or other action of the juror in an official proceeding.

(b) “Threaten” as used in this section means any threat proscribed in 17 PNC sections 1904(a) and 1904(b) of this Penal Code.

(c) Retaliating against a juror is a class C felony.

§ 4309. Tampering with physical evidence.

(a) A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted, the person:

(1) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its verity in the pending or prospective official proceeding;

(2) Makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.

(b) “Physical evidence,” as used in this section includes any article, object, document, record, or other thing of physical substance.

(c) Tampering with physical evidence is a misdemeanor.

§ 4310. Criminal contempt of court.

(a) A person commits the offense of criminal contempt of court if:

(1) The person recklessly engages in disorderly or contemptuous behavior, committed during the sitting of a court in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority;

(2) The person creates a breach of peace or a disturbance with intent to interrupt a court’s proceedings;

(3) As an attorney, clerk, or other officer of the court, the person knowingly fails to perform or violates a duty of the person’s office, or knowingly disobeys a lawful directive or order of a court;

(4) The person knowingly publishes a false report of a court’s proceedings;

(5) Knowing that the person is not authorized to practice law, the person represents the person’s self to be an attorney and acts as such in a court proceeding;

(6) The person intentionally records or attempts to record the deliberation of a jury;

(7) The person knowingly disobeys or resists the process, injunction, or other mandate of a court;

(8) The person intentionally refuses to be qualified as a witness in any court or, after being qualified, to answer any proper interrogatory without a privilege to refuse to answer; or

(9) Being a juror, the person intentionally, without permission of the court, fails to attend a trial or official proceeding to which the person has been summoned or at which the person has been chosen to serve.

(b) Except as provided in subsection (c), criminal contempt of court is a misdemeanor.

(c) The court may treat the commission of an offense under subsection (a) as a petty misdemeanor, in which case:

(1) If the offense was committed in the immediate view and presence of the court, or under such circumstances that the court has knowledge of all of the facts constituting the offense, the court may order summary conviction and disposition; and

(2) If the offense was not committed in the immediate view and presence of the court, nor under such circumstances that the court has knowledge of all of the facts constituting the offense, the court shall order the defendant to appear before it to answer a charge of criminal contempt of court; the trial, if any, upon the charge shall be by the court without a jury; and proof of guilt beyond a reasonable doubt shall be required for conviction.

(d) When the contempt under subsection (a) also constitutes another offense, the contemnor may be charged with and convicted of the other offense notwithstanding the fact that the contemnor has been charged with or convicted of the contempt.

(e) Whenever any person is convicted of criminal contempt of court or sentenced therefor, the particular circumstances of the offense shall be fully set forth in the judgment and in the order or warrant of commitment.

(f) Nothing in this section shall be construed to alter the court's power to punish civil contempt. When the contempt consists of the refusal to perform an act that the contemnor has the power to perform, the contemnor may be imprisoned until the contemnor has performed it. In such a case the act shall be specified in the warrant of commitment. In any proceeding for review of the judgment or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment or order the commitment. When a court of competent jurisdiction issues an order compelling a parent to furnish support, including child support, medical support, or other remedial care, for the parent's child, it shall constitute prima facie evidence of a civil contempt of court upon proof that:

(1) The order was made, filed, and served on the parent or proof that the parent was present in court at the time the order was pronounced; and

(2) The parent did not comply with the order.

An order of civil contempt of court based on prima facie evidence under this subsection shall clearly state that the failure to comply with the order of civil contempt of court may subject the parent to a penalty that may include imprisonment or, if imprisonment is immediately ordered, the conditions that must be met for release from imprisonment. A party may also prove civil contempt of court by means other than prima facie evidence under this subsection.

DIVISION SIX  
OFFENSES AGAINST PUBLIC ORDER  
CHAPTER 44  
MISCELLANEOUS OFFENSES

§ 4400. Definitions.

§ 4401. Disorderly conduct.

§ 4402. Refusal to provide ingress or egress; penalty.

§ 4403. Failure to disperse.

§ 4404. Riot.

§ 4405. Unlawful assembly.

- § 4406. Obstructing.
- § 4407. Harassment.
- § 4408. Desecration.
- § 4409. Abuse of a corpse.
- § 4410. Cruelty to animals in the first degree.
- § 4411. Cruelty to animals in the second degree.
- § 4412. Violation of privacy.

§ 4400. Definitions.

In this division, unless a different meaning is plainly required, or the definition is otherwise limited by this section:

- (1) “Animal” includes every living creature, except a human being.
- (2) “Equine animal” means an animal of or belonging to the family Equidae, including horses, ponies, mules, donkeys, asses, burros, and zebras.
- (3) “Facsimile” means a document produced by a receiver of signals transmitted over telecommunication lines, after translating the signals, to produce a duplicate of an original document.
- (4) “Necessary sustenance” means care sufficient to preserve the health and well-being of a pet animal, except for emergencies or circumstances beyond the reasonable control of the owner or caretaker of the pet animal, and includes but is not limited to the following requirements:
  - (A) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight;
  - (B) Open or adequate access to water in sufficient quantity and quality to satisfy the animal’s needs;
  - (C) Access to protection from wind, rain, or sun;
  - (D) An area of confinement that has adequate space necessary for the health of the animal and is kept reasonably clean and free from excess waste or other contaminants that could affect the animal’s health; provided that the area of confinement in a primary pet enclosure must:
    - (i) Provide access to shelter;
    - (ii) Be constructed of safe materials to protect the pet animal from injury;
    - (iii) Enable the pet animal to be clean, dry, and free from excess waste or other contaminants that could affect the pet animal’s health;
    - (iv) Provide the pet animal with a solid surface or resting platform that is large enough for the pet animal to lie upon in a normal manner, or, in the case of a caged bird a perch that is large enough for the bird to perch upon in a normal manner;
    - (v) Provide sufficient space to allow the pet animal to, at minimum, do the following:
      - (aa) Easily stand, sit, lie, turn around, and make all other normal body movements in a comfortable manner for the pet animal, without making physical contact with any other animal in the enclosure; and

(bb) Interact safely with other animals within the enclosure; and

(E) Veterinary care when needed to prevent suffering.

(5) “Obstructs” means renders impassable without unreasonable inconvenience or hazard.

(6) “Pet animal” means a dog, cat, domesticated rabbit, guinea pig, domesticated pig, or caged birds (passeriformes, piciformes, and psittaciformes only) so long as not bred for consumption.

(7) “Primary pet enclosure” means any kennel, cage, or structure used to restrict only a pet animal as defined in this section to a limited area of space, and does not apply to the confinement of any animals that are raised for food, such as any poultry that is raised for meat or egg production and livestock, rabbits, or pigs that are raised specifically for meat production because these animals are not pets when raised for meat or egg production.

(8) “Private place” means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.

(9) “Public” means affecting or likely to affect a substantial number of persons.

(10) “Public place” means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

(11) “Record”, for the purposes of 17 PNC section 4412 of this Penal Code means to videotape, film, photograph, or archive electronically or digitally.

(12) “Torment” means fail to attempt to mitigate substantial bodily injury with respect to a person who has a duty of care to the animal.

(13) “Torture” includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.

§ 4401. Disorderly conduct.

(a) A person commits the offense of disorderly conduct if, with intent to cause physical inconvenience or alarm by a member or members of the public, or recklessly creating a risk thereof, the person:

(1) Engages in fighting or threatening, or in violent or tumultuous behavior; or

(2) Makes unreasonable noise; or

(3) Subjects another person to offensively coarse behavior or abusive language that is likely to provoke a violent response; or

(4) Creates a hazardous or physically offensive condition by any act that is not performed under any authorized license or permit; or

(5) Impedes or obstructs, for the purpose of begging or soliciting alms, any person in any public place or in any place open to the public.

(b) Noise is unreasonable, within the meaning of subsection (a)(2), if considering the nature and purpose of the person's conduct and the circumstances known to the person, including the nature of the location and the time of the day or night, the person's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation; or the failure to heed the admonition of a police officer that the noise is unreasonable and should be stopped or reduced.

The renter, resident, or owner-occupant of the premises who knowingly or negligently consents to unreasonable noise on the premises shall be guilty of a noise violation.

(c) Disorderly conduct is a petty misdemeanor.

§ 4402. Refusal to provide ingress or egress; penalty.

(a) Whenever ingress to or egress from any public or private place is obstructed by any person or persons in such manner as not to leave a free passageway for persons and vehicles lawfully seeking to enter or leave such place, any law enforcement officer shall direct such person or persons to move so as to provide and maintain a free and unobstructed passageway for persons and vehicles lawfully going into or out of such place. It shall be unlawful for any person to refuse or willfully fail to move as directed by such officer.

(b) As used in this section, "law enforcement officer" means any public servant, whether employed by the Republic of Palau or political subdivision thereof, or any state thereof, vested by law with a duty to maintain public order, to make arrests for offenses, or to enforce the criminal laws, whether the duty extends to all offenses or is limited to a specific class of offenses.

(c) Any person who refuses or willfully fails to move as directed by such officer shall be fined not more than two hundred dollars (\$200) or imprisoned not more than six months, or both.

§ 4403. Failure to disperse.

(a) When six or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance, or alarm, a law enforcement officer may order the participants and others in the immediate vicinity to disperse.

(b) A person commits the offense of failure to disperse if the person knowingly fails to comply with an order made pursuant to subsection (a).

(c) Failure to disperse is a misdemeanor.

§ 4404. Riot.

(a) A person commits the offense of riot if the person participates with five or more other persons in a course of disorderly conduct:

(1) With intent to commit or facilitate the commission of a felony; or

(2) When the person or any other participant to the person's knowledge uses or intends to use a firearm or other dangerous instrument in the course of the disorderly conduct.

(b) Riot is a class C felony.

§ 4405. Unlawful assembly.

(a) A person commits the offense of unlawful assembly if:

(1) The person assembles with five or more other persons with intent to engage in conduct constituting a riot; or

(2) Being present at an assembly that either has or develops a purpose to engage in conduct constituting a riot, the person remains there with intent to advance that purpose.

(b) Unlawful assembly is a misdemeanor.

§ 4406. Obstructing.

(a) A person commits the offense of obstructing if, having no legal privilege to do so, the person knowingly or recklessly obstructs any highway or public passage, whether alone or with others.

(b) A person in a gathering commits the offense of obstructing if the person refuses to obey a reasonable request or order by a law enforcement officer to move:

(1) To prevent obstruction of a highway or other public passage; or

(2) To maintain public safety by dispersing those gathered in dangerous proximity to a public hazard.

(c) An order to move under subsection (b)(1), addressed to a person whose speech or other lawful behavior attracts an obstructing audience, is not reasonable if the obstruction can be readily remedied by police control.

(d) A person is not guilty of violating subsection (a) solely because persons gather to hear the person speak or because the person is a member of such a gathering.

(e) Obstructing is a misdemeanor if the person persists in the conduct specified in subsection (a) after a warning by a law enforcement officer; otherwise it is a petty misdemeanor.

§ 4407. Harassment.

(a) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

(1) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;

(2) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;

(3) Repeatedly makes telephone calls, facsimile transmissions, or any form of electronic communication defined as “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, including electronic mail transmissions,” without purpose of legitimate communication;

(4) Repeatedly makes a communication anonymously or at an extremely inconvenient hour;

(5) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or

(6) Makes a communication using offensively coarse language that would

cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.

(b) Harassment is a misdemeanor.

§ 4408. Desecration.

(a) A person commits the offense of desecration if the person intentionally desecrates:

(1) Any public monument or structure; or

(2) A place of worship or burial; or

(3) In a public place the national flag or any other object of veneration by a substantial segment of the public.

(b) “Desecrate” means defacing, damaging, polluting, or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover the defendant’s action.

(c) Desecration is a misdemeanor.

(d) Any person convicted of committing the offense of desecration shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than ten thousand dollars (\$10,000), or both.

§ 4409. Abuse of a corpse.

(a) A person commits the offense of abuse of a corpse if, except as authorized by law, the person treats a human corpse in a way that the person knows would outrage ordinary family sensibilities.

(b) Abuse of a corpse is a misdemeanor.

§ 4410. Cruelty to animals in the first degree.

(a) A person commits the offense of cruelty to animals in the first degree if the person intentionally or knowingly:

(1) Tortures, mutilates, or poisons or causes the torture, mutilation, or poisoning of any pet animal or equine animal resulting in serious bodily injury or death of the pet animal or equine animal; or

(2) Kills or attempts to kill any pet animal belonging to another person, without first obtaining legal authority or the consent of the pet animal’s owner.

(b) Subsection (a)(1) shall not apply to:

(1) Accepted veterinary practices;

(2) Activities carried on for scientific research governed by standards of accepted educational or medicinal practices; or

(3) Cropping or docking as customarily practiced.

(c) Subsection (a)(2) shall not apply to:

(1) Humane euthanasia of any animal by an animal control officer, duly incorporated humane society, duly incorporated society for the prevention of cruelty to animals, or duly authorized governmental agency; or

(2) Conduct that the actor believes to be necessary to avoid an imminent harm or evil to the actor, another person, or an animal; provided that the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by this section and is justifiable as provided in 17 PNC section 302 of this Penal Code for choice of evils; provided further that, for purposes of this paragraph, as the justification described in 17 PNC section 302 of this Penal Code shall also apply to conduct that the actor believes to be necessary to avoid an imminent harm or evil to an animal.

(d) Whenever any pet animal or equine animal is so severely injured that there is no reasonable probability that its life can be saved, the animal may be immediately destroyed without creating any offense under this section.

(e) Cruelty to animals in the first degree is a class C felony.

§ 4411. Cruelty to animals in the second degree.

(a) A person commits the offense of cruelty to animals in the second degree if the person intentionally, knowingly, or recklessly:

(1) Overdrives, overloads, tortures, torments, beats, causes substantial bodily injury to, or starves any animal, or causes the overdriving, overloading, torture, torment, beating, or starving of any animal;

(2) Deprives a pet animal of necessary sustenance or causes such deprivation;

(3) Mutilates, poisons, or kills without need any animal other than insects, vermin, or other pests;

(4) Carries or causes to be carried, in or upon any vehicle or other conveyance, any animal in a cruel or inhumane manner;

(5) Confines or causes to be confined, in a kennel or cage, any pet animal in a cruel or inhumane manner;

(6) Tethers, fastens, ties, or restrains a dog to a doghouse, tree, fence, or any other stationary object by means of a choke collar, pinch collar, or prong collar; provided that a person is not prohibited from using such restraints when walking a dog with a hand-held leash or while a dog is engaged in a supervised activity; or

(7) Assists another in the commission of any act specified in subsections (a)(1) through (1)(6).

(b) Subsection (a)(1), (2), (3), (5), (6), and (7) shall not apply to:

(1) Accepted veterinary practices; or

(2) Activities carried on for scientific research governed by standards of accepted educational or medicinal practices; or

(c) Whenever any animal is so severely injured that there is no reasonable probability that its life or usefulness can be saved, the animal may be immediately destroyed without creating any offense under this section.

(d) Cruelty to animals in the second degree is a misdemeanor.

§ 4412. Violation of privacy.

(a) A person commits the offense of violation of privacy if, except in the execution of a public duty or as authorized by law, the person intentionally:

(1) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place;

(2) Peers or peeps into a window or other opening of a dwelling or other structure adapted for sojourn or overnight accommodations for the purpose of spying on the occupant thereof or invading the privacy of another person with a lewd or unlawful purpose, under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed;

(3) Trespasses on property for the sexual gratification of the actor;

(4) Installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any means or device for observing, recording, amplifying, or broadcasting sounds or events in that place, including another person in a stage of undress or sexual activity; or

(5) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein.

(b) This section shall not apply to any dissemination, distribution, or transfer of images subject to this section by an electronic communication service provider or remote storage service in the ordinary course of its business.

(c) For the purpose of this section:

(1) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(2) "Electronic communication service" means any service that provides to users thereof the ability to send or receive wire or electronic communications.

(3) "Electronic communication service provider" means any person engaged in the offering or sale of electronic communication services to the public.

(4) "Electronic communication system" means any wire, radio, electromagnetic, photo-optical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications, including e-mail, web hosting, multimedia messaging services, and remote storage services offered by an electronic communication service provider.

(5) "Remote storage service" means the provision to the public of computer storage or processing services by means of an electronic communication system.

(6) "Intimate areas" means any portion of a person's underwear, pubic area, anus, buttocks, vulva, genitals, or female breast.

(7) "Intimate areas underneath clothing" does not include intimate areas visible through a person's clothing or intimate areas exposed in public.

(8) "Public place" means an area generally open to the public, regardless of whether it is privately owned, and includes but is not limited to streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, buses,

tunnels, buildings, stores, and restaurants.

(d) Violation of privacy is a misdemeanor. In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this section.

CHAPTER 45  
FIREARMS CONTROL ACT

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CHAPTER 46  
TRUST TERRITORY WEAPONS CONTROL ACT

...

CHAPTER 47  
PROHIBITIONS AGAINST CHEMICAL WEAPONS

...

DIVISION SEVEN  
OFFENSES AGAINST PUBLIC HEALTH AND MORALS

CHAPTER 48  
PROSTITUTION AND PROMOTING PROSTITUTION

§ 4800. Prostitution.

§ 4801. Promoting prostitution; definition of terms.

§ 4802. Promoting prostitution in the first degree.

§ 4803. Promoting prostitution in the second degree.

§ 4804. Loitering for the purpose of engaging in or advancing prostitution.

§ 4805. Promoting travel for prostitution.

§ 4800. Prostitution.

(a) A person commits the offense of prostitution if the person:

(1) Engages in, or agrees or offers to engage in, sexual conduct with another person for a fee; or

(2) Pays, agrees to pay, or offers to pay a fee to another to engage in sexual conduct.

(b) As used in subsection (a) above:

(1) "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.

(2) "Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification, or perversion.

(3) "Sexual contact" means any touching, other than acts of "sexual penetration", 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.

(4) "Sexual penetration" means:

(A) Vaginal intercourse, anal intercourse, fellatio, 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. As used in this definition, "genital opening" includes the

anterior surface of the vulva or labia majora; or

(B) Cunnilingus or anilingus, whether or not actual penetration has occurred.

For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.

(c) Prostitution is a misdemeanor.

(d) This section shall not apply to a Bureau of Public Safety police officer or other law enforcement officer acting in the course and scope of duties.

§ 4801. Promoting prostitution; definition of terms.

In sections 4802 and 4803:

(a) A person “advances prostitution” if, acting other than as a prostitute or a patron of a prostitute, the person knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons for prostitution purposes, permits premises to be regularly used for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(b) A person “profits from prostitution” if, acting other than as a prostitute receiving compensation for personally-rendered prostitution services, the person accepts or receives money or other property pursuant to an agreement or understanding with any person whereby the person participates or is to participate in the proceeds of prostitution activity.

§ 4802. Promoting prostitution in the first degree.

(a) A person commits the offense of promoting prostitution in the first degree if the person knowingly:

(1) Advances prostitution by compelling or inducing a person by force, threat, fraud, or intimidation to engage in prostitution, or profits from such conduct by another; or

(2) Advances or profits from prostitution of a person less than eighteen years old.

(b) Promoting prostitution in the first degree is a class A felony.

(c) As used in this section:

(1) “Fraud” means making material false statements, misstatements, or omissions.

(2) “Threat” means threatening by word or conduct to:

(A) Cause bodily injury in the future to the person threatened or to any other person;

(B) Cause damage to property or cause damage, as defined in 17 PNC section 3100 of this Penal Code, to a computer, computer system, or computer network;

(C) Subject the person threatened or any other person to physical confinement or restraint;

(D) Commit a penal offense;

(E) Accuse some person of any offense or cause a penal charge to be instituted against some person;

(F) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair the threatened person's credit or business repute;

(G) Reveal any information sought to be concealed by the person threatened or any other person;

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

(I) Take or withhold action as a public servant, or cause a public servant to take or withhold such action;

(J) Bring about or continue a strike, boycott, or other similar collective action, to obtain property that is not demanded or received for the benefit of the group that the defendant purports to represent;

(K) Destroy, conceal, remove, confiscate, or possess any actual or purported passport, or any other actual or purported government identification document, or other immigration document, of another person; or

(L) Do any other act that would not in itself substantially benefit the defendant but that is calculated to harm substantially some person with respect to the threatened person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

§ 4803. Promoting prostitution in the second degree.

(a) A person commits the offense of promoting prostitution in the second degree if the person knowingly advances or profits from prostitution.

(b) Promoting prostitution in the second degree is a class B felony.

§ 4804. Loitering for the purpose of engaging in or advancing prostitution.

(a) For the purposes of this section, "public place" means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building that fronts on any of the aforesaid places, or a motor vehicle in or on any such place.

(b) Any person who remains or wanders about in a public place and repeatedly beckons to or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons for the purpose of committing the crime of prostitution shall be guilty of a petty misdemeanor.

(c) Any person who remains or wanders about in a public place and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons for the purpose of committing the crime of advancing prostitution is guilty of a misdemeanor.

§ 4805. Promoting travel for prostitution.

(a) A person commits the offense of promoting travel for prostitution if the person

knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be prostitution if occurring in the Republic of Palau.

(b) The phrase “travel services” as used in subsection (a) above, includes transportation by air, sea, or rail; related ground transportation; hotel accommodations; or package tours, whether offered on a wholesale or retail basis.

(c) Promoting travel for prostitution is a class C felony.

## CHAPTER 49 OFFENSES RELATED TO OBSCENITY

§ 4900. Definitions of terms in this chapter.

§ 4901. Displaying indecent matter.

§ 4902. Displaying indecent material; prima facie evidence.

§ 4903. Promoting pornography.

§ 4904. Promoting pornography for minors.

§ 4905. Promoting pornography; prima facie evidence.

§ 4906. Open lewdness.

§ 4900. Definitions of terms in this chapter.

In this chapter, unless a different meaning is required:

(1) “Age verification records of sexually exploited individuals” means individually identifiable records pertaining to every sexually exploited individual provided to patrons or customers of a public establishment or in a private club or event. Such records shall include:

(A) Each sexually exploited individual’s name and date of birth, as ascertained by an examination of the individual’s valid driver’s license, official Republic of Palau identification card, or passport;

(B) A certified copy of each sexually exploited individual’s driver’s license, official Republic of Palau identification card, or passport; and

(C) Any name ever used by each sexually exploited individual including but not limited to maiden name, aliases, nicknames, stage names, or professional names.

(2) “Age verification records of sexual performers” means individually identifiable records pertaining to every sexual performer portrayed in a visual depiction of sexual conduct, which include:

(A) Each performer’s name and date of birth, as ascertained by the producer’s personal examination of a performer’s valid driver’s license, official Republic of Palau identification card, or passport;

(B) A certified copy of each performer’s valid driver’s license, official Republic of Palau identification card, or passport; and

(C) Any name ever used by each performer including, but not limited to, maiden name, alias, nickname, stage name, or professional name.

(3) “Community standards” means the standards of the Republic of Palau.

(4) “Disseminate” means to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present material or to offer or agree to do the same.

(5) “Erotic or nude massager” means a nude person providing massage

services with or without a license.

(6) “Exotic or nude dancer” means a person performing, dancing, or entertaining in the nude, and includes patrons participating in a contest or receiving instruction in nude dancing.

(7) “Intent to profit” means the intent to obtain monetary gain.

(8) “Material” means any printed matter, visual representation, or sound recording, and includes but is not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, drawings, sculptures, and tape or wire recordings.

(9) “Minor” means any person less than eighteen years old.

(10) “Nude” means unclothed or in attire, including but not limited to sheer or see-through attire, so as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals or any portion of the female breast below the top of the areola.

(11) “Performance” means any play, motion picture film, dance, or other exhibition performed before an audience.

(12) “Pornographic.” Any material or performance is “pornographic” if all of the following coalesce:

(A) The average person, applying contemporary community standards would find that, taken as a whole, it appeals to the prurient interest.

(B) It depicts or describes sexual conduct in a patently offensive way.

(C) Taken as a whole, it lacks serious literary, artistic, political, or scientific merit.

(13) “Pornographic for minors.” Any material or performance is “pornographic for minors” if:

(A) It is primarily devoted to explicit and detailed narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse; and:

(i) It is presented in such a manner that the average person applying contemporary community standards, would find that, taken as a whole, it appeals to a minor’s prurient interest; and

(ii) Taken as a whole, it lacks serious literary, artistic, political, or scientific value; or

(B) It contains any photograph, drawing, or similar visual representation of any person of the age of puberty or older revealing such person with less than a fully opaque covering of his or her genitals and pubic area, or depicting such person in a state of sexual excitement or engaged in acts of sexual conduct or sadomasochistic abuse; and:

(i) It is presented in such a manner that the average person, applying contemporary community standards, would find that, taken as a whole, it appeals to a minor’s prurient interest; and

(ii) Taken as a whole, it lacks serious literary, artistic, political, or scientific value.

(14) “Produces” means to manufacture or publish any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity that does not involve hiring, contracting for, managing, or otherwise arranging for the participation of the performers depicted.

(15) “Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

(16) “Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse or physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification, or perversion.

(17) “Sexual excitement” means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

(18) “Sexually exploited individuals” means erotic or nude massagers and exotic or nude dancers.

(19) “Sexual performer” includes any person portrayed in a pornographic visual depiction engaging in, or assisting another person to engage in, sexual conduct.

§ 4901. Displaying indecent matter.

(a) A person commits the offense of displaying indecent matter if the person knowingly or recklessly displays on any sign, billboard, or other object visible from any street, highway, or public sidewalk, a photograph, drawing, sculpture, or similar visual representation of any person of the age of puberty or older:

(1) That reveals the person with less than a fully opaque covering over his or her genitals, pubic area, or buttocks, or depicting the person in a state of sexual excitement or engaged in an act of sexual conduct or sadomasochistic abuse; and

(2) That is presented in such a manner as to exploit lust; and

(3) That lacks serious literary, artistic, political, or scientific value.

(b) Displaying indecent material is a petty misdemeanor.

§ 4902. Displaying indecent material; prima facie evidence.

The fact that a person engaged in the conduct specified by 17 PNC section 4901 is prima facie evidence that the person engaged in that conduct with knowledge of or in reckless disregard of the character, content, or connotation of the material that is displayed.

§ 4903. Promoting pornography.

(a) A person commits the offense of promoting pornography if, knowing its content and character, the person:

(1) Disseminates for monetary consideration any pornographic material; or

(2) Produces, presents, or directs pornographic performances for monetary consideration; or

(3) Participates for monetary consideration in that portion of a performance that makes it pornographic.

(b) Promoting pornography is a misdemeanor.

§ 4904. Promoting pornography for minors.

(a) A person commits the offense of promoting pornography for minors if:

(1) Knowing its character and content, the person disseminates to a minor material that is pornographic for minors; or

(2) Knowing the character and content of a motion picture film or other performance that, in whole or in part, is pornographic for minors, the person:

(A) Exhibits such motion picture film or other performance to a minor; or

(B) Sells to a minor an admission ticket or pass to premises where there is exhibited or to be exhibited such motion picture film or other performance; or

(C) Admits a minor to premises where there is exhibited or to be exhibited such motion picture film or other performance.

(b) Promoting pornography for minors is a class C felony.

§ 4905. Promoting pornography; prima facie evidence.

(a) The fact that a person engaged in the conduct specified by 17 PNC sections 4903 or 4904 is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material disseminated or the performance produced, presented, directed, participated in, exhibited, or to be exhibited.

(b) In a prosecution under 17 PNC section 4904, the fact that the person:

(1) To whom material pornographic for minors was disseminated, or

(2) To whom a performance pornographic for minors was exhibited, or

(3) To whom an admission ticket or pass was sold to premises where there was or was to have been exhibited such performance, or

(4) Who was admitted to premises where there was or was to have been such performance, was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

§ 4906. Open lewdness.

(a) A person commits the offense of open lewdness if in a public place the person does any lewd act that is likely to be observed by others who would be affronted or alarmed.

(b) Open lewdness is a petty misdemeanor.

## CHAPTER 50 GAMBLING OFFENSES

§ 5000. Definitions of terms in this chapter.

§ 5001. Promoting gambling in the first degree.

§ 5002. Promoting gambling in the second degree.

§ 5003. Gambling.

§ 5004. Possession of gambling records in the first degree.

§ 5005. Possession of gambling records in the second degree.

- § 5006. Possession of a gambling device.
- § 5007. Possession of gambling records; defense.
- § 5008. Gambling offenses; prima facie evidence.
- § 5009. Forfeiture of property used in illegal gambling.
- § 5010. Social gambling; definition and specific conditions, affirmative defense.
- § 5011. Exemption.

§ 5000. Definitions of terms in this chapter.

In this chapter unless a different meaning plainly is required, the following definitions apply:

(1) “Advance gambling activity”. A person “advances gambling activity” if he or she engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device, or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his or her knowledge for purposes of gambling activity, he or she permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation. A person advances gambling activity if he or she plays or participates in any form of gambling activity.

(2) “Bookmaking” means advancing gambling activity by accepting bets from members of the public upon the outcomes of future contingent events.

(3) “Contest of chance” means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

(4) “Gambling”. A person engages in gambling if he or she stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his or her control or influence, upon an agreement or understanding that he, she or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health, or accident insurance.

(5) “Gambling device” means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

(6) “Lottery” means a gambling scheme in which:

(A) The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and

(B) The winning chances are to be determined by a drawing or by some other method based on an element of chance; and

(C) The holders of the winning chances are to receive something of value.

(7) “Mutuel” means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

(8) “Player” means a person who engages in gambling solely as a contestant or bettor.

(9) “Profit from gambling activity”. A person “profits from gambling activity” if he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of gambling activity.

(10) “Social gambling” is defined in 17 PNC section 5010.

(11) “Something of value” means any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service or entertainment.

§ 5001. Promoting gambling in the first degree.

(a) A person commits the offense of promoting gambling in the first degree if the person knowingly advances or profits from gambling activity by:

(1) Engaging in bookmaking to the extent that the person receives or accepts in any seven-day period more than five bets totaling more than five hundred dollars (\$500); or

(2) Receiving in connection with a lottery, or mutuel scheme or enterprise, money or written records from a person other than a player whose chances or plays are represented by such money or records; or

(3) Receiving or having become due and payable in connection with a lottery, mutuel, or other gambling scheme or enterprise, more than one thousand dollars (\$1,000) in any seven-day period played in the scheme or enterprise.

(b) Promoting gambling in the first degree is a class C felony.

§ 5002. Promoting gambling in the second degree.

(a) A person commits the offense of promoting gambling in the second degree if the person knowingly advances or profits from gambling activity.

(b) Promoting gambling in the second degree is a misdemeanor.

§ 5003. Gambling.

(a) A person commits the offense of gambling if the person knowingly advances or participates in any gambling activity.

(b) Gambling is a misdemeanor.

§ 5004. Possession of gambling records in the first degree.

(a) A person commits the offense of possession of gambling records in the first degree if the person knowingly possesses, produces, or distributes any writing, paper,

instrument, or article:

(1) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting, or representing more than five bets totaling more than five hundred dollars (\$500); or

(2) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise, and constituting, reflecting, or representing more than one hundred plays or chances therein or one play or chance wherein the winning amount exceeds five thousand dollars (\$5,000).

(b) Possession of gambling records in the first degree is a class C felony.

§ 5005. Possession of gambling records in the second degree.

(a) A person commits the offense of possession of gambling records in the second degree if the person knowingly possesses any writing, paper, instrument, or article:

(1) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or

(2) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise.

(b) Possession of gambling records in the second degree is a misdemeanor.

§ 5006. Possession of a gambling device.

(a) A person commits the offense of possession of a gambling device if the person manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing it is to be used in the advancement of gambling activity that is not social gambling.

(b) Possession of a gambling device is a misdemeanor.

§ 5007. Possession of gambling records; defense.

In any prosecution under 17 PNC sections 5004 and 5005, it is a defense that the writing, paper, instrument, or article possessed by the defendant was neither used nor intended to be used in the advancement of gambling activity, except for records used in social gambling.

§ 5008. Gambling offenses; prima facie evidence.

(a) Proof that a person knowingly possessed any gambling record specified in 17 PNC sections 5004 and 5005 or any gambling device in 17 PNC section 5006 is prima facie evidence that the person possessed the record or device with knowledge of its contents and character.

(b) In any prosecution under this part in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine, or other periodically printed publication of general circulation, shall be admissible in evidence and shall constitute prima facie evidence of the occurrence of the event.

§ 5009. Forfeiture of property used in illegal gambling.

Any gambling device, paraphernalia used on fighting animals, or birds, implements, furniture, personal property, vehicles, vessels, aircraft, or gambling record possessed or used in violation of this part, or any money or personal property used as a bet or stake in gambling activity in violation of this part, may be ordered forfeited to the Republic of Palau, subject to the requirements of 17 PNC Chapter 7 of this Penal Code.

§ 5010. Social gambling; definition and specific conditions, affirmative defense.

(a) "Social gambling" means gambling in which all of the following conditions are present:

- (1) Players compete on equal terms with each other; and
- (2) No player receives, or becomes entitled to receive, anything of value or any profit, directly or indirectly, other than the player's personal gambling winnings; and
- (3) No other person, corporation, unincorporated association, or entity receives or becomes entitled to receive, anything of value or any profit, directly or indirectly, from any source, including but not limited to permitting the use of premises, supplying refreshments, food, drinks, service, lodging or entertainment; and
- (4) It is not conducted or played in or at a hotel, motel, bar, nightclub, cocktail lounge, restaurant, massage parlor, billiard parlor, or any business establishment of any kind, public parks, public buildings, public beaches, school grounds, churches or any other public area; and
- (5) None of the players is below the age of majority; and
- (6) The gambling activity is not bookmaking.

(b) Affirmative defense. In any prosecution for an offense described in 17 PNC sections 5003, 5004, 5005 or 5006, a defendant may assert the affirmative defense that the gambling activity in question was a social gambling game as defined in 17 PNC section 5010(a).

(c) If the defendant asserts the affirmative defense, the defendant shall have the burden of going forward with evidence to prove the facts constituting such defense unless such facts are supplied by the testimony of the prosecuting witness or circumstance in such testimony, and of proving such facts by a preponderance of evidence.

(d) In any prosecution for an offense described in this part the fact that the gambling activity involved was other than a social gambling game shall not be an element of the offense to be proved by the prosecution in making out its prima facie case.

§ 5011. Exemption

(a) Participation in any gambling game for the limited purposes of raising funds for a worthy cause or entertainment sponsored by any school, church organization, or non-profit organization shall be permitted.

(b) The operation of a Virtual Pachinko Business or an Internet Digits Lottery Game Business pursuant to a concession agreement entered into pursuant to 11 PNC Chapter 14 shall be permitted; provided that the internet site or sites of the Virtual Pachinko Business and Internet Digits Lottery Game Business are inaccessible to persons located within the Republic, and that Palauan citizens shall not be allowed to play Virtual Pachinko or the Internet Digits Lottery Game. The Internet Digits Lottery Game shall be blocked at any server located in Palau as well as on the software with a flashing screen that states:

\*\*\* This site cannot accept wagers or bets from within the Republic of Palau and this Internet Digits Lottery Game Operator will not pay any funds to any person located in the Republic of Palau.\*\*\*

The Virtual Pachinko Game shall be locked at any server located in Palau as well as on the software with a flashing screen that states:

\*\*\* This site cannot accept wagers or bets from within the Republic of Palau and this Virtual Pachinko Operator will not pay any funds to any person located in the Republic of Palau.\*\*\*

Section 6. Amendment. Section 2205 of Title 14 of the Palau National Code is amended to read as follows:

“§ 2205. Procedures; penalties; limitations.

(a) Any person accused of committing any civil contempt shall have a right to notice of the charges and an opportunity to present defenses and mitigation; provided, however, where the offense is committed in the immediate view and presence of the court, upon a trial or hearing, it may be punished summarily. For that purpose, an order must be made by the court, justice, or judge, stating the facts which constitute the offense and plainly prescribe the punishment to be inflicted therefor.

(b) A person found to be in civil contempt of court shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than six (6) months, or both; provided, however, that a person found in civil contempt for having failed to perform an act or duty, which is yet in the power of that person to perform, shall be imprisoned until he has performed it.

(c) Any person shall have the right to be charged within three months of the contempt and the right not to be charged twice for the same contempt.”

Section 7. Repealer. Section 2203 of Title 14 of the Palau National Code entitled “Power of the courts to punish for criminal contempt” is hereby repealed in its entirety.

Section 8. Amendment. Chapter 28 as amended by RPPL No. 8-51 entitled Sex Crimes and renumbered herein as Chapter 16 of Title 17 of the Palau National Code and its title amended as “Sexual Offenses” in accordance with this Act is amended to include the following section:

“§ 1609. Illegally marrying.

(1) A person commits the offense of illegally marrying if the person intentionally marries or purports to marry, knowing that the person is legally ineligible to do so.

(2) Illegally marrying is a class C felony.”

Section 9. Amendment. 40 PNC § 1702 is hereby amended as follows:

“1702. Interest.

If any tax or penalty imposed by this division is not paid on or before the date prescribed for such payment, there shall be assessed and collected, in addition to such tax liability at the rate of three percent (3%) per month from its due date until the date it is paid, except for road use taxes in cases where the late payment of road use taxes is due to mechanical repair or any other reasonable justification to be determined by the Director of the Bureau of Public Safety. In such cases, only the applicable road use tax shall be charged.”

Section 10. Effective date of Section 9. Section 9 shall take effect upon this Act’s approval by the President, or upon the Act’s becoming law without such approval.

Section 11. Effective date. This Act shall take effect ninety (90) days after its approval by the President, or upon its becoming law without such approval, except as otherwise provided by law.

**PASSED: February 24, 2014**

**Approved this 24th day of April, 2013**

**Tommy E. Remengesau, Jr.**  
**President of the Republic of Palau**