CHAPTER 2

Process—Warrants and Arrest

SECTIONS

§ 201. Process obligatory upon police.

(1) All process in any criminal proceedings, in all contempt proceedings, and in juvenile delinquency proceedings, issued in accordance with law and the rules of procedure prescribed in accordance with law, shall be obligatory upon all policemen having knowledge thereof, and any policeman to whom such process is given shall promptly make diligent effort to execute or serve the same either personally or through another policeman.

(2) This section shall cover orders to show cause why a person should not be adjudged in contempt, orders of attachment of a person, summons, and all other orders (including an oral order in place of any of the foregoing), issued in either civil contempt proceedings or juvenile delinquency proceedings, as well as all forms of process in criminal proceedings.

Source: TT Code 1966 § 489; TT Code 1970, 12 TTC 51; TT Code 1980, 12 TTC 51.

§ 202. Limitation of arrests without a warrant.

No arrest of any person shall be made without first obtaining a warrant therefor, except in the cases authorized in this chapter or as otherwise provided by law.

Source: TT Code 1966 § 456; TT Code 1970, 12 TTC 52; TT Code 1980, 12 TTC 52.

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

Case annotations: Suspicion of guilt can justify the extreme action of an arrest only when based upon reasonable grounds known to the arresting officer at the time of arrest so strong that a cautious man would "believe," that is, consider it more likely than not that the accused is guilty of the offense. *Ludwig v. FSM*, 2 FSM R. 27, 33 (App. 1985).

§ 203. Authority to issue a warrant of arrest.

The following officials are authorized to issue a warrant of arrest:

(1) any court;

(2) any judge;

(3) the clerk of courts for a district subject to such limitations as the Chief Justice of the High Court may impose;

(4) any other person authorized in writing by the High Commissioner and a certified copy of whose authorization is filed with the clerk of courts for the district in which he acts.

Source: TT Code 1966 § 446; TT Code 1970, 12 TTC 53; TT Code 1980, 12 TTC 53.

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

Case annotations:

Arrest and Custody

No right is held more sacred, or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraints or interference of others, unless by clear and unquestionable authority of law. *FSM v. Tipen*, 1 FSM R. 79, 86 (Pon. 1983).

The law generally requires that a prisoner test the legality of his detention in a court of law rather than attempt to enforce his own claim to freedom. *FSM v. Doone*, 1 FSM R. 365, 368 (Pon. 1983).

Police may question persons who, while they are in police custody, fall under suspicion for another crime, without regard to the fact that other persons in a similar category would be released without questioning. *FSM v. Jonathan*, 2 FSM R. 189, 199 (Kos. 1986).

§ 204. Warrant or penal summons upon complaint.

(1) Any person, other than the Attorney General or a district attorney, desiring the issuance of a warrant of arrest for a criminal offense shall personally appear and make a complaint within the district where the offense or some part thereof is alleged to have been committed, before an official authorized to issue a warrant.

(2) If the complaint states the essential facts constituting a criminal offense by one or more persons named or described therein, and if, in the opinion of the official, there is probable cause to believe or strongly suspect that the offense complained of has been committed by such person or persons, the official may issue his warrant for the arrest of such person or persons, or may issue a penal summons as provided in this chapter.

(3) Any official, other than a judge of a district court, may refuse to act if he deems that the public interest does not require action before the matter can reasonably be presented to a judge of a district court.

Source: TT Code 1966 § 448; TT Code 1970, 12 TTC 54; TT Code 1980, 12 TTC 54.

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

§ 205. Investigation of complaint in doubtful cases.

(1) If a judge of a district court before whom a complaint is made is doubtful whether sufficient grounds in fact exist for the issuance of a warrant or penal summons, he may, if the complainant consents, refer the complaint to the Micronesia police for investigation and report and withhold action for a reasonable time pending such report.

(2) If the complainant does not consent to such a reference or if the report of investigation is not received within a reasonable time, the judge shall proceed to examine under oath the complainant, any witnesses offered by the complainant and such other witnesses as the judge deems best and may, in his discretion, give the accused an opportunity to be present and to be heard.

(3) If the judge is satisfied from the investigation made by the Micronesia police or that made by him as

directed in subsection (2) of this section that there is probable cause to believe or strongly suspect that the offense complained of has been committed and that the accused committed it, he shall issue a warrant or a penal summons as provided in this chapter.

Source: TT Code 1966 § 449; TT Code 1970, 12 TTC 55; TT Code 1980, 12 TTC 55.

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

§ 206. Use of penal summons in lien of warrant of arrest.

(1) In the case of all criminal offenses for which the lawful punishment does not exceed a fine of $100, or six months imprisonment, or both, a penal summons to appear before a court at a time and place fixed in the penal summons shall be issued instead of a warrant of arrest, unless it shall appear to the court or official issuing the process that the public interest requires the arrest of the accused.

(2) Upon request of the complainant, a penal summons instead of a warrant may be issued in any case.

(3) If, after a penal summons has been served upon him, the accused fails to appear in response to the penal summons without an excuse known to and deemed adequate by the court named therein, a warrant shall be issued.

Source: TT Code 1966 § 450; TT Code 1970, 12 TTC 56; TT Code 1980, 12 TTC 56.

§ 207. Execution of warrants and service of penal summons.

A warrant of arrest shall be executed or the penal summons served by a policeman or by a person specifically authorized in the warrant or summons to execute or serve it. The warrant may be executed or the summons served at any place within the jurisdiction of the Trust Territory. The penal summons shall be served upon the accused by delivering a copy to him personally and orally explaining the substance thereof to him in a language generally understood in the locality and, if practicable, in one understood by the accused, or by leaving it at his dwelling house or usual place of abode or of business with some person of suitable age and discretion then residing or employed therein and orally explaining the substance thereof.

Source: TT Code 1966 § 451; TT Code 1970, 12 TTC 57; TT Code 1980, 12 TTC 57.

§ 208. Return of service.

(1) The person executing a warrant shall endorse thereon and sign a statement of the arrest showing the date and place of arrest and shall have such warrant delivered to the court or official before whom the accused is brought pursuant to section 217 of this chapter, or to the court named in the warrant if the accused is released on bail or personal recognizance before being brought before a court or official.

(2) At or before the time stated in a penal summons for appearance of the accused, the person to whom a penal summons is delivered for service shall endorse and sign a report of his action thereon and have such summons delivered to the court named therein. If he has served the summons, his report shall show the date, place, and method of service.

Source: TT Code 1966 § 452; TT Code 1970, 12 TTC 58; TT Code 1980, 12 TTC 58.

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

§ 209. Issuance of oral order in lieu of warrant or penal summons by community court.

(1) A community court or any judge thereof may, if the court or judge deems the public interest so requires, issue an oral order in place of either a warrant of arrest or a penal summons, which shall have the same force and effect within the territorial jurisdiction of that court as a warrant or penal summons.

(2) Such an oral order may be served by orally communicating the substance thereof to the accused and the report of execution or service of such an order may be made orally.

(3) Any person making an arrest on such an oral order or serving such an order in place of a penal summons shall report all the essential facts to the court or official before whom the accused is brought or ordered to appear.

(4) Any person by going to trial before a community court without requesting a copy of the charges against him thereby waives his right to have a copy in advance of trial in that court, but he does not thereby waive his right to such copy before trial in a district court in the event of an appeal.

Source: TT Code 1966 § 453; TT Code 1970, 12 TTC 59; TT Code 1980, 12 TTC 59.

§ 210. Issuance of warrant or penal summons on information.

The Attorney General or a district attorney may file an information signed by him in any court competent to try the accused for a criminal offense or offenses charged therein. If the information states the essential facts constituting a criminal offense or offenses by one or more persons named or described therein and is supported by one or more written statements under oath showing to the satisfaction of the court that there is probable cause to believe or strongly suspect that the offense complained of has been committed by such person or persons, the court shall, upon request of the Attorney General or district attorney, issue its warrant or penal summons as upon a complaint.

Source: TT Code 1966 § 454; TT Code 1970, 12 TTC 60; TT Code 1980, 12 TTC 60.

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

Case annotations:

Information

Under 12 F.S.M.C. 210, the lack of sworn, written statements showing probable cause makes the issuance of the summonses defective. It does not make the information defective. *FSM v. Kansou*, 13 FSM R. 48, 50 (Chk. 2004).

Where language of an information is more specific than the language of the statute under which the offense is charged, the prosecution is required to establish those specific facts in addition to a violation of the statute. *FSM v. Boaz (I)*, 1 FSM R. 22, 24 (Pon. 1981).

An information which claims that the defendant entered a building for the purpose of "fighting" rather than "assaulting" a person within the building does not render the information inadequate for a conviction. A desire to fight carries with it a desire to commit an assault. *FSM v. Boaz (I)*, 1 FSM R. 22, 26 (Pon. 1981).

Government's failure to prove the assertion in its information that a dangerous weapon was used to cause the victim to submit to the sexual assault need not result in dismissal of the case. It merely prevents an application of the greater punishment available under 11 F.S.M.C. 914(3)(b). *Buekea v. FSM*, 1 FSM R. 487, 493-94 (App. 1984).

Allegations in the Information alleging a criminal violation must be proven in order to obtain a conviction. It is not sufficient that the evidence show a violation of the statute specified in the Information if the actual violation is different from the one alleged. *Buekea v. FSM*, 1 FSM R. 487, 493-94 (App. 1984).

At the discretion of the trial judge, the Information may be amended to conform to the evidence if it appears fair to do so. *Buekea v. FSM*, 1 FSM R. 487, 494 (App. 1984).

When an information sufficiently apprizes the defendant of the charges against which he must be prepared to defend and is sufficiently detailed to enable him to plead his case as a bar to future prosecutions for the same offense, it is generally sufficient that an information set forth the offense in words of the statute itself. *Laion v. FSM*, 1 FSM R. 503, 516-17 (App. 1984).

The language of Rule 7(c) of FSM Supreme Court Rules of Criminal Procedure has been interpreted by other courts as permitting prosecution to charge commission of a single offense by different means, or by charging in conjunctive actions prohibited disjunctively in a statute. *Laion v. FSM*, 1 FSM R. 503, 517 (App. 1984).

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

11 F.S.M.C. 301 is one of a set of sections in Chapter 3 of the National Criminal Code specifying general principles of responsibility which apply implicitly to all substantive offenses but do not themselves enunciate substantive offenses. These are not subject to "violation" and are therefore not reached by Rule 7 of the FSM Rules of Criminal Procedure. These general principles are deemed

applicable to all crimes, and mere failure to restate them in an Information is not a failure to inform or a violation of due process. *Engichy v. FSM*, 1 FSM R. 532, 542 (App. 1984).

Dropping one count from a criminal information does not prevent the prosecution from proving that count as an element of other pending charges. *FSM v. Cheng Chia-W (I*), 7 FSM R. 124, 126 (Pon. 1995).

Where counts in an information other than the one count dismissed also charge illegal fishing violations the dismissal of two other counts for which illegal fishing is an element will be denied. *FSM v. Cheng Chia-W (I)*, 7 FSM R. 124, 126 (Pon. 1995).

Criminal defendants have the constitutional right to be informed of the nature of the accusation against them. This protection is implemented through Criminal Rule 7(c)(1), which requires that an information must "be a plain, concise and definite written statement of the essential facts constituting the offense charged." An information should not be thrown out because of minor, technical objections which do not prejudice the accused. *FSM v. Xu Rui Song*, 7 FSM R. 187, 189 (Chk. 1995).

The fundamental purpose of the information is to inform the defendant of the charge so that he may prepare his defense, and the test for sufficiency is whether it is fair to defendant to require him to defend on the basis of the charge as stated in the particular information. Another purpose is to inform the court of the facts alleged so that it may decide whether they are sufficient in law to support a conviction, if one should be had. *FSM v. Xu Rui Song*, 7 FSM R. 187, 189 (Chk. 1995).

The information should be sufficiently definite, certain, and unambiguous as to permit the accused to prepare his defense. Common sense will be a better guide than arbitrary and artificial rules, and the sufficiency of the information will be determined on the basis of practical rather than technical considerations. In an information each count should stand on its own although facts alleged therein may be incorporated by reference. This is true as to each defendant. *FSM v. Xu Rui Song*, 7 FSM R. 187, 189-90 (Chk. 1995).

An information that is sufficient for one co-defendant may be insufficient and defective as to another. *FSM v. Xu Rui Song*, 7 FSM R. 187, 190 (Chk. 1995).

An information that, as a practical matter, is not sufficiently certain and unambiguous so as to permit defendant to prepare a defense, or to inform the court of what alleged acts or omissions of this particular defendant result in criminal liability is defective, and may be dismissed without prejudice. *FSM v. Xu Rui Song*, 7 FSM R. 187, 190 (Chk. 1995).

§ 211. Authority to arrest without warrant.

Arrest without a warrant is authorized in the following situations:

(1) Where a breach of the peace or other criminal offense has been committed, and the offender shall endeavor to escape, he may be arrested by virtue of an oral order of any official authorized to issue a warrant, or without such order if no such official be present.

(2) Anyone in the act of committing a criminal offense may be arrested by any person present, without a

warrant.

(3) When a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it, such policeman may arrest the person without a warrant.

(4) Policemen, even in cases where it is not certain that a criminal offense has been committed, may, without a warrant, arrest and detain for examination, persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony.

Source: TT Code 1966 § 457; TT Code 1970, 12 TTC 61; TT Code 1980, 12 TTC 61.

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

§ 212. Use of citations.

A policeman in any case in which he may lawfully arrest a person without a warrant, may, subject to such limitations as his superiors may impose, issue and serve a citation upon the person instead of making an arrest, if he deems that the public interest does not require an arrest.

Source: TT Code 1966 § 455; TT Code 1970, 12 TTC 62; TT Code 1980, 12 TTC 62.

§ 213. Complaints in cases of arrest without warrant.

When a person arrested without a warrant is brought before a court or official authorized to issue a warrant, a complaint shall be made against him forthwith, if that has not already been done.

Source: TT Code 1966 § 465; TT Code 1970, 12 TTC 63; TT Code 1980, 12 TTC 63.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.

§ 214. Arrested person to be informed of cause and authority of arrest.

(1) Any person making an arrest shall, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest.

(2) A policeman making an arrest by virtue of a warrant need not have the warrant in his possession at the time of the arrest, but, after the arrest, the person arrested may request to see the warrant, and that shall be shown to him as soon as possible.

Source: TT Code 1966 § 458; TT Code 1970, 12 TTC 64; TT Code 1980, 12 TTC 64.

Editor's note: The 1970 and 1980 editions of the Trust Territory Code made extensive changes in the phraseology of the 1966 edition.

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

Case annotations: Where a municipal police officer intending to make an arrest to for unlawful drinking, informs the accused that he is going to "take him to a place" because he was drinking and where there are indications that the accused understands that the officer is seeking to effect an arrest, there is sufficient compliance with the requirement of 12 F.S.M.C. 214 that arresting officers "make every reasonable effort to advise the person arrested as to the cause and authority of the arrest." *Loch v. FSM*, 1 FSM R. 566, 569 (App. 1984).

Where the plaintiffs were set upon and beaten by police officers and one plaintiff was arrested and no reason was provided to that plaintiff when the officers detained and arrested him, nor was any reason subsequently given although 12 F.S.M.C. 214(1) provides that any person making an arrest must, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest, the plaintiff's detention for six hours was without any justification, precisely the sort of conduct that 11 F.S.M.C. 701 was meant to protect against. The assaulting police officers were acting under color of law and as agents of the defendant Chuuk Department of Public Safety, which is an agency of the defendant Chuuk state government. Thus these defendants are liable for the violation of the plaintiffs' civil rights under 11 F.S.M.C. 701. *Hauk v. Emilio*, 15 FSM R. 476, 479 (Chk. 2008).

One should be considered "arrested," for the purposes of the right to be advised of his rights to remain silent when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained persons may be, or may have been, involved in commission of a crime. *FSM v. Edward*, 3 FSM R. 224, 232 (Pon. 1987).

That the plaintiff was not informed at or before the time of his arrest why he was being arrested constituted a violation. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 483, 491 (Pon. 2005).

§ 215. Use of force in making arrest.

In all cases where the person arrested refuses to submit or attempts to escape, such degree of force may be used as is necessary to compel submission.

Source: TT Code 1966 § 459; TT Code 1970, 12 TTC 65; TT Code 1980, 12 TTC 65.

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

Where no Micronesian legislative body has addressed the rules concerning arrests and where no party suggests that the matter is influenced by customary law, the principles stated in the Restatements of Torts concerning use of deadly force may be considered in determining, for purposes of a criminal case, the scope of police officer's right to use force while making an arrest. *Loch v. FSM*, 1 FSM R. 566, 570 (App. 1984).

The interest of society in the life of its members, even though they be felons or reasonably suspected of felony, is so great that the use of force involving serious danger to them is privileged only as a last resort when it reasonably appears that there is no other alternative except abandoning his attempts to make the arrest. In determining whether the use of such force is privileged, the actor has not the same latitude of discretion which is permitted to him in determining whether it is necessary to use force which is intended or likely to cause less serious consequences. *Loch v. FSM*, 1 FSM R. 566, 570 (App. 1984).

Deadly force by a police officer attempting to effect an arrest, may be justified by evidence indicating the defendant reasonably believes that there is no alternative method of effecting the arrest and that deadly force is necessary as a last resort. *Loch v. FSM*, 1 FSM R. 566, 571-72 (App. 1984).

Reasonableness of a police officer's conduct in using deadly force while making an arrest must be assessed on the basis of the information the police officer had when he acted. *Loch v. FSM*, 1 FSM R. 566, 571-72 (App. 1984).

It is quite reasonable for a police officer, who uses a deadly weapon in deadly fashion against a person armed with a knife, to obtain a weapon that will afford him a means of protecting himself against the knife and intimidating the person to be arrested. *Loch v. FSM*, 1 FSM R. 566, 573 (App. 1984).

Where a police officer arms himself with a weapon to arrest a man armed with a knife, and then uses the weapon in a deadly fashion without first giving the person an opportunity to submit and without determining whether the person intends to use the knife to prevent arrest, this use of force cannot be viewed as a last resort necessary to the arrest not as reasonably necessary to protect the police officer from serious bodily injury. *Loch v. FSM*, 1 FSM R. 566, 573 (App. 1984).

While a police officer may use force to effect an arrest and to protect himself and other citizens, he may not use force simply to punish people he dislikes or those he decides have done wrong. The principal functions of the police officer are to preserve peace and order and to apprehend lawbreakers so that they may be tried by the courts and handled justly. *Loch v. FSM*, 1 FSM R. 566, 574_75 (App. 1984).

Punishment is no part of the police officer's assignment. A policeman who chooses to mete out punishment violates his office and does so at his own peril. *Loch v. FSM*, 1 FSM R. 566, 575 (App. 1984).

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

In making an otherwise lawful arrest, a police officer may use whatever force is reasonably necessary to effect the arrest, and no more; he

must avoid using unnecessary violence. *Meitou v. Uwera*, 5 FSM R. 139, 143 (Chk. S. Ct. Tr. 1991).

The use of force by police officers is not privileged or justified when the arrestee was so drunk and unstable to resist or defend himself and when the police officer used force because he was enraged at being insulted by the arrestee. *Meitou v. Uwera*, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

§ 216. Disposition of persons arrested by private persons.

Any private person making an arrest shall deliver the arrested person to a policeman or an official authorized to issue a warrant without unnecessary delay and shall explain the cause of the arrest. Except where transportation difficulties are involved, or neither a policeman nor an official authorized to issue a warrant can be located promptly, such delay should not extend beyond a few hours during the daytime or early evening nor beyond ten o'clock on the following morning in the case of persons arrested during the night time.

Source: TT Code 1966 § 462; TT Code 1970, 12 TTC 66; TT Code 1980, 12 TTC 66.

§ 217. Disposition of arrested persons by policeman.

Persons arrested by a policeman, except under subsection (4), section 211 of this chapter, or delivered to him after arrest by a private person, shall be brought without unnecessary delay before a court competent to try the offender for the criminal offense charged, subject to the following:

(1) If bail has been fixed, it shall be accepted and the arrested person released to appear in accordance with all orders of the court named in the warrant or any court to which the case may be transferred. Reasonable opportunity to raise bail shall be afforded by permitting the person arrested to send a message or messages through a policeman or other persons by telephone, cable, wireless, messenger, or other expeditious means, to any person likely to assist in securing bail; provided, that such message can be sent without expense to the government or that the arrested person prepays any expense there may be to the government.

(2) If it appears that it will not be practicable to bring the arrested person promptly before a court competent to try him for the offense charged, and he has not been released on bail or personal recognizance, he shall be brought before an official authorized to issue a warrant without unnecessary delay. This official shall commit the arrested person, discharge him, or release him on bail or personal recognizance as provided in this title. Whenever a judge of a district court is available, the arrested person shall be brought before such a judge in preference to any other official authorized to issue a warrant.

Source: TT Code 1966 § 463; TT Code 1970, 12 TTC 67; TT Code 1980, 12 TTC 67.

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

§ 218. Rights of persons arrested.

In any case of arrest, or arrest for examination, as provided in subsection (4) of section 211 of this chapter, it shall be unlawful to:

(1) deny to counsel, whether such counsel is retained by the arrested person or a member of his family or is a Public Defender not yet appointed by the Court, the right to see the arrested person once, at any time, for a reasonable period of time at the place of detention, and thereafter at reasonable intervals and for reasonable periods of time; or

(2) deny to the arrested person the right to see at reasonable intervals, and for reasonable periods of time at the place of his detention, counsel, or members of his family, or his employer, or a representative of his employer; or

(3) refuse or fail to make a reasonable effort to send a message by telephone, cable, wireless, messenger, or other expeditious means to any person mentioned in subsection (2) of this section, provided the arrested person so requests and such message can be sent without expense to the Government or the arrested person prepays any expense there may be to the Government; or

(4) fail either to release or charge such arrested person with a criminal offense within a reasonable time, which under no circumstances shall exceed 24 hours; or

(5) fail to either release the accused or to bring him before a court, judge, or judicial officer for a bail hearing within a reasonable time, which under no circumstances shall exceed 24 hours after his arrest, unless the location of the nearest court makes such appearance impossible. When the location of the court makes such appearance impossible, the municipal or community court judge for the area where the person was arrested shall be immediately notified by the arresting person or officer and shall set any conditions for the release of the person that the judge believes will protect the public and will insure the presence of the person when transportation to the nearest court becomes possible. The person arrested shall be transported to the nearest court without unnecessary delay.

(6) further, it shall be unlawful for those having custody of one arrested, before questioning him about his participation in any crime, to fail to inform him of his rights and their obligations under subsections (1) through (5) of this section.

(7) In addition, any person arrested shall be advised as follows:

(a) that the individual has a right to remain silent;

(b) that the police will, if the individual so requests, endeavor to call counsel to the place of detention and allow the individual to confer with counsel there before he is questioned further, and allow him to have counsel present while he is questioned by the police if he so desires; and

(c) that the services of the Public Defender, when in the vicinity or of his local representative, are available for these purposes without charge.

Source: TT Code 1966 § 464; COM PL 4-5 § 1; TT Code 1970, 12 TTC 68; TT Code 1980, 12 TTC 68: PL 1-74 § 1.

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

The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.

Case annotations: Under FSM law, courts will rarely be required to look to the Constitution to determine the scope of any right a person in custody may have to be advised of rights before questioning because national statute establishes the rights of persons accused of national crimes. 12 F.S.M.C. §§ 218, 220. *FSM v. Edward*, 3 FSM R. 224, 230 (Pon. 1987).

One should be considered "arrested" within the meaning of 12 F.S.M.C. 218 when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime. *FSM v. Louis*, 15 FSM R. 348, 352 (Pon. 2007).

When the police officers only viewed the accused as a potential witness in the matter of another person, not as a suspect; when the officers dropped him back off at the funeral where they originally met him instead of taking him to the police station and the officers never substantially restricted or controlled the accused's freedom of movement; when the accused agreed to take the officers to fetch the handgun at Palikir, and willingly went with them in the vehicle; and when there is simply no evidence that the officers threatened, demanded, or compelled the accused in any manner, the accused was not under arrest during the car ride to and from Palikir. Accordingly, the officers were not required to inform the accused of his rights under 12 F.S.M.C. 218. *FSM v. Louis*, 15 FSM R. 348, 353 (Pon. 2007).

When an accused has expressed a wish to meet with counsel before further questioning or to have counsel present during questioning, questioning must cease at once, and any attempt by police to ignore or override the accused's wish, or to dissuade him from exercising his right, violates 12 F.S.M.C. 218, and evidence obtained as a result of that violation is not admissible against an accused. *FSM v. Suzuki*, 17 FSM R. 70, 73-74 (Chk. 2010).

It is unlawful for the government to fail either to release or charge an arrested person with a criminal offense within a reasonable time, which must under no circumstances exceed 24 hours. Thus, evidence, such as an accused's statement, obtained as a result of the defendant being detained for more than 24 hours without being charged or released must be excluded. *FSM v. Sam*, 15 FSM R. 491, 493 (Chk. 2008).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible, but the defendant is entitled to the suppression of any evidence or statements obtained from him after his first 24 hours of detention. *FSM v. Sato*, 16 FSM R. 26, 30 (Chk. 2008).

A claim of failure to inform an arrestee of his rights and denying him legal counsel and access to the courts is a statutory claim, not a constitutional one. An arrested person's rights are codified at 12 F.S.M.C. 218, which provides that, at the time of arrest, a police officer must inform the arrestee of her rights, including the right to counsel, prior to any questioning and that the officer must either release the arrestee or bring her before a judicial officer within twenty-four hours of the arrest. *Annes v. Primo*, 14 FSM R. 196, 204 (Pon. 2006).

In any case of arrest it is unlawful to fail either to release or charge an arrested person with a criminal offense within a reasonable time, which must under no circumstances exceed 24 hours. *FSM v. Menisio*, 14 FSM R. 316, 319 (Chk. 2006).

The remedy for an unlawful detention over 24 hours is not the dismissal of the information against the defendant or the suppression of all evidence and statements obtained from him. The only remedy in a criminal prosecution (as opposed to a civil suit) is suppression of any evidence obtained as a result of the illegal detention. *FSM v. Menisio*, 14 FSM R. 316, 319 (Chk. 2006).

Evidence obtained in violation of 12 F.S.M.C. 218 is rendered inadmissible by 12 F.S.M.C. 220. *FSM v. Menisio*, 14 FSM R. 316, 319 (Chk. 2006).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible. The defendant is entitled to the suppression of any evidence or statements obtained from him after the first 24 hours of his detention. *FSM v. Menisio*, 14 FSM R. 316, 320 (Chk. 2006).

One should be considered "arrested," for the purposes of the right to be advised of his rights to remain silent when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained persons may be, or may have been, involved in commission of a crime. *FSM v. Edward*, 3 FSM R. 224, 232 (Pon. 1987).

The actions of corrections officers in refusing to permit the plaintiff to use the phone to call an attorney or to contact one at his request; in refusing to allow the plaintiff to telephone his family or to contact them at his request and in refusing to permit his wife to speak to him when she called the jail; and in failing to insure that the plaintiff was brought before a judicial officer within 24 hours of his arrest constituted violations of 12 F.S.M.C. 218. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 483, 491 (Pon. 2005).

Corrections officers' failure to permit the use of restroom facilities while he was in jail and to provide him with food and water while he was in their custody was an inhumane condition of confinement constituting cruel and unusual punishment. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 483, 491 (Pon. 2005).

When it was the Pohnpei Department of Public Safety's stated policy not to deny an arrested person the right to see family members or counsel at reasonable times; not to unreasonably refuse to an arrested person the right to use the telephone to call family members or counsel; and to insure that within 24 hours of arrest the arrested person was either released or charged and taken before a qualified magistrate, but when the actual policy was that arrestees could not see family members; that arrestees could make phone calls to or meet with a lawyer, but could not receive phone calls from or make phone calls to family members, except in emergency situations such as funerals, the restrictions on contact with family members violated both the department regulations and 12 F.S.M.C. 213(2) and (3). The corrections officers' actions in denying the plaintiff the opportunity to contact family members; in refusing him permission to call a lawyer (except on the last day of his confinement); in failing to permit him to use the restroom; and in failing to provide him with food were products of decisions and action of persons with the final policy-making power concerning prisoners in that time and place. This constituted the actual policy at relevant times irrespective of stated policy and the failure to undertake any investigation of the plaintiff's complaints resulted in the ratification by the chief policy-maker of the challenged actions. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 483, 491-92 (Pon. 2005).

That the plaintiff was not informed at or before the time of his arrest why he was being arrested constituted a violation. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 483, 491 (Pon. 2005).

By not raising it until five years after relevant events, Pohnpei waived the cholera epidemic as a defense to its failure to insure that the plaintiff was taken before a judicial officer within 24 hours of arrest. But it would not make a difference even if the defense of the cholera epidemic were considered, when Pohnpei presented no showing of a causal link between the cholera epidemic and Warren's being held in jail for 63½ hours. Since jail staff was not reduced as a result of the epidemic, nor did any other epidemic-related factor prevent Warren from being taken before a magistrate within 24 hours of arrest. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 483, 492 (Pon. 2005).

§ 219. Effect of irregularities in issuance of warrant of arrest.

The proceedings before a court or an official authorized to issue a warrant of arrest shall not be invalidated, nor any finding, order, or sentence set aside, for any error or omission, technical or otherwise, occurring in such proceedings, unless in the opinion of the reviewing authority or a court hearing the case on appeal or otherwise it shall appear that the error or omission has prejudiced the accused.

Source: TT Code 1966 § 497; TT Code 1970, 12 TTC 69; TT Code 1980, 12 TTC 69.

§ 220. Effect of violation of title.

No violation of the provisions of this title shall in and of itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused; provided, that any person detained in custody in violation of any provision of this title may, upon motion by any person in his behalf, and after such notice as the court may order, be released from custody by the court named in the warrant, or before which he has been held to answer. The release shall be upon such terms as the court may deem law and justice require. The relief authorized by this section shall be in addition to, and shall not bar, all forms of relief to which the arrested person may be entitled by

law.

Source: TT Code 1966 §§ 498, 499; TT Code 1970, 12 TTC 70; TT Code 1980, 12 TTC 70.

-

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.

Case annotations: Under FSM law, courts will rarely be required to look to Constitution to determine scope of any right a person in custody may have to be advised of rights before questioning because national statute establishes rights of persons accused of national crimes. 12 F.S.M.C. §§ 218, 220. *FSM v. Edward*, 3 FSM R. 224, 230 (Pon. 1987).

Statements made by a person being questioned by police without being advised of all his rights violates 12 F.S.M.C. 218. A statement so obtained is rendered inadmissible by 12 F.S.M.C. 220. *FSM v. George*, 6 FSM R. 626, 629 (Kos. 1994).

When a person's ability to think or reason has been diminished due to lack of rest by being held in custody for over 12 hours, his submission to questioning is not an act of voluntariness or consent even though he was advised of some of his rights just before questioning. Any statements made then were the products of physical exhaustion and a sense of oppression, and as a result of violation of the accused's rights under 12 F.S.M.C. 218. Under 12 F.S.M.C. 220, the statement, or evidence derived therefrom, is thus inadmissible against the accused. *FSM v. George*, 6 FSM R. 626, 629 (Kos. 1994).