

# TITLE 12

## CRIMINAL PROCEDURE

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### SUBCHAPTERS

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## CHAPTER 1

### General Provisions

## SECTIONS

### § 101. Definitions.

### § 102. Name in which prosecution shall be conducted.

#### § 101. Definitions.

As used in this title, the following terms shall have the meanings set forth below:

- (1) "Arrest" means placing any person under any form of detention by legal authority.
- (2) "Attorney General" means the legal officer on the staff of the High Commissioner or any person appointed by the High Commissioner to supervise prosecutions throughout the Trust Territory.
- (3) "Citation" means a written order to appear before a court at a time and place named therein to answer a criminal charge briefly described in the citation. It shall contain a warning that failure to obey it will render the accused liable to have a complaint filed against him upon which a warrant of arrest may be issued. The statement of the charge or charges in a citation or a copy thereof may be accepted by the court in place of an information in any misdemeanor tried in the first instance in a community court or a district court.
- (4) "Complaint" means a statement of the essential facts constituting a criminal offense by one or more persons named or described therein. It shall be made under oath before a court or an official authorized to issue a warrant. It may be either written or oral, but whenever the court or official hearing it deems practicable it shall be reduced to writing, signed by the complainant, and bear a record of the oath signed by the person who administered it. The complaint shall refer to the code section, ordinance, district order, native custom, or other provision of the law which the accused is alleged to have violated, but any error in this reference or its omission may be corrected by leave of court at any time prior to sentence and shall not be ground for reversal of a conviction if the error or omission did not mislead the accused to his prejudice. If a felony is not charged, the court may accept a complaint in lieu of an information.
- (5) "District Attorney" means any person appointed by the High Commissioner to represent the government in any case, civil or criminal, in any court of the Trust Territory.
- (6) "Judge" means any member of the High Court, a district court, or a community court.
- (7) "Oath" shall include a solemn affirmation.
- (8) "Penal Summons" means a written order summoning a person or persons to appear before a court at a time and place named therein, instead of commanding an arrest. Otherwise it shall meet all the requirements of a warrant. It shall contain a warning that failure to obey it will render the accused liable to arrest upon a warrant.
- (9) "Personal Recognizance" means a promise made before an official authorized to accept bail that in consideration of the release of the person he will appear in accordance with all orders of the court and that if he fails to do so he will pay a stated sum of money.
- (10) "Policeman" means any member of the Micronesia police or any person authorized by the High Commissioner or any district administrator to act as a policeman.
- (11) "Search Warrant" means a written order directed to a policeman, commanding him to search for and, if found, to seize and bring before a particular court or official certain articles supposed to be in the possession of a person

or at a place named or described in the search warrant. It shall be signed by the Clerk of Court or by the official issuing it, and shall state the grounds or probable cause for its issuance and the name of the person or persons whose statements, under oath, have been taken in support thereof. It shall designate the court or official to whom it shall be returned.

(12) "Warrant of Arrest" means a written order commanding that a person or persons be arrested and brought without unnecessary delay before a court named therein, or otherwise dealt with according to law. It shall be signed by the Clerk of the Court or by the official issuing it and shall contain the name of the accused, or if his name is unknown any name or description by which he can be identified with reasonable certainty. It shall describe the criminal offense charged and may do so by referring to either the original or a copy of the complaint or information attached to or on the same sheet as the warrant. Except where otherwise indicated, the word "warrant" in this title refers to a "warrant of arrest."

**Source:** TT Code 1966 § 445; TT Code 1970, 12 TTC 1; TT Code 1980, 12 TTC 1.

**Cross-reference:** FSM Const., art. IV, §§ 3 and 5. The provisions of the Constitution are found in Part I of this code.

**Editor's note:** Subsections rearranged in alphabetical order in 1982 edition of this code.

### **§ 102. Name in which prosecution shall be conducted.**

Criminal prosecutions shall be conducted in the name of the Federated States of Micronesia for violations of the following:

- (1) laws enacted by the Congress of the Federated States of Micronesia; and
- (2) statutes of the Trust Territory of the Pacific Islands which are continued in effect by article XV, section 1, of the Constitution of the Federated States of Micronesia and are within the jurisdiction of the National Government of the Federated States of Micronesia.

**Source:** TT Code 1966 § 486; TT Code 1970, 12 TTC 201; TT Code 1980, 12 TTC 201; PL 1-127 § 2.

**Cross-reference:** FSM Const., art. IV, §§ 3 and 5. The provisions of the Constitution are found in Part I of this code.

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

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

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of

the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

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

**Case annotations:** National court jurisdiction over the Trust Territory Weapons Control Act is consistent with 12 F.S.M.C. 102 which states in part that criminal prosecutions shall be conducted in the name of the Federated States of Micronesia for violations of the statutes of the Trust Territory which continued in effect by virtue of the transition article of the Constitution and which are within the jurisdiction of the National Government of the Federated States of Micronesia. 11 F.S.M.C. 1201-1231. *FSM v. Nota*, 1 FSM R. 299, 303 (Truk 1983).

### Prosecution

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

A prosecuting attorney's decision whether to prosecute must be overruled only in the most extraordinary circumstances, e.g., vindictiveness, impermissible discrimination, or an attempt to prevent the exercise of constitutional rights. *Nix v. Ehmes*, 1 FSM R. 114, 125-26 (Pon. 1982).

A prosecuting attorney has wide discretion in determining whether to prosecute. *Nix v. Ehmes*, 1 FSM R. 114, 126 (Pon. 1982).

The decision to initiate, continue, or terminate a particular criminal prosecution is, with limited exceptions, within the discretion of the prosecutor. *FSM v. Mudong*, 1 FSM R. 135, 140 (Pon. 1982).

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

The prosecution of criminals is not a power having an indisputably national character. *Truk v. Hartman*, 1 FSM R. 174, 178 (Truk 1982).

The high public office of state prosecutor may be the most powerful office in our system of justice. The prosecutor invokes and implements the sovereign powers of the state in the justice system and is given a wide degree of discretion in so doing. *Rauzi v. FSM*, 2 FSM R. 8, 13 (Pon. 1985).

Some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. *Rauzi v. FSM*, 2 FSM R. 8, 16 (Pon. 1985).

There are sound reasons why prosecutors should retain discretion over whether to submit a plea agreement to a court based upon information obtained by the prosecution subsequent to execution of a written plea agreement but before presentation of that agreement to the court. *FSM v. Ocean Pearl*, 3 FSM R. 87, 91 (Pon. 1987).

Although the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is initiated in the FSM Supreme Court, the court also has responsibility for assuring that actions thereafter taken are in the public interest. Thus, criminal litigation can be dismissed only by obtaining leave of court. *FSM v. Ocean Pearl*, 3 FSM R. 87, 91 (Pon. 1987).