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**TITLE 18**

**CRIMINAL PROCEDURE**

**Chapter 1**

**General Provisions**

§ 101. Definitions.

**§ 101. Definitions.**

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

(a) “Arrest” means placing any person under any form of legal detention by legal authority.

(b) “Attorney General” means the legal officer on the staff of the President or any person appointed by the President to supervise prosecutions throughout the Republic.

(c) “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 the Court of Common Pleas.

(d) “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.

(e) “Judge or justice” means any member of the Supreme Court, National Court, or Court

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of Common Pleas.

(f) “Oath” shall include a solemn affirmation.

(g) “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.

(h) “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.

(i) “Policeman” means any member of the Bureau of Public Safety so trained and hired to be a public safety officer or any person authorized by the President to **act** as a policeman.

(j) “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 Courts 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.

(k) “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.”

[Header A: GENERAL PROVISIONS 18 PNCA § 101

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### Source

(Code 1966, § 445.) 12 TTC § 1, § 1(9) defining “District Attorney” omitted as inapplicable; terms put into alphabetical order and section modified.

### Commission Comment

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For rules of criminal procedure promulgated by the Supreme Court pursuant to ROP Const., Art. X, § 14, and

§ 101 of Title 4 of this Code, see Courts of Republic of Palau Rules of Criminal Procedure (eff. December 23, 1983).

## Notes

An Guiling v. ROP, 11 ROP 132, 133, 134 (2004).

ROP v. Kruger, 8 ROP Intrm. 347, 349 (Tr. Div. 2000).

Itelbong v. Trust Territory, 2 TTR 595 (1964).

Temengil v. Trust Territory, 2 TTR 31 (1959).

Lornis v. Trust Territory, 2 TTR 114 (1959).

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## Chapter 2

### Process; Warrants and Arrest

§ 201. Process obligatory upon police.

§ 202. Limitation of arrests without a warrant.

§ 203. Authority to issue a warrant of arrest.

§ 204. Warrant or penal summons upon complaint.

§ 205. Investigation of complaint in doubtful cases.

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

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

§ 208. Return of service.

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

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

§ 211. Authority to arrest without warrant.

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§ 213. Complaints in cases of arrest without warrant.

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

§ 215. Use of force in making arrest.

§ 216. Disposition of persons arrested by private persons.

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§ 217. Disposition of arrested persons by policeman.

§ 218. Rights of persons arrested.

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

§ 220. Effect of violation of title.

### **§ 201. Process obligatory upon police.**

(a) All process in any criminal **proceedings**, in all contempt **proceedings**, and in juvenile delinquency **proceedings**, issued in accordance with law and the Courts of Republic of Palau Rules of Criminal 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.

(b) 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**.

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[Header A: **PROCESS; WARRANTS AND ARREST 18 PNCA § 204**

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#### **Source**

(Code 1966, § 489.) 12 TTC § 51, modified.

### **§ 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**

(Code 1966, § 456.) 12 TTC § 52.

### **§ 203. Authority to issue a warrant of arrest.**

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

(a) any court;

(b) any judge or justice;

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(c) the Clerk of Courts, subject to such limitations as the Chief Justice may impose;

(d) any other person authorized in writing by the President, and a certified copy of whose authorization is filed with the Clerk of Courts.

### Source

(Code 1966, § 446.) 12 TTC § 53, modified.

### § 204. Warrant or penal summons upon complaint.

(a) Any person, other than the Attorney General, desiring the issuance of a warrant of arrest for a criminal offense shall personally appear and make a complaint before an official authorized to issue a warrant.

(b) 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.

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(c) Any official, other than a judge or justice of a 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 or justice of a court.

### Source

(Code 1966, § 448.) 12 TTC § 54, modified.

### Notes

Uaayan v. Trust Territory, 1 TTR 418 (1958).

### § 205. Investigation of complaint in doubtful cases.

(a) If a judge or justice of a 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 Bureau of Public Safety for investigation and report and withhold action for a reasonable time pending such report.

(b) 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 or justice shall

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**proceed** to examine under oath the complainant, any witnesses offered by the complainant and such other witnesses as the judge or justice deems best and may, in his discretion, give the accused an opportunity to be present and to be heard.

(c) If the judge or justice is satisfied from the investigation made by the Bureau of Public Safety or that made by him as directed in subsection (b) 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

(Code 1966, § 449.) 12 TTC § 55, modified.

### § 206. Use of penal summons in lieu of warrant of arrest.

(a) In the case of all criminal offenses for which the lawful punishment does not exceed a fine of \$100.00 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

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process that the public interest requires the arrest of the accused.

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

(c) 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

(Code 1966, § 450.) 12 TTC § 56.

### Notes

Eram v. Trust Territory, 3 TTR 442 (1968).

### § 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 Republic. A 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

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(Code 1966, § 451.) 12 TTC § 57, modified.

### § 208. Return of service.

(a) 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.

(b) 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

[Header B: **18 PNCA § 208 CRIMINAL PROCEDURE**

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therein. If he has served the summons, his report shall show the date, place, and method of service.

#### Source

(Code 1966, § 452.) 12 TTC § 58.

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

(a) A court or any judge or justice thereof may, if the court or judge or justice 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.

(b) 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.

(c) Any person making an arrest on 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.

(d) Any person by going to trial before a 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 court in the event of an appeal.

#### Source

(Code 1966, § 453.) 12 TTC § 59, modified.

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

The Attorney General 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, issue its warrant or penal summons as upon a complaint.

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[Header A: **PROCESS; WARRANTS AND ARREST 18 PNCA § 212**

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[Footer A: Supp. 2 18 - 9]

#### Source

(Code 1966, § 454.) 12 TTC § 60, modified.

#### Notes

ROP v. Olkeriil, 6 ROP Intrm. 361, 362 (Tr. Div. 1997).

Fontana v. Trust Territory, 2 TTR 616 (1959).

### § 211. Authority to arrest without warrant.

Arrest without a warrant is authorized in the following situations:

(a) 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.

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

(c) 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.

(d) 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

(Code 1966, § 457.) 12 TTC § 61.



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## Notes

ROP v. Olkeriil, 6 ROP Intrm. 361, 363 (Tr. Div. 1997).

King v. ROP, 6 ROP Intrm. 131, 134 (1997).

ROP v. Gibbons, 1 ROP Intrm. 547A, 547G (1988).

In re Santos, (App. Div., June 1978).

Trust Territory v. Kaneshima, 4 TTR 340 (1969).

### § 212. Use of citations.

A policeman in any case in which he may lawfully arrest a person without a warrant, may, subject

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[Header B: **18 PNCA § 212 CRIMINAL PROCEDURE**

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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

(Code 1966, § 455.) 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

(Code 1966, § 465.) 12 TTC § 63.

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

(a) 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.

(b) 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

(Code 1966, § 458.) 12 TTC § 64.

## Notes

Fontana v. Trust Territory, 2 TTR 616 (1959).

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### **§ 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**

(Code 1966, § 459.) 12 TTC § 65.

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### **[Header A: PROCESS; WARRANTS AND ARREST 18 PNCA § 217**

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### **§ 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 10 o'clock on the following morning in the case of persons arrested during the night time.

#### **Source**

(Code 1966, § 462.) 12 TTC § 66.

### **§ 217. Disposition of arrested persons by policeman.**

Persons arrested by a policeman, except under subsection (d), 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:

(a) 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.

(b) 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 or justice of a court is available, the arrested person shall be brought before such a judge or justice in preference to any other official authorized to issue a warrant.

#### **Source**

(Code 1966, § 463.) 12 TTC § 67, modified.

[Header B: 18 PNCA § 217 CRIMINAL PROCEDURE

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Notes

ROP v. Olkeriil, 6 ROP Intrm. 361, 363 (Tr. Div. 1997).

Sonoda v. Trust Territory, (App. Div. November 1976).

**§ 218. Rights of persons arrested.**

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

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

(2) to 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 (a)(1) 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

(3) to 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;

(4) 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 (a)(1) - (3) of this section.

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

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

(2) 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

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(3) that the services of the public defender, when in the vicinity of his local representative, are available for these purposes without charge.

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[Header A: **PROCESS; WARRANTS AND ARREST 18 PNCA § 220**

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[Footer A: Supp. 5 18 - 13]

### Source

(Code 1966, § 464.) 12 TTC § 68.

### Notes

ROP v. Otei, 11 ROP 240, 241 (Tr. Div. 2003).

Wong v. ROP, 11 ROP 178, 182 (2004).

ROP v. Recheluul, 10 ROP 205, 207, 208, 209 (Tr. Div. 2002).

ROP v. Imeong, 7 ROP Intrm. 257, 259 (Tr. Div. 1998).

ROP v. Olkeriil, 6 ROP Intrm. 361, 363 (Tr. Div. 1997).

In re Temol, 6 ROP Intrm. 326, 327-30 (Tr. Div. 1996).

In re Application of Matagolai, 6 TTR 577 (1974).

Trust Territory v. Remengesau, 6 TTR 94 (1972).

Ridep v. Trust Territory, 5 TTR 61 (1970).

Trust Territory v. Kaneshima, 4 TTR 340 (1969).

Trust Territory v. Sokau, 4 TTR 434 (1969).

Trust Territory v. Kaneshima, 4 TTR 340 (1968).

Trust Territory v. Polls, 3 TTR 387 (1968).

Eram v. Trust Territory, 3 TTR 442 (1968).

Meyer v. Trust Territory, 3 TTR 586 (App. Div. 1965).

Haruo v. Trust Territory, 1 TTR 565 (App. Div. 1952).

### § 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

(Code 1966, § 497.) 12 TTC § 69.

**Notes**

Trust Territory v. Remengesau, 6 TTR 94 (1972).

Henry v. Trust Territory, 6 TTR 78 (1972).

Trust Territory v. Hartman, 5 TTR 226, (1970).

Willianter v. Trust Territory, 3 TTR 227 (1966).

Yinmed v. Trust Territory, 2 TTR 492 (1963).

Ropon v. Trust Territory, 2 TTR 313 (1962).

**§ 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

[Header B: **18 PNCA § 220 CRIMINAL PROCEDURE**

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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**

(Code 1966, § 498 and 499.) 12 TTC § 70.

**Notes**

ROP v. Recheluul, 10 ROP 205, 208 (Tr. Div. 2002).

ROP v. Imeong, 7 ROP Intrm. 257, 260 (Tr. Div. 1998).

ROP v. Olkeriil, 6 ROP Intrm. 361, 362 (Tr. Div. 1997).

In re Temol, 6 ROP Intrm. 326, 327-30 (Tr. Div. 1996).

Eram v. Trust Territory, 3 TTR 42 (1968).

Trust Territory v. Techur, 2 TTR 212 (1963).

Yinmed v. Trust Territory, 2 TTR 492 (1963).

Fontana v. Trust Territory, 2 TTR 616 (1959).

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[Header A: **SEARCHES AND SEIZURES 18 PNCA § 301**

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## Searches and Seizures

- § 301. Searches and seizures in connection with arrests.
- § 302. Forcing entrance to make arrest.
- § 303. Authority to issue a search warrant.
- § 304. Property for which search warrant may be issued.
- § 305. Procedure for issuance of search warrants.
- § 306. Contents of search warrant.
- § 307. Execution of search warrant and return with inventory.
- § 308. Hearing upon return of search warrant.
- § 309. Filing of search warrant and accompanying papers.
- § 310. Oral order in lieu of search warrant.
- § 311. Entering building or ship to execute search warrant.
- § 312. Motion for return of property and to suppress evidence.
- § 313. Sale of perishable property.
- § 314. Effect of irregularities in **proceedings** to issue search warrant.

### **§ 301. Searches and seizures in connection with arrests.**

(a) Every person making an arrest may take from the person arrested all offensive weapons which he may have about his person and may also search the person arrested and the premises where the arrest is made, so far as the premises are controlled by the person arrested, for the instruments, fruits, and evidences of the criminal offense for which the arrest is made, and, if found, seize them.

(b) Any property taken or seized shall be promptly delivered to a policeman or an official authorized to issue a warrant, to be disposed of according to law.

(c) No search warrant shall be required for the actions authorized by this section.

#### **Source**

(Code 1966, § 460.) 12 TTC § 101.

#### **Cross-reference**

For fundamental rights provisions regarding search and seizure, see ROP Const. art. IV, §§ 4, 6; for Trust Territory Bill of Rights provision regarding unreasonable search and seizure, see §403 of Title 1.

#### **Notes**

King v. ROP, 6 ROP Intrm. 131, 134-35, 137 (1997).

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ROP v. Gibbons, 1 ROP Intrm. 547A, 547G (1988).

Trust Territory v. Kaneshima, 4 TTR 340 (1969).

**§ 302. Forcing entrance to make arrest.**

Whenever it is necessary to enter a building or ship to make an arrest and entrance is refused, any person making an arrest for a felony committed in his presence or a policeman making an arrest may force an entrance. Before breaking any door or other barrier, he shall first demand entrance in a loud voice and state that he desires to execute a warrant of arrest or an oral order in place of a warrant, or, if it is a case in which arrest is lawful without a warrant, he must substantially state that information in a loud voice. Whenever practicable, this demand and statement shall be made in a language generally understood in the locality.

**Source**

(Code 1966, § 461.) 12 TTC § 102.

**§ 303. Authority to issue a search warrant.**

The following officials are authorized to issue a search warrant:

- (a) any court;
- (b) any judge or justice;
- (c) the Clerk of Courts subject to such limitations as the Chief Justice may impose;
- (d) any other person authorized in writing by the President, provided a certified copy of such authorization is filed with the Clerk of Courts.

**Source**

(Code 1966, § 446.) 12 TTC § 103, modified.

**Cross-reference**

For fundamental rights provisions regarding search and seizure, see ROP Const. art. IV, §§ 4, 6; for Trust Territory Bill of Rights provision regarding unreasonable search and seizure, see § 403 of Title 1.

**[Header A: SEARCHES AND SEIZURES 18 PNCA § 305**

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§ 304. Property for which search warrant may be issued.

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(a) Except where otherwise expressly authorized by law, search warrants shall be issued only to search for and seize the following:

- (1) property the possession of which is prohibited by law; or
- (2) property stolen or taken under false pretenses or embezzled or found and fraudulently appropriated; or
- (3) forged instruments in writing, or counterfeit coin intended to be passed, or instruments or materials prepared for making them; or
- (4) arms or munitions prepared for the purpose of insurrection or riot; or
- (5) property necessary to be produced as evidence or otherwise on the trial of anyone accused of a criminal offense; or
- (6) property designed or intended for use as, or which is, or has been used as, the means of committing a criminal offense.

(b) The term “property” as used herein includes documents, books, papers and any other tangible objects.

### Source

(Code 1966, § 477.) 12 TTC § 104.

### Notes

ROP v. Shao Wen Wen, 9 ROP 279, 284 (Tr. Div. 2002).

### § 305. Procedure for issuance of search warrants.

Anyone desiring the issuance of a search warrant shall personally appear and make application therefor under oath, before an official authorized to issue a warrant. The application shall set forth the grounds for issuing the warrant and may be supported by statements of others made under oath before the official. The application and statements may be either written or oral, but, whenever the official hearing the application deems practicable, they shall be reduced to writing, signed by the person or persons making them, and bear a record of the oath signed by the person who administered it. If the official hearing the application is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a search warrant identifying the property and naming or describing the person or place to be searched, except that any official other than a judge or justice of a 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 or justice of a court.

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Source

(Code 1966, § 478.) 12 TTC § 105, modified.

## **§ 306. Contents of search warrant.**

A search warrant shall command a policeman to search forthwith the person or place named, for the property specified. The warrant shall direct that it be served in the daytime, except that, if the statements under oath in support of the application are positive that the property is on the person or in the place to be searched, the warrant may, at the discretion of the official issuing it, direct that it be served at any time. It shall designate some official authorized to issue a warrant, to whom it shall be returned, and, whenever consistent with the reasonable expeditious handling of the matter, the official so designated shall be a judge or justice of a court. It shall designate the time within which it may be executed and returned. This time shall not exceed 10 days, plus whatever time the official issuing the warrant determines will be reasonably required for the policeman to travel to the point where the search is to be made and to return such warrant to the appropriate official.

**Source**

(Code 1966, § 479.) 12 TTC § 106, modified.

## **§ 307. Execution of search warrant and return with inventory.**

The policeman taking property under a search warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. The policeman executing a search warrant shall promptly, upon completion of his search, endorse upon the warrant and sign a brief statement of the action he has taken pursuant to the warrant, showing the date on which the search was made, the person or place searched, the person to whom he gave a copy of the warrant and a receipt for the property taken, or the place where he left the copy and receipt. He shall then deliver the warrant, accompanied by a written inventory of any property taken, and the property seized, to the official before whom the warrant is returnable. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by a statement signed and sworn to by

[Header A: **SEARCHES AND SEIZURES 18 PNCA § 309**

]

the policeman to the effect that the inventory is a true account of all property taken under the warrant. The official before whom a search warrant is returned shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

**Source**

(Code 1966, § 480.) 12 TTC § 107.

## **§ 308. Hearing upon return of search warrant.**

If the grounds on which the warrant was issued are controverted, the official to whom a search warrant is returned shall **proceed** to take testimony in relation thereto, and the testimony of each witness shall be reduced to writing and subscribed by the witness. If it appears that the property taken is not the same as that described in the warrant or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the official must cause the property to be restored to the person from whom it was taken; but if it appears that the property taken is the same as that described in the warrant and that there is probable cause for believing the existence of the grounds on which the warrant was issued, then the official shall

## Palau National Code Annotated (PNCA) Title 18

order the same retained in the custody of the person seizing it or otherwise disposed of according to law.

### Source

(Code 1966, § 481.) 12 TTC § 108.

### § 309. Filing of search warrant and accompanying papers.

The official to whom a search warrant is returned shall attach to the warrant the inventory and all other papers in connection therewith, including any order made as to the disposition of the property seized, and shall file such documents with the Clerk of Courts.

### Source

(Code 1966, § 482.) 12 TTC § 109, modified.

### § 310. Oral order in lieu of search warrant.

(a) A court or any judge or justice thereof may, if the public interest so requires, issue an oral order in place of a search warrant. Such oral order shall have the same force and

[Header B: **18 PNCA § 310 CRIMINAL PROCEDURE**

]

effect within the territorial jurisdiction of that court as a search warrant and shall be returnable before the issuing court or judge or justice.

(b) An oral order in place of a search warrant may be orally communicated to the person from whom or from whose premises the property is taken, and no inventory shall be required in such case, but the property seized shall be brought promptly before the court or judge or justice issuing the order, and the policeman executing it may orally report his actions thereon.

(c) The court or judge or justice shall, upon request, allow the applicant for the order and the person from whom or from whose premises the property was taken to view the property taken, and shall report all actions in the matter to the Clerk of Courts as soon as possible.

(d) If the grounds on which the order was issued are controverted, the court or judge or justice shall **proceed** to take testimony orally. Such testimony need not be reduced to writing.

### Source

(Code 1966, § 483.) 12 TTC § 110, modified.

### § 311. Entering building or ship to execute search warrant.

If a building or ship or any part thereof is designated as the place to be searched, the policeman executing the warrant or oral order in place of a warrant may enter without demanding permission if he finds the building or ship open. If the building or ship be closed, he shall first

## Palau National Code Annotated (PNCA) Title 18

demand entrance in a loud voice and state that he desires to execute a search warrant or an oral order in place thereof as the case may be. If the doors, gates, or other bars to the entrance be not immediately opened, he may force an entrance, by breaking them if necessary. Having entered, he may demand that any other part of the building or ship, or any closet, or other closed space within the place designated in the search warrant in which he has reason to believe the property is concealed, be opened for his inspection, and, if refused, he may break them. Whenever practicable these demands and statements shall be made in a language generally understood in the locality.

### [Header A: SEARCHES AND SEIZURES 18 PNCA § 314

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Source

(Code 1966, § 484.) 12 TTC § 111.

#### Notes

ROP v. Takada, (Criminal Case No. 357-90).

### § 312. Motion for return of property and to suppress evidence.

A person aggrieved by an unlawful search and seizure may move the Trial Division of the Supreme Court for the return of the property and to suppress for use as evidence anything so obtained. The motion to suppress evidence may also be made in the court where the trial is to be held and in which the evidence is sought to be used. The motion shall be made before trial or hearing unless opportunity therefor did not exist before trial or hearing or the accused was not aware of the ground for the motion, but the court in its discretion may entertain the motion at the trial or hearing. Upon such motion the court shall review any order previously made by the official before whom any search warrant, or oral order in place thereof, was returned, and shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial.

#### Source

(Code 1966, § 485.) 12 TTC § 112, modified.

#### Notes

ROP v. Techur, 6 ROP Intrm. 340, 340 (Tr. Div. 1997).

Trust Territory v. Techur, 5 TTR 212 (1970).

Nichig v. Trust Territory, 1 TTR 572 (1953).

### § 313. Sale of perishable property.

Seized property which is perishable may be ordered sold and the **proceeds** brought into court.

#### Source

(Code 1966, § 490.) 12 TTC § 113.

### § 314. Effect of irregularities in **proceedings** to issue search warrant.

The **proceedings** before a court or an official authorized to issue a search warrant 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**

(Code 1966, § 497.) 12 TTC § 114.

**[Header B: 18 PNCA § 314 CRIMINAL PROCEDURE**

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Notes

Trust Territory v. Hartman, 5 TTR 226 (1970).

Trust Territory v. Techur, 5 TTR 212 (1970).

Flores v. Trust Territory, 1 TTR 377 (1958).

**[Header A: RIGHTS OF DEFENDANTS 18 PNCA § 401**

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[Footer A: Supp. 4 18 - 23]

Chapter 4

Rights of Defendants

§ 401. Rights enumerated.

§ 402. Duties of the Office of the Public Defender.

§ 403. Time limits and exclusions.

§ 404. Sanctions.

**§ 401. Rights enumerated.**

Every defendant in a criminal case before a court of the Republic shall be entitled:

- (a) to have in advance of trial a copy of the charge upon which he is to be tried;
- (b) to consult counsel before the trial and to have an attorney at law or other representative of his own choosing defend him at the trial;
- (c) to apply to the court for further time to prepare his defense, which the court shall grant if it is satisfied that the defendant will otherwise be substantially prejudiced in his defense;
- (d) to bring with him to the trial such material witnesses as he may desire or to have them summoned by the court at his request;

## Palau National Code Annotated (PNCA) Title 18

(e) to give evidence on his own behalf at his own request at the trial, although he may not be compelled to do so;

(f) to have **proceedings** interpreted for his benefit when he is unable to understand them otherwise; and

(g) to request the appointment of an assessor in trials in the event that one has not been appointed by the trial judge or justice.

### Source

(Code 1966, § 187.) 12 TTC § 151, modified.

### Cross-reference

For fundamental rights provisions regarding defendants, see ROP Const. art. IV, §§ 6, 7; for Trust Territory Bill of Rights provisions regarding defendants, see §§ 404, 406 of Title 1.

[Footer A: Supp. 4 18 - 23A]

### [Header B: 18 PNCA § 401 CRIMINAL PROCEDURE

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Notes

In re Application of Matagolai, 6 TTR 577 (1974).

Rungun v. Trust Territory, 1 TTR 601 (1957).

#### § 402. Duties of the Office of the Public Defender.

The Office of the Public Defender shall represent indigent individuals in all criminal matters.

Where representation of a particular individual would constitute a conflict of interest under the Rules of Professional Responsibility or violate an individual's constitutional or statutory rights, the individual shall be represented by an attorney appointed by the Supreme Court.

### Source

RPPL 5-7 § 39.

#### § 403. Time limits and exclusions.

(a) In any case involving a defendant charged with an offense, the judge or justice shall, at the earliest practicable time, consult with the counsel for the defendant and the attorney for the Government and set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar, so as to assure a speedy trial.

(b) Any information or complaint charging an individual with the commission of an offense shall be filed within thirty days from the date on which the individual was arrested or served with a summons in connection with such charges.

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(c) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or complaint with the commission of an offense shall begin within seventy days from the filing date and making public of the information or complaint, or from the date a defendant has appeared before a judge or justice of the court in which the charge is pending, whichever date last occurs. Unless the defendant consents in writing to the contrary, the trial shall not begin less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to **proceed** pro se.

(d)

(1) If any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter an information or complaint is filed against

[Header A: **RIGHTS OF DEFENDANTS 18 PNCA § 403**

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such

[Footer A: Supp. 4 18 - 23B]

defendant or individual charging him with the same offense or an offense based on or arising from the same conduct or arising from the same circumstances giving rise to the original charge, subsections (b) and (c) shall apply to the subsequent complaint or information.

(2) If the defendant is to be tried upon a complaint or information dismissed by a trial court and reinstated following an appeal, the trial shall begin within seventy days from the date the appeal is decided, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the appeal is decided if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The periods of delay enumerated in subsection (h) are excluded in computing the time limitations specified in this section. The sanctions of section 404 apply to this subsection.

(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall begin within seventy days from the date the declaration or order becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall begin within seventy days from the date the appellate decision becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date of the appellate decision if unavailability of witnesses or other factors resulting from passage of time make trial within seventy days impractical. The periods of delay enumerated in subsection (h) are excluded in computing the time limitations specified in this section. The sanctions of section 404 apply to this subsection.

(f) Notwithstanding the provisions of subsection (b), for the first six-calendar-month period following the effective date of this section as set forth in section 405(b), the time limit imposed with respect to the period between arrest and complaint by

## Palau National Code Annotated (PNCA) Title 18

subsection (c) shall be forty-five days, and for the second such six-month period such time limit shall be thirty-five days.

(g) Notwithstanding the provisions of subsection (c), for the first six-calendar-month period following the effective date of this section as set forth in section 405(b) of this chapter, the time limit with respect to the period between preliminary examination and trial imposed by subsection (c) shall be eighty days, and for the second such six-month period such time limit shall be seventy-five days.

(h) The following periods of delay shall be excluded in computing the time within which an information or a complaint must be filed, or in computing the time within which the

[Header B: **18 PNCA § 403 CRIMINAL PROCEDURE**

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[Footer A: Supp. 4 18 - 23C]

trial of any such offense must begin:

(1) any period of delay resulting from other **proceedings** concerning the defendant, including but not limited to delay resulting from:

(A) any **proceeding**, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) trial with respect to other charges against the defendant;

(C) any interlocutory appeal;

(D) any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(E) any **proceeding** relating to the transfer of a case;

(F) consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government; and

## Palau National Code Annotated (PNCA) Title 18

(G) any period, not to exceed thirty days, during which any proceeding concerning the defendant is under advisement by the court;

(2) any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct;

(3) any period of delay resulting from the absence or unavailability of the defendant or an essential witness. For the purposes of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of this paragraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial;

(4) any period of delay resulting from the fact that the defendant is mentally

[Header A: **RIGHTS OF DEFENDANTS 18 PNCA § 403**

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incompetent or physically unable to stand trial;

[Footer A: Supp. 4 18 - 23D]

(5) a reasonable period of delay when waiting for the results of laboratory testing or persons or substances essential to the case;

(6) if the information or complaint is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would begin to run as to the subsequent charge had there been no previous charge;

(7) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted;

(8) any period of delay, not to exceed one year, resulting from the need to gather further evidence against other potential defendants where a criminal conspiracy may exist;



(9)

(A) any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance based on findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial;

(B) the factors, among others, which a judge shall consider in determining whether to grant a continuance under paragraph (A) are as follows:

(i) whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice;

[Header B: **18 PNCA § 403 CRIMINAL PROCEDURE**

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(ii) whether the case is so unusual or so complex, due to the

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[Footer A: Supp. 4 18 - 23E]

number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section;

(iii) whether, in a case in which arrest precedes complaint, delay in the filing of the complaint is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the complaint within the period specified in subsection (b) or because the facts upon which the judge must base a determination of probable cause are unusual or complex;

## Palau National Code Annotated (PNCA) Title 18

(iv) whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence;

(v) whether the delay was caused by the defendant or the Public Defender's Office;

(C) no continuance under subparagraph (A) shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government;

(10) any period of delay, not to exceed one year, ordered by a judge or justice upon an application of a party and a finding by a preponderance of the evidence that an official request, as defined in subparagraph (A), has been made for evidence of any such offense and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in a foreign country.

(A) The term "official request" means a letter requesting information, a request under a treaty or convention, or any other request for evidence

[Header A: **RIGHTS OF DEFENDANTS 18 PNCA § 403**

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made to a court or other authority of a foreign country by a court or an authority of the Republic of Palau having criminal law enforcement

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[Footer A: Supp. 4 18 - 23F]

responsibility.

(B)

(i) Upon application of the Republic of Palau, filed before return of a complaint, indicating that evidence of an offense is in a foreign country, the judge or justice shall suspend the running of the

## Palau National Code Annotated (PNCA) Title 18

statute of limitations for the offense if the court finds by a preponderance of the evidence that an official request has been made for such evidence and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

(ii) The court shall rule upon such application not later than thirty days after the filing of the application.

(C) Except as provided in subparagraph (D), a period of suspension under this section shall begin on the date on which the official request is made and end on the date on which the foreign court or authority takes final action on the request.

(D) The total of all periods of suspension under this paragraph with respect to an offense:

(i) shall not exceed three years; and

(ii) shall not extend a period within which a criminal case must be initiated for more than six months if all foreign authorities take final action before such period would expire without regard to this section.

(11) any delay resulting from a national emergency or natural disaster.

(i) If trial did not begin within the time limitation specified in this section because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in a complaint or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of this section on the day

[Header B: **18 PNCA § 403 CRIMINAL PROCEDURE**

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the order permitting withdrawal of the plea becomes final.

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[Footer A: Supp. 4 18 - 23G]

(j)

## Palau National Code Annotated (PNCA) Title 18

(1) If the attorney for the Government knows that a person charged with an offense is serving a term of imprisonment in a penal institution, he shall promptly:

(A) undertake to obtain the presence of the prisoner for trial;  
or

(B) cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand trial.

(2) If the person having custody of such prisoner receives a detainer he shall promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs the person having custody that he does demand trial, such person shall cause notice to that effect to be sent promptly to the attorney for the Government who caused the detainer to be filed.

(k)

(1) If the defendant is absent, as defined by subsection (h)(3), on the day set for trial, and the defendant's subsequent appearance before the court on a warrant or other process or surrender to the court occurs more than 21 days after the day set for trial, the defendant shall be deemed to have first appeared before a judge or justice of the court in which the information or complaint is pending within the meaning of subsection (c) on the date of the defendant's subsequent appearance before the court.

(2) If the defendant is absent, as defined by subsection (h)(3), on the day set for trial, and the defendant's subsequent appearance before the court on a warrant or other process or surrender to the court occurs not more than 21 days after the day set for trial, the time limit required by subsection (c), as extended by subsection (h), shall be further extended by 21 days.

### Source

RPPL 6-24 § 1.

### Notes

RPPL 6-24 includes the following provision in Section 1 titled "Section 405" which reads in part:

(a) The time limitation in section 403(b):

## Palau National Code Annotated (PNCA) Title 18

(1) shall apply to all individuals who are arrested or served with a summons on or after the date of expiration of the six-calendar-month period following the effective date of this section; and

(2) shall begin to run on such date of expiration as to all individuals who are arrested or served with a

[Footer A: Supp. 5 18 - 23H]

[Header A: **RIGHTS OF DEFENDANTS 18 PNCA § 404**

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summons prior to the date of expiration of such six-calendar-month period, in connection with the commission of an offense, and with respect to which offense no information or complaint has been filed prior to such date of expiration.

(b) The time limitation in section 403(c):

(1) shall apply to all offenses charged in informations or complaints filed on or after the date of expiration of the six-calendar-month period following the effective date of this section; and

(2) shall begin to run on such date of expiration as to all offenses charged in informations or complaints filed prior to that date.

ROP v. Erbai, 11 ROP 247, 248, 249, 250 (Tr. Div. 2004).

### **§ 404. Sanctions.**

(a)

(1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no complaint or information is filed within the time limit required by section 403(b) as extended by section 403(h), such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a re-prosecution on the administration of sections 403 and 404 and on the administration of justice.

(2) If a defendant is not brought to trial within the time limit required by section 403(c) as extended by section 403(h), the information or complaint shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under paragraph 403(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of sections 403 and 404 and on the administration of

## Palau National Code Annotated (PNCA) Title 18

justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere

[Header B: **18 PNCA § 404 CRIMINAL PROCEDURE**

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shall constitute a waiver of the right to dismissal under this section.

(b) In any case in which counsel for the defendant or the attorney for the Government: knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial; or files a motion solely for the purpose of delay which he or she knows is frivolous and without merit; or makes a statement for the

[Header B: **18 PNCA § 404 CRIMINAL PROCEDURE**

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[Footer A: Supp. 5 18 - 23I]

purpose of obtaining a continuance which he or she knows to be false and which is material to the granting of a continuance; or otherwise willfully fails to **proceed** to trial without justification consistent with section 403, the court may punish any such counsel or attorney, as follows:

- (1) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to the amount set by the Supreme Court in an amount not to exceed 25 percent;
- (2) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 percent of the compensation to which he is entitled in connection with the defense of such defendant;
- (3) by imposing on any attorney for the Government or any attorney from the Office of the Public Defender a fine of not to exceed \$250;
- (4) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or
- (5) by filing a report with an appropriate disciplinary committee.

(c) The authority to punish provided by this section shall be in addition to any other authority or power available to such court. The court shall follow procedures established in the Disciplinary Rules and Procedures for Attorneys and Trial

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Counselors Practicing in the Courts of the Republic of Palau in punishing any counsel or attorney for the Government pursuant to this section.

### Source

RPPL 6-24 § 1.

### Notes

RPPL 6-24 includes the following provision in Section 1 titled “Section 405” which reads in part:

(c) Section 404 shall become effective and apply to all cases begun by arrest or summons, and informations or complaints filed on or after the effective date of this section.

[Header B: **18 PNCA CRIMINAL PROCEDURE**

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[Header A: **RIGHTS OF DEFENDANTS 18 PNCA § 502**

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[Footer A: Supp. 4 18 - 23J]

## Chapter 5

### Preliminary Matters

§ 501. Name in which prosecution conducted.

§ 502. Duties of official at preliminary hearing.

§ 503. Plea not to be taken.

§ 504. Pretrial procedure.

§ 505. Disposition of the record.

§ 506. Preliminary examination upon request of person released on bail or personal recognizance.

**§ 501. Name in which prosecution conducted.**

All criminal prosecutions shall be conducted in the name of the “Republic of Palau.”

### Source

12 TTC § 201, modified.

### Notes

Koror v. Blanco, (Criminal Appeal No. 5-93).

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### § 502. Duties of official at preliminary hearing.

When an arrested person is brought before an official authorized to issue a warrant but such official is not competent to try the arrested person for the offense charged, the official shall:

- (a) inform the arrested person of the charge or charges;
- (b) inform the arrested person of his right to retain counsel and of his right to be released on bail as provided by law, and allow him reasonable time and opportunity to consult counsel, if desired;
- (c) inform the arrested person of his right to have a preliminary examination, and of his right to waive the examination and the consequences of such waiver;
- (d) inform the arrested person that he is not required to make a statement and that any statement that he does make may be used against him; and

[Header B: **18 PNCA § 502 CRIMINAL PROCEDURE**

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[Footer A: Supp. 4 18 - 24]

- (e) fix the amount of bail as provided by law if the arrested person so requests or alter the bail previously set if the official deems best.

#### **Source**

(Code 1966, § 466(a).) 12 TTC § 202.

#### **Notes**

Borja v. Trust Territory, 6 TTR 584 (1974).

### § 503. Plea not to be taken.

The arrested person shall not be called upon to plead at the preliminary hearing.

#### **Source**

(Code 1966, § 466(b).) 12 TTC § 203.

### § 504. Pretrial procedure.

- (a) If the arrested person does not waive preliminary examination, the official shall hear the evidence within a reasonable time.
- (b) A reasonable continuance shall be granted at the request of the arrested person or the prosecution to permit preparation of evidence. The arrested person has the right to be released on bail as provided by law during the period of a continuance.



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(c) The arrested person may cross-examine witnesses against him and may introduce evidence in his own behalf.

(d) If the arrested person waives preliminary examination, or if from the evidence it appears to the official that there is probable cause to believe that a criminal offense has been committed and that the arrested person committed it, the official shall forthwith:

(1) hold the arrested person to answer in a court competent to try him for the offense charged;

(2) fix, continue, or alter the bail as provided by law; and

(3) if bail is not provided, or a personal recognizance accepted, commit him to jail to await trial.

(e) If during the preliminary examination it appears to the official that the warrant of arrest, complaint or other statement of the charge or charges does not properly name or

[Header A: **PRELIMINARY MATTERS 18 PNCA § 506**

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[Footer A: Supp. 2 18 - 25]

describe the person arrested or that although not guilty of the offense specified there is probable cause to believe he has committed some other offense, the official shall not discharge such person but shall forthwith hold him to answer for the offense shown by the evidence.

(f) If the arrested person does not waive preliminary examination and from the evidence it does not appear to the official that there is probable cause to believe that a criminal offense has been committed and that the arrested person committed it, the official shall discharge him.

### **Source**

(Code 1966, § 466(c).) 12 TTC § 204.

### **Notes**

Ngerur v. Supreme Court, 4 ROP Intrm. 134, 136-37 (1994).

Borja v. Trust Territory, 6 TTR 584 (1974).

### **§ 505. Disposition of the record.**

## Palau National Code Annotated (PNCA) Title 18

After concluding the **proceedings**, the official shall transmit forthwith to the Clerk of Courts all papers in the **proceedings** and any bail taken by him; provided, that when a person has been held to answer in a court, the papers and any bail taken shall be transmitted to the Clerk of Courts.

### Source

(Code 1966, § 466(d).) 12 TTC § 205, modified.

### **§ 506. Preliminary examination upon request of person released on bail or personal recognizance.**

If it appears it will not be practicable to bring an arrested person promptly before a court as indicated in subsection (b) of section 217 of this title, and he has been released on bail or personal recognizance, he may apply to a judge or justice of a court, if one is available, otherwise to any official authorized to issue a warrant, and request a preliminary examination. Thereupon the judge or justice or official shall set a time and place for preliminary examination, give the complainant and accused reasonable notice thereof.

### Source

(Code 1966, § 467.) 12 TTC § 206, last clause is deleted as no such sections exist, and section modified.

### Notes

Ngerur v. Supreme Court, 4 ROP Intrm. 134, 136 (1994).

[Header B: **18 PNCA CRIMINAL PROCEDURE**

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[Header A: **BAIL 18 PNCA § 602**

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[Footer A: Supp. 3 18 - 27]

## Chapter 6

### Bail

§ 601. Right to bail.

§ 602. Who may fix bail; allowing bail after conviction.

§ 603. Notice by police of requests to have bail fixed.

§ 604. Amount of bail.

§ 605. Form and disposition of bail; sufficiency of sureties.

§ 606. Modification of bail.

§ 607. Exoneration and release of bail.

§ 608. Personal recognizance.

## Palau National Code Annotated (PNCA) Title 18

### § 601. Right to bail.

(a) Any person arrested for a criminal offense, other than murder in the first degree, shall be entitled as a matter of right to be released on bail before conviction; provided, however, that no person shall be so released while he is so under the influence of intoxicating liquor or drugs that there is a reasonable ground to believe he will be offensive to the general public.

(b) A person arrested for murder in the first degree may be released on bail by any judge or justice who is authorized to be assigned by the Chief Justice to sit in the Appellate Division of the Supreme Court; provided, that the Attorney General shall be given reasonable opportunity to be heard before any application for bail is granted.

#### Source

(Code 1966, § 468.) 12 TTC § 251, modified.

#### Cross-reference

For fundamental rights provisions regarding bail, see ROP Const., Art. IV, § 7; for Trust Territory Bill of Rights provision regarding bail, see § 406 of Title 1.

#### Notes

ROP v. Kruger, 8 ROP Intrm. 347, 347 (Tr. Div. 2000).

Marbou v. Termeteet, 5 TTR 655 (1971).

Meyer v. Epsom, 3 TTR 54 (1965).

### § 602. Who may fix bail; allowing bail after conviction.

In the case of any person arrested for a criminal offense, other than murder in the first degree, any

[Header B: **18 PNCA § 602 CRIMINAL PROCEDURE**

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court or any official authorized to issue a warrant may fix the bail prior to conviction. This may be done at the time of issuing the warrant and endorsed on the warrant or may be done at any time prior to conviction. After conviction bail may be allowed only if a stay of execution of the sentence has been granted and only in the exercise of discretion by a court authorized to order a stay or by a judge or justice thereof.

#### Source

(Code 1966, § 469.) 12 TTC § 252, modified.

#### Notes

ROP v. Kruger, 8 ROP Intrm. 347, 347 (Tr. Div. 2000).

ROP v. Decherong, 1 ROP Intrm. 438, 439 (1988).

ROP v. Tmetuchl, 1 ROP Intrm. 296, 297 (1986).

## Palau National Code Annotated (PNCA) Title 18

Lino v. Trust Territory, 6 TTR 206 (1972).

### **§ 603. Notice by police of requests to have bail fixed.**

When any arrested person for whom bail has not been fixed, or to whom bail has been once denied in the case of murder in the first degree, notifies any policeman or jail attendant that he desires to give bail, an official authorized to fix bail shall be promptly notified by the police authorities. The arrested person shall be brought before the official for this purpose if the official so requests.

#### **Source**

(Code 1966, § 470.) 12 TTC § 253.

### **§ 604. Amount of bail.**

The amount of bail shall be such as, in the judgment of the court or official fixing it, will insure the presence of the accused in the future. The determination of the court or official should take into account the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the accused to give bail and the character of the accused.

#### **Source**

(Code 1966, § 471.) 12 TTC § 254.

#### **Cross-reference**

Bail not to be excessive, see ROP Const., Art. IV, § 7; § 406 of Title 1.

[Header A: **BAIL 18 PNCA § 606**

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#### **Notes**

ROP v. Kruger, 8 ROP Intrm. 347, 347 (Tr. Div. 2000).

Marbou v. Termeteet, 5 TTR 655 (1971).

### **§ 605. Form and disposition of bail; sufficiency of sureties.**

Cash or bonds or notes of the United States may be accepted as bail. If a bail bond is given, one or more sureties may be required. A person of good standing in the community who is in a position of moral or customary authority over the accused, such as his father, the head of his extended family group, or the chief of his lineage or clan, may be accepted as surety without the disclosure of property by way of justification, if the official taking bail or determining the sufficiency of the surety considers that such surety will reasonably guarantee the appearance of the accused. Otherwise, no surety or sureties are to be accepted unless their combined net worth over and above all just debts and obligations is not less than the amount of the bond. Any surety may be required to furnish proof of his sufficiency, either by his own oath or otherwise. If the official to whom the bail is tendered refuses to accept the surety or sureties offered, the question of their sufficiency shall, at the request of the accused, be referred promptly to a judge or justice for determination. The determination of the judge or justice shall be final. Any bail accepted shall be promptly transmitted to the Clerk of Courts.

#### **Source**

(Code 1966, § 472.) 12 TTC § 255, last clause omitted as no longer applicable and section modified.

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### § 606. Modification of bail.

The court before which a criminal case is pending may, for cause shown, either increase or decrease the bail or require an additional surety or sureties or allow substitution of sureties.

If increased bail or an additional surety or sureties is required, the accused may be committed to custody unless he gives bail in the increased amount or furnishes additional surety or sureties as required.

#### Source

(Code 1966, § 473.) 12 TTC § 256.

#### Notes

Marbou v. Termeteet, 5 TTR 655 (1971).

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[Header B: **18 PNCA § 607 CRIMINAL PROCEDURE**

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### § 607. Exoneration and release of bail.

When the condition for which the bail was given has been satisfied, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bail bond or by a timely surrender of the accused into custody.

#### Source

(Code 1966, § 473.) 12 TTC § 257.

### § 608. Personal recognizance.

In the case of an arrest for any criminal offense, the lawful punishment for which does not exceed a fine of \$100.00 or six months imprisonment or both, any court or official authorized to fix bail may, in the exercise of discretion, order that the arrested person be released on his personal recognizance in such sum as the court or official may fix, without security, into the custody of a responsible member of the community, provided the arrested person has a usual place of abode or of business or employment in the Republic.

#### Source

(Code 1966, § 475.) 12 TTC § 258, modified.

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[Header B: **18 PNCA CRIMINAL PROCEDURE**

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[Header A: **WITNESSES 18 PNCA § 702**

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**Chapter 7**

**Witnesses**

§ 701. Witness summons.

§ 702. Detention and release of witness.

**§ 701. Witness summons.**

A witness summons in a **proceeding** before an official authorized to issue a warrant, who is not a court, may be issued by such an official. Failure by any person without adequate excuse to obey such a witness summons may be deemed a contempt of court.

**Source**

(Code 1966, § 487.) 12 TTC § 301, modified.

**§ 702. Detention and release of witness.**

(a) Whenever the court has reason to believe that a witness may be intimidated or become unavailable at the trial, he may be detained as a material witness; provided, that no such person shall be detained for a period of more than 21 days without a further order being made. A report of such detention shall be made forthwith in the manner provided for the transmission of the record.

(b) A person detained as a material witness shall be entitled to be released as a matter of right upon giving bail for his appearance as witness in an amount fixed by the court ordering the detention or any higher court. The court ordering the detention, or any higher court, may order the witness' release without bail if he has been detained for an unreasonable length of time and may modify at any time the requirement as to bail.

**Source**

(Code 1966, § 488.) 12 TTC § 302, modified.

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**[Header B: 18 PNCA § 801 CRIMINAL PROCEDURE**

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**Chapter 8**

**Dismissal**

§ 801. Dismissal by Attorney General.

§ 802. Dismissal by court.

**§ 801. Dismissal by Attorney General.**

## Palau National Code Annotated (PNCA) Title 18

The Attorney General may by leave of court file a dismissal of an information, or complaint, or citation and the prosecution shall thereupon terminate. Such a dismissal may not, however, be filed during the trial without the consent of the accused.

### Source

(Code 1966, § 491.) 12 TTC § 351, modified.

### Notes

Kap v. Trust Territory, 4 TTR 336 (1969).

### § 802. Dismissal by court.

If there is unnecessary delay in bringing an accused to trial, the court may dismiss an information, or complaint, or citation.

### Source

(Code 1966, § 492.) 12 TTC § 352.

### Notes

ROP v. Sisior, 4 ROP Intrm. 152, 160 (1994).

Kap v. Trust Territory, 4 TTR 336 (1969).

Trust Territory v. Ogo, 3 TTR 287 (1967).

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[Header A: **INSANITY 18 PNCA § 902**

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[Footer A: Supp. 5 18 - 33]

## Chapter 9

### Insanity

§ 901. Insanity at time of offense.

§ 902. Insanity at time of trial.

### § 901. Insanity at time of offense.

If it is ascertained by the court upon competent medical or other evidence that the accused at the time of committing the offense with which he is charged was so insane as not to know the nature and quality of his **act**, the court shall record a finding of such fact and may make an order pursuant to section 531 of Title 34 of the Code.

### Source

(Code 1966, § 493.) 12 TTC § 401.

### Cross-reference

For statutory provisions on mental illnesses; diagnosis, treatment and care; and commitment, see chapter 5 of Title 34.

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## § 902. Insanity at time of trial.

If the court ascertains that the accused is insane at the time of trial, the court shall adjourn the trial and order the accused to be detained as in section 901 of this chapter.

### Source

(Code 1966, § 494.) 12 TTC § 402.

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## [Header B: 18 PNCA § 1001 CRIMINAL PROCEDURE

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Chapter 10

Criminal Extradition

### Subchapter I

#### General Provisions

§ 1001. Definitions.

§ 1002. Fugitives from justice; duty of the President.

§ 1003. Form of demand.

§ 1004. Official investigation of demand for extradition.

§ 1005. Extradition of person imprisoned or awaiting trial in a state.

§ 1006. Extradition of persons who have left demanding state involuntarily.

§ 1007. Extradition of persons not present in demanding state at time of commission of **crime**.

§ 1008. Persons under criminal prosecution in the Republic at time of requisition.

§ 1009. Inquiry into guilt or innocence of accused.

### § 1001. Definitions.

Where appearing in this chapter:

(a) “Executive authority” includes the governor, and any person performing the functions of governor in any state, territory or possession of the United States of America.

(b) “President” includes any person performing the functions of the President of the Republic of Palau by authority of the law of the Republic.

(c) “State” refers to any state of the United States of America, its territories and possessions, organized or unorganized, including the District of Columbia, Virgin



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Islands, Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa and Guam.

### Source

(P.L. No. 7-4, § 1.) 12 TTC § 451, terms put into alphabetical order and section modified.

### Notes

In re Lee, 12 ROP 196, 197 (Tr. Div. 2005).

In re Munguy, 6 ROP Intrm. 22, 27-28 (1996).

Matter of Application of Won, 1 ROP Intrm. 311, 312-15 (Tr. Div. 1986).

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[Header A: **CRIMINAL EXTRADITION 18 PNCA § 1003**

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[Footer A: 18 - 35]

### § 1002. Fugitives from justice; duty of the President.

Subject to the provisions of this chapter the President shall have arrested and delivered up to the executive authority of any state any person charged in that state with treason, felony, or other **crime**, who has fled from justice and is found in the Republic.

### Source

12 TTC § 452, modified.

### Commission Comments

The extradition law of 12 TTC § 451 *et. seq.* that comprises this chapter found to be valid and need not relate to any statutory scheme for extradition created by the United States Congress. The extradition authority vested in the High Commissioner by 12 TTC §451 *et. seq.* held to have been transferred to the President of the Republic of Palau as a necessary part of the package of responsibilities specifically transferred by Transfer Orders and Secretarial Order No. 3039. *Cf. Seklii v. Republic of Palau*, Criminal Appeal No. 1-83 (App. Div. Feb. 1984).

### Notes

In Matter of Application of Won & Song, 1 ROP Intrm. 311 (Tr. 1986).

### § 1003. Form of demand.

(a) No demand for the extradition of a person charged with or convicted of **crime** in a state shall be recognized by the President unless in writing alleging, except in cases arising under section 1007 of this chapter, that the accused was present in the demanding state at the time of the commission of the alleged **crime** and that thereafter he fled from such state. Such demand shall be accompanied by:

(1) a copy of an indictment found;

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(2) a copy of an information supported by an affidavit filed in the state having jurisdiction of the **crime**;

(3) a copy of an affidavit made before a magistrate in such state together with a copy of any warrant which was issued thereon; or

(4) a copy of a judgment of conviction or of a sentence imposed in execution thereof together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole.

(b) The indictment, information or affidavit made before the magistrate must

[Header B: **18 PNCA § 1003 CRIMINAL PROCEDURE**

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substantially charge the person demanded with having committed a **crime** under the law of that state and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

### Source

12 TTC § 453, modified.

### **§ 1004. Official investigation of demand for extradition.**

When a demand shall be made upon the President by the executive authority of a state for the surrender of a person charged with or convicted of a **crime**, the President may call upon the Attorney General or any prosecuting officer in the Republic to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

### Source

12 TTC § 454, modified.

### **§ 1005. Extradition of person imprisoned or awaiting trial in a state.**

When it is desired to have returned to the Republic a person charged in the Republic with a **crime** and such person is imprisoned or is held under criminal **proceedings** then pending against him in a state, the President may agree with the executive authority of such state for the extradition of such person before the conclusion of such **proceedings** or his term of sentence in such state, upon condition that such person be returned to such state at the expense of the Republic as soon as the prosecution in the Republic is terminated.

### Source

12 TTC § 455, modified.

### **§ 1006. Extradition of persons who have left demanding state involuntarily.**

The President may also surrender on demand of the executive authority of any state any person in the Republic who is charged, in the manner provided in section 1052, with having violated the

## Palau National Code Annotated (PNCA) Title 18

laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

### Source

12 TTC § 456, modified.

[Header A: **CRIMINAL EXTRADITION 18 PNCA § 1009**

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### **§ 1007. Extradition of persons not present in demanding state at time of commission of crime.**

The President may also surrender, on demand of the executive authority of any state, any person in the Republic charged in such state, in the manner provided in section 1003 of this chapter, with committing an **act** in the Republic, or in a third state, intentionally resulting in a **crime** in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the **crime**, and has not fled therefrom.

### Source

12 TTC § 457, modified.

### **§ 1008. Persons under criminal prosecution in the Republic at time of requisition.**

If a criminal prosecution has been instituted under the laws of the Republic against a person subject to extradition and is still pending, the President, in his discretion, either may surrender him on the demand of the executive authority of another state or may hold him until he has been tried and discharged or convicted and punished in the Republic.

### Source

12 TTC § 470, modified.

### **§ 1009. Inquiry into guilt or innocence of accused.**

Except as that may be involved in identifying the person held as the person charged with the **crime**, the President shall make no inquiry into the guilt or innocence of the accused as to the **crime** of which he is charged, nor may any such inquiry be made in any **proceeding** after presentation to the President of the demand for extradition accompanied by a charge of **crime** in legal form as provided in this chapter.

### Source

12 TTC § 471, modified.

[Header B: **18 PNCA § 1021 CRIMINAL PROCEDURE**

]

## Subchapter II

### Arrest

§ 1021. President's warrant of arrest; issuance; recitals.

§ 1022. Same; manner and place of execution.

§ 1023. Same; assistance to arresting officer.

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§ 1024. Same; rights of accused persons; application for writ of habeas corpus.

§ 1025. Same; penalty for noncompliance.

§ 1026. Same; confinement in jail authorized when necessary.

§ 1027. Arrest prior to requisition; by warrant.

§ 1028. Same; without a warrant.

§ 1029. Same; commitment to await requisition.

§ 1030. President may recall warrant or issue additional warrant.

### **§ 1021. President's warrant of arrest; issuance; recitals.**

If the President decides that a demand for extradition of a person charged with, or convicted of, a **crime** in a state should be complied with, he shall sign a warrant of arrest, which shall

be sealed with the Republic seal, and be directed to the Attorney General, the Director of the Bureau of Public Safety, or other person whom he may think fit to be entrusted with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

#### **Source**

12 TTC § 458, modified.

### **§ 1022. Same; manner and place of execution.**

Such warrant shall authorize the officer or other person to whom it is directed to arrest the accused at any time and at any place where he may be found within the Republic, and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

#### **Source**

12 TTC § 459, modified.

[Header A: **CRIMINAL EXTRADITION 18 PNCA § 1025**

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### **§ 1023. Same; assistance to arresting officer.**

Every officer or other person empowered to make the arrest, as provided in section 1022 of this chapter, shall have the same authority in arresting the accused to command assistance therein as the Attorney General, the Director of the Bureau of Public Safety and other officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

#### **Source**

12 TTC § 460, modified.

### **§ 1024. Same; rights of accused persons; application for writ of habeas corpus.**

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first

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be taken forthwith before a judge or justice of the Republic, who shall inform him of the demand made for his surrender and of the **crime** with which he is charged and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that

he or they desire to test the legality of his arrest, the court shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied

for, notice thereof and of the time and place of hearing thereon shall be given to the Attorney General of the Republic and to the agent of the demanding state.

### Source

12 TTC § 461, modified.

### Cross-reference

Writ of habeas corpus recognized and may not be suspended, ROP Const., Art. IV, §7; privilege of the writ of habeas corpus not to be suspended unless case of rebellion, invasion or imminent danger thereof and the public safety shall require it, see Title 1, §411; for statutory provisions on habeas corpus, see chapter 11 of Title 18.

### Notes

In Matter of Application of Won & Song, 1 ROP Intrm. 311, 312 (Tr. 1986).

### § 1025. Same; penalty for noncompliance.

Any officer who shall deliver a person in his custody under the President's warrant to the agent for extradition of the demanding state in disobedience of section 1024 of this chapter shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than \$1,000.00, or be imprisoned not more than six months, or both.

[Header B: **18 PNCA § 1025 CRIMINAL PROCEDURE**

]

### Source

12 TTC § 462, modified.

### § 1026. Same; confinement in jail authorized when necessary.

The officer or person executing the President's warrant of arrest, or the agent of the demanding state to whom the prisoner is to be delivered may, when necessary, confine the prisoner in any jail of the government of the Republic and the warden of such jail shall

receive and safely keep the prisoner until the officer or person having charge of him is ready

to **proceed** on his route, such officer or person being chargeable with the expense of keeping the prisoner.

### Source

12 TTC § 463, modified.

### § 1027. Arrest prior to requisition; by warrant.

A judge or justice shall issue a warrant directed to the Attorney General, or the Director of the Bureau of Public Safety commanding him to apprehend the person named therein wherever he may be found in the Republic and to bring him before the Supreme Court to answer the charge or complaint and affidavit. A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant whenever:

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(a) any person within the Republic shall be charged on the oath of any credible

person before any judge or justice of the Republic with the commission of a **crime** in any state, and, except in cases arising under section 1007 of this chapter, with having fled from justice, with having been convicted of a **crime** in that state and with having escaped from confinement, or with having broken the terms of his bail, probation, or parole; or

(b) complaint shall have been made before the Supreme Court setting forth on the affidavit of any credible person in a state that a **crime** has been committed in such other state and that the accused has been charged in such state with the commission of the **crime**, and, except in cases arising under section 1007 of this chapter, has fled

from justice, or that the accused has been convicted of a **crime** in that state and has escaped from confinement, or has broken the terms of his bail, probation or parole, and that the accused is believed to be in the Republic.

### Source

12 TTC § 464, modified.

[Header A: **CRIMINAL EXTRADITION 18 PNCA § 1030**

]

### **§ 1028. Same; without a warrant.**

The arrest of a person may also be lawfully made by any policeman or private citizen without a warrant upon reasonable information that the accused stands charged in the courts of a state with a **crime** punishable by death or imprisonment for a term of exceeding one year. When

so arrested the accused must be taken before the Supreme Court with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section and thereafter his answer shall be heard as if he had been arrested on

a warrant.

### Source

12 TTC § 465, modified.

### **§ 1029. Same; commitment to await requisition.**

If from the examination before the Supreme Court it appears that the person held pursuant to either of the two preceding sections is the person charged with having committed the **crime** alleged and, except in cases arising under section 1007 of this chapter, that he has fled from justice, the Supreme Court shall, by a warrant reciting the accusation, commit him to jail for such a time not exceeding 45 days specified in the warrant as will enable the arrest of the accused to be made under a warrant of the President on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused shall give bail as provided in section 1041 of this chapter, or until he shall be legally discharged.

### Source

12 TTC § 466, modified.

### **§ 1030. President may recall warrant or issue additional warrant.**

## Palau National Code Annotated (PNCA) Title 18

The President may recall his warrant of arrest or may issue another warrant whenever he deems it proper.

### Source

12 TTC § 472, modified.

[Header B: **18 PNCA § 1041 CRIMINAL PROCEDURE**

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### Subchapter III

#### Bail

§ 1041. Bail; when allowed; conditions of bond.

§ 1042. Same; discharge, recommitment or renewal.

§ 1043. Same; forfeiture.

#### **§ 1041. Bail; when allowed; conditions of bond.**

Unless the offense with which the prisoner is charged is shown to be an offense punishable

by death or life imprisonment under the laws of the state in which it was committed, the Supreme Court may admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as the court deems proper, conditioned upon his appearance before it at a time specified in such bond or undertaking, and upon his surrender for arrest upon the warrant of the President.

### Source

12 TTC § 467, modified.

#### **§ 1042. Same; discharge, recommitment or renewal.**

If the accused is not arrested under warrant of the President by the expiration time specified

in the warrant, bond, or undertaking, the Supreme Court may discharge him or may recommit him to a further day, or may again take bail for his appearance and surrender, as provided in section 1041 of this chapter. At the expiration of the second period of commitment, or if he has been bailed and appeared according to the terms of his bond or undertaking, the court

may either discharge him, or may require him to enter into a new bond or undertaking, to appear and surrender himself at another day.

### Source

12 TTC § 468, modified.

#### **§ 1043. Same; forfeiture.**

If the prisoner is admitted to bail and fails to appear and surrender himself according to the condition of his bond, the Supreme Court shall declare the bond forfeited and order his immediate arrest without warrant if he be within the Republic. Recovery may be had on such bond in the name of the Republic as in the case of other bonds or undertakings given by the

[Header A: **CRIMINAL EXTRADITION 18 PNCA § 1052**

]

## Palau National Code Annotated (PNCA) Title 18

accused in criminal **proceedings** within the Republic.

### Source

12 TTC § 469, modified.

### Subchapter IV

#### Fugitives from the Republic

§ 1051. Fugitives from the Republic; issuance of warrant to receive and convey.

§ 1052. Same; applications for requisition; return of person charged with **crime**.

§ 1053. Same; same; escaped convict.

§ 1054. Same; same; form of applications; copies, etc.

§ 1055. Same; costs and expenses.

#### **§ 1051. Fugitives from the Republic; issuance of warrant to receive and convey.**

Whenever the President shall demand from the executive authority of any state a person charged with **crime** or with escaping from confinement or breaking the terms of his bail, probation or parole in the Republic, he shall issue a warrant under the seal of the Republic to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the government of the Republic.

### Source

12 TTC § 473, modified.

#### **§ 1052. Same; applications for requisition; return of person charged with **crime**.**

When the return to the Republic of a person charged with a **crime** in the Republic is required, the Attorney General or his assistant shall present to the President his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the **crime** charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the

location of the accused therein at the time the application is made, and certifying that, in the opinion of the Attorney General or his assistant, the ends of justice require the arrest and return of the accused to the Republic for trial, and that the **proceeding** is not instituted to enforce a private claim.

### Source

12 TTC § 474, modified.

[Header B: **18 PNCA § 1053 CRIMINAL PROCEDURE**

]

#### **§ 1053. Same; same; escaped convict.**

When the return to the Republic is required of a person who has been convicted of a **crime** in the Republic and who has escaped from confinement or broken the terms of his bail,

probation or parole, the Attorney General shall present to the President a written application for a requisition for the return of such person, in which application shall be stated the name



## Palau National Code Annotated (PNCA) Title 18

of the person, the **crime** of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, and the state in which he is believed to be, including the location of the person therein at the time application is made.

### Source

12 TTC § 475, modified.

### § 1054. Same; same; form of applications; copies, etc.

The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the information and affidavit filed, or of the complaint made to the judge or magistrate charged, or of the judgment of conviction, or of the sentence.

The Attorney General or his assistant may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the President indicated by endorsement thereon, and one of the certified copies of the indictment, or complaint, or information and affidavits, or of the judgment of conviction, or of the sentence shall be filed in the Office of the

President to remain of record in that office. The other copies of all papers shall be forwarded with the President's requisition.

### Source

12 TTC § 476, modified.

### § 1055. Same; costs and expenses.

The expenses incident to the extradition of any person under sections 1051-1054 of this chapter shall be paid out of the National Treasury.

### Source

12 TTC § 477, modified.

[Header A: **CRIMINAL EXTRADITION 18 PNCA § 1072**

]

## Subchapter V

### Miscellaneous Provisions

§ 1071. Immunity from service of process in certain civil actions.

§ 1072. Waiver of extradition **proceedings**.

§ 1073. Procedures of chapter not deemed waiver of Republic's rights.

§ 1074. Immunity from other criminal prosecutions while in the Republic.

### § 1071. Immunity from service of process in certain civil actions.

A person brought into the Republic by or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal **proceeding** to answer which he is being or has been returned, until he has been convicted in the criminal **proceeding**, or, if acquitted, until he has had ample opportunity to return to the state from which he was extradited.

### Source

12 TTC § 478, modified.

**§ 1072. Waiver of extradition proceedings.**

(a) Any person arrested in the Republic and charged with having committed any **crime** in any state, or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 1021 and 1022 of this chapter and all other procedure incidental to extradition **proceedings** by executing or subscribing in the presence of a justice of the Supreme Court within the Republic a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed it shall forthwith be forwarded to the Office of the President and filed therein.

(b) The justice shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent of the demanding state, and shall deliver or cause to be delivered to such agent a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an executive procedure or to limit the powers, rights or duties of the officers of the demanding state or of the Republic.

[Header B: **18 PNCA § 1072 CRIMINAL PROCEDURE**

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**Source**

12 TTC § 479, modified.

**§ 1073. Procedures of chapter not deemed waiver of Republic's rights.**

Nothing in this chapter shall be deemed to constitute a waiver by the Republic of its right, power or privilege to try such demanded person for **crime** committed within the Republic, or of its right, power or privilege to regain custody of such person by extradition **proceedings** or otherwise for the purpose of trial, sentence or punishment for any **crime** committed within the Republic; nor shall any **proceedings** had under this chapter which result in, or fail to result in, extradition be deemed a waiver by the Republic of any of its rights, privileges, or jurisdiction in any way whatsoever.

**Source**

(Code 1966, § 30.) 12 TTC § 480, modified.

**§ 1074. Immunity from other criminal prosecutions while in the Republic.**

After a person has been brought back to the Republic by or after waiver of extradition **proceedings**, he may be tried in the Republic for other **crimes** which he may be charged with having committed therein as well as that **crime** specified in the requisition for his extradition.

**Source**

12 TTC § 481, modified.

[Header A: **HABEAS CORPUS 18 PNCA § 1102**

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]

## CHAPTER 10.1

### Extradition and Transfer

#### Subchapter 1

#### General Provisions

§ 10.101. Supersession.

§ 10.102. Definitions.

§ 10.103. Extraditable offenses.

§ 10.104. Extradition objections.

#### § 10.101. Supersession.

This chapter shall not supersede the extradition provisions of the Compact of Free Association, whose provisions shall be deemed an extradition treaty for the purposes of this chapter. Any extradition treaty or international agreement to which the Republic was a party before the effective date of this chapter remains in force and shall be deemed an extradition treaty for the purposes of this chapter. In the case of conflict, the provisions of the extradition treaty shall take precedence over the provisions of this chapter.

#### Source

RPPL 6-5 § 1[3], modified.

#### Notes

Section 1[1] of RPPL 6-5 reads: “Short title. This **Act** shall be known and may be cited as the ‘Extradition and Transfer **Act** of 2001.’” Section 1[2] reads: “Section 2. Purpose. The purposes of this **Act** are: to facilitate the procedures for extradition of persons from a foreign state to the Republic of Palau, and vice versa; to promote the rehabilitation and effective reintegration of criminal offenders into society by transferring convicted citizens to their home countries to serve a criminal sentence; to declare that the Republic shall have an obligation to extradite any person who has committed an extraditable offense in an extradition country, no matter what their nationality or citizenship, where the requirements of this **Act** have been met, and where there is no valid impediment to extradition under this **Act**, to promote mutual cooperation in law enforcement in the Pacific region and internationally to bring fugitives to justice; and to declare that to that end, this **Act** should be liberally construed, together with the following related legislation the Mutual Assistance in Criminal Matters **Act**; the Money Laundering and **Proceeds of Crime Act**; and the Foreign Evidence **Act**.”

#### § 10.102. Definitions.

In this chapter:

[Header B: 18 PNCA § 10.102 CRIMINAL PROCEDURE

]

(a) “Attorney General” means the Attorney General of the Republic of Palau;

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- (b) “Comity Country” means a foreign state granted or seeking a courtesy or a special privilege to be granted with respect to extradition or the transfer of a convicted person notwithstanding the fact that such foreign state does not otherwise qualify under the chapter as an extradition country because of its status as a Forum country or a treaty country;
- (c) “Document” means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system, or other device, and any record of information, and includes, but is not limited to, anything on which there is writing, marks, figures, symbols, or perforations having meaning for persons qualified to interpret them, anything from which sounds, images or writings can be produced, with or without the aid of anything else, a map, plan, drawing, photograph or similar thing;
- (d) “Extradition country” means any treaty country with which the Republic has entered into an extradition treaty;
- (e) “Extradition request” means a written petition made by one country to another country for the surrender of a particular person for purposes of prosecution or punishment for a criminal offense;
- (f) “Extradition treaty” means a written pact, protocol, agreement, convention, or covenant, entered into or ratified by the Republic that relates wholly or partly to the surrender of persons accused or convicted of criminal offenses;
- (g) “Foreign escort officer” means an official representative of the foreign state to which a person is to be surrendered or transferred for service of the person’s sentence, conditional sentence, or conditional release;
- (h) “Foreign state” means any country other than the Republic and every constituent part of such country which administers its own laws relating to criminal offenses;
- (i) “Forum country” means a member of the Pacific Islands Forum;
- (j) “Interpol” means the International Criminal Police Organization;
- (k) “Judge” means a person who has been duly appointed as a judge or justice of the Supreme Court of the Republic, unless otherwise noted;
- (l) “Law enforcement officer” means a member of the Bureau of Public Safety, Ministry

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[Header A: **GENERAL PROVISIONS 18 PNCA § 10.102**

]

of Justice of the Republic of Palau;

(m) “Person” means and includes any natural or legal person sought for extradition;

(n) “Political offense” means any charge or conviction based on a person’s political beliefs or affiliation where the conduct involved does not otherwise constitute a violation of that country’s criminal laws;

(o) “Prison” means any place for the confinement or custody in the course of the administration of justice, and includes a jail, police cell, or any place where the personal liberty of a person to voluntarily depart is restricted;

(p) “**Proceeding**” or “**proceedings**” means any procedure conducted by or under the supervision of an authorized judicial officer of any country, and includes an inquiry, investigation, or preliminary or final determination of facts;

(q) “**Proceeds of crime**” means any property derived or realized directly or indirectly from a serious offense or an extraditable offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later successively converted, transformed, or intermingled, as well as income, capital, or other economic gains derived or realized from such property at any time since the offense;

(r) “Property” means currency and all other real or personal property of every description, wherever situated, whether tangible or intangible, and includes an interest in any such property but does not include any clan, lineage, or family land located in the Republic, nor any interest held by a legitimate bona fide purchaser or owner of property, real or otherwise, without notice of any illegal interest, in such real property located in the Republic;

(s) “Requesting country” means a foreign state that is seeking the surrender of a person for purposes of prosecution or punishment for a criminal offense allegedly committed in such foreign state;

(t) “Serious offense” means a violation of any law of the Republic which is a criminal offense punishable by a term of imprisonment for more than one year, or a criminal law of the requesting country, in relation to **acts** or omissions, which had they occurred in Republic would have constituted a criminal offense punishable by a term of imprisonment for more than one year;

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(u) “Supreme Court” means the Supreme Court of the Republic and all its divisions;

### [Header B: 18 PNCA § 10.102 CRIMINAL PROCEDURE

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(v) “Surrender” means the **act** by which public authorities deliver a person charged with or convicted of a **crime** and who is found within their jurisdiction to the authorities within whose jurisdiction it is alleged that the **crime** was committed;

(w) “Surrender warrant” means an official authorization; issued by a judge ordering the surrender of a person to a requesting country, requiring any person having custody of the person to relinquish custody to the officer possessing the warrant, authorizing handing the person over to the custody of a foreign escort officer, and authorizing the foreign escort officer to transport the person to the requesting country for purposes of prosecution and punishment for a criminal offense;

(x) “Tainted property” means property used in, or in connection with, the commission of a serious or extraditable offense or the **proceeds** of **crime**;

(y) “Treaty country” means a foreign state with which the Republic has entered into an extradition treaty, and which is listed in regulations promulgated under this chapter;

(z) “Writing” includes facsimiles, electronic mail, and any other means of communication that is capable of being reproduced in printed form.

(aa) A reference in this chapter to the law of the Republic or any foreign state or country, includes the law of any part of the Republic or any part of that foreign state or country.

### Source

RPPL 6-5 § 1[4], modified.

### § 10.103. Extraditable offenses.

(a) An extraditable offense is an offense which occurred in the requesting country and is or would be a criminal offense under the laws of both the requesting country and the Republic or the receiving country and the transferring country, or their political subdivisions, punishable by imprisonment or other deprivation of liberty for over one year.

(b) In determining whether an offense is an extraditable offense under this chapter, terminology and categorization are not dispositive, and the totality of the **acts** or omissions alleged shall be considered in determining the constituent elements of the offense. Any part of such **act**, failure to **act**, or omission may be taken into account.

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(c) Where there is no statutory penalty, the level of penalty that can be imposed for the offense by any court shall be taken into account.

(d) An offense may be an extraditable offense if it relates to taxation, customs duties, or other revenue matters or relating to foreign exchange control of a foreign state even if the Republic does not impose a duty, tax, tariff, or control of that kind, provided such offense would not be unconstitutional under the laws of the Republic.

**Source**

RPPL 6-5 § 1[5].

**§ 10.104. Extradition objections.**

An extradition objection arises automatically where:

(a) the offense is a political offense;

(b) substantial grounds suggest that the prosecution or punishment is due to race, religion, nationality, political opinion or affiliation, gender, or status, or that the proceedings are prejudiced because of any of these factors;

(c) the offense arises under a foreign state's military law but is not a criminal offense in the Republic;

(d) the person has been convicted of the offense in the Republic and has not escaped or breached any condition of release;

(e) the person is immune from prosecution or punishment due to lapse of time, amnesty, or any other reason under the requesting country's laws;

(f) the person has been acquitted, pardoned, or duly punished for the offenses, in the Republic or the foreign state;

(g) judgment was entered in the person's absence, and the requesting country's law does not entitle the person to raise any defenses upon his or her return;

(h) a prosecution for the offense is pending in the Republic;

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(i) the offense was not committed in the requesting country and the Republic has no jurisdiction over that offense committed in similar circumstances outside of the Republic;

[Header B: **18 PNCA § 10.104 CRIMINAL PROCEDURE**

]

(j) the offense was committed, even partially, within the Republic, and the Attorney General confirms that prosecution will be instituted;

(k) the offense is punishable by death, and there are insufficient assurances that the death penalty will not be imposed or carried out;

(l) the person is likely to be tried or sentenced by a court not authorized by law;

(m) the person is likely to be subjected to torture or cruel and inhumane treatment or punishment, including inhumane prison conditions. Conditions in countries that have acceded to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment adopted on December 10, 1984, or the International Covenant on Civil and Political Rights, adopted on December 16, 1966, are presumed humane, but can be rebutted by clear and convincing evidence.

(n) If the requesting government is either authoritarian in nature or non-democratic in form, no citizen of Palau or person of Palauan ancestry shall be extradited to that country.

(o) If the offense is punishable by death, no citizen of Palau or person of Palauan ancestry shall be extradited to that country.

### Source

RPPL 6-5 § 1[6].

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[Header A: **EXTRADITION OF PERSONS 18 PNCA § 10.111**

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### Subchapter II

#### Extradition of Persons to Foreign States

§ 10.111. Obligation to extradite.

§ 10.112. Authority of the Minister of Justice.

§ 10.113. Extradition requests.



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§ 10.114. Multiple extradition requests.

§ 10.115. Supporting documents.

§ 10.116. Authenticated documents.

§ 10.117. Application for extradition and surrender and for arrest warrant.

§ 10.118. Rule of Specialty.

§ 10.119. Affidavit on specialty and other obligations.

§ 10.120. Provisional arrest.

§ 10.121. Power of judges to issue arrest warrants and provisional arrest warrants in anticipation of extradition.

§ 10.122. Return on the arrest warrant; preliminary hearing.

§ 10.123. Automatic review hearing.

§ 10.124. Waiver of extradition and consent to surrender.

§ 10.125. Surrender determination hearing.

§ 10.126. Surrender decision.

§ 10.127. Applications for re-extradition.

§ 10.128. Surrender warrant; deferred surrender.

§ 10.129. Limited surrender for trial.

§ 10.130. Temporary surrender warrant.

§ 10.131. Execution of a surrender warrant.

§ 10.132. Evidence taking in the Republic.

§ 10.133. Curing of deficiencies or defects in documents.

### **§ 10.111. Obligation to extradite.**

(a) When surrender of a person who is not a Palauan citizen or national or of Palauan ancestry is sought for an extraditable offense and where the requirements of this chapter have been satisfied and no valid and legally sustainable extradition objections preclude surrender, the Republic has an obligation to extradite the person.

(b) Neither the Republic nor any extradition country shall be bound to extradite its own citizens or nationals, but may grant extradition if, in the discretion of the court, after

[Header B: **18 PNCA § 10.111 CRIMINAL PROCEDURE**

]

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notice to the party sought to be extradited and a hearing, extradition is deemed proper. If the requested government denies extradition solely on the basis of citizenship or nationality, it shall submit the case to its competent authorities for purposes of prosecution.

(c) This chapter shall be liberally construed to effect the purposes of this chapter.

### Source

RPPL 6-5 § 1[7].

### Notes

The words “Republic has an obligation” in subsection (a) reads “Republic as an obligation” in RPPL 6-5 § 1[7].

### § 10.112. Authority of the Minister of Justice.

The Minister of Justice or his or her designee shall be authorized to:

- (a) receive extradition requests directly from foreign states or Interpol;
- (b) determine, pursuant to this chapter, whether and what action to take on an extradition request;
- (c) determine whether the requesting country is an extradition country, and if not, whether to designate or certify it as such;
- (d) impose conditions on the requesting country for the treatment of the person;
- (e) apply to the Supreme Court for warrants of arrest, provisional arrest, surrender, and for applications for re-extradition;
- (f) appear at hearings authorized by this chapter on behalf of a requesting country;
- (g) institute extradition proceedings;
- (h) take any action authorized in this section on behalf of a requesting country, upon receiving notice of an extradition request or an intent to make an extradition request in the immediate future, and the person is believed to be physically present or about to enter the Republic in the foreseeable future;

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(i) take any other legal action deemed necessary in furtherance of the purposes of this chapter.

[Header A: **EXTRADITION OF PERSONS 18 PNCA § 10.113**

]

### Source

RPPL 6-5 § 1[8].

### § 10.113. Extradition requests.

(a) Requests shall be made in writing, in the English language, and be accompanied by the necessary supporting documents.

(b) Upon receipt of the extradition request, the Minister of Justice or his or her designee shall notify the President, review and consider the request, determine whether the request meets this chapter's requirements, and promptly communicate the determination to the requesting country, providing a written statement of any deficiencies in the request.

(c) The Minister of Justice or his or her designee shall determine whether to institute extradition **proceedings**, but shall not do so unless:

(1) the requesting country has issued an arrest warrant for the extraditable offense;

(2) the person named in the warrant is physically present or about to enter the Republic in the foreseeable future;

(3) the requesting country is an extradition country;

(4) the requesting country has produced or will produce in the immediate future the necessary supporting documents;

(5) no extradition objections or other law precludes the person's surrender;

(6) no other valid and legally justifiable cause exists to preclude surrender of the person.

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(d) Where the extradition request meets some but not all of this chapter's requirements when it is made, the Minister of Justice or his or her designee may provisionally institute extradition proceedings and take any necessary action authorized in section 10.112 provided that the Minister of Justice or his or her designee is satisfied that any defect or deficiency is readily curable and that the requesting country will immediately act to cure such defect or deficiency.

[Header B: **18 PNCA § 10.113 CRIMINAL PROCEDURE**

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(e) The President or his or her designee may refuse any request from a country that does not offer substantially similar privileges to the Republic.

### Source

RPPL 6-5 § 1[9].

### § 10.114. Multiple extradition requests.

(a) When the Minister of Justice or his or her designee concurrently receives two or more extradition requests for the same person, the Minister of Justice or his or her designee shall have the discretion to decide the order in which to consider the requests.

(b) The Minister of Justice or his or her designee shall notify each requesting country of the multiple requests and shall communicate the order in which the requests will be considered.

(c) The Minister of Justice or his or her designee shall consider all circumstances of the case, particularly:

(1) the relative seriousness of the offenses;

(2) the time and place of each offense;

(3) the person's citizenship, national status, and country of usual residence;

(4) the likelihood of the denial of an extradition request for any reason;  
and

(5) the possibility of re-extradition of the person to a third foreign state.

### Source

**§ 10.115. Supporting documents.**

(a) An extradition request shall be accompanied by:

(1) as accurate and complete a description of the person as possible, including information on identity, nationality, and location;

[Header A: **EXTRADITION OF PERSONS 18 PNCA § 10.115**

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(2) a detailed statement of the **acts** or omissions constituting the extraditable offense, including details of the time and place of commission;

(3) the text of the law creating the offense, including any applicable statutes of limitations;

(4) the text of the law prescribing the maximum penalty for the offense, or if the penalty is not prescribed by statute, a statement defining the maximum penalty that can be imposed.

(b) An extradition request for a person charged with but not yet convicted of an offense shall be accompanied by the original or an authenticated copy of the arrest warrant issued by an authorized judicial authority of the requesting country and by a description of the evidence providing probable cause supporting the belief the person sought to be extradited committed the offense;

(c) An extradition request for a person convicted of the offense shall be supported by the original or authenticated copy of the arrest warrant issued by an authorized judicial authority of the requesting country, the original or an authenticated copy of the judgment of the conviction, evidence establishing that the person is the person who was convicted, and a statement of whether the sentence has been imposed and if imposed, a copy of the sentence and a statement showing the portion of the sentence remaining to be served.

(d) Where an extradition request relates to a person who has been convicted of an offense in his or her absence, in addition to the documents described in subsection (c), the request shall be accompanied by a statement defining the legal means available to the person to prepare defenses and to have the case retried in the person's presence if the person is surrendered.

(e) Where an extradition request or a statement of intent to make an extradition request is received, and a substantial likelihood exists that the person may flee the

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Republic unless arrested, a facsimile or electronically transmitted copy of the arrest warrant or judgment may be substituted, provided that the requesting country produces an original or authenticated copy within 10 business days.

(f) All supporting documents shall be in English or accompanied by an authentic translation into English, and shall be consistent with the Palau Constitution and all evidentiary and procedural provisions of the Palau National Code.

[Header B: **18 PNCA § 10.115 CRIMINAL PROCEDURE**

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(g) If the Minister of Justice or his or her designee determines that the supporting information or documentation is defective or deficient in any respect, the Minister of Justice or his or her designee may request the additional information and specify a reasonable time for its receipt.

### Source

RPPL 6-5 § 1[11].

### § 10.116. Authenticated documents.

(a) Any relevant authenticated document shall be admissible in any **proceeding** under this chapter, to the extent consistent with the Palau Constitution and all evidentiary and procedural provisions of the Palau National Code, and rules of Court.

(b) A document produced by a requesting country that is introduced for admission in any **proceeding** under this chapter shall be deemed to be authenticated where such document is signed or certified by an authorized judicial authority, or is under the official seal of the requesting country.

(c) Nothing in this section prevents the proof of any matter or the admission of any document in the **proceedings** pursuant to any other law or rule of evidence of the Republic.

(d) Except as provided by this chapter, all documents or other material supplied in response to or support of an extradition request shall not require further certification or authentication.

### Source

RPPL 6-5 § 1[12], modified.

### § 10.117. Application for extradition and surrender and for arrest warrant.

(a) Extradition **proceedings** under this chapter are commenced by the Minister of Justice or his or her designee's filing of an application for extradition and surrender with the Supreme Court.

(b) An application for extradition and surrender shall be accompanied by an application for an arrest warrant, unless the person has already been arrested.

[Header A: **EXTRADITION OF PERSONS 18 PNCA § 10.119**

]

(c) The application for an arrest warrant shall be supported by the Minister of Justice or his or her designee's affidavit attesting to the matters enumerated in section 10.113(c) and the necessary supporting documents.

**Source**

RPPL 6-5 § 1[13].

**§ 10.118. Rule of specialty.**

(a) A person surrendered for extradition under this chapter shall not be arrested, detained, tried, or punished in the requesting country for an offense other than that for which extradition has been granted, and the requesting country will not extradite the person to a third country unless:

(1) the person has voluntarily surrendered to the jurisdiction of the third country or consented to the extradition; or

(2) the person has not left the requesting country's jurisdiction within thirty days of being free to do so; or

(3) the Republic has consented to the arrest, detention, trial, or punishment of that person for an offense other than that for which extradition was granted, subject to conditions as may be prescribed by the judge in the extradition **proceedings**.

(b) Subsection (a) shall not apply to offenses committed after extradition.

(c) The requesting country may try or punish the person for a different offense, including a lesser offense, upon notice to the Minister of Justice or his or her designee, if the different offense is based on the same facts as set out in the extradition request and is punishable by no greater penalty than the offense for which the person was surrendered.

**Source**

RPPL 6-5 § 1[14].

**§ 10.119. Affidavit on specialty and other obligations.**

In support of the application for extradition and surrender, the requesting country shall submit an

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affidavit on specialty and other obligations to the Supreme Court before the surrender determination hearing, containing assurances that it will abide by the rule of specialty and any other undertaking, obligation, or promise that the Minister of Justice or his or her designee shall require as to the person's treatment.

**Source**

RPPL 6-5 § 1[15].

**§ 10.120. Provisional arrest.**

(a) In the case of urgency where the Minister of Justice or his or her designee has provisionally approved the institution of extradition **proceedings** pursuant to section 10.113(d), or imminent receipt of an official extradition request is anticipated, and there is a substantial likelihood that the person may flee the Republic unless such person is immediately arrested, the Minister of Justice or his or her designee may apply to the Supreme Court for a provisional arrest warrant without filing an application for extradition and surrender.

(b) An application for a provisional arrest warrant shall be supported by: an affidavit of the Minister of Justice or his or her designee attesting to those matters required by section 10.113(d) as have been met or established; and such supporting documents as are available at that time.

**Source**

RPPL 6-5 § 1[16].

**§ 10.121. Power of judges to issue arrest warrants and provisional arrest warrants in anticipation of extradition.**

In anticipation of the surrender of a person to a requesting country, a judge is authorized to issue an arrest warrant or a provisional arrest warrant where:

(a) the Minister of Justice or his or her designee has filed an application for extradition and surrender or an application for a provisional arrest warrant; and

(b) the judge finds probable cause to believe that:

(1) a warrant for the arrest of the person has been duly issued in an extradition

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country for an extraditable offense; and



- (2) the person named in the arrest warrant issued in the requesting country is the same person named in the Minister of Justice or his or her designee's warrant application; and
- (3) the person is physically present or about to enter the Republic; and
- (4) the requesting country has made an extradition request.

**Source**

RPPL 6-5 § 1[17].

**§ 10.122. Return on the arrest warrant; preliminary hearing.**

(a) A person arrested under an arrest warrant or provisional arrest warrant issued pursuant to this chapter shall be brought before a judge without unnecessary delay, and a preliminary hearing shall be held to determine whether there is probable cause to believe that:

- (1) the person arrested is the same person named in the arrest warrant issued in the requesting country; and
- (2) the person committed an extraditable offense in the requesting country; and
- (3) the requesting country is an extradition country.

(b) At the preliminary hearing on probable cause:

- (1) the rules of evidence shall apply;
- (2) the person arrested shall be given a copy of the arrest warrant issued in the requesting country, the arrest or provisional arrest warrant issued in the Republic, the Minister of Justice or his or her designee's application for the arrest or provisional arrest warrant, and the affidavit in support of the arrest or provisional arrest warrant;
- (3) the standard of proof shall be by a preponderance of the evidence.

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(c) Where the evidence is sufficient, pending the surrender determination hearing or the person's voluntary surrender, the judge is authorized to:

(1) commit the person to custody or official detention in the Republic, for not more than 30 days pending further **proceedings**; or

(2) release the person on recognizance or bail pending the surrender determination hearing, if satisfied that the person will not flee the jurisdiction and will voluntarily appear at all subsequent extradition **proceedings**.

(d) Where a person is released on recognizance or bail, the judge is authorized to set reasonable conditions of release, including reporting requirements and such other conditions as are allowed under the laws of the Republic, and shall require that the person's travel documents be surrendered until conclusion of the surrender determination hearing.

### Source

RPPL 6-5 § 1[18].

### § 10.123. Automatic review hearing.

(a) No later than 30 days after a person is committed to custody or released on recognizance or bail after a preliminary or review hearing, and every 30 days thereafter, a judge shall hold a review hearing to determine whether a person should be released or discharged, or whether any order made by a judge with respect to such person should be modified, rescinded, or continued in force.

(b) At the review hearing, the Minister of Justice or his or her designee shall present evidence in support of any request for continued custody and shall establish by a preponderance of the evidence that probable cause for those matters set forth in section 10.113(c) continues to exist, and, if an application for extradition and surrender has not yet been filed, that extradition **proceedings** will be instituted in the Republic within the next 30 days.

(c) Where the judge is satisfied that the requirements of subsection (b) have been met, the judge may order the release of the person on recognizance or bail, under any of the conditions authorized by section 10.122(d), or may remand the person to custody for an additional period not to exceed 30 days.

[Header A: **EXTRADITION OF PERSONS 18 PNCA § 10.124**

]

(d) Where the judge is not satisfied that the requirements of subsection (b) have been met, the person shall be released. Where the person was the subject of a provisional

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arrest warrant, such release shall not prevent the subsequent institution of extradition **proceedings** or the re-arrest of the person pursuant to those **proceedings**.

(e) No person shall be detained or held in custody longer than 60 days pursuant to orders from the preliminary or review hearings without the formal institution of extradition **proceedings**.

(f) No person shall be detained longer than 90 days pursuant to orders from the preliminary or review hearings unless a surrender warrant has been issued.

### Source

RPPL 6-5 § 1[19].

### § 10.124. Waiver of extradition and consent to surrender.

(a) At any time, a person may waive extradition and voluntarily consent to surrender for criminal prosecution or punishment for any extraditable offense or any non-extraditable offense for which the person has been charged or convicted, provided the judge is satisfied that the consent is voluntarily given with notice of the matters enumerated in this section.

(b) Waiver of extradition and consent to surrender may be made by a person's oral or written application to a judge.

(c) Where a person applies to a judge for waiver of extradition for any extraditable offense and indicates that he or she wishes to consent to surrender, the judge shall conduct an inquiry on the record to determine whether the waiver and consent are voluntarily given and whether the person understands the charges pending against him or her in the requesting country and the maximum penalties that could be imposed. During such inquiry the judge shall inform the person that waiving extradition and consenting to surrender shall mean that:

(1) the person will be committed to the custody of the Republic until the person is surrendered;

(2) no extradition **proceedings** will take place to determine whether the person should be surrendered for the extraditable offense;

[Header B: 18 PNCA § 10.124 CRIMINAL PROCEDURE

]

(3) the person's waiver of extradition and consent to surrender is final and cannot be withdrawn; and

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(4) the person will be surrendered without further court proceedings of any kind in the Republic.

(d) After the inquiry, the judge shall determine on the record whether the person fully understands the matters enumerated in subsection (c), and if so, whether the person continues to request that extradition be waived and voluntarily consents to surrender for the extraditable offense.

(e) Where charges are pending against a person in the requesting country for any criminal offenses that do not qualify as extraditable offenses under this chapter, and the requesting country has asked that the person also be surrendered for prosecution or punishment for those offenses, and the person has informed the judge that he or she wishes to voluntarily consent to surrender himself or herself for prosecution or punishment for those offenses, the judge shall:

(1) conduct an inquiry and advise the person as in subsection (c) with respect to the non-extraditable offense(s); and

(2) inform the person that he or she cannot be extradited from the Republic for such other offense, and after the inquiry, shall determine on the record whether the person fully understands the matters enumerated in this subsection and subsection (c), and if so, whether the person continues to voluntarily consent to surrender for the non-extraditable offenses as well as for the extraditable offense.

(f) Where the judge is satisfied that:

(1) the person has waived extradition for any extraditable offense and the consent to surrender for the extraditable offenses was given with notice and voluntarily; and, where applicable;

(2) the consent to surrender for any non-extraditable offenses was given with notice and voluntarily, the judge shall order that the person be taken into custody pending the person's surrender, and shall, without undue delay, issue a surrender warrant for the person with respect to the offense for which the person has consented to be surrendered.

[Header A: **EXTRADITION OF PERSONS 18 PNCA § 10.125**

]

### Source

RPPL 6-5 § 1[20].

### Notes

## Palau National Code Annotated (PNCA) Title 18

The words “taken into custody” in subsection (f)(2) reads “taken into the custody” in RPPL 6-5 § 1[20].

### § 10.125. Surrender determination hearing.

(a) Where the Minister of Justice or his or her designee has instituted extradition **proceedings**, and the person has not waived extradition or voluntarily consented to surrender, a judge shall hold a hearing to determine whether the person should be surrendered.

(b) The surrender determination hearing shall commence no later than 60 days after the filing of the application for extradition and surrender, and shall be open to the public and recorded.

(c) The evidence shall be limited to the following:

(1) whether the person is the person named in the arrest warrant of the requesting country;

(2) whether the offense for which extradition is sought is an extraditable offense;

(3) whether the requesting country is an extradition country;

(4) whether supporting documents have been filed with the Supreme Court, and whether such documents have been properly authenticated where required;

(5) whether the supporting documents and other evidence adduced in the extradition **proceedings** support a finding that the person committed the extraditable offense, or is in violation of a court order issued in the requesting country in respect of an extraditable offense; and

(6) whether any extradition objection has arisen, and if so, whether such extradition objection or any other law, compelling circumstance, or national interest precludes surrender of the person.

(d) The surrender determination hearing and all other extradition **proceedings** held under this chapter shall not decide the guilt or innocence of the person.

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(e) The surrender determination hearing and all other extradition **proceedings** under this

[Header B: **18 PNCA § 10.125 CRIMINAL PROCEDURE**

]

chapter shall be conducted as special **proceedings** which are neither exclusively civil nor criminal in nature, and which are held solely to determine whether the requirements of this chapter have been met and the circumstances are such that the chapter requires surrender of a person for the purpose of standing trial or serving a sentence for an extraditable offense.

(f) The person sought to be extradited shall be entitled to the assistance of legal counsel in all extradition **proceedings**, to notice of the charges pending in the requesting country, and to a hearing on whether an extradition request should be granted or denied.

(g) The presentation or establishment of a prima facie case is not required to grant an application for extradition and surrender; provided, however, where the law of the extradition country requires that evidence sufficient to support a prima facie case be presented in its extradition **proceedings**, and the Minister of Justice or his or her designee of the Republic requests that the court make a finding of whether a prima facie case has been presented:

(1) the judge shall assess the sufficiency of the evidence presented at the surrender determination hearing and make a finding on the record as to whether under the Republic's laws and rules of evidence, the evidence would be sufficient to place the person on trial had the offense been committed in the Republic; provided, however,

(2) Subsection (d) shall continue to apply.

### Source

RPPL 6-5 § 1[21].

### § 10.126. Surrender decision.

(a) At the conclusion of the surrender determination hearing, the judge shall consider the evidence and determine whether to grant or deny the application for extradition and surrender.

(b) The judge shall grant the application for extradition and surrender upon finding, by a preponderance of the evidence, that:

(1) the person is the person named in the arrest warrant of the requesting country;

[Footer A: Supp. 5 18 - 67]

[Header A: **EXTRADITION OF PERSONS 18 PNCA § 10.126**

]

(2) the offense for which extradition is sought is an extraditable offense;

(3) the requesting country is an extradition country; and

(4) the supporting documents have been filed and, where required, properly authenticated;

(5) the supporting documents and other evidence adduced in the extradition **proceedings** support a finding of probable cause to believe that the person committed the extraditable offense as such offense was presented and defined by the requesting country, or is in violation of a court order issued in the requesting country in respect of an extraditable offense; and

(6) there is no legally sustainable ground to deny the application.

(c) The judge shall deny the application for extradition and surrender where:

(1) a preponderance of the evidence has not established the matters set forth in subsections (b)(1) through (5);

(2) a valid extradition objection has arisen;

(3) the requesting country has failed to produce the affidavit on specialty and other obligations, or has failed to agree with any promise, obligation, condition, or assurance that the Minister of Justice or his or her designee or the judge imposed regarding the treatment of the person, and the Republic does not have an extradition treaty with the requesting country under which such obligations are required; or

(4) taking into consideration the national interests of the Republic, including.

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(i) its interest in effective international cooperation to combat **crime**;

(ii) the severity of the offense;

(iii) the length of time that has elapsed since commission of the offense;

or

[Header B: **18 PNCA § 10.126 CRIMINAL PROCEDURE**

]

(iv) the length of time remaining on a sentence to be served, the interests of justice demand that the person not be surrendered.

(d) Within seven days of the surrender determination hearing, the judge shall issue a written decision granting or denying the application for extradition and surrender, accompanied by findings of fact and conclusions of law, and where the application is granted, listing:

(1) the extraditable offense for which the person is ordered to be surrendered, and,

(2) any other offenses of which the person is found to have voluntarily consented to surrender.

(e) Where the judge determines that the application for extradition and surrender should be denied, the person shall be released from extradition **proceedings**.

(f) Where the judge determines that the application for extradition and surrender should be granted, the judge shall issue a surrender warrant, ordering that the person be committed to the custody of the Republic, to await surrender within the time limits established by section 10.131.

(g) The Minister of Justice or his or her designee shall promptly notify the requesting country of the judge's decision and provide the requesting country with a copy of the written decision.

### Source

RPPL 6-5 § 1[22].



**Notes**

In re Lee, 12 ROP 196, 197 (Tr. Div. 2005).

**§ 10.127. Applications for re-extradition.**

(a) Where multiple extradition requests have been received, and the Minister of Justice or his or her designee has instituted extradition **proceedings** on behalf of one requesting country, but another requesting country seeks surrender of the same person for a different extraditable offense, upon the Minister of Justice or his or her designee's filing of an application for re-extradition on behalf of the other requesting country, the judge shall be authorized to determine whether the person can be re-extradited to that other country after the criminal **proceedings** have concluded in the first country to which the person is extradited.

[Header A: **EXTRADITION OF PERSONS 18 PNCA § 10.128**

]

[Footer A: Supp. 4 18 - 69]

(b) Applications for re-extradition shall be made in the same manner as applications for extradition and surrender and must:

(1) be filed by the Minister of Justice or his or her designee on behalf of the country seeking re-extradition, before the surrender determination hearing held on the first requesting country's application for extradition and surrender;

(2) be approved by the first requesting country for re-extradition of the person to the second country seeking re-extradition; and

(3) meet all requirements of this chapter for extradition of the person to a requesting country.

(c) Where an application for re-extradition has been properly filed, at the conclusion of the surrender determination hearing the judge shall determine whether to grant or deny the application for re-extradition, and shall issue an order stating findings of fact and conclusions of law justifying the decision.

(d) The Minister of Justice or his or her designee may file applications for re-extradition on behalf of any foreign state seeking extradition of the same person, and the judge may consider and rule upon any number of such applications; provided, however, only one such application shall be allowed on behalf of each foreign state.

**Source**

RPPL 6-5 § 1[23].

**§ 10.128. Surrender warrant deferred surrender.**

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(a) A surrender warrant shall:

- (1) be in writing;
- (2) state the offense for which the person is to be surrendered;
- (3) require the Director of the Bureau of Public Safety to take custody of the person;
- (4) authorize the Director of the Bureau of Public Safety or a law enforcement officer whom the Director designates to transport and hold the person in custody

[Header B: **18 PNCA § 10.128 CRIMINAL PROCEDURE**

]

for such time as is necessary to enable the person to be transferred to the custody of the foreign escort officer within the time limits established by section 10.131; and

- (5) authorize the foreign escort officer to transport the person out of the Republic to the requesting country.

(b) If the person subject to the surrender warrant is already serving a sentence or has been charged for another offense committed in the Republic, the judge may order that the surrender warrant be held in abeyance and that execution be deferred until the person:

- (1) has completed the sentence and is scheduled to be released from custody;
- (2) has been tried and acquitted or convicted for the other offense, and has completed any sentence for such offense and is scheduled to be released from custody.

### **Source**

RPPL 6-5 § 1[24].

### **§ 10.129. Limited surrender for trial.**

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(a) Where a judge determines after a surrender determination hearing that an extradition request and application for extradition and surrender should be granted, but:

(1) the person is being prosecuted or is serving a sentence in the Republic for an offense other than that for which extradition has been requested; and

(2) surrender is sought for an offense of which the person is accused but has not been convicted,

the judge may either defer the surrender until the conclusion of the **proceedings** or the full execution of any sentence, or may order limited surrender of the person for the purpose of trial in the requesting country.

(b) The judge shall not grant limited surrender for trial unless the law of the requesting country permits the return of offenders to the Republic after conviction in the requesting country, and the judge is satisfied by the affidavit on specialty and other obligations that:

[Header A: **EXTRADITION OF PERSONS 18 PNCA § 10.130**

]

(1) the person will be given a speedy trial in the requesting country;

(2) the person will be returned to the Republic after the trial, even if convicted; and

(3) adequate provision has been made for the person's travel to the requesting country and return.

(c) Persons surrendered pursuant to this section shall remain in custody during the period of surrender and shall be returned to the Republic at the conclusion of the trial **proceedings** held in the requesting country.

### Source

RPPL 6-5 § 1[25].

### § 10.130. Temporary surrender warrant.

(a) Upon application of the Minister of Justice or his or her designee, the judge may issue a temporary surrender warrant instead of a surrender warrant, for limited surrender for purposes of trial.

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(b) A temporary surrender warrant must comply with the same requirements established for surrender warrants, and in addition shall state the terms of limited surrender, including:

- (1) surrender has been granted for trial only;
- (2) the person shall be given a speedy trial in the requesting country;
- (3) the person shall be returned to the Republic after the trial, and if convicted, without execution of any sentence imposed; and
- (4) the requesting country shall bear the expense and provide for the person's travel to the requesting country and return.

(c) Where a person who was the subject of a temporary surrender warrant was surrendered to the requesting country and was returned after trial in the requesting country: and,

- (1) has completed his or her sentence in the Republic; or

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[Header B: **18 PNCA § 10.130 CRIMINAL PROCEDURE**

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- (2) has been tried and acquitted, or convicted for the offense in the Republic and has completed any sentence and is scheduled to be released from custody;

the judge may issue a surrender warrant for imposition and execution of the sentence imposed in the requesting country for the extraditable offense for which the person had been temporarily surrendered for trial.

(d) Any time a person spends in custody in a requesting country as a result of a temporary surrender warrant shall count toward the sentence being served, or for calculating the time to be served for any sentence imposed after conviction in the Republic **proceeding** that was pending against the person before limited surrender.

(e) Where a person who is the subject of a temporary surrender warrant completes the sentence being served while in custody in the requesting country, the Minister of Justice or his or her designee shall so advise the requesting country, and the return of the person is not required.

**Source**

RPPL 6-5 § 1[26].

**§ 10.131. Execution of a surrender warrant.**

(a) Where a surrender warrant has been issued, the Minister of Justice or his or her designee shall immediately notify the requesting country of the time limitations of this section, the length of time the person has been held in custody since issuance of the surrender warrant, and of the requesting country's obligation to expeditiously arrange for execution of the surrender warrant.

(b) Where a person is in custody pursuant to a surrender warrant, but has not been surrendered within 60 days of the date the surrender warrant was issued, the person may apply to a judge for rescission of the surrender warrant and release from custody, and a hearing shall be held on the application.

(c) Subsection (b) shall not apply where a surrender warrant has been held in abeyance and execution of the warrant deferred because the person is serving a sentence in the Republic or is a defendant in a criminal case which has not been concluded.

(d) Notice shall be given to the Minister of Justice or his or her designee where an application for rescission of the surrender warrant is made, and a hearing shall be held

[Header A: **EXTRADITION OF PERSONS 18 PNCA § 10.132**

]

within a reasonable time.

(e) At the hearing, the Minister of Justice or his or her designee shall have the burden of establishing by a preponderance of the evidence that there is justifiable cause for the delay in executing the surrender warrant.

(f) Unless the evidence establishes that there was justifiable cause for delay in executing the surrender warrant, the judge shall grant the application for rescission and order that the person be released from custody with respect to the extradition proceedings.

(g) Justifiable cause for delay includes, but is not limited to:

(1) surrender during that time period would have endangered the person's life, health, or personal safety;

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(2) no suitable means of transport was available, and all reasonable steps were taken to obtain suitable transport; or

(3) there was delay by a third country in responding to a request by the requesting country for permission to transport the person through the third country, and all reasonable steps were taken to obtain the permission; or

(4) the remoteness of the requesting country made it unreasonable to expect that surrender could be effected within the time limit.

(h) The judge shall deny the application for rescission of the surrender warrant where the evidence establishes that there was justifiable cause for delay in surrendering the person, and order that the person continue to be held in custody for an additional period not to exceed 60 days, unless renewed in accordance with this section.

(i) Even with justifiable delay, no person shall be held in custody pursuant to a surrender warrant longer than 180 days, when the surrender warrant shall automatically expire.

### Source

RPPL 6-5 § 1[27].

### § 10.132. Evidence-taking in the Republic.

(a) Where a request has been made to the Minister of Justice or his or her designee for

[Header B: **18 PNCA § 10.132 CRIMINAL PROCEDURE**

]

the taking and gathering of evidence in the Republic relating to an extraditable offense committed in a extradition country, the Minister of Justice or his or her designee shall consider and **act** upon the request pursuant to applicable Palau law.

(b) In any case where the Minister of Justice or his or her designee has instituted or intends to institute extradition **proceedings**, the Minister of Justice or his or her designee may, consistent with Palau law, authorize and assist a requesting country in gathering evidence in the Republic, subject to appropriate conditions, for use in:

(1) any **proceedings** for the extradition of the person from the Republic;

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(2) any **proceedings** in the extradition country relating to the prosecution or punishment of such person for the extraditable offense.

### Source

RPPL 6-5 § 1[28].

### § 10.133. Curing of deficiencies or defects in documents.

In any **proceeding** under this chapter, where a required document is defective or deficient in any respect, and the judge considers the defect or deficiency to be readily curable, in the interest of justice, the judge may continue the **proceedings** for a reasonable period to allow the defect or deficiency to be cured.

### Source

RPPL 6-5 § 1[29].

## Subchapter III

### Extradition to Comity Countries

§ 10.141. Designation or deeming of a comity country as extradition country.

§ 10.142. Limitation on commencement of extradition **proceedings**.

### § 10.141. Designation or deeming of a comity country as an extradition country.

(a) At any time, a comity country may be designated by regulation as an extradition country for purposes of this chapter.

[Header A:       **EXTRADITION TO COMITY COUNTRIES 18 PNCA § 10.142**

]

(b) The Minister of Justice or his or her designee may certify a comity country as an extradition country for purposes of a particular extradition request, where, considering the seriousness of the offense and the national interest in combating **crime**, wherever it occurs, the public interest of the Republic and the comity country warrant such certification, provided the other requirements of this chapter are met.

(c) When the Minister of Justice or his or her designee certifies a comity country as an extradition country, the Minister of Justice or his or her designee may also specify conditions that are to apply to the extradition request, and may require the comity country to enter into reasonable obligations, promises, and agreements as evidenced by an affidavit on specialty and other obligations.

(d) Where a comity country is designated an extradition country through regulations or certification of the Minister of Justice or his or her designee, extradition from the Republic to such comity country shall be allowable and the provisions and procedures of this chapter shall apply.

### Source

RPPL 6-5 § 1[30].

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### § 10.142. Limitation on commencement of extradition proceedings.

Extradition proceedings may not be commenced on a request from a comity country until the country has been designated an extradition country by regulation or certification of the Minister of Justice or his or her designee.

#### Source

RPPL 6-5 § 1[31].

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[Header B: 18 PNCA § 10.151 CRIMINAL PROCEDURE

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### Subchapter IV

#### Search, Seizure and Transit

§ 10.151. Application of other laws.

§ 10.152. Search for and seizure of tainted property in relation to foreign offenses.

§ 10.153. Transit.

#### 10.151. Application of other laws.

(a) In addition to the procedures set forth in this chapter, the provisions of chapter 3 of title 18 of the Palau National Code and the Money Laundering and Proceeds of Crime Act shall apply to any search, seizure, arrest, confiscation, or other activity authorized under this chapter.

(b) Any action authorized by the Money Laundering and Proceeds of Crime Act shall be authorized under this chapter, including confiscation of tainted property, pecuniary penalties, search and seizure of tainted property, the issuance of restraining orders and production orders, and realization of property.

#### Source

RPPL 6-5 § 1[32].

#### § 10.152. Search for and seizure of tainted property in relation to foreign offenses.

(a) Where an extradition country requests assistance with the location or seizure of property suspected to be evidence or tainted and related to an extraditable offense, the Money Laundering and Proceeds of Crime Act shall apply, provided that the Minister of Justice or his or her designee has authorized the giving of assistance to the foreign state under the Mutual Assistance in Criminal Matters Act.



## Palau National Code Annotated (PNCA) Title 18

(b) Subsection (a) shall apply regardless of whether an extradition request has already been made or received.

### Source

RPPL 6-5 § 1[33].

**[Header A: SEARCH, SEIZURE AND TRANSIT 18 PNCA § 10.153**

]

§ 10.153. Transit.

(a) Notice to and approval by the Minister of Justice of an official request shall be required to transit through the Republic a person who is accused or convicted of a serious offense and is being extradited for trial or service of a sentence of imprisonment or conditional release.

(b) Where an extradition or comity country makes an official request for transit through the Republic and notwithstanding any immigration law, the Minister of Justice shall give permission to such extradition or comity country to transport through the Republic:

(1) any person who has been duly surrendered to the extradition or comity country by another country, for purposes of extradition for a serious offense that is not a political offense or an offense of purely military character; and

(2) any convicted person being transferred to an extradition or comity country from another country for service of a sentence of imprisonment, or supervision over the person's conditional release,

unless the national security interests of the Republic clearly require that such permission be denied; provided, however, a request for transit may be refused where a request for extradition of the person from the Republic of that extradition country for the same offense would not have been allowable under this chapter, or where there is reason to believe that the person's safety might be threatened.

(c) Where transit permission is given, a law enforcement officer in the Republic may assist the foreign escort officer escorting the person, and the person may be held in custody in the Republic until the person's journey to the extradition country can continue.

(d) If it becomes necessary to hold a person transiting through the Republic in accordance with subsection (a) in custody for more than 96 hours, the person shall be brought before a judge who may issue an order to commit the person to continued custody in the Republic until the person's journey to the extradition country can continue.

(e) When transit of a person is to be made by air transport and no stop is scheduled to be made in the Republic, no prior notice or approval of such transit is required; provided, however, in the case of extenuating circumstances creating an unscheduled landing in the Republic, immediate notice shall be given to the Minister of Justice which shall have the effect of a request for provisional arrest, and the foreign state having custody of the

[Header B: **18 PNCA § 10.153 CRIMINAL PROCEDURE**

]

person shall submit an official request for transit to the Minister of Justice, who shall be authorized to take any legal action necessary or expedient in such circumstances.

**Source**

RPPL 6-5 § 1[34].

**Subchapter V**

**Transnational Extradition of Persons from a Foreign State to the Republic**

§ 10.161. Surrender to the Republic.

§ 10.162. Surrendered persons to be brought before a judge.

§ 10.163. Limitations on prosecution and detainment.

§ 10.164. Persons temporarily surrendered to the Republic.

§ 10.165. Evidence for purposes of surrender to the Republic.

**§ 10.161. Surrender to the Republic.**

A person may be surrendered to the Republic from any foreign state for purposes of prosecution or punishment of the person for any serious offense that the person committed or allegedly committed in the Republic.

**Source**

RPPL 6-5 § 1[39].

**§ 10.162. Surrendered persons to be brought before a judge.**

(a) A person surrendered to the Republic for a serious offense shall be brought into the Republic and delivered to the appropriate authorities.

(b) The Minister of Justice or his or her designee shall designate an authorized officer to escort the person surrendered from the foreign state, and the person shall remain in custody during transit.

(c) Upon entry of the person into the Republic, the person shall be brought before a judge as soon as practicable, but in any event within 48 hours, and shall be committed to custody until the person can be tried or the imposition of any sentence.

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**Source**

RPPL 6-5 § 1[36].

**§ 10.163. Limitations on prosecution and detainment.**

A person surrendered to the Republic for any serious offense shall not, without having the opportunity to voluntarily depart the Republic:

(a) be detained or tried for any offense committed before surrender, other than the offense for which surrender was made, except for alternate and lesser included offenses in lieu of the original offense on proof of the same facts constituting the original offense and for which the penalty is no greater than the penalty for the original offense;

(b) be detained for surrender to a third foreign state for an offense committed before surrender to the Republic, unless the judge or magistrate in the surrendering country has so ordered in the surrender determination **proceedings**, and other requirements of this chapter for extradition have been met.

**Source**

RPPL 6-5 § 1[37].

**§ 10.164. Persons temporarily surrendered to the Republic.**

(a) Where a person is temporarily surrendered to the Republic for trial for a serious offense, but has criminal charges pending or an uncompleted sentence in the surrendering country, the person shall:

(1) be kept in custody at all times in compliance with any condition to which the surrendering country specified and the Minister of Justice or his or her designee agreed;

(2) not be prosecuted, detained, or punished for any offense other than that for which temporary surrender was granted, except for alternate and lesser included offenses in lieu of the original offense, on proof of the same facts constituting the original offense, and for which the penalty is no greater than the penalty for the original offense, and

(3) be returned to the surrendering country after trial.

[Header B: **18 PNCA § 10.164 CRIMINAL PROCEDURE**

]

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(b) Where a person has been temporarily surrendered, and the surrendering country officially notifies the Republic that it no longer requires the person to be returned:

(1) if the person is convicted in the Republic, any sentence imposed shall be immediately executed;

(2) if the person is not convicted in the Republic of the offense for which the person was surrendered, or any alternate offense, such person shall be released from custody; provided, however,

(i) such release shall be subject to the immigration laws of the Republic;

(ii) the person shall, upon request, be returned to the surrendering country, at the Republic's expense.

### Source

RPPL 6-5 § 1[38].

### § 10.165. Evidence for purposes of surrender to the Republic.

Where the Minister of Justice or his or her designee intends to seek extradition of a person to the Republic, the Minister of Justice or his or her designee may authorize the taking of evidence in the surrendering foreign state for use in any **proceedings** relating to the person's extradition to the Republic or to the offense, provided that the evidence be taken pursuant to the Mutual Assistance in Criminal Matters **Act** and the Foreign Evidence **Act**.

### Source

RPPL 6-5 § 1[39].

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[Header A:       **TRANSFER OF CONVICTED PERSONS 18 PNCA § 10.171**

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## Subchapter VI

### Transfer of Convicted Persons

§ 10.171. Transfer of convicted persons allowed.

§ 10.172. Conditions of eligibility for transfer of convicted persons.

§ 10.173. Obligation to provide information to persons convicted in the Republic to extradition countries.

§ 10.174. Requests for transfer.

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§ 10.175. Supporting documents required for requests for transfer.

§ 10.176. Verification of convicted person's consent to transfer.

§ 10.177. Effect of transfer for receiving country; authorization where receiving country is the Republic;

§ 10.178. Effect of transfer for transferring country.

§ 10.179. Continued enforcement in receiving country.

§ 10.180. Conversion of sentencing order or order for conditional release.

§ 10.181. Pardon; amnesty; commutation.

§ 10.182. Review of judgment.

§ 10.183. Termination of enforcement.

§ 10.184. Information on enforcement.

§ 10.185. Transit of convicted persons.

§ 10.186. Language; authentication of documents; and costs.

§ 10.187. Retroactive effect.

§ 10.188. Relationship to extradition treaties and international agreements.

§ 10.189. Liberal construction; friendly settlement.

### **§ 10.171. Transfer of convicted persons allowed.**

(a) The Republic shall afford the widest measure of cooperation with the transfer of persons convicted of serious offenses to and from the Republic, in accordance with the provisions of this chapter which applies to convicted persons who have been sentenced to imprisonment or to a period of conditional release, including probation, a suspended sentence, or parole.

(b) A citizen of the Republic who has been convicted of a serious offense in a foreign state, and sentenced to a term of imprisonment or conditionally released, may be transferred to the Republic for service of any sentence imposed by the foreign court or for enforcement of any conditions of a conditional release order.

[Header B: **18 PNCA § 10.171 CRIMINAL PROCEDURE**

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(c) A citizen of any foreign state who has been convicted of a serious offense in the Republic, and sentenced to a term of imprisonment or conditionally released, may be transferred to such foreign state in accordance with this chapter for service of any sentence imposed by the court or for enforcement of any conditions of a conditional release order.

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(d) The convicted person may request transfer to the transferring country or the receiving country, or the transferring country or the receiving country may request transfer.

### Source

RPPL 6-5 § 1[40].

### § 10.172. Conditions of eligibility for transfer of convicted persons.

A person convicted of a serious offense in the Republic, in an extradition country, or in a foreign state that is not an extradition country, may be transferred to serve the sentence or for enforcement of the terms of any conditional release order, where all of the following conditions are met:

- (a) the person is a citizen of the receiving country;
  
- (b) the foreign country has agreed to comply with the requirements of this chapter, evidenced by a written agreement stating the terms of the transfer, signed by the Minister of Justice or his or her designee or chief law enforcement officer of both the transferring country and the receiving country;
  
- (c) the judgment of conviction is final, any appeal procedures have been completed, and no collateral or extraordinary remedies are pending;
  
- (d) the convicted person voluntarily consented to the transfer, with full knowledge of the consequences, or the convicted person's attorney consented if the person cannot due to any medically diagnosed physical or mental impairment or condition;
  
- (e) before the transfer, the transferring country has afforded an opportunity to the receiving country to verify the consent;
  
- (f) both the transferring country and receiving country agree to the transfer, as evidenced by the written agreement;

[Header A:       **TRANSFER OF CONVICTED PERSONS 18 PNCA § 10.173**

]

(g) where the person has been sentenced to imprisonment, at the time of receipt of the request for transfer, at least six months of the sentence remain to be served; however, in exceptional cases where the interest of justice requires, a sentenced person may be transferred even if the remaining time to be served is less than six months.

### Source

RPPL 6-5 § 1[41].

### § 10.173. Obligation to provide information to persons convicted in the Republic and to extradition countries.

## Palau National Code Annotated (PNCA) Title 18

(a) Where a citizen of a foreign state is convicted of a serious offense in the Republic, the court shall inform the person and legal counsel about the opportunity for transfer under this chapter, and of the procedure for making a request for transfer.

(b) Where the convicted person is a citizen of an extradition country, the Minister of Justice or his or her designee shall inform the extradition country of the conviction as soon as practicable after the conviction becomes final, and shall provide the extradition country with the following information:

(1) the person's name, date and place of birth, and passport number;

(2) the person's address or place of residence in the extradition country;

(3) a statement of the facts upon which the conviction was based;

(4) a statement describing the judgment and any order of commitment or conditional release.

(c) Where the convicted person is a citizen of a foreign state that is not an extradition country, the court may, upon request of the person, order the Minister of Justice or his or her designee to provide the foreign state with the information in subsection (b).

(d) Convicted persons shall be informed in writing of any action that the Minister of Justice or his or her designee takes and any decision made by the Republic or the extradition country or any foreign state with respect to a request for transfer.

### Source

RPPL 6-5 § 1[42].

### [Header B: 18 PNCA § 10.174 CRIMINAL PROCEDURE

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§ 10.174. Requests for transfer.

(a) The Minister of Justice or his or her designee shall make a request for transfer of a convicted person and any subsequent communications in writing through diplomatic channels to the receiving country.

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(b) Requests made to the Republic for transfer of a citizen of the Republic convicted of a serious offense in any foreign state shall be in writing and communicated to the Minister of Justice or his or her designee, who shall review and **act** upon such request promptly and shall inform the foreign state in writing of the decision.

(c) A request for transfer of a convicted foreign citizen shall be made only with the approval of the President of the Republic, after consultation with the Minister of Justice, the Director of the Bureau of Public Safety, and the judge rendering the judgment of conviction.

(d) A request for transfer of a citizen of the Republic shall require the approval of the President of the Republic, after consultation with the Minister of Justice and the Director of the Bureau of Public Safety.

(e) In deciding a request for transfer, the following shall be taken into account:

(1) whether the transfer would adversely affect the rights of the victims of the offense, particularly with respect to any rights to the payment of restitution or compensation by the person;

(2) whether the transfer would contribute positively to the person's social rehabilitation and lawful reintegration into society;

(3) the seriousness of the **crime**;

(4) the person's previous criminal record;

(5) the physical and mental health of the person;

(6) the ties that the person may have to the transferring and receiving countries;

(7) the capability of the receiving country to enforce the sentence or conditions of release, and the likelihood of enforcement in substantial compliance with the court

[Header A:       **TRANSFER OF CONVICTED PERSONS 18 PNCA § 10.175**

]

order;



(8) considering the economic status and other factors of the transferring country, the ability of that country to enforce the sentence or conditions of release in that country if the person is not transferred;

(9) the respective prison conditions in the transferring country and the receiving country, if the person has been sentenced to imprisonment, including whether the prison conditions in the receiving country are at least substantially equivalent to the minimum standards for imprisonment in the transferring country;

(10) whether the transfer will substantially contribute to the development of more effective regional and international cooperation in law enforcement, particularly with respect to penal matters; and

(11) whether the transfer will advance the principles embodied in the Universal Declaration of Human Rights, adopted on 10 December 1948, and the International Covenant on Civil and Political Rights, adopted on 16 December 1966.

**Source**

RPPL 6-5 § 1[43].

**§ 10.175. Supporting documents required for requests for transfer.**

(a) A document or statement verifying that each of the conditions of eligibility for transfer of convicted persons has been met shall be provided by the transferring country to the receiving country.

(b) Where a request for transfer is made, the transferring country shall also provide the following documents to the receiving country:

(1) a certified copy of the judgment of conviction and sentence, and a copy of the law on which the conviction is based;

(2) a statement indicating how much of the sentence of imprisonment has already been served, or what conditions of the conditional release order have been satisfied, together with information on any pre-trial detention, and any other factor relevant to the enforcement of the sentence or conditional release;

[Header B: **18 PNCA § 10.175 CRIMINAL PROCEDURE**

## Palau National Code Annotated (PNCA) Title 18

- (3) a document signed by the person evidencing the person's consent to the transfer if required; and
  
- (4) any available medical, psychological, or social reports pertaining to the person, together with information about any medical or other therapeutic treatment received and any recommendation for further treatment.

(c) The transferring country or the receiving country may demand receipt of any of these documents or statements before making or deciding a request for transfer.

### Source

RPPL 6-5 § 1[44].

### § 10.176. Verification of convicted person's consent to transfer.

(a) The transferring country and the receiving country shall ensure that the person required to give consent to the transfer does so voluntarily and with full knowledge of the legal consequences.

(b) The transferring country shall afford an opportunity to the receiving country to verify through a consul, other verifying officer, or official agreed upon, that the consent is given knowingly and voluntarily.

(c) The procedure for giving and verifying consent shall be as follows:

(1) Before the transfer of a person from or to the Republic, a verifying officer shall inquire whether the person understands and agrees that the consent to transfer, once verified, is irrevocable and that the transfer will be subject to the conditions imposed by this chapter;

(2) Before determining that a person's consent is voluntary and knowing, the verifying officer shall advise the person of the person's right to consult with legal counsel; and if the person so desires, the **proceedings** will be continued until the person has had an opportunity to consult with legal counsel;

(3) The verifying officer shall determine that the consent is voluntary and not the result of any promises, threats, or other improper inducements;

(4) The consent of the person and acceptance by the transferring and receiving

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countries shall be in writing and signed by the person and his or her legal counsel, and endorsed by the verifying officer, and the Minister of Justice or his or her designee or chief law enforcement officer of the transferring country;

(5) The verification of consent **proceedings** shall be recorded, and the verifying officer shall maintain custody of the records.

**Source**

RPPL 6-5 § 1[45].

**§ 10.177. Effect of transfer for transferring country.**

(a) The taking charge of a person by the receiving country's authorities shall have the effect of suspending the enforcement of the sentence or conditional release order in the transferring country.

(b) The transferring country may no longer enforce the sentence or conditional release order if the receiving country considers enforcement of the sentence or conditional release order to have been completed.

**Source**

RPPL 6-5 § 1[46].

**§ 10.178. Effect of transfer for receiving country; authorization where receiving country is the Republic.**

(a) The authorized authorities of the receiving country shall:

(1) continue enforcement of the sentence or conditional release order through a court or administrative order, under the conditions set out in section 10.179; or

(2) convert the sentence, through a judicial or administrative procedure, into a decision of that country, thereby substituting for the sanction imposed in the transferring country a sanction prescribed by the law of the receiving country for the same offense.

(b) If requested, the receiving country shall inform the transferring country before the transfer of the sentenced person as to which procedure it will follow.

]

(c) The law of the receiving country shall govern enforcement of the sentence or conditional release order, and that country alone shall be authorized to take all appropriate decisions.

(d) Any country which cannot avail itself of one of the procedures to enforce measures imposed in another country on persons who for reasons of mental condition have been held not criminally responsible for the commission of the offense, but which is still prepared to receive such persons for further treatment, may indicate in advance of any transfer or decision on whether to agree to a transfer the procedures it will follow in such cases.

(e) Where the Republic is the receiving country, judges of the Supreme Court shall be authorized to:

(1) continue the enforcement of the sentence or conditional release order foreign state's court order through an order; or

(2) convert the sentence or conditional release order of the foreign state's court, through a judicial determination, into a decision of the Supreme Court, thereby substituting a sanction prescribed by the law of the Republic for the same offense.

**Source**

RPPL 6-5 § 1[47].

**§ 10.179. Continued enforcement in the receiving country.**

(a) In the case of continued enforcement, the receiving country shall be bound by the nature and duration of the sentence, conditional sentence, or conditional release.

(b) Notwithstanding subsection (a), where the sentence or conditional release order is by its nature or duration incompatible with the law of the receiving country, or its law so requires, by a court or administrative order, the receiving country shall adapt the sanction to a punishment or measure prescribed by its own law for a similar offense; provided, however, such punishment or measure shall correspond with the sentencing order to be enforced as far as possible.

(c) The receiving country shall not aggravate the sanction by its nature or duration, nor exceed the maximum prescribed by the law of the receiving country.

[Header A:       **TRANSFER OF CONVICTED PERSONS 18 PNCA § 10.181**

]

**Source**

## Palau National Code Annotated (PNCA) Title 18

RPPL 6-5 § 1[48].

### § 10.180. Conversion of sentencing order or order for conditional release.

(a) In the case of conversion of a sentencing order or an order for conditional release, the procedures provided by the law of the receiving country apply.

(b) When converting a sentencing order or an order for conditional release, the authorized authority of the receiving country:

(1) shall be bound by the findings of facts insofar as they appear explicitly or implicitly from the judgment;

(2) may not convert a sanction involving deprivation of liberty to a pecuniary sanction;

(3) shall deduct from the full period of deprivation of liberty the period already served; and

(4) shall not increase the term of imprisonment, and shall not be bound by any minimum the receiving country may provide for the offense committed.

(c) If the conversion procedure takes place after the transfer of the convicted person, the receiving country shall keep that person in custody or otherwise ensure the person's presence in the receiving country pending the outcome of that procedure.

#### Source

RPPL 6-5 § 1[49].

### § 10.181. Pardon, amnesty, commutation.

Either the transferring country or the receiving country may grant pardon, amnesty, or commutation of a sentencing order or an order for conditional release, in accordance with its Constitution or other laws.

#### Source

RPPL 6-5 § 1[50].

### [Header B: 18 PNCA § 10.182 CRIMINAL PROCEDURE

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§ 10.182. Review of judgment.

## Palau National Code Annotated (PNCA) Title 18

The transferring country alone shall have the right to decide on any application for review of the judgment.

### Source

RPPL 6-5 § 1[51].

### § 10.183. Termination of enforcement.

The receiving country shall terminate enforcement of the sentence or conditional release as soon as it is informed by the transferring country of any decision or measure whereby the sentence or conditional release ceases to be enforceable.

### Source

RPPL 6-5 § 1[52].

### § 10.184. Information on enforcement.

The receiving country shall inform the transferring country:

- (a) when it considers enforcement of the sentence to have been completed;
- (b) if the sentenced person has escaped from custody; or
- (c) if the transferring country requests a special report.

### Source

RPPL 6-5 § 1[53].

### § 10.185. Transit of convicted persons.

A convicted person transiting through the Republic pursuant to this section shall not be prosecuted, or detained, or otherwise subjected to any restriction of liberty in the Republic for any offense committed or sentence imposed before the person's departure from the transferring country.

[Header A:       **TRANSFER OF CONVICTED PERSONS 18 PNCA § 10.188**

]

### Source

RPPL 6-5 § 1[54].

### § 10.186. Language, authentication of documents, and costs.

- (a) Information required under section 10.173(a) shall be provided to the person in the person's language, where the person does not understand the English language.

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(b) Requests for transfer of convicted persons and supporting documents shall be in the English language or accompanied by a translation into the English language.

(c) Except as provided in section 10.175(b)(1), certification of documents transmitted in application of this chapter shall not be required.

(d) The receiving country shall bear any costs incurred in the application of this chapter except costs incurred exclusively in the transferring country.

### Source

RPPL 6-5 § 1[55].

### § 10.187. Retroactive effect.

This chapter shall apply to the enforcement of any sentence or conditional release order imposed before its entry into force.

### Source

RPPL 6-5 § 1[56].

### § 10.188. Relationship to extradition treaties and international agreements.

This chapter does not affect the rights and undertakings derived from extradition treaties and other treaties or international agreements on international cooperation in criminal matters providing for the transfer of detained persons for purposes of confrontation or testimony.

### Source

RPPL 6-5 § 1[57].

## [Header B: 18 PNCA § 10.189 CRIMINAL PROCEDURE

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§ 10.189. Liberal construction; friendly settlement.

This chapter shall be liberally construed so as to accomplish the purposes of this chapter, particularly with respect to the effective regional and international cooperation in penal matters and the lawful reintegration of criminal offenders into society, and to that end, the Republic shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of its application.

### Source

RPPL 6-5 § 1[58].

## Subchapter VII

### Miscellaneous

§ 10.191. Provision of evidence for prosecution by other countries.

§ 10.192. Costs and expenses.

§ 10.193. Judicial review.

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§ 10.194. Regulations.

§ 10.195. Unlawful flight to avoid prosecution or punishment.

### **§ 10.191. Provision of evidence for prosecution by other countries.**

Where the Republic seeks extradition of a person accused or convicted of a serious offense in the Republic; but,

(a) a foreign state has refused or failed to surrender the person to the Republic; and

(b) the foreign state has agreed to prosecute or punish the person for the offense for which the Republic sought surrender, upon request by the foreign state made pursuant to the Mutual Assistance in Criminal Matters Act, and approved by the Minister of Justice or his or her designee, the Minister of Justice or his or her designee shall provide the foreign state with all available evidence to enable the foreign state to prosecute and punish the person.

#### **Source**

RPPL 6-5 § 1[59].

[Header A: MISCELLANEOUS 18 PNCA § 10.193

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§ 10.192. Costs and expenses.

(a) The Republic shall bear all costs of any proceedings conducted in the Republic arising out of an extradition request, whether such request was made by the Republic or a foreign state, provided the foreign state affords reciprocal services to the Republic, including costs incurred in pursuing the request through the Supreme Court, and costs incurred in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought, and shall also bear the costs incurred in conveying a person whose extradition is sought by the Republic, from or returning the person to the Republic including transit costs.

(b) The requesting country shall bear the costs of any proceedings conducted in the requesting country arising out of an extradition request, including costs incurred in pursuing the request through the courts, and costs incurred in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought, and shall also bear the costs incurred in conveying a person whose extradition is sought by the requesting country from or returning the person to the requesting country including transit costs.

#### **Source**

RPPL 6-5 § 1[60].

### **§ 10.193. Judicial review.**

Judicial review of the detention or custody of a person under this chapter, or of any order issued or proceeding held under this chapter, shall be limited to an application for a writ of habeas corpus, and the scope of a habeas corpus review shall be limited to:



## Palau National Code Annotated (PNCA) Title 18

(a) jurisdiction of the court;

(b) whether a request for extradition was properly pursued under this chapter, and whether the chapter's requirements have been met;

(c) the identity of the person in custody or detained, or whose liberty has been restricted, and whether that person is the same person named in the arrest warrant issued in the requesting country; and

(d) whether there was sufficient evidence to support a finding of probable cause to believe that the person committed the serious offense as such offense was presented and

[Header B: **18 PNCA § 10.193 CRIMINAL PROCEDURE**

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defined by the laws of the requesting country, or is in violation of a requesting country court order.

### Source

RPPL 6-5 § 1[61].

### § 10.194. Regulations.

The Minister of Justice may promulgate regulations not inconsistent with this chapter, prescribing all matters necessary or convenient for giving effect to the chapter, including but not limited to:

(a) creating schedules which list treaty countries and extradition countries to which this chapter applies; provided, however, a foreign state shall be listed in only one such schedule;

(b) amending schedules;

(c) designating a comity country as an extradition country, pursuant to section 10.141;

(d) creating evidentiary regimes to be followed in proceedings applicable to particular countries, where special evidentiary requirements must be met for such countries;

(e) establishing the forms for arrest or surrender warrants;

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(f) setting out the text of extradition treaties or other applicable international agreements relating to extradition or transfer of convicted persons;

(g) establishing procedures for implementation of subchapter VII, including procedures for acceptance or rejection of requests for transfer; and

(h) clarifying any provision of this chapter where such becomes necessary in order to give effect to an extradition treaty.

### Source

RPPL 6-5 § 1[62].

**[Header A: MISCELLANEOUS 18 PNCA § 10.195**

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§ 10.195. Unlawful flight to avoid prosecution or punishment.

(a) A person who knowingly commits a crime against the Republic punishable by imprisonment for more than one year, and subsequently leaves the Republic in order to escape apprehension, prosecution, or punishment, commits a felony offense punishable by imprisonment for not more than three years, a maximum fine of \$25,000, or both.

(b) A person charged with or convicted of a crime against the Republic punishable by imprisonment for more than one year, who subsequently leaves the Republic in order to escape apprehension, prosecution, or punishment, in violation of a court order relating to the charge or conviction, commits a felony offense punishable by imprisonment for not less than six months and not more than ten years, a maximum fine of \$100,000, or both.

(c) In a prosecution for any offense created by subsection (a), there shall be a rebuttable presumption that the person left in order to escape apprehension, prosecution, or punishment, where the person left the Republic within 180 days of commission of the offense.

(d) In a prosecution for any offense created by subsection (b), it shall be presumed that the person left the Republic in order to escape apprehension, prosecution, or punishment, where the person left in violation of a court order not to leave the Republic and the person has refused to voluntarily return to appear at any proceedings relating to the relevant charge or conviction by waiving extradition and consenting to surrender.

### Source

RPPL 6-5 § 1[63].

[Header B: **18 PNCA CRIMINAL PROCEDURE**

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[Header A: **HABEAS CORPUS 18 PNCA § 1102**

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## **Chapter 11**

### **Habeas Corpus**

§ 1101. Power to grant writs of habeas corpus.

§ 1102. Application for writ.

§ 1103. Action by Clerk of Courts upon application for writ.

§ 1104. Show cause order.

§ 1105. Preliminary examination and recommendation by judge.

§ 1106. Issuance or denial of writ.

§ 1107. Evidence.

§ 1108. Appeals.

#### **§ 1101. Power to grant writs of habeas corpus.**

Writs of habeas corpus may be granted by the Trial Division of the Supreme Court or any judge or justice authorized to be assigned by the Chief Justice in the Appellate Division of

the Supreme Court. Every person unlawfully imprisoned or restrained of his liberty under any pretense whatsoever, or any person on behalf of an unlawfully imprisoned individual, may apply for a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.

#### **Source**

(Code 1966, § 300.) 9 TTC § 101, modified.

#### **Cross-reference**

For fundamental rights provisions regarding habeas corpus, see ROP Const., Art. IV, § 7; for Trust Territory Bill of Rights provision regarding habeas corpus, see § 403 of Title 1.

#### **Notes**

Wolff v. ROP, 9 ROP 104, 105 (2002).

Wolff v. Ngiraklsong, 9 ROP 78, 79 (2002).

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In re Gotina, 9 ROP 1, 2 (1999).

In Re Gotina, 8 ROP Intrm. 102, 103 (2000).

In re Singeru Techur, (App. Div. April 1976).

In re Yusim Minor, (App. Div. April 1976).

In re Application of HSU, 6 TTR 27 (1972).

Figir v. Trust Territory, 4 TTR 368 (1969).

Purako v. Efou, 1 TTR 236 (1955).

### **§ 1102. Application for writ.**

Application for the writ of habeas corpus shall be made to a court or judge or justice authorized to issue the same, or to the Clerk of Courts, by a written statement under oath signed by the party for whose relief it is intended, or by some person in his behalf. It shall set forth the facts

[Header B: **18 PNCA § 1102 CRIMINAL PROCEDURE**

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concerning the imprisonment or restraint of the person for whose relief it is intended, and, if known, the name of the person who has custody over him, and by virtue of what claim or authority the restraint or imprisonment is being practiced.

#### **Source**

(Code 1966, § 301.) 9 TTC § 102, modified.

#### **Notes**

Wolff v. ROP, 9 ROP 104, 105 (2002).

Wolff v. Ngiraklsong, 9 ROP 78, 79 (2002).

Koror State v. Ngiraingas, (Criminal Appeal No. 15-92).

### **§ 1103. Action by Clerk of Courts upon application for writ.**

If the application for a writ of habeas corpus is made to a clerk of courts, the clerk shall immediately bring the application to the personal attention of a court or judge or justice authorized to issue the writ.

#### **Source**

(Code 1966, § 302.) 9 TTC § 103, modified.

### **§ 1104. Show cause order.**

A court or judge or justice entertaining an application for a writ of habeas corpus shall issue an order directing the person against whom the writ is requested to show cause why the writ should not be granted, unless it appears from the application that the person detained is not entitled thereto. The order to show cause shall be directed to the person having custody of the person detained. The order shall set the time and place for hearing, which shall be as early as the court or judge or justice issuing the order deems practicable, preferably within three days. The person to whom the order is directed shall, at or before the time set for hearing, make a return certifying the true cause of the detention and unless the application for the writ and the return present only issues of law, the person to whom the order is directed shall produce at the hearing the person detained, unless the person is so sick or so weak that this cannot with safety be done. The

## Palau National Code Annotated (PNCA) Title 18

applicant, or the person detained may, under oath, deny any of the facts set forth in the return, or declare any other material facts. The application, the return, and any suggestions made against either of them may be amended by leave of the court or judge or justice. If the person to whom the order is directed does not make a return as above required, or does not appear at the time and place set for hearing, the court or judge or justice may proceed without him.

### Source

(Code 1966, § 303.) 9 TTC § 104, modified.

[Header A: **HABEAS CORPUS 18 PNCA § 1107**

]

### § 1105. Preliminary examination and recommendation by judge.

If the application for a writ of habeas corpus is heard by a judge of the Court of Common Pleas, he shall, without delay or formality, make preliminary findings of fact and recommendations as to the issuance or denial of the writ, and the disposition of the person detained, and submit these by dispatch or other speedy method to the Chief Justice or to the most accessible court or judge or justice authorized to issue the writ.

### Source

(Code 1966, § 304.) 9 TTC § 105, modified.

### § 1106. Issuance or denial of writ.

A court or judge or justice hearing the application for a writ of habeas corpus, and authorized to issue the writ, shall, without delay or formality, determine the facts, grant the writ unconditionally, deny the writ, or grant the writ on terms fixed by the court and discharge the person for whose relief the application has been brought or make any order as to his disposition that law and justice may require. The court or judge or justice authorized to issue the writ and receiving the report and recommendations of a judge of the Court of Common Pleas as provided in section 1105 of this chapter, may act upon the matter, by dispatch or other speedy method, on the basis of the Court of Common Pleas judge's report, or may order such further hearing or the submission of such further evidence as he deems law and justice require, and the Clerk of Courts shall take such action in the matter as the judge, justice or court may direct.

### Source

(Code 1966, § 305.) 9 TTC § 106, modified.

### Notes

Saunders v. ROP, 8 ROP Intrm. 90, 91 (1999).

In re Singeru Techur, (App. Div. April 1976).

In re Yusim Minor, (App. Div. April 1976).

Ichiro v. Bismark, 1 TTR 57 (1953).

### § 1107. Evidence.

On application for a writ of habeas corpus, evidence may be taken orally or by deposition, or in the discretion of the court or judge or justice, by written statement under oath. If written statements under oath are admitted, any party shall have the right to propound written interrogatories to the person who made such statements or to file answering written statements

under oath. On application for a writ of habeas corpus, documentary evidence, transcripts of

# Palau National Code Annotated (PNCA) Title 18

## [Header B: **18 PNCA § 1107 CRIMINAL PROCEDURE**

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proceedings upon arraignments, plea, sentence, and a transcript of the oral testimony introduced on any previous similar application by or on behalf of the same person shall be admissible in evidence. The declarations of a return to an order to show cause in a habeas corpus proceeding, if not formally denied, shall be accepted as true, except to the extent that the court or judge or justice finds from the evidence that they are not true.

### **Source**

(Code 1966, § 306.) 9 TTC § 107, modified.

### **Notes**

Saunders v. ROP, 8 ROP Intrm. 90, 91 (1999).

## **§ 1108. Appeals.**

In a habeas corpus proceeding in which the final order is made by the Trial Division of the Supreme Court or a judge or justice thereof, the final order shall be subject to appeal to the Appellate Division of the Supreme Court, provided notice of appeal is filed within 30 days after entry of the final order. The court or judge or justice issuing the final orders may in its or his discretion stay execution of the order, admit the person imprisoned or restrained to bail pending action by the Appellate Division of the Supreme Court, or direct that the final order take effect pending such action or without waiting for the time for filing such notice of appeal to expire.

### **Source**

(Code 1966, § 307.) 9 TTC § 108, modified.

### **Notes**

Borja v. Trust Territory, 6 TTR 584 (1974).

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## [Header A: **PAROLE 18 PNCA § 1202**

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## **Chapter 12**

### **Parole**

§ 1201. Short title.

§ 1202. Definitions.

§ 1203. Legislative findings and purposes.

§ 1204. Palau Parole Board; created; membership; Chairman.

§ 1205. Terms of Board members; vacancies.

§ 1206. Powers and duties of Parole Board.

§ 1207. Powers and duties of the Chairman.

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§ 1208. Work/Study Release; criteria; power of Board to regulate.

§ 1209. Time eligibility for release on parole.

§ 1210. Parole determination criteria.

§ 1211. Information considered.

§ 1212. Parole determination proceeding; time.

§ 1213. Conditions of parole.

§ 1214. Jurisdiction of Board.

§ 1215. Early termination of parole.

§ 1216. Aliens.

§ 1217. Summons to appear or warrant for return to custody of parolee.

§ 1218. Revocation of parole.

§ 1219. Repealer.

§ 1220. Retroactive effect.

§ 1221. Severability.

### **§ 1201. Short title.**

This chapter shall be known and may be cited as the “Parole Reform Act of 1992.”

#### **Source**

RPPL 3-73 § 1, modified.

### **§ 1202. Definitions.**

As used in this chapter, unless the context requires otherwise:

(a) “Convict” means a person deprived of his liberty through legal process.

(b) “Parole” means full or partial release from imprisonment under the provisions of

[Header B: **18 PNCA § 1202 CRIMINAL PROCEDURE**

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this chapter or prior legislation, rules or regulations, and includes work or school release.

(c) “Parolee” means any convict who has been granted parole.

(d) “Place of confinement” means a place maintained, supervised and controlled by

## Palau National Code Annotated (PNCA) Title 18

public authority for the detention of those deprived of liberty through legal process such as a public prison facility.

### Source

RPPL 3-73 § 2, terms put into alphabetical order and section modified.

### § 1203. Legislative findings and purposes.

The purpose of this chapter is to foster a penal system that encourages respect for laws of the Republic of Palau and considers seriously the need to adhere to criminal sentences as determined by the courts of the Republic. The Olbiil Era Kelulau finds that the deterrent effect of sentences it prescribes and the courts fix is a means of encouraging respect for laws of the Republic and of promoting the welfare of society.

Concurrently, the Olbiil Era Kelulau recognizes the need to rehabilitate persons convicted and sentenced to prison for violation of any law of the Republic. Accordingly, the Olbiil Era Kelulau finds that this legislation is intended to encourage respect for the laws of the Republic by acknowledging the salutary deterrent effect of sentences requiring incarceration, as well as an effort to rehabilitate prisoners in an equitable manner to reduce recidivism and increase the likelihood of the convict's return to society after completion of his sentence as a responsible and law abiding person.

### Source

RPPL 3-73 § 3, modified.

### § 1204. Palau Parole Board; created; membership; Chairman.

There is hereby established, a Palau Parole Board which shall be comprised of five members. Five members known as "Board members" shall be appointed by the President, by and with the advice and consent of the Senate. The Board shall elect from among its members a Chairman and Vice Chairman. The President shall designate a member to serve as temporary Chairman until such time as the Board members shall elect a Chairman. Any three members

of the Board shall constitute a quorum. The concurrence of a majority of all the Board

[Header A: **PAROLE 18 PNCA § 1206**

]

members present at any meeting, and in no event less than a majority of a quorum, shall be necessary for any official action taken by the Board unless otherwise provided herein. Each Board member who is not an employee of the national government, a state government or political subdivision thereof shall receive the sum of \$35.00 for each day such member is actually engaged in the business of the Board. A member who is an employee of the national government, state government, or a political subdivision thereof shall be placed on administrative leave while on the business of the Board. No Board member shall receive any sum in excess of \$1,000 in any calendar year regardless of the number of days such member is engaged in the business of the Board. No Board member may travel outside of the Republic on Board business at the expense of the Board without prior written approval by the President or the President's designee.

### Source

RPPL 3-73 § 4. Amended by RPPL 5-34 § 35.

### § 1205. Terms of Board members: vacancies.

The initial terms of the Board members shall be as follows: two for a period of one year;



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two for a period of two years; one for a period of three years. Successors to the first appointees hereunder shall be appointed for terms of three years each. Vacancies other than by expiration of term shall be filled in the same manner as the original appointment was made for the remainder of the unexpired term. The President shall appoint a new Board member within 45 days after any vacancy occurs and after rejection of an appointment by the Senate. The President may only remove a Board member for good cause, including but not limited to inefficiency, misconduct, neglect of duty or failure to attend meetings.

### Source

RPPL 3-73 § 5.

### § 1206. Powers and duties of Parole Board.

(a) The Board shall meet at least quarterly, and by majority vote shall promulgate rules and regulations establishing guidelines for the powers enumerated in subsection (b) of this section and such other rules and regulations as are necessary to carry out parole policy and the purposes of this chapter.

(b) The Board, by majority vote, and pursuant to the procedures in this chapter shall have the power to:

[Header B: **18 PNCA § 1206 CRIMINAL PROCEDURE**

]

(1) grant or deny an application or recommendation to parole any eligible convict;

(2) impose reasonable conditions on an order granting parole;

(3) modify or revoke an order paroling any eligible convict;

(4) grant, deny, modify or revoke work or study release privileges pursuant to section 208;

(5) employ parole officers and other necessary personnel in compliance with the National Civil Service Act; and

(6) request parole officers and other individuals, organizations, and public or private agencies to perform such duties with respect to any parolee as the Board deems necessary for his supervision, and to assure that no parole officers, individuals, organizations, or agencies shall bear excessive caseloads; and

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(7) direct the preparation of requests for appropriations for the Board, and the use of funds made available to the Board.

(c) The Board, by majority vote, and pursuant to its rules and regulations shall have the power to conduct hearings and proceedings, take sworn testimony, obtain and make a record of pertinent information, make findings of probable cause and issue subpoenas for witnesses or evidence in parole proceedings, and recommend disposition of any matters enumerated in subsection (b) of this section. The Board may in its discretion hold public hearings regarding the granting or revocation of parole.

(d) At least semi-annually, the Board shall submit to the President and to each house of the Olbiil Era Kelulau a report on the implementation and functioning of this chapter, and of the Board's involvement in the procedures prescribed in the Republic of Palau Public Law No. 3-22, the Executive Clemency Act. This report shall include any findings and recommendations which are approved by a majority vote of the Board members.

(e) Pursuant to the procedures set forth in the Executive Clemency Act, the Board shall consider any proposal submitted for exercise of executive clemency. The Board shall prepare a written recommendation regarding clemency that is approved by a majority vote of the Board. The Board shall review and respond to the proposal for clemency in an impartial manner, free from any political influence, and shall consider the following factors:

[Header A: **PAROLE 18 PNCA § 1207**

]

(1) the nature of the crime(s) for which the clemency is being proposed;

(2) the length of the sentence imposed and the amount of time already served;

(3) any comments or recommendations made by the court as part of its sentencing order; and

(4) whether such a pardon would depreciate the seriousness of the offense or promote disrespect for the law.

(f) The Board shall maintain and make available for public inspection a record of the final vote of each member on all matters. In so acting, each Board member shall have equal responsibility and authority, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

## Palau National Code Annotated (PNCA) Title 18

(g) Annually the Board shall submit an itemized proposed budget for the next fiscal year to the President of the Republic and to the Olbiil Era Kelulau no later than March 30th.

### Source

RPPL 3-73 § 6, modified.

### § 1207. Powers and duties of the Chairman.

(a) The Chairman shall:

(1) convene and preside at meetings of the Board pursuant to section 1206 and such additional meetings of the Board as the Chairman may call or as may be requested in writing by at least three Board members;

(2) assign, and supervise all personnel employed by the Board;

(3) assign duties among officers and employees of the Board, including Board members, so as to balance the workload and provide for orderly administration;

(4) serve as spokesman for the Board and report semi-annually to the President and each house of the Olbiil Era Kelulau on the activities of the Board

pursuant to the procedures and duties set forth in section 1206(d) of this chapter; and

(5) exercise such other powers and duties and perform such other functions as may be necessary to carry out the purposes of this chapter or as may be provided

[Header B: **18 PNCA § 1208 CRIMINAL PROCEDURE**

]

under any other provision of law.

### Source

RPPL 3-73 § 7, modified.

### § 1208. Work/Study Release; criteria: power of Board to regulate.

(a) The Board may grant Work and Study Release to convicts subject to the restrictions in subsection (b) of this section. The term “Work and Study Release” means a parolee’s authorized absence from prison for purpose of employment and/or

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to participate in an academic or vocational education activity during the day, returning to the prison at night. As used in this section “day” means the period of time from 6:00 a.m. to 6:00 p.m. and “night” means the period of time from 6:00 p.m. to 6:00 a.m.

(b) The Board may not consider for placement in a Work or Study Release program:

(1) a convict who has not served at least one third of his sentence, including executed and suspended portions; or

(2) a convict with a history of violent or assaultive behavior who is determined by the Board to be a threat to public safety.

### Source

RPPL 3-73 § 8, modified.

### § 1209. Time of eligibility for release on parole.

(a) Whenever confined and serving a definite term or terms a convict may be eligible for release on parole after serving one-third of his term or terms or after serving 20 years of a life sentence or after serving 15 years of a sentence of 30 years or more, except as otherwise provided by law. Convicts serving terms of less than one year shall not be eligible for parole. If a portion of the sentence of incarceration is to be suspended, the date of eligibility for parole shall be after one third of the combined total of the suspended and executed portions.

[Header A: **PAROLE 18 PNCA § 1210**

]

(b) The court may also make any recommendations concerning parole and conditions therefor as part of its Sentencing Order. The Board shall consider such recommendations in its evaluation of a convict for parole.

(c) Upon request of the Board, it shall be the duty of the various parole officers and government bureaus and agencies to furnish the Board information available to such officer, bureau, or agency, concerning any eligible convict or parolee, and whenever compatible with the public interest, their views and recommendations with respect to any matter within the jurisdiction of the Board.

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[Header A: **PAROLE 18 PNCA § 1210**

]

[Footer A: Supp. 5 18 - 107]

(d) Nothing in this section shall be construed to provide that any convict shall be eligible for release on parole if such convict is ineligible for such release under any other provision of law.

## Palau National Code Annotated (PNCA) Title 18

(e) A convict convicted of a violent or assaultive crime against persons, and whose presence in the community could attract undue public attention, create unusual concern, or depreciate the seriousness of the offense, as determined by two or more Board members, shall only be granted parole with unanimous consent of all of the Board members, not merely a quorum.

(f) This chapter is not intended to lengthen the parole eligibility period for convicts sentenced prior to the effective date of this chapter.

### Source

RPPL 3-73 § 9, modified.

### Notes

Eller v. ROP, 10 ROP 122, 123 (2003).

### § 1210. Parole determination criteria.

(a) If an eligible convict has substantially observed the rules of the prison and if the Board, upon consideration of the nature and circumstances of the offense and the history and characteristics of the convict, determines:

(1) that release would not depreciate the seriousness of his offense or promote disrespect for the law; and

(2) that release would not jeopardize the public welfare; subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Board pursuant to section 1206(a) of this chapter, such convict may be released on parole.

(b) Parole shall not be granted to any convict, otherwise eligible for parole if the parole board determines that:

(1) the convict, during the current incarceration in a place of confinement seriously or frequently violated the rules and regulations of the place of confinement; or

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[Header B: **18 PNCA § 1210 CRIMINAL PROCEDURE**

]

(2) there is a reasonable probability that the convict will commit a crime.

## Palau National Code Annotated (PNCA) Title 18

(c) The Board may deny parole notwithstanding the guidelines referred to in subsection (a) of this section if it determines there is good cause for so doing; provided, that the convict is furnished written notice stating with particularity the reasons for its determination, including a summary of the information relied upon.

### Source

RPPL 3-73 § 10, modified.

### § 1211. Information considered.

(a) In making a determination under this chapter the Board shall consider, if available and relevant:

- (1) reports and recommendations which the staff of the facility in which such convict is confined may make;
- (2) official reports of the convict's prior criminal record, including a report or record of earlier probation and parole experiences;
- (3) presentence investigation reports;
- (4) recommendations regarding the convict's parole made at the time of sentencing by the sentencing judge;
- (5) any existing reports of physical, mental, or psychiatric examinations of the convict;
- (6) the amount of time already served by the convict; and
- (7) the potential danger to the community reasonably represented by the convict.

(b) The convict shall have the right, individually, or through counsel, to present evidence in the form of affidavit or oral testimony at the time of the parole proceeding.

The Board shall also consider such additional relevant information concerning the convict (including information submitted by the convict) as may be reasonably available.

### Source

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**§ 1212. Parole determination proceeding; time.**

(a) Whenever feasible, the initial parole determination proceeding for a convict eligible for parole shall be held not later than thirty (30) days before the date of such eligibility for parole. An eligible convict may knowingly and intelligently waive any proceeding.

(b) At least thirty (30) days prior to any parole determination proceeding, the convict shall be provided with

(1) written notice of the time and place of the proceeding, and

(2) reasonable access to a report or other documents to be used by the Board in making its determination.

(c) Prior to and during the parole determination proceeding as provided in subsection

(b) of this section, a convict shall have the right to counsel, either retained or through the Office of the Public Defender.

(d) The convict shall be allowed to appear and testify on his own behalf at the parole determination proceeding.

(e) A full and complete audio tape record or transcript of every proceeding shall be retained by the Board. Upon request, the Board shall make available to any eligible convict such records as the Board may retain of the proceeding.

(f) If parole is denied, a personal conference to explain the reasons for such denial may be held between the convict and the Board members conducting the proceeding at the conclusion of the proceeding. In lieu of such personal conference, a written statement of the reasons for such denial shall be submitted to the convict. When feasible, the conference or written statement shall include advice to the convict as to what steps may be taken to enhance his chance of being released at a subsequent proceeding.

(g) In any case in which release on parole is not granted, subsequent parole determination proceedings shall be held not less frequently than:

(1) once every six (6) months in the case of a convict with a term or terms less

than seven years; or

(2) once every twenty four (24) months in the case of a convict with a term or terms of seven years or longer.

[Header B: **18 PNCA § 1212 CRIMINAL PROCEDURE**

]

**Source**

RPPL 3-73 § 12.

**§ 1213. Conditions of parole.**

(a) In every case, the Board shall impose as a condition of parole that the parolee obey all laws and not commit another crime. The Board may impose or modify other conditions of parole reasonably necessary to protect the public welfare to the extent that such conditions are reasonably related to:

(1) the nature and circumstances of the offense; and

(2) the history and characteristics of the parolee.

(b) The conditions of parole should be sufficiently specific to serve as a guide to supervision and conduct, and upon release on parole the parolee shall be given a certificate setting forth the conditions of his parole. If the parolee is not represented by counsel, the Board shall explain the conditions of parole to the parolee.

(c) (1) The Board may modify conditions of parole pursuant to this section on its own motion or on the motion of the parole officer supervising a parolee; provided, that the parolee receives notice of such action and has ten (10) days after receipt of such notice to express his views on the proposed modification. Following such a ten-day period, the Board shall have twenty one (21) days, exclusive of holidays, to act upon such motion or application.

(2) A parolee may petition the Board on his own behalf for a modification of

conditions pursuant to this section.



## Palau National Code Annotated (PNCA) Title 18

(3) The provisions of this subsection shall not apply to modifications of parole conditions pursuant to a revocation proceeding under section 1218.

### Source

RPPL 3-73 § 13, modified.

### § 1214. Jurisdiction of Board.

(a) A parolee shall remain in the legal custody and under the control of the Parole Officer, until the expiration of the full term or terms for which such parolee was sentenced.

[Header A: **PAROLE 18 PNCA § 1215**

]

(b) Except as otherwise provided in this section, the jurisdiction of the Board over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced, except that such jurisdiction may terminate at an earlier date to the extent provided under section 1215 (relating to early termination of parole supervision).

(c) In the case of any parolee found to have intentionally refused or failed to respond to any reasonable request, order, summons, or warrant of the Board or any member or agent thereof, the jurisdiction of the Board may be extended for the period during which the parolee so refused or failed to respond.

(d) Upon the termination of the jurisdiction of the Board over any parolee, the Board shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

### Source

RPPL 3-73 § 14, modified.

### § 1215. Early termination of parole.

(a) Upon its own motion or upon request of the parolee, the Board may terminate supervision over a parolee prior to the termination of jurisdiction under section 1214.

(b) Two years after each parolee's release on parole, and at least annually thereafter, the Board shall review the status of the parolee to determine the need for continued

[Header B: **18 PNCA § 1215 CRIMINAL PROCEDURE**

]

supervision. In calculating such a two-year period, there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentences.

## Palau National Code Annotated (PNCA) Title 18

(c) (1) Five years after each parolee's release on parole, the Board shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in section 1218(a)(2), that such supervision should not be terminated because there is a reasonable probability that the parolee will engage in conduct violating any criminal law.

(2) If supervision is not terminated under subparagraph (1) of this subsection, the parolee may request a hearing annually thereafter. Such hearing, with procedures as provided in subparagraph (1) of this subsection, shall be conducted with respect to such termination of supervision not less frequently than every two years.

(3) In calculating the five-year period referred to in subparagraph (1) of this subsection, there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentence.

### Source

RPPL 3-73 § 15, modified.

### § 1216. Aliens.

When an alien convict subject to deportation becomes eligible for parole, or when the Board determines more immediate deportation is advisable, the Board may do the following:

(a) initiate deportation proceedings prior to the release of the convict from the place of incarceration, so that the alien convict's departure from the Republic of Palau is a condition of parole.

(b) allow the alien to pay the cost of travel to his country of citizenship voluntarily in lieu of a deportation proceedings so that the convict's departure from the Republic of Palau is a condition of parole.

(c) this section shall not apply to persons convicted of firearms violations.

### Source

RPPL 3-73 § 16, modified.

[Header A: **PAROLE 18 PNCA § 1218**

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### § 1217. Summons to appear or warrant for return to custody of parolee.

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(a) If any parolee is alleged to have violated his parole, the Board, or any Board member, is authorized to issue summons to:

(1) cause such a parolee to appear at a hearing conducted pursuant to section 1218; or

(2) issue an arrest warrant to cause the return to custody of the parolee.

(b) Any summons or warrant issued under this section shall be issued by the Board as soon as practicable after discovery of the alleged violation, except when delay is deemed necessary. Imprisonment in an institution shall not be deemed grounds for delay of such issuance, except that, in the case of any parolee charged with a criminal offense, issuance

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of a summons or warrant may be suspended pending disposition of the charge.

(c) Any summons or warrant issued pursuant to this section shall provide the parolee with written notice of:

(1) the conditions of parole he is alleged to have violated as provided under section 1213; or

(2) the possible action which may be taken by the Board.

(d) Any officer of the prison or any officer authorized to serve criminal process

within the Republic of Palau, to whom a warrant issued under this section is delivered, shall execute such warrant by arresting such parolee and returning the parolee to a place of confinement under the custody of the Board.

(e) Any public safety officer who witnesses a parole violation may arrest the parolee forthwith.

(f) The parolee shall be held without bail until his hearing pursuant to section 1218.

### **Source**

RPPL 3-73 § 17, modified.

### **Notes**

Masami v. Kesolei, 10 ROP 213, 214, 215, 216 (Tr. Div. 2003).

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**§ 1218. Revocation of parole.**

(a) Any alleged parole violator summoned or arrested under section 1217 shall be accorded the opportunity to have a revocation hearing within 30 days of arrest.

(b) Hearings held pursuant to this section shall be conducted by the Board in accordance with the following procedures:

(1) written notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing.

(2) opportunity for the parolee to be represented by an attorney retained by the parolee, or if he is financially unable to retain counsel, a member of the Office of the Public Defender shall serve as his counsel or if he so chooses, a representative as provided by rules and regulations, unless the parolee knowingly waives such representation.

(3) opportunity for the parolee to be apprised of the evidence against him, the right to testify and present witnesses and documentary evidence; the right to confront and cross examine adverse witnesses, unless the hearing officer specifically finds good cause for not allowing confrontation.

For the purpose of subparagraph (a) of this subsection, the Board may subpoena witnesses and evidence. If a person refuses to obey such a subpoena, the Board may petition the court of the Republic of Palau to order such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Board, when the court finds such information, thing, or testimony directly related to an issue raised at the parole revocation hearing. Failure to obey such an order shall be punishable as contempt of court.

(c) Conviction of a crime committed subsequent to release on parole shall revoke parole.

(d) Whenever a parolee is summoned or arrested pursuant to section 1217 and the Board finds pursuant to the procedures of this section and by a preponderance of evidence that the parolee has violated a condition of his parole, the Board may take any of the following actions:

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(1) restore the parolee to supervision;

(2) reprimand the parolee;

[Header A: **PAROLE 18 PNCA § 1221**

]

(3) modify the parolee's conditions of parole; or

(4) formally revoke parole, work release or study release.

The Board may take any such action provided it has taken into consideration whether or not the parolee has been convicted of any crime subsequent to his release on parole, and the seriousness thereof, or whether such action is warranted by the frequency or seriousness or the parolee's violation of any other condition or conditions of his parole.

(e) The Board shall furnish the parolee with written notice of its determination not later than twenty one (21) days, excluding holidays, after the date of the revocation hearing. If parole is revoked, a report shall be prepared by the Board setting forth in writing the factors considered and reasons for such action, a copy of which shall be given to the parolee.

### **Source**

RPPL 3-73 § 18, modified.

### **Notes**

Masami v. Kesolei, 10 ROP 213, 216 (Tr. Div. 2003).

### **§ 1219. Repealer.**

This chapter repeals Administrative Directive 69-7 issued by the High Commissioner of the Trust Territory of the Pacific Islands on April 14, 1969.

### **Source**

RPPL 3-73 § 19, modified.

### **§ 1220. Retroactive effect.**

The Parole Board will have the authority to determine parole eligibility for those convicts imprisoned and who were potentially eligible for parole before the effective date of this chapter.

### **Source**

RPPL 3-73 § 20, modified.

### **§ 1221. Severability.**

If any provisions of this chapter are declared invalid or the applicability thereof to any person

# Palau National Code Annotated (PNCA) Title 18

[Header B: **18 PNCA § 1221 CRIMINAL PROCEDURE**

]

or circumstances is held invalid, the validity of the remainder of the chapter and applicability of such provision to other persons and circumstances shall not be affected thereby, and to this extent the provisions of this chapter are deemed severable.

## Source

RPPL 3-73 § 21, modified.

[Header B: **18 PNCA § 1301 CRIMINAL PROCEDURE**

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[Header A: **GENERAL PROVISIONS 18 PNCA § 1302**

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## CHAPTER 13

### MUTUAL ASSISTANCE IN CRIMINAL MATTERS

#### Subchapter I

#### General Provisions

§ 1301. Application.

§ 1302. Definitions.

#### § 1301. Application.

This chapter shall apply in relation to mutual assistance in criminal matters between the Republic and any foreign state, subject to any condition, variation or modification in any existing or future agreement with that state, whether in relation to a particular case or more generally.

## Source

RPPL 6-6 § 1[3], modified.

## Notes

RPPL 6-6 § 1[1] reads: “Section 1. Short title. This Act shall be known and may be cited as the ‘Mutual Assistance in Criminal Matters Act of 2001’” RPPL 6-6 § 1[2] reads: “Section 2. Purpose. The purpose of this Act is to enable the Republic to cooperate with foreign states in criminal investigations and proceedings.”

#### § 1302. Definitions.

Unless the subject or context otherwise requires, in this chapter:

- (a) “appeal” includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for a stay of execution;

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(b) “Attorney General” means the Attorney General of the Republic of Palau;

(c) “data” means representations, in any form, of information or concepts;

(d) “document” means any record of information and any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device, and includes, but is not limited to:

(1) anything on which there is writing, marks, figures, symbols, or perforations

[Header B: **18 PNCA § 1301 CRIMINAL PROCEDURE**

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[Footer A: Supp. 4 18 - 117]

having meaning for persons qualified to interpret them;

(2) anything from which sounds, images or writings can be produced, with or without the aid of anything else; or

(3) a map, plan, drawing, photograph or similar thing;

(e) “foreign confiscation order” means an order, made by a court in a foreign state, for the confiscation or forfeiture of property in connection with or recovery of the proceeds of a serious offense;

(f) “foreign restraining order” means a foreign court order made relating to a serious offense to restrain a person or persons from dealing with property;

(g) “foreign state” means any country other than the Republic and every constituent part of such country which administers its own laws relating to international cooperation;

(h) “interest” in relation to property, means a legal or equitable estate in the property, or right, power, or privilege in connection with the property, whether present or future and whether vested or contingent;

(i) “person” means any natural or legal person;

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(j) “place” includes any land and any premises;

(k) “premises” includes the whole or any part of a structure, building, aircraft, or vessel;

(l) “proceedings” means:

(1) any procedure conducted under the supervision of an authorized judicial officer in relation to any alleged or proven offense, and includes an inquiry, investigation, or preliminary or final determination of facts; or

(2) property derived from such offense;

(m) “proceeds of crime” except as otherwise provided herein, means fruits of a crime, or any property derived or realized directly or indirectly from a serious offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later successively converted, transformed or intermingled, as well as

[Header A: **GENERAL PROVISIONS 18 PNCA § 1302**

]

income, capital or other economic gains derived or realized from such property at any time since the offense;

(n) “property” means real or personal property of every description, whether situated in the Republic or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property, but does not include any clan, lineage, or family land located in the Republic, nor any interest held by a legitimate bona fide purchaser or owner of property, real or otherwise, without notice of any illegal interest, in such property located in the Republic;

(o) “Republic” means the Republic of Palau;

(p) “serious offense” means an offense against a provision of:

(1) any law of the Republic which is a criminal offense punishable by imprisonment for more than one year;



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(2) a law of a foreign state, in relation to acts or omissions, which had it occurred in the Republic, would have constituted a criminal offense punishable by imprisonment for more than one year;

(q) “Supreme Court” means the Supreme Court of the Republic of Palau.

### Source

RPPL 6-6 § 1[4], modified.

### Subchapter II

#### Mutual Assistance

§ 1311. Authority to make and act on mutual legal assistance requests.

§ 1312. Saving provision for other requests or assistance in criminal matters.

§ 1313. Mutual legal assistance requests by the Republic of Palau.

§ 1314. Contents of requests for assistance.

§ 1315. Foreign requests for an evidence-gathering order or a search warrant.

§ 1316. Foreign requests for consensual transfer of detained persons.

§ 1317. Detention of persons transferred to the Republic.

§ 1318. Safe conduct guarantee.

§ 1319. Foreign requests for Republic restraining orders.

§ 1320. Requests for enforcement of foreign confiscation or restraining orders.

[Header B: **18 PNCA § 1302 CRIMINAL PROCEDURE**

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§ 1321. Foreign requests for the location of proceeds of crime.

§ 1322. Sharing confiscated property with foreign states.

#### **§ 1311. Authority to make and act on mutual legal assistance requests.**

(a) Consistent with the Palau Constitution, the Attorney General may make requests on behalf of the Republic to the appropriate authority of a foreign state for mutual legal assistance in any investigation commenced or proceeding instituted in the Republic, relating to any serious offense. The Attorney General shall make all such requests through the Minister of State of the Republic, submitting the name of the foreign state to which a request is being made, the nature of the request, and the nature of the criminal matter.

(b) Upon receipt by the Minister of State, and subsequent notification of the President, of a request from a foreign state for mutual assistance in any investigation commenced or proceeding instituted in that state relating to a serious offense, the Attorney General may:

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(1) grant the request, in whole or in part, on such terms and conditions as he or she thinks fit provided however that no request for assistance under this or any other law of the Republic shall be granted unless the requesting foreign state makes sufficient written assurance that they will cover all costs associated with the request;

(2) refuse the request, in whole or in part, on the ground that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of the Republic; or

(3) after consulting with the competent authority of the foreign state, postpone the request, in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in the Republic.

(c) The President or his designee may refuse any request for mutual legal assistance from a country that does not afford substantially reciprocal privileges to the Republic of Palau, or upon determination that refusal of such a request is in the public interests of the Republic.

### Source

RPPL 6-6 § 1[5].

[Header A: MUTUAL ASSISTANCE 18 PNCA § 1311

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[Header B: 18 PNCA § 1312 CRIMINAL PROCEDURE

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§ 1312. Saving provision for other requests or assistance in criminal matters.

Nothing in this chapter shall limit:

(a) the power of the Attorney General, apart from this chapter, to make requests to foreign states or act on requests from foreign states for assistance in investigations or proceedings in criminal matters;

(b) the power of any other person or court, apart from this chapter, to make requests to foreign states or act on requests from foreign states for forms of international assistance other than those specified in section 1313; or

(c) the nature or extent of assistance in investigations or proceedings in criminal matters which the Republic may lawfully give to or receive from foreign states.

### Source

## Palau National Code Annotated (PNCA) Title 18

RPPL 6-6 § 1[6], modified.

### § 1313. Mutual legal assistance requests by the Republic.

The requests which the Attorney General is authorized to make are that the foreign state:

- (a) have evidence taken, or documents or other articles produced;
- (b) obtain and execute search warrants or other lawful instruments authorizing a search for, and seizure of, relevant evidence;
- (c) locate or restrain any property believed to be the proceeds of crime located in the foreign state;
- (d) confiscate any property which is the subject of a confiscation order made under the Money Laundering and Proceeds of Crime Act of 2001;
- (e) transmit to the Republic any such confiscated property or any proceeds realized therefrom, or any such evidence, documents, articles or things;
- (f) transfer in custody to the Republic a person who consents to assist the Republic in the relevant investigation or proceedings;

[Header B: **18 PNCA § 1314 CRIMINAL PROCEDURE**

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[Header A: **MUTUAL ASSISTANCE 18 PNCA § 1314**

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- (g) provide any other form of assistance that involves or is likely to involve the exercise of a coercive power over a person or property; or
- (h) permit the presence of nominated persons during the execution of any request made under this chapter.

#### Source

RPPL 6-6 § 1[7], modified.

### § 1314. Contents of requests for assistance.

- (a) A request for mutual assistance shall:

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- (1) give the name of the authority conducting the investigation or proceeding to which the request relates;
- (2) give a description of the nature of the criminal matter and a summary of the relevant facts and laws with a copy of the laws referenced;
- (3) give a description of the purpose of the request and of the nature of the assistance being sought;
- (4) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in the requested state, give details of the offense in question, particulars of any investigation or proceeding commenced in respect of the offense, and be accompanied by a copy of any relevant restraining or forfeiture order,
- (5) give details of any procedure that the requesting state wishes to be followed in giving effect to the request;
- (6) include a statement of any requests for confidentiality and the reasons for those requests;
- (7) give the desired time frame for compliance with the request;
- (8) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is in the requested state; and

[Header A: **MUTUAL ASSISTANCE 18 PNCA § 1315**

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- (9) give any other information that may assist in giving effect to the request.

- (b) A request for mutual assistance from a foreign state may be granted, if necessary after consultation, notwithstanding that the request does not comply with subsection (a).

### **Source**

RPPL 6-6 § 1[8], modified.

**§ 1315. Foreign requests for an evidence-gathering order or a search warrant.**

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(a) An authorized person of the foreign state may apply to the Supreme Court for a search warrant or an evidence-gathering order.

(b) The Supreme Court may issue an evidence-gathering order or a search warrant where there is probable cause to believe that:

(1) a serious offense has been or may have been committed against the laws of the foreign state;

(2) evidence relating to that offense may:

(A) be found in a building, receptacle or place in the Republic; or

(B) be able to be given by a person believed to be in the Republic;

(3) in the case of an application for a search warrant, it would not, in all the circumstances, be more appropriate to grant an evidence-gathering order.

(c) A statement contained in the foreign request that a serious offense has been or may have been committed against the law of the foreign state is prima facie evidence of that fact.

(d) An evidence-gathering order:

(1) shall provide for the manner in which the evidence is to be obtained in order to give proper effect to the foreign request, unless such manner is prohibited in the Republic, and in particular, may require any person named therein to:

(A) make a record from data or make a copy of a record;

[Header B: **18 PNCA § 1315 CRIMINAL PROCEDURE**

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(B) attend court to give evidence on oath or otherwise until excused;

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(C) produce to the Supreme Court or to any person designated by the Court, any thing, including any document, or copy thereof; or

(2) may include such terms and conditions as the Supreme Court considers desirable, including those relating to the interests of the person named therein or of third parties; and

(3) shall only be issued subject to agreement by the requesting foreign state to bear all costs incurred by the Republic in connection therewith.

(e) A person named in an evidence-gathering order may refuse to answer a question or to produce a document or thing where the refusal is based on:

(1) a law currently in force in the Republic; or

(2) a privilege recognized by law in the foreign state; or

(3) a law in the foreign state that would render the answering of that question or the production of that document or thing an offense in the person's own jurisdiction.

(f) Where a person refuses to answer a question or to produce a document or thing pursuant to subsection (e)(2) or (3), the Supreme Court shall report the matter to the Attorney General who shall notify the foreign state and request the foreign state to provide a written statement on whether the person's refusal was well-founded under the law of the foreign state.

(g) A person who, without reasonable excuse, refuses to comply with a lawful order of the Supreme Court, or who having refused pursuant to subsection (e), continues to refuse notwithstanding the admission into evidence of a statement that the refusal is not well-founded, commits a contempt of court and may be punished accordingly.

(h) A search warrant shall be in the usual form in which a search warrant is issued in the Republic, varied to the extent necessary to suit the case.

(i) No document or thing seized and ordered to be sent to a foreign state shall be sent until the Attorney General is satisfied that the foreign state has agreed to comply with any

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terms or conditions imposed.

(j) The Supreme Court shall be authorized to adopt, recognize, and enforce foreign court orders certified or under seal, which shall have the rebuttable presumption of validity.

**Source**

RPPL 6-6 § 1[9].

**§ 1316. Foreign requests for consensual transfer of detained persons.**

(a) Where the Attorney General approves a request of a foreign state to have a person who is detained in the Republic by virtue of a sentence or court order transferred to a foreign state to give evidence or assist in an investigation or proceeding in that state relating to a serious offense, an authorized person may apply to the Supreme Court for a transfer order.

(b) The Supreme Court may order the transfer of a detained person if after any documents filed or information given establishes that the detained person consents to the transfer.

(c) A transfer order made under subsection (b):

(1) shall set out the name of the detained person and the person's current place of confinement;

(2) shall order that the detained person be delivered into the custody of a person who is designated in the order or who is a member of the class of persons so designated;

(3) shall order the person taking custody of the detained person to transport the detained person to the foreign state and, on return, to return that person to a place of confinement in the Republic specified in the order;

(4) shall state the reasons for the transfer; and

(5) shall fix the period of time at or before the expiration of which the detained person must be returned, unless varied for the purposes of the request by the Attorney General.

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(d) The time a detained person spent in custody pursuant to a transfer order shall count toward any sentence, so long as the person remains in such custody.

**Source**

RPPL 6-6 § 1[10].

**§ 1317. Detention of persons transferred to the Republic.**

(a) The Attorney General may by written notice authorize:

(1) the temporary detention in the Republic of a person in detention in a foreign state who is to be transferred to the Republic pursuant to a request under section 1313(f), for such period as may be specified in the notice; and

(2) the return of the person to the custody of the foreign state when his or her presence is no longer required.

(b) A person in respect of whom a notice is issued shall so long as the notice is in force:

(1) be permitted to enter and remain in the Republic for the purposes of the request, and be required to leave the Republic when no longer required for those purposes, notwithstanding any Republic law to the contrary; and

(2) while in custody in the Republic for the purposes of the request, be deemed to be in lawful custody.

(c) The Attorney General may at any time vary a notice, and where the foreign state requests the release of the person from custody, either immediately or on a specified date, the Attorney General shall direct that the person be released from custody accordingly; provided, however, that the Attorney General may require the immediate departure of that person from the Republic if such departure is determined to be in the best interest of the nation.

(d) Any person who escapes from lawful custody while in the Republic pursuant to a request under section 1313(f) may be arrested without warrant by any authorized person and returned to the custody authorized under subsection (a)(1) of this section.



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(e) Where a foreign country has requested that a person be detained in the Republic in the course of transit between the foreign country and a third country and the Attorney

[Header A: **MUTUAL ASSISTANCE 18 PNCA § 1317**

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General grants the request, the provisions of this section shall apply.

### **Source**

RPPL 6-6 § 1[11], modified.

### **§ 1318. Safe conduct guarantee.**

(a) Where a person, whether or not a detained person, is in the Republic in response to a request by the Attorney General to a foreign state under this chapter for such person to give evidence in a proceeding or to assist in an investigation, prosecution or related proceeding, the person shall not, while in the Republic, be detained, prosecuted or punished or subjected to civil process, in respect of any act or omission that occurred before the person's departure from the foreign state pursuant to the request. Provided however, this section shall not preclude the person by voluntary agreement and consent, from entering into a stipulated settlement or resolution of any criminal charges pending in the Republic, or of any civil or criminal matter.

(b) Subsection (a) ceases to apply to the person when the person leaves the Republic, or has had the opportunity to leave, but remains in the Republic for 10 days after the Attorney General has notified the person in writing that he or she is no longer required for the purposes of the request.

### **Source**

RPPL 6-6 § 1[12], modified.

### **§ 1319. Foreign requests for Republic restraining orders.**

(a) Where a foreign state requests the Attorney General to obtain a restraining order against property, except clan, lineage, or family land, or any interest held by a legitimate bona fide purchaser or owner without notice of an illegal interest in the property; and where criminal proceedings have begun in the foreign state in respect of a serious offense; and there is probable cause to believe that the property relating to the offense or belonging to the defendant or the defendant's coconspirators is located in the Republic; the Attorney General may apply to the Supreme Court for a restraining order.

(b) Upon application of the Attorney General, the Court may make a restraining order in respect of the property, as if the serious offense that is the subject of the order had been committed in the Republic.

[Header B: **18 PNCA § 1318 CRIMINAL PROCEDURE**

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Source

RPPL 6-6 § 1[13].

**§ 1320. Requests for enforcement of foreign confiscation or restraining orders.**

(a) Where a foreign state requests the Attorney General to arrange for the enforcement of a foreign restraining order or foreign confiscation order, the Attorney General may apply to the Supreme Court for entry and enforcement of the order.

(b) The Supreme Court shall enter and enforce a foreign restraining order, if the Court is satisfied that at the time of entry and registration, the order is in force in the foreign state.

(c) The Supreme Court shall enter and enforce a foreign confiscation order which is legally capable of enforcement in the Republic if the Court is satisfied that:

(1) at the time of entry and enforcement, the order is in force in the foreign state and is not subject to appeal; and

(2) where the person the subject of the order did not appear in the confiscation proceedings in the foreign state, that:

(A) the person was given sufficient notice of the proceedings; or

(B) the person had absconded or had died before such notice could be given, and if the person died, the decedent's estate was given fair notice of the proceedings.

(d) A statement contained in the foreign request that the elements provided in subsection (c) is prima facie evidence of those facts, without proof of the signature or official character of the person appearing to have signed the foreign request.

(e) Where a foreign restraining order or foreign confiscation order is entered for enforcement, a copy of any amendments made to the order in the foreign state (whether before or after entry and enforcement), may be entered and enforced in the same way as the order, but shall not have effect for the purposes of the Money Laundering and Proceeds of Crime Act of 2001, until they are so entered and enforced.

(f) The Supreme Court shall, on application by the Attorney General, rescind entry of:

[Header A: **MUTUAL ASSISTANCE 18 PNCA § 1320**

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(1) a foreign restraining order, if it appears to the Court that the order has ceased to have effect.

(2) a foreign confiscation order, if it appears to the Court that the order has been

[Header B: **18 PNCA § 1320 CRIMINAL PROCEDURE**

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satisfied or has ceased to have effect.

(g) A facsimile copy of a duly authenticated foreign restraining or confiscation order, or amendment made to such an order, shall be regarded as the same as the duly authenticated foreign order for 21 days, but entry and registration effected by means of a facsimile ceases to have effect at the end of the 21 days unless a duly authenticated original of the order has been entered and registered.

**Source**

RPPL 6-6 § 1[14].

**§ 1321. Foreign requests for the location of proceeds of crime.**

Where a foreign state requests the Attorney General to assist in locating property believed to be the proceeds of a serious crime, the Attorney General may authorize any application of the Money Laundering and Proceeds of Crime Act of 2001, for the purpose of acquiring the information sought by the foreign state.

**Source**

RPPL 6-6 § 1[15].

**§ 1322. Sharing confiscated property with foreign states.**

The Attorney General may enter into an arrangement with the competent authorities of a foreign state, in respect of money laundering and proceeds of crime, for the reciprocal sharing with that state of such part of any property realized in the foreign state as a result of action taken by the Attorney General or in the Republic as a result of action taken in the Republic.

**Source**

RPPL 6-6 § 1[16].

[Header B: **18 PNCA § 1333 CRIMINAL PROCEDURE**

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**Subchapter III**

**Miscellaneous**

§ 1331. Privilege for foreign documents.

## Palau National Code Annotated (PNCA) Title 18

§ 1332. Restriction on use of evidence and materials obtained by mutual assistance.

§ 1333. Deposit of confiscated proceeds of drug crime.

### **§ 1331. Privilege for foreign documents.**

(a) A document sent to the Attorney General by a foreign state in accordance with a request pursuant to this chapter is privileged and no person shall disclose to anyone the document, its purport, or any part of the contents, before the document, in compliance with the conditions on which it was so sent, is made public or disclosed in the course of and for the purpose of any proceedings under this chapter.

(b) Except to the extent required under this chapter to execute a request by a foreign state for mutual assistance in criminal matters, no person shall disclose the fact that the request has been received or the contents of the request.

(c) Violation of this section is a felony offense, punishable by imprisonment for a maximum of ten years or a maximum fine of \$50,000, or both, provided, however, in the case of a corporation, company, commercial enterprise, commercial entity, or other legal person, the maximum fine shall be increased to \$250,000.

#### **Source**

RPPL 6-6 § 1[17], modified.

### **§ 1332. Restriction on use of evidence and materials obtained by mutual assistance.**

No information, document, article, or other thing obtained from a foreign state pursuant to a request made under this chapter shall be used in any investigation or proceeding other than the investigation or proceeding disclosed in the request, unless the Supreme Court so permits, after considering input from the foreign state on the other usage.

#### **Source**

RPPL 6-6 § 1[18], modified.

**[Header A: MISCELLANEOUS 18 PNCA § 1333**

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§ 1333. Deposit of confiscated proceeds of drug crime.

Any proceeds of drug-related crime which have been:

(a) confiscated in a foreign state pursuant to a request by the Republic under section 1313(d);

(b) confiscated in the Republic pursuant to a request by a foreign state under section 1320(a), to the extent available under any sharing of confiscated property arrangement

**[Header B: 18 PNCA § 1333 CRIMINAL PROCEDURE**

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referred to in section 1322, or otherwise, shall be deposited in accounts of the Republic as follows:

(1) 55% in the Fund for Drug Abuse Prevention and Control, established under the Controlled Substances Act, 34 PNC Division 4;

(2) 30% in the Retirement Fund, 41 PNC 731 for payment in equal proportions of old age insurance benefits, 41 PNC 753, and disability insurance benefits, 41 PNC 754;

(3) 15% in an account for use by the Palau National Olympic Committee.

### **Source**

RPPL 6-6 § 1[19], modified.

[Header B: **18 PNCA CRIMINAL PROCEDURE**

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