# TITLE 6 CRIMES & CRIMINAL PROCEDURE

## LIST OF SECTIONS AFFECTED (WITH DATES)
## SEPT. 1, 2007 – DEC. 31, 2010

standard type: amended section; **bold** type: new or reenacted section;
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# GENERAL PROVISIONS

## CHAPTER 1. PRELIMINARY PROVISIONS.

### § 103. Further Definitions.

**Case Annotations:** *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26, 7 N.M.I. 388 (2006); *Commonwealth v. Palacios*, 2004 MP 23, 7 N.M.I. 105 (2004).

### § 104. Rules of Construction.

**Case Annotations:** *Commonwealth v. Camacho*, 2002 MP 6, 6 N.M.I. 382 (2002).

### § 108. Location of Trial.

**Case Annotations:** *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26, 7 N.M.I. 388 (2006).

## CHAPTER 2. GENERAL PRINCIPLES OF RESPONSIBILITY.

### Article 1. Liability.

### § 201. Principals.

**Case Annotations:** *Commonwealth v. Rabauliman*, 2004 MP 12, 7 N.M.I. 54 (2004).

**CRIMINAL LAW**

**Aider and Abettor**
The apparent inconsistency between sections 201 and 251(d) of Title 6 of the Commonwealth Code can be reconciled by reading 251(d) to mean that the legislature sought to preserve only those common law defenses not previously addressed by codified Commonwealth law. Thus one convicted as an aider and abettor is not entitled to be punished differently from a principal, according to the distinction established by the common law. 6 CMC §§ 201 and 251(d). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 38, 6 N.M.I. 382, 393-94 (2002).

The Commonwealth Code regarding aiding and abetting draws no distinction between principal and an assessor before the fact. 6 CMC § 201. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 55, 6 N.M.I. 382, 396 (2002).

**STATUTES**

**Interpretation and Construction**

– **Penal Statutes**
By statute, there is no distinction between principals in the first and second degree. Rather, the required action is to aid, abet, counsel, command, induce or produce commission of the crime or to cause the act to be done. 6 CMC § 201. *Commonwealth v. Crisostomo*, 2007 MP 7 ¶ 20, 7 N.M.I. 424 (2007).

### Article 2. Defenses.

#### § 251. Defenses: Generally.

**Case Annotations:** . . .

**CRIMINAL LAW**

**Aider and Abettor**
The apparent inconsistency between sections 201 and 251(d) of Title 6 of the Commonwealth Code can be reconciled by reading 251(d) to mean that the legislature sought to preserve only those common law defenses not previously addressed by codified Commonwealth law. Thus one convicted as an aider and abettor is not entitled to be punished differently from a principal, according to the distinction established by the common law. 6 CMC §§ 201 and 251(d). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 38, 6 N.M.I. 382, 393-94 (2002).

#### § 253. Defenses: Infancy.

**Case Annotations:** *Commonwealth v. Camacho*, 2002 MP 6, 6 N.M.I. 382 (2002).

**Infancy, Defense of**

. . .

# DIVISION 1: CRIMES AGAINST THE PERSON

## PART 1. CRIMES AGAINST THE PERSON.

### CHAPTER 1. HOMICIDE.

#### § 1101. Murder.

**Case Annotations:** *Commonwealth v. Repeki*, 2004 MP 19, 7 N.M.I. 84 (2004); *Commonwealth v. Camacho*, 2002 MP 6, 6 N.M.I. 382 (2002).

#### § 1102. Manslaughter.

**Case Annotations:** *Commonwealth v. Repeki*, 2004 MP 19, 7 N.M.I. 84 (2004); *Commonwealth v. Camacho*, 2002 MP 6, 6 N.M.I. 382 (2002).

# CHAPTER 2. ASSAULT AND RELATED OFFENSES.

## § 1201. Assault.

**Case Annotations:** . . .

**CRIMINAL LAW**

**Assault**

– **Generally**
Assault and assault and battery must be intentional, but neither offense requires willful conduct. 6 CMC §§ 1201, 1202. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 40, 7 N.M.I. 162, 168 (2005).

**Lesser Included Offense**

– **Generally**
The elements of assault are not a subset of the elements of disturbing the peace. Nor are the elements of assault and battery a subset of the elements of disturbing the peace. Therefore, neither assault nor assault and battery are lesser included offenses of the offense of disturbing the peace. 6 CMC § 1201; 6 CMC § 1202; 6 CMC § 3101. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 38, 7 N.M.I. 162, 168 (2005).

## § 1202. Assault and Battery.

**Case Annotations:** *Commonwealth v. Castro*, 2007 MP 9, 7 N.M.I. 432 (2007); *Commonwealth v. Milliondaga*, 2007 MP 6, 7 N.M.I. 422 (2007); *Commonwealth v. Perez*, 2006 MP 24, 7 N.M.I. 372 (2006); *Commonwealth v. Rabauliman*, 2004 MP 12, 7 N.M.I. 54 (2004); *Commonwealth v. Seman*, 2001 MP 20, 6 N.M.I. 334 (2001); *Commonwealth v. Palacios*, 2003 MP 6, 6, N.M.I. 546 (2003); *Nakatsukasa v. Superior Ct.*, 1999 MP 25, 6 N.M.I. 59 (1999).

**CRIMINAL LAW**

**Assault**

– **Generally**
Assault and battery under 6 CMC § 1202(a) is not a specific intent crime, but is, rather, a general intent crime. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 12, 7 N.M.I. 105, 108 (2004).

Assault and battery under 6 CMC § 1202(a) contains two separate crimes with separate intent requirements. Assault and battery comprised of unlawfully striking, beating, wounding, or otherwise doing bodily harm to another, requires a general intent analysis. Assault and battery comprised of having sexual contact with another person without the person's consent, when further defined by the sexual contact definition of 6 CMC § 103(r), requires a specific intent analysis. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 14, 7 N.M.I. 105, 108 (2004).
Conviction under the 6 CMC § 1202(a) for assault and battery by sexual contact requires: sexual contact with another person; without that person's consent; for the purpose of arousing or gratifying the sexual desire of either party. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 15, 7 N.M.I. 105, 108 (2004).

– **Intent**
Assault and Battery under 6 CMC § 1202(a) is not a specific intent crime, rather it is a general intent crime. 6 CMC § 1202(a). *Commonwealth v. Atalig*, 2002 MP 20 ¶ 65, 6 N.M.I. 487, 497 (2002).

**Lesser Included Offense**

– **Generally**
The elements of assault are not a subset of the elements of disturbing the peace. Nor are the elements of assault and battery a subset of the elements of disturbing the peace. Therefore, neither assault nor assault and battery are lesser included

offenses of the offense of disturbing the peace. 6 CMC § 1201; 6 CMC § 1202; 6 CMC § 3101. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 38, 7 N.M.I. 162, 168 (2005).

**Sexual Offenses (Misc.)**
An overly narrow reading of the term sexual contact in 6 CMC § 1202(a) would place many examples of inappropriate sexual touching under simple assault and battery. The term assault and battery by unlawful sexual contact, although charged and prosecuted under the identical section of the assault and battery statute, serves as an added stigma and potent deterrent to such unacceptable contact. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 18, 7 N.M.I. 105, 109 (2004). Sexual contact pursuant to 6 CMC § 1202(a) encompasses all intentional, non-consensual sexual touching, including touching that is done to embarrass, degrade, humiliate or harass a person. When such purposeful conduct intentionally targets the sexual spheres of a person's body, it cannot be said that sexual gratification does not motivate the conduct. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 22, 7 N.M.I. 105, 110 (2004).

### § 1203. Aggravated Assault and Battery.

**Case Annotations:** *Commonwealth v. Repeki*, 2004 MP 19, 7 N.M.I. 84 (2004).

## CHAPTER 3. SEXUAL OFFENSES.

### Article 1. General Provisions.

### § 1301. Sexual Assault in the First Degree.

**Case Annotations:** *Commonwealth v. Castro*, 2007 MP 9, 7 N.M.I. 432 (2007); *Commonwealth v. Rabauliman*, 2004 MP 12, 7 N.M.I. 54 (2004).

### § 1303. Sexual Assault in the Third Degree.

**Case Annotations:** *Commonwealth v. Rabauliman*, 2004 MP 12, 7 N.M.I. 54 (2004).

### § 1306. Sexual Abuse of a Minor in the First Degree.

**Case Annotations:** *Commonwealth v. Castro*, 2007 MP 9, 7 N.M.I. 432 (2007).

### § 1307. Sexual Abuse of a Minor in the Second Degree.

**Case Annotations:** *Commonwealth v. Rabauliman*, 2004 MP 12, 7 N.M.I. 54 (2004).

### § 1311. Incest.

**Case Annotations:** *Commonwealth v. Arriola*, 2002 MP 8, 6 N.M.I. 412 (2002).

### Article 3. Prostitution.

### § 1341. Definitions.

**Case Annotations:** *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4, 6 N.M.I. 361 (2002).

### § 1342. Prohibition.

**Case Annotations:** *Commonwealth v. Attao*, 2005 MP 8, 7 N.M.I. 154 (2005).

### § 1343. Prostitution.

**Case Annotations:** *Commonwealth v. Attao*, 2005 MP 8, 7 N.M.I. 154 (2005).

### § 1344. Promoting Prostitution.

**Case Annotations:** *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4, 6 N.M.I. 361 (2002).

### § 1346. Penalties.

(a)-(e) [unchanged]
(f) In addition to any criminal penalties, the court may order any or all of the following:
(1) [unchanged]
(2) A temporary or permanent bar on the issuance of all ~~nonresident~~ foreign national worker certificates of the violator if it was found by the court that the violator committed a prostitution offense prohibited under this article.

**Source:** . . . (f)(2) amended by global amendment PL 15-108, § 5.

**Commission Comment:** PL 11-19 took effect July 9, 1998. See also the commission comments to 6 CMC § 1341.

**Case Annotations:** *Commonwealth v. Chen*, 2006 MP 14, 7 N.M.I. 318 (2006); *Commonwealth v. Attao*, 2005 MP 8, 7 N.M.I. 154 (2005).

**CRIMINAL LAW**

**Prostitution**

– **Civil Penalties**
The mandatory fee imposed under 6 CMC § 1346(e), for conviction of prostitution-related offenses, is a civil penalty. 6 CMC § 1346(e). *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 16, 6 N.M.I. 361, 365 (2002).

The CNMI Legislature intended to impose a civil penalty by the mandatory fee outlined in 6 CMC § 1346(e)(2). 6 CMC § 1346(e)(2). *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 20, 6 N.M.I. 361, 366 (2002).

A mere assertion that the penalty imposed under 6 CMC § 1346(e)(2), for conviction of prostitution-related offenses, is a fine, is insufficient proof that the statutory scheme is so punitive either in purpose or effect as to negate the legislative intention to impose a civil penalty. 6 CMC § 1346(e)(2). *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 24, 6 N.M.I. 361, 367 (2002).

A defendant, charged with promoting prostitution in the second degree, in violation of 6 CMC § 1344(a) and 6 CMC § 1344(d)(2) is charged with a felony punishable by less than five years imprisonment and by less than a $2,000 fine, and therefore is not entitled to a jury trial under 7 CMC § 3101(a). This is so, although the defendant is subject to a fine of up to $1,000 under 6 CMC § 1346(c) and a mandatory fee of $2,000 under 6 CMC § 1346(e)(2), because the mandatory fee is a civil rather than a criminal penalty. 6 CMC § 1344(a), 6 CMC § 1344(d)(2), 7 CMC § 3101(a), 6 CMC § 1346(c). *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 26, 6 N.M.I. 361, 368 (2002).

## CHAPTER 4. ROBBERY; KIDNAPPING; OTHER CRIMES AGAINST THE PERSON.

## Article 2. Kidnapping and Related Offenses.

### § 1421. Kidnapping.

**Case Annotations:** *Commonwealth v. Rabauliman*, 2004 MP 12, 7 N.M.I. 54 (2004).

## Article 3. Other Crimes Against the Person.

### § 1434. Resisting Arrest.

(a) [unchanged]

(b) "Law enforcement officer" includes any police officer, corrections officer, or fire service officer of the Department of Public Safety, any probation officer of the Office of Adult Probation Supervision, any parole officer of the Board of Parole, any conservation officer of the Department of Natural Resources, any customs officer of the Department of Finance, or any other law enforcement officer of the Commonwealth.

(c) [unchanged]

**Source:** . . . (b) amended by PL 15-114, § 2.

**Commission Comment:** . . . PL 15-114, effective on November 29, 2007, contained the following in addition severability and savings clause provisions:

Section 1. Findings. The Legislature finds that Public Law 1-8 created the Board of Parole as well as established the positions of parole officers. Public Law 11-8 amended Public Law 1-8 to provide that parole officers shall have the power of arrest of persons under the jurisdiction of the board, the right of parole officers to bear firearms while on duty, and for the inclusion of parole officers on the list of law enforcement officers eligible for death benefits.

The Legislature further finds that Public Law 3-71, as amended and codified as 6 CMC § 1434(b), creates an offense for resisting arrest and applies to law enforcement officers. It does not, however, specifically refer to parole officers of the Board of Parole. In exercising the power given to them by Public Law 1-8, as amended, the Legislature finds that parole officers require protection from those who might seek to resist their statutory authority. Therefore, the Legislature finds that 6 CMC § 1434(b) should be amended to ensure that the offense of resisting arrest also applies to anyone who resists arrest by a parole officers of the Board of Parole.

# CHAPTER 5. CRIMES AGAINST THE PERSON.

## Article 1. Anti-Trafficking Act.

. . .

§ 1508. Immigration Status. [DELETED by PL 17-1 § 7(A)]

### § 1508. Immigration Status. [DELETED by PL 17-1 § 7(A)]

**Source:** . . . deleted by PL 17-1 § 7(A) (March 22, 2010).*

**Commission Comment:** . . .* PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

# PART 2. CRIMES AGAINST PROPERTY.

## CHAPTER 3. OTHER PROPERTY OFFENSES.

### § 1803. Criminal Mischief.

**Case Annotations:** *Commonwealth v. Diaz*, 2003 MP 14, 6 N.M.I. 605 (2003).

# DIVISION 2: CONTRABAND OFFENSES

## CHAPTER 1. CONTROLLED SUBSTANCES.

### Article 4. Offenses and Penalties.

### § 2141. Trafficking Offenses; Penalties.

**Case Annotations:** *Commonwealth v. Cabrera*, 1999 MP 22, 6 N.M.I. 47 (1999); . . .

**CRIMINAL LAW**

**Drug Trafficking**

– **Sentencing**
The plain language of the current version of 6 CMC § 2141(b)(1) mandates the imposition of one of three punishments: a fine not exceeding $10,000; a term of imprisonment for not less than 25 years; or both. 6 CMC § 2141(b)(1). *Commonwealth v. Diaz*, 2003 MP 14 ¶ 17, 6 N.M.I. 605, 611 (2003).

Where there is evidence of confusion on the part of the trial court regarding the interpretation of a statute regarding sentencing, 6 CMC § 2141(b)(1), and where the N.M.I. Supreme Court is unconvinced, after reviewing the record, that the trial court was aware of the minimum sentence available under the applicable statute, it will vacate the sentence. 6 CMC § 2141(b)(1). *Commonwealth v. Diaz*, 2003 MP 14 ¶ 25, 6 N.M.I. 605, 613 (2003).

When sentencing pursuant to 6 CMC § 2141(b)(1), the trial court has discretion as to whether the sentence shall include a term of imprisonment of no less than twenty-five years; however, once that determination is made, the term of imprisonment ordered by the trial court may not be suspended. 6 CMC § 2141(b)(1). *Commonwealth v. Diaz*, 2003 MP 14 ¶ 30, 6 N.M.I. 605, 614 (2003).

### § 2150. Forfeitures.

**Case Annotations:** *Villanueva v. Tinian Shipping and Transp., Inc.*, 2005 MP 12, 7 N.M.I. 182 (2005).

## CHAPTER 2. WEAPONS CONTROL.

### Article 1. Weapons Control Act.

#### § 2205. Identification Card Prerequisite to Purchase, Possession and Use; Prima Facie Evidence of Possession.

**Case Annotations:**

**STATUTES**

**Interpretation and Construction**

– **Penal Statutes**
Where a firearm is found in a vehicle, it shall be prima facie evidence that the firearm is in the possession of the occupant if there is but one. If there is more than one occupant, it shall be prima facie evidence that it is in the possession of all. 6 CMC § 2205(b). *Commonwealth v. Crisostomo*, 2007 MP 7 ¶ 22, 7 N.M.I. 424, 428 (2007).

#### § 2229. Fees for Licenses and Identification Cards.

(a)-(e) [unchanged]

(f) A late fee not to exceed 20 percent of the fee imposed shall be assessed for a late renewal.

**Source:** . . . (f) added by PL 16-42 § 2(c).

**Commission Comment:** . . . See comment to 6 CMC § 4104 for information regarding PL 16-42, which became law on July 13, 2009.

# DIVISION 3: MISCELLANEOUS OFFENSES

## CHAPTER 1. OFFENSES AGAINST PUBLIC PEACE, SAFETY AND MORALS.

### Article 1. General Offenses.

#### § 3101. Disturbing the Peace.

**Case Annotations:** *Commonwealth v. Castro*, 2007 MP 9, 7 N.M.I. 432 (2007); *Commonwealth v. Palacios*, 2004 MP 23, 7 N.M.I. 105 (2004); *Commonwealth v. Palacios*, 2003 MP 6, 6, N.M.I. 546 (2003).

**CRIMINAL LAW**

**Disturbing the Peace**
The language of 6 CMC § 3101 indicates that the statute applies to both private and public disturbances. The legislature omitted an express provision to the statute punishing only public disturbances. 6 CMC § 3101. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 28, 6 N.M.I. 487, 493 (2002).

It is significant to note that the Third Legislature, in enacting Public Law 3-71, Section 1, which was codified as 6 CMC § 3101, rejected the wording of the Model Penal Code for Disorderly Conduct, 250.2 which specifically focuses on public disturbances. Public Law 3-71; 6 CMC § 3101; Model Penal Code for Disorderly Conduct, 250.2. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 31, 6 N.M.I. 487, 493 (2002).

The Trust Territory cases which interpret the Disturbing the Peace statute, TTC 426 (1966), the predecessor to 11 TTC 551 (1970) (which according to Senate Bill No. 3-85, S.D. 2, Standing Committee Report No. 3-141 is the source for 6 CMC § 3101) indicate that disruption of the peace encompasses a large range of activities, as such 6 CMC § 3101 can apply to both public and private disturbances. TTC 426 (1966); 11 TTC 551 (1970); 6 CMC § 3101. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 32, 6 N.M.I. 487, 494 (2002).

The right to peace and quiet guaranteed by 6 CMC § 3101 is personal. 6 CMC § 3101. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 34, 6 N.M.I. 487, 494 (2002).

Disturbing the Peace under 6 CMC § 3101(a) is a general intent crime, not a specific intent crime. 6 CMC § 3101(a). *Commonwealth v. Atalig*, 2002 MP 20 ¶ 73, 6 N.M.I. 487, 498 (2002).

**Lesser Included Offense**

– **Generally**
The elements of assault are not a subset of the elements of disturbing the peace. Nor are the elements of assault and battery a subset of the elements of disturbing the peace. Therefore, neither assault nor assault and battery are lesser included offenses of the offense of disturbing the peace. 6 CMC § 1201; 6 CMC § 1202; 6 CMC § 3101. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 38, 7 N.M.I. 162, 168 (2005).

**Penal Statutes**

– **Constitutional Questions**

— **Particular Cases**
The crime of disturbing the peace requires willful conduct. 6 CMC § 3101. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 40, 7 N.M.I. 162, 168 (2005).

A reasonable person of ordinary intelligence would know that intoxicated harassment of others constitutes disturbing the peace in violation of 6 CMC § 3101(a). *Commonwealth v. Mundo*, 2004 MP 13 ¶ 20, 7 N.M.I. 64, 66 (2004).

## § 3107. Fireworks Control.

(a) *Definitions*. For the purposes of this section, unless the context clearly indicates otherwise, the following definitions shall apply:

(1) "Combustible substance" means any substance so arranged as to bum in more than one second.

(2) "Explosive substance" or "explosive mixture" means any substance so arranged as to burn in less than one second.

(3) "Firecracker" means a small, paper-wrapped or cardboard tube containing no more than fifty milligrams of explosive composition that produces noise and a flash of light.

(4) "Firework" or "fireworks" means any combustible or explosive composition or substance, or any combination of such compositions or substances, or any other article which was prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, including but not limited to blank cartridges or toy cannons in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, bombs, rockets, wheels, colored fires, fountains, mines, or serpents, or any other similarly composed item defined by the Fire Chief to be fireworks.

(5) "Sparklers" means materials of a character that will, when ignited, sparkle without throwing or dropping hot residue capable of igniting combustible materials, attached to a wire or other noncombustible central support, with such materials arranged in a cylindrical shape not more than ten inches in length nor more than one-quarter inch in diameter and which shall not burn more rapidly than one inch in ten seconds, but not including materials encased within a container of any character.

(b) *Prohibition*. No fireworks, as defined in this section, shall be permitted for sale, possession, or use in the Commonwealth of the Northern Mariana Islands unless:

(1) Consigned to the Commonwealth or Federal Government, in which case they shall not be discharged except under the direct supervision of the authorities of one of the said Governments, or

(2) Authorized for public or private display by permit by the Fire Chief. The Fire Chief is authorized to promulgate regulations for the permitting process.

(c) *Sale of fireworks*. Selling fireworks or firecrackers from any temporary stand located along any street, highway or right of way is prohibited in the Commonwealth. No roadside vending of fireworks or firecrackers shall be allowed in the Commonwealth.

(d) *Exception*. The term fireworks as defined in this section shall not be construed to include:

(1) Sparklers;

(2) Caps as used in toy pistols or other party favors containing .25 grains or less of explosive compound, and when the rate of burning and the explosive force of the materials in such devices are not greater than an equivalent weight of F.F.F.G. black powder, and when such devices are so constructed that the hand cannot come in contact with the cap when in place for explosion, and when the major explosive force is contained or dispelled within the housing or shell of the device, there is no visible flame during discharge, there is no flaming or smoldering of any of the components or parts of the device after discharge, and the device does not produce sufficient heat to readily ignite combustible materials upon which the device may be placed.

(3) Snakes or similar smoke-producing material containing not more than 100 grains of combustible substances when there is no visible flame during discharge, there is no after smoldering, and the devices do not produce sufficient heat to readily ignite combustible materials upon which the devices may be placed.

(4) Model rockets and model rocket motors designed for the purpose of propelling recoverable aero models.

(5) Those items described in ORS 480.127 (4).

(e) *Penalty*.

(1) Any individual, firm, partnership or corporation that violates any provision of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not

less than five-hundred dollars and not more than one-thousand-five-hundred dollars or imprisonment for not more than one year, or both.

(2) Nothing in this section shall apply to or prohibit any employee of the Division of Fish and Wildlife of the Department of Lands and Natural Resources or the United States Fish and Wildlife Service from possessing fireworks for control of game birds and animals, or prohibit any law enforcement officer from possessing fireworks in the performance of his duties, or prohibit any recognized government organization from sponsoring and conducting in connection with any public celebration, an officially supervised and controlled fireworks display.

(f) *Regulations*. The Department of Public Safety shall promulgate rules and regulations for the implementation of this section.

(g) *Transition*. Within thirty days of enactment of this legislation, the Fire Chief shall publish a list of items that fall under § 3107(a)(4) and § 3107(c) of this section. No person shall be found in violation of § 3107(d) of this section until the later of:

(1) The effective date of this section, or

(2) Thirty days after the publication of the list required by this subsection.

Prior to the effective date of this legislation, the Department of Public Safety shall assist in the safe disposal of items defined in § 3101(a)(4) of this section.

**Source:** . . . repealed and reenacted by PL 15-127, § 3, modified.

**Commission Comment:** The commission changed capitalization, deleted figures that repeated words and changed all occurrences of "this Act" to "this section" pursuant to 1 CMC § 3806(d), (e) and (f). The subsections referenced in subsection (g) of this section are exactly as stated in original public law. Public Law 15-127 was enacted into law on February 5, 2008, and contained the following in addition to severability, and savings clause provisions.

Section 1. Short Title. This Act may be cited as the "Fireworks Control Act of 2008."

Section 2. Findings and Purpose. The Commonwealth Legislature finds that this past holiday season the Commonwealth Health Center (CHC) Emergency Room treated two young boys, ages six and eight for firecracker-related injuries. The six-year old boy sustained second degree burns to fifty percent of his face, while the eight-year old boy sustained first and second degree bums to his hand and also slight burns to his hair, eyelashes, eyebrows and nose (Marianas Variety, December 29, 2006). A few days later CHC treated four other individuals for firecracker-related injuries. Two of the individuals suffered bums to their hands while the other two sustained severe eye injuries; leaving one individual legally blind on the right eye (Saipan Tribune, January 5,2007).

In 2003, several families spent their New Year's Day trying to recover what was left of their homes after the homes had been burned to the ground on New Year's Eve. The blaze was blamed on a lighted firecracker that landed on one of the houses and quickly spread to the other houses within the vicinity (Saipan Tribune, January 2, 2003).

Aside from fireworks or firecracker-related injuries, there have been numerous complaints, from residents as well as tourists, of extremely loud firecrackers and of the abusive handling of such substances.

Recently, a tourist from Russia expressed his disgust and anger about the fireworks situation in the Commonwealth. In his letter addressed to the Marianas Visitors Authority, he stated ". . . [W]e were unable to sleep, because some criminal elements were congregating in the immediate vicinity [public beach, behind Aquarius Beach Tower] of the hotel property, first doing fireworks... The glass balcony doors were trembling with each explosion; the fireworks were lasting for over an hour.. ." The tourist went on to state that during his two week stay on Saipan, he encountered two incidences of extremely loud firecrackers being ignited late in the evening that would last until the early morning hours. In closing, his letter he stated "We will discuss our

negative experience on the internet forums, and will not recommend vacationing on Saipan."

This negative feedback, particularly coming from a tourist, is detrimental to tourist promotion efforts during the Commonwealth's economic downturn. It is unfortunate when the Marianas Visitors Authority and other tour agencies work hard to promote our islands as "a tropical paradise" where visitors can experience "friendly lifestyle and warm island hospitality" only to witness tourists leaving with negative memories of their stay.

Furthermore, the Legislature finds that when these explosive-like firecrackers go off, elders, especially those who lived through World War II, become terrified and are reminded of those dark days. In addition to the trauma experienced by the elderly, the sick, particularly those with heart problems, also become frightened especially when they are caught off guard.

The Legislature therefore finds that the fireworks/firecracker situation in the Commonwealth has become uncontrollable under current provisions of law and a broader prohibition is necessary in the interest of the public health and safety and for the promotion of a strong tourist industry.

### § 3113. Loitering Outside a Business Establishment on a Public Thoroughfare for the Purpose of Luring, Enticing, or Soliciting Persons for Commercial Gain is Hereby Prohibited.

(a) A person commits loitering if the person is found on a public thoroughfare engaged in the following conduct:

(1) Attempting more than one time to stop or detain a person by shouting, loudly calling, or beckoning to a person to lure, entice, or solicit a person for commercial gain whether for legal or illegal purposes; or

(2) Attempting to stop or detain a person by physically touching or grabbing a person for the purpose of handing out fliers or handbills regarding a commercial enterprise for a fee or to lure, entice, or solicit a person for commercial gain whether for legal or illegal purposes.

(3) Following or attempting to follow a person for the purpose of handing out fliers or handbills regarding a commercial enterprise for a fee or to lure, entice, or solicit a person for commercial gain whether for legal or illegal purposes.

(b) Public thoroughfare for the purposes of this section shall mean any sidewalk, square, mall, parking lot, street, or beach area.

(c) A person convicted of loitering under this section may be punished by fine of not more than $1000 and by imprisonment of not more than 30 days.

**Source:** . . . amended by PL 15-113, § 2.

**Commission Comment:** . . .

PL 15-113 took effect on November 29, 2007 and contained the following, in addition to severability and savings clauses:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that the original loitering act as enacted through Public Laws 14-50 and 14-93 has been largely ineffective in curbing the continued aggressive street-side solicitation of tourists and other individuals in the CNMI. The Legislature also finds that the language of 6 CMC § 3113 is in need of refining in order to adequately place the public on notice of what types of conduct are prohibited. The attempt, more than one time, to lure a customer into a commercial transaction, whether legal or illegal, through aggressive shouting, calling, or beckoning shall not be permitted. Further, any grabbing or other touching whatsoever of potential customers for commercial gain shall not be tolerated. Finally,

the following or aggressive pursuit of potential customers for commercial gain must be discouraged.

**Article 4. ~~Smoking.~~ Prohibition of Smoking.** [*Repealed and reenacted by PL 16-46*]
~~§ 3171. Definitions.~~
~~§ 3172. Smoking in Public Places Prohibited.~~
~~§ 3173. Smoking on Public School Grounds Prohibited.~~
~~§ 3174. Use of Cigarettes or Any Tobacco Products as Prizes is Prohibited.~~

§ 3171. Definitions.
§ 3172. Prohibition of Smoking in Government Facilities.
§ 3173. Prohibition of Smoking in Public Places.
§ 3174. Prohibition of Smoking in Places of Employment.
§ 3175. Prohibition of Smoking on Property of the Public School System.
§ 3176. Reasonable Distance.
§ 3177. Where Smoking Not Regulated.
§ 3178. Declaration of Establishment as Non-Smoking.
§ 3179. Posting of Signs.
§ 3780. Non-Retaliation.
§ 3181. Enforcement.
§ 3182. Violations and Penalties.
§ 3183. Public Education.
§ 3184. Governmental Agency Cooperation.
§ 3185. Prohibition of the Use of Cigarettes or Tobacco Products as Prizes.
§ 3186. Disposition of Fines.
§ 3187. Other Applicable Law.

**§ 3171. Definitions.**

The following words and phrases, whenever used in this article, shall be construed as defined in this section unless the context clearly indicates otherwise:

(a) "Attached bar" means a bar area of a restaurant.

(b) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(c) "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

(d) "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

(e) "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

(f) "Enclosed area" means an area or space bounded by walls, with or without windows, continuous from floor to ceiling and enclosed by one or more doors, including but not limited to an

office, function room, or hallway. If an outdoor area, as defined herein, has a structure capable of being enclosed by walls or covers, regardless of the materials or removable nature of the walls or covers, the area will be considered enclosed when the walls or covers are in place.

(g) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals or other clinics, including nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms, and wards within health care facilities.

(h) "Outdoor area" means any space open to the outside air at all times.

(i) "Person" means any individual, firm, fiduciary, partnership, corporation, trust or association, however formed, club, trustee, agency or receiver.

(j) "Place of employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

(k) "Public place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

(l) "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include an attached bar.

(m) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(n) "Service line" means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(o) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(p) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

(q) "Sports arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

**Source:** . . . repealed and reenacted by PL 16-46, § 3(3171), modified.

**Commission Comment:** . . . The commission removed figures that repeated words pursuant to 1 CMC § 3806(e). Public Law 16-46, effective September 29, 2009, contained severability and savings clause provisions and the following:

Section 1. Short Title. This Act may be cited as the "Smoke-free Air Act of 2008."

Section 2. Findings and Purpose. The Commonwealth Legislature adopts the findings of the Americans for Nonsmokers' Rights Foundation (ANRF) and finds that:

1. Secondhand smoke is a known human carcinogen (cancer-causing agent) that is associated with an increased risk of lung cancer and coronary heart disease in nonsmoking adults. Young children are particularly susceptible to secondhand smoke because their lungs are not fully developed. Exposure to secondhand smoke is associated with an increased risk for sudden infant death syndrome, asthma, bronchitis, and pneumonia in young children. Each year, in the United States, secondhand smoke is associated with an estimated 8,000-26,000 new asthma cases in chldren and an estimated 150,000-300,000 new cases of bronchitis and pneumonia in children less than 18 months (7,500-15,000 of which will require hospitalization). (*Secondhand Smoke*. National Center for Chronic Disease Prevention and Health Promotion. Center for Disease Control and Prevention www.cdc.gov/tobacco.)

2. An estimated 3,000 lung cancer deaths and more than 35,000 coronary heart disease deaths occur annually among adult nonsmokers in the United States as a result of exposure to secondhand smoke. Approximately 60% of non-smokers in the United States have biological evidence of secondhand smoke exposure. (*Secondhand Smoke*. National Center for Chronic Disease Prevention and Health Promotion. Center for Disease Control and Prevention www.cdc.gov/tobacco)

3. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI), "Health Effects of Exposure to Environmental Tobacco Smoke: the Report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI),* August 1999.)

4. The Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "Environmental Tobacco Smoke: First Listed in the Ninth Report on Carcinogens," *U.S. Department of Health and Human Services (DHHS), Public Health Service, National Toxicology Program. 2000.)*

5. A study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local law eliminating smoking in workplaces and public places was in effect has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced Incidence of Admissions for Myocardial Infarction Associated with Public Smoking Ban: Before and After Study," *British Medical Journal* 328: 977-980, April 24,2004.)

6. Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. (California Environmental Protection Agency (Cal EPA), “Health Effects of Exposure to Environmental Tobacco Smoke”, *Tobacco Control* 6(4): 246-353, Winter, 1997.)

7. The Americans with Disabilities Act (ADA, 42 U.S.C. § 12101 et seq.), which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental Tobacco Smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

8. The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General.* Public Health Service, Centers for Disease Control, 1986.) The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke. (Environmental Protection Agency (EPA), "Indoor Air Facts No. 5: Environmental Tobacco Smoke," *Washington, D.C.: Environmental Protection Agency (EPA)*, June 1989.)

9. The Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 24,2004.)

10. A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association Between Exposure to Environmental Tobacco Smoke and the Development of Acute Coronary Syndromes: the CARD102000 Case-control Study," *Tobacco Control* 11(3): 220-225, September 2002.)

11. Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke. ("The High Price of Cigarette Smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

12. Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free. Creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. The Effect of Ordinances Requiring Smoke-free Restaurants on Restaurant Sales in the United States. *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The Economic Impact of Smoke-free Workplaces: an Assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)

13. Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The High Price of Cigarette Smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

14. It is the duty of the Commonwealth Legislature to provide a healthy and safe environment for the people of the CNMI as well as for visitors to our islands. This includes establishing smoke-free public and workplaces for the benefit of all, and particularly for the elderly and children. Accordingly, the Legislature finds and declares that the purposes of this Act are: (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

**~~§ 3172. Smoking in Public Places Prohibited.~~**

~~(a) - (e) [unchanged]~~

~~(f) (1) [unchanged]~~

~~(2) The Secretary shall prescribe reasonable regulations to implement the enforcement of this section. The Secretary may also establish by regulation the issuance of citations, hearing procedures based on the Administrative Procedure Act, and assessment of reasonable civil fines on any person found in violation of subsection (b) not to exceed $500 for the first violation and not to exceed $1000 for any subsequent violation. The fines collected shall be segregated by the Department of Finance and used by the Secretary solely to fund costs of enforcing this section.~~

**§ 3172. Prohibition of Smoking in Government Facilities.**

Except as otherwise provided for in this article, smoking is prohibited in all enclosed areas and outdoor areas within 25 feet of any doorway entrance or exit to a government facility that is owned, leased or operated by the government of the Commonwealth of the Northern Mariana Islands or any instrumentality thereof, including but not limited to office buildings, warehouses and vehicles owned or leased by the same; provided that the head of any department, agency, board, commission, authority, corporation or entity of the Commonwealth Government, including municipalities and agencies thereof, may by regulation adopt prohibitions against smoking that are more stringent than those provided in this article.

**Source:** . . . repealed and reenacted by PL 16-46, § 3(3172).

**Commission Comment:** PL 13-58, known as the CNMI Health Improvement Act of 2003, became effective on August 14, 2003 and contained, among other enactments, findings, appropriations, severability, and savings clause provisions.

**§ 3173. Prohibition of Smoking in Public Places.**

Except as otherwise provided in this article, smoking is hereby prohibited in all enclosed areas of public places within the Commonwealth of the Northern Mariana Islands, including but not limited to the following:

(a) Galleries, libraries, and museums.

(b) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.

(c) Educational facilities, both public and private.

(d) Elevators.

(e) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.

(f) Health care facilities.

(g) Licensed child care and adult day care facilities.

(h) Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities.

(i) Polling places.

(j) Buses and taxicabs.

(k) Restaurants, including attached bars except as provided in 6 CMC § 3177(a).

(1) Restrooms, lobbies, reception areas, hallways, and other common-use areas.

(m) Supermarkets, retail food outlets, department stores, and retail stores.

(n) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission or department, to the extent the place is subject to the jurisdiction of the Commonwealth government.

(o) Service lines.

(p) Shopping malls.

(q) Sports arenas, including enclosed places in outdoor arenas.

**Source:** . . . repealed and reenacted by PL 16-46, § 3(3173), modified.

**Commission Comment:** The commission replaced a public law section reference with the corresponding codified section number pursuant to 1 CMC § 3806(c).

**§ 3174. Prohibition of Smoking in Places of Employment.**

(a) To the extent otherwise permitted pursuant to this article, smoking shall be prohibited in all enclosed facilities within places of employment, or within 25 feet of any person who is not smoking if the place or site of work is an outdoor area or area other than an enclosed area, without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles,
and all other enclosed facilities.

(b) All employers shall advise their employees, agents, subagents, contractors, customers, and all other persons who are physically present on the premises at the place of employment during business hours, whether in an enclosed area or not, of the prohibition against smoking under this section.

(c) Employers, including employees, agents, subagents, or any person acting on behalf of the employer at the place of employment, shall have the duty to assist the Department of Public Health with the enforcement of this section by reporting a violation under this section immediately to the Department of Public Health. Failure to report may subject the person, persons and the employer to the penalties under 6 CMC § 3182(b).

**Source:** . . . repealed and reenacted by PL 16-46, § 3(3174), modified.

**Commission Comment:** The commission replaced a public law section reference with the corresponding codified section number pursuant to 1 CMC § 3806(c).

**§ 3175. Prohibition of Smoking on Property of the Public School System.**

(a) It shall be unlawful at all times for any person or an employee of any public school or college to smoke on school or college property. Any person or employee who knowingly violates this section shall be subject to the penalties under 6 CMC § 3182.

(b) It shall be unlawful for any student enrolled in public schools, colleges, or trade schools in the Northern Marianas to use tobacco products of any type on school property.

(c) The Public School System and the Northern Marianas College shall establish by regulation a policy dealing with students who violate this law. This policy shall, at a minimum, include mandatory education classes on the hazards of tobacco use.

**Source:** PL 16-46, § 3(3175), modified.

**Commission Comment:** The commission replaced a public law section reference with the corresponding codified section number pursuant to 1 CMC § 3806(c).

**§ 3176. Reasonable Distance.**

Smoking is prohibited within a reasonable distance of 25 feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means. In no case shall this provision be used to apply or permit smoking on school or college property.

**Source:** PL 16-46, § 3(3176).

**§ 3177. Where Smoking Not Regulated.**

Notwithstanding any provision of this article to the contrary, the following areas shall be exempt from the provisions of 6 CMC §§ 3173 and 3174:

(a) Bars, including open air bars, but not attached bars, at the earlier of

(1) an established time when the kitchen ceases servicing dinner meals or
(2) 10:00 p.m.;
(3) provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.

(b) Private residences, except when used as a licensed child care, adult day care, or health care facility.

(c) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent of rooms rented to guests in a hotel or motel may be so designated. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

(d) Private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.

(e) Outdoor areas of places of employment except those covered by the provisions of 6 CMC §§ 3174 and 3176.

(f) Enclosed gaming areas of a casino establishment.

(g) Fully enclosed and well-ventilated smoking areas at the departure terminal of Commonwealth airports.

**Source:** PL 16-46, § 3(3177), modified.

**Commission Comment:** The commission replaced public law section references with the corresponding codified section numbers and removed figures that repeated words pursuant to 1 CMC § 3806(c) and (e).

**§ 3178. Declaration of Establishment as Non-Smoking.**

Notwithstanding any other provision of this article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place, including the outdoor area within 25 feet of the entrance or exit to such establishment. Smoking shall be prohibited in any place in which a sign conforming to the requirements of 6 CMC § 3179(a) is posted.

**Source:** PL 16-46, § 3(3178), modified.

**Commission Comment:** The commission replaced a public law section reference with the corresponding codified section number pursuant to 1 CMC § 3806(c).

**§ 3179. Posting of Signs.**

(a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this article, by the owner, operator, manager, or other person in control of that place.

(b) Every public place and place of employment where smoking is prohibited by this article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager, or other person having control of the area.

**Source:** PL 16-46, § 3(3179).

**§ 3180. Non-retaliation.**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this article or reports or attempts to prosecute a violation of this article.

**Source:** PL 16-46, § 3(3180).

**§ 3181. Enforcement.**

(a) This article shall be enforced by the Department of Public Health or an authorized designee.

(b) Notice of the provisions of this article shall be given to all applicants for a business license in the Commonwealth of the Northern Manana Islands.

(c) Any citizen who desires to register a complaint under this article may initiate enforcement with the Secretary of the Department of Public Health or his designee.

(d) The Department of Public Health, the Fire Division of the Department of Public Safety, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this article.

(e) An owner, manager, operator, or employee of an establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof, report the violation to the Department of Public Safety and Department of Public Health as soon as practicable and may request assistance from the Department of Public Safety if such assistance is deemed necessary to stop the violation and physically remove the person or persons causing the violation.

(f) Notwithstanding any other provision of this article, an employee or private citizen may bring legal action to compel the enforcement of this article.

(g) In addition to the remedies provided by the provisions of this section, the Department of Public Health or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

**Source:** PL 16-46, § 3(3181).

**§ 3182. Violations and Penalties.**

(a) A person who smokes in an area where smoking is prohibited by the provisions of this article shall be guilty of a civil infraction, punishable by:

(1) A fine not to exceed fifty dollars for a first violation.

(2) A fine not to exceed one hundred dollars for a second violation.

(3) A fine not to exceed two hundred dollars for a third and subsequent violation and the completion of a mandatory tobacco prevention and/or cessation course.

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of a civil infraction, punishable by:

(1) A fine not to exceed two hundred dollars for a first violation.

(2) A fine not to exceed three hundred dollars for a second violation within one year.

(3) A fine not exceeding five hundred dollars for each additional violation within one year.

(c) In addition to the fines established by this section, violation of this article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any business license issued to the person for the premises on which the violation occurred.

(d) Each day in which a violation of this article occurs shall be considered a separate and distinct violation.

**Source:** PL 16-46, § 3(3182), modified.

**Commission Comment:** The commission removed figures that repeated words pursuant to 1 CMC § 3806(e).

**§ 3183. Public Education.**

The Department of Public Health shall engage in a continuing program to explain and clarify the purposes and requirements of this article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this article.

**Source:** PL 16-46, § 3(3183).

**§ 3184. Governmental Agency Cooperation.**

The Secretary of the Department of Public Health shall annually request other governmental branches, departments, and autonomous agencies having facilities within the Commonwealth of the Northern Manana Islands to establish local operating procedures in cooperation and compliance with this article. This includes urging all federal agencies and the Public School System to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

**Source:** PL 16-46, § 3(3184).

**§ 3185. Prohibition of the Use of Cigarettes or any Tobacco Products as Prizes.**

The use of any device, amusement machine game, raffle, fund-raising or prize to aid, promote or induce sales or purchases of cigarettes or any tobacco products or the giving of any cigarettes or any tobacco products in connection with any device, amusement machine game, raffle, fund-raising or prize is prohibited. Any person who knowingly violates this provision is guilty of a misdemeanor and upon conviction shall be punished by a fine of $500 per violation.

**Source:** PL 16-46, § 3(3185).

**§ 3186. Disposition of Fines.**

(a) Fifty percent of the fines collected pursuant to this article shall be deposited in the General Fund.

(b) Fifty percent of the fines collected pursuant to this article shall be allocated to the Department of Public Health for enforcement purposes. The Secretary of Finance shall establish a "Smoke-free Enforcement" revolving account for this purpose. The Secretary of the Department of Public Health shall be the expenditure authority of the "Smoke-free Enforcement" account. Funds in the account shall be available for expenditure without further appropriation by the legislature.

(c) Funds allocated to this account shall not be reprogrammed for any other purpose.

**Source:** PL 16-46, § 3(3186), modified.

**Commission Comment:** The commission removed figures that repeated words pursuant to 1 CMC § 3806(e).

### § 3187. Other Applicable Laws.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**Source:** PL 16-46, § 3(3187).

## CHAPTER 3. OFFENSES AGAINST PUBLIC ADMINISTRATION.

### § 3201. Bribery.

**Case Annotations:** . . .

**CONSTITUTION**

**Equal Protection**

– **Generally**
Section 3201 of Title 6 of the Commonwealth Code does not violate equal protection simply because it provides that the amount of the criminal fine for violation will be three times the value of the payment received, and thus some defendants accused of bribery will be entitled to a jury trial pursuant to 7 CMC § 3101(a) while others will not. 6 CMC § 3201; 7 CMC § 3101(a). *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 23, 7 N.M.I. 221, 226 (2005).

**CRIMINAL LAW**

**Offenses Against the Commonwealth**

– **Generally**
In the common law, bribery has been defined as: the voluntary giving or receiving of anything of value in corrupt payment for an official act done or to be done. The C.N.M.I. bribery statute, 6 CMC § 3201, clearly mirrors this common law definition. 6 CMC § 3201. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 13, 7 N.M.I. 221, 225 (2005).

The C.N.M.I. bribery statute, 6 CMC § 3201, does not provide a definition for the key term: corrupt. As such, it is instructive to turn to common law definitions of bribery and specifically of the term corrupt as an aid to interpreting our statute. 6 CMC § 3201. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 13, 7 N.M.I. 221, 225 (2005).

The essential elements of bribery, under 6 CMC § 3201, are: whether the accused knew that the person they gave something to was a public officer, whether the accused unlawfully and voluntarily gave something of value to the public officer, whether the accused's intent or *mens rea* in doing so was wrongful and corrupt, and whether the accused did so to obtain an official act by the public officer. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 17, 7 N.M.I. 221, 225 (2005).

### § 3202. Misconduct in Public Office.

**Case Annotations:** *Commonwealth v. Seman*, 2001 MP 20, 6 N.M.I. 334 (2001); . . .

**CRIMINAL LAW**

**Misconduct in Public Office**
Illegal acts may be committed under the color of office in violation of 6 CMC § 3202, Misconduct in Public Office, where: the illegal acts occurred while the accused and the victim were on official travel; the accused obtained a hotel room for the victim separate from her colleagues; and the accused was the boss of the victim and remained so during the course of the illegal acts, among other things. 6 CMC § 3202. *Commonwealth v. Atalig*, 2002 MP 21 ¶ 52, 6 N.M.I. 498, 496 (2002).

### § 3203. Escape.

**Case Annotations:** *Commonwealth v. Camacho*, 2002 MP 22, 6 N.M.I. 505 (2002).

### § 3306. Perjury.

(e) [deleted]

**Source:** . . . (e) deleted by PL 17-1 § 7(B) (March 22, 2010).*

**Commission Comment:** * PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein..

# DIVISION 4: DISPOSITION OFFENDERS

## CHAPTER 1. SENTENCING.

### § 4101. Fines.

**Case Annotations:** *Commonwealth v. Taisacan*, 2005 MP 9, 7 N.M.I. 162 (2005); *Commonwealth v. Palacios*, 2004 MP 23, 7 N.M.I. 105 (2004).

### § 4104. Alternative Sentence: Conditions of Probation.

(a)- (d) [unchanged]

(e) A person placed under probation supervision (pre-trial services or post-sentence supervision), investigation or house arrest shall pay a probation service fee in a sum not less than $20 and nor more than $360 annually. In determining the fee the Court shall consider the nature of the offense, the level of supervision, and investigation required. The fee shall be deposited in the Probation Services Fund established in 1 CMC § 3406.

**Source:** . . .(e) amended by PL 16-42 § 2(b).

**Commission Comment:** . . .

PL 16-42, enacted on July 13, 2009, contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that the Probation Reform Act of 2006, Public Law 15-46, contains certain provisions that are

duplicative and may cause confusion in its implementation. It is therefore the purpose of this Act to amend and repeal certain sections of the Probation Reform Act of 2006 to remove such provisions.

**§ 4105. Alternative Sentence: Probation and Suspension of Execution of Sentence.**

(a)- (j) [unchanged]

(k) [Repealed.] ~~For purposes of this section, an "indigent person" is a person who, at the time need is determined, does not have sufficient assets, credit, or other means to provide for payment of an attorney and all other necessary expenses of representation without depriving the person or his dependents of food, shelter or clothing, and who has not disposed of any assets with the intent of establishing eligibility for assistance under this title. In determining whether a person is an "indigent person," the court shall consider such factors as income, real or personal property owned, outstanding debts, the number and ages of any dependents for whom the person provides support, the person's lifestyle, and any other factors the court deems relevant.~~

**Source:** . . . (k) repealed by PL 16-42 § 3.

**Commission Comment:** . . . See the comment to 6 CMC § 4104 for information regarding PL 16-42, which was enacted on July 13, 2009.

**§ 4109. Restitution, Compensation, or Forfeiture.**

**Case Annotations:** *Commonwealth v. Saburo*, 2002 MP 3, 6 N.M.I. 355 (2002).

**§ 4113. Alternative Sentence: Probation and Suspension of Imposition of Sentence.**

(a)- (m) [unchanged]

(n) [Repealed.] ~~For purposes of this section, an "indigent person" is a person who, at the time need is determined, does not have sufficient assets, credit, or other means to provide for payment of an attorney and all other necessary expenses of representation without depriving the person or his dependents of food, shelter or clothing, and who has not disposed of any assets with the intent of establishing eligibility for assistance under this title. In determining whether a person is an "indigent person," the court shall consider such factors as income, real or personal property owned, outstanding debts, the number and ages of any dependents for whom the person provides support, the person's lifestyle, and any other factors the court deems relevant.~~

**Source:** . . . (n) repealed by PL 16-42 § 3.

**Commission Comment:** . . . See the comment to 6 CMC § 4104 for information regarding PL 16-42, which was enacted on July 13, 2009.

**§ 4114. New Trial; Correction or Reduction of Sentence.**

**Case Annotations:** *Commonwealth v. Appleby*, 2007 MP 19, 7 N.M.I. 485 (2007).

**§ 4115. Findings on Sentencing.**

**Case Annotations:** *Commonwealth v. Camacho*, 2002 MP 6, 6 N.M.I. 382 (2002).

**Sentencing**

– **Specific Findings Requirement**
A court may satisfy the specific findings requirements of 6 CMC § 4115 by orally providing several distinct reasons for the sentence imposed. 6 CMC § 4115. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 43, 6 N.M.I. 361, 372 (2002).

# DIVISION 5: JUVENILE JUSTICE

*[Chapters 1 and 2 repealed and replaced by PL 16-47 (Juvenile Justice Act of 2008)]*

**CHAPTER 1. ~~GENERAL PROVISIONS~~ JUVENILE JUSTICE ACT.**
**CHAPTER 2. ~~LIABILITY OF PARENTS FOR ACTS OF DELINQUENT CHILD~~ RESERVED.**

## CHAPTER 1. JUVENILE JUSTICE ACT.

Article 1. Definitions, Principles, Components.
Article 2. Responsibilities of the Division of Youth Services (DYS).
Article 3. Jurisdiction and Transfers.
Article 4. Proceedings.
Article 5. Custody and Detention.
Article 6. Appeals; Post-disposition Procedures Requirements.
Article 7. Juvenile Justice Act Violations and School Intervention.
Article 8. Records and Expungement.

### Article 1. Definitions, Principles, Components.

§ 5101. Definitions.
§ 5102. Principles.
§ 5103. Juvenile Justice System Basic Components.

**§ 5101. Definitions.**

When used in this chapter, unless the context otherwise requires:

(a) "Adult" means a person eighteen years of age or older.

(b) "Commit to" means to transfer legal custody.

(c) "Community-based program" means an in-home confinement program or a nonsecure or staff secure residential or nonresidential program operated to supervise and provide competency development to juvenile offenders in the least restrictive setting, consistent with public safety, operated by the Commonwealth or under contract with the Commonwealth.

(d) "Court" means the Commonwealth Superior Court. "Juvenile court" means the Commonwealth Superior Court during the pendency of any matter falling under this chapter.

(e) "Department" means the Department of Community and Cultural Affairs.

(f) "Detention" means the temporary placement in physically restricting facilities of juveniles who require secure custody for their own or the community's protection, or for the juvenile's supervision and/or treatment.

(g) "Director" means the Director of DYS.

(h) "Diversion" means the utilization of local community resources, churches, counseling for the juvenile and/or family, substance abuse counseling, informal probation, community service work, voluntary restitution, or any other available service or program as an alternative to further proceedings in court.

(i) "DYS" means the Division of Youth Services of the Department of Community and Cultural Affairs.

(j) "Guardian ad litem" means a person appointed by the court to determine, monitor and advance the best interests of a juvenile, other minor child or other incompetent individual, including a juvenile within the jurisdiction of this chapter or a child subject to proceedings pursuant to Title 6, Chapter 3 of the Commonwealth Code, 6 CMC § 5311 et seq., during the course of legal proceedings. "Guardian ad litem" does not mean the attorney for the juvenile, other minor child or other incompetent individual. Rather, the guardian ad litem is an officer of the court who reports directly to the court, and who provides independent advice to the court (as compared to the attorneys advocating for one side or the other in the action) to bring balance to the decision-making process.

(k) "Habitual status offender" means any juvenile who has been reported by the Public School System's School Attendance Review Committee, DYS, or the Department of Public Safety or a parent or guardian for commission of three status offenses within twelve months. A status offender may be charged, petitioned and adjudicated as a habitual status offender for the third status offense committed within that twelve month period.

(l) "Judge" means a judge of the Commonwealth Superior Court.

(m) "Juvenile" means any person less than eighteen years of age or who was less than eighteen years of age at the time of any act, commission or status bringing the person within the purview of this chapter.

(n) "Juvenile detention center" means any Commonwealth operated, secure facility intended and operated only for the detention of juveniles, wherever located.

(o) "Juvenile offender" means a person under the age of eighteen years, committed by the court to the custody, care and jurisdiction of DYS following adjudication for a delinquent act which would constitute a felony or misdemeanor if committed by an adult.

(p) "Legal custody" means the relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care.

(q) "Legal guardian" means a person appointed as guardian of a minor under the laws of the Commonwealth. For the purposes of this chapter, legal guardian does not include and shall not be construed to include any guardian ad litem, or the owner, operator or the agent of an owner or operator of a detention center, secure facility, work program, community based program other than an in-home confinement program, staff secure facility or other facility having temporary or long-term physical custody of the juvenile offender.

(r) "Secure facility" means any architecturally secure Commonwealth-operated facility or facility operated under contract with the Commonwealth which provides twenty-four hour supervision and confinement for juvenile offenders committed to the custody of DYS.

(s) "Staff secure facility" means a community-based program other than an in-home confinement program with awake staff twenty-four hours a day, seven days a week for intensive supervision of juveniles.

(t) "Status offense" means any act which, if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed "status offenders." Status offenses include truancy, curfew violation, and possession of alcoholic beverages or tobacco.

(u) "Truant" means a juvenile who fails to attend school as required by law, as set forth in 6 CMC § 5161.

(v) "Work program" means a public service work project which employs juvenile offenders at a reasonable wage for the purpose of reimbursing victims of the juvenile offender's delinquent behavior.

**Source:** PL 16-47, § 3(a), modified.

**Commission Comment:** The commission created the title of this article; replaced public law section references with corresponding codified section numbers; changed "this act" to "this chapter;" and removed figures that repeated written words pursuant to 1 CMC § 3806(c), (d) and (e). PL 16-47, effective November 30, 2009, included severability and savings clause provisions and the following:

Section 1. Short Title. This Act shall be referred to as the "Juvenile Justice Act of 2008."

Section 2. Finding, Policy, Purpose. The Legislature finds that the Commonwealth needs a comprehensive juvenile justice system that will be based on the following principles: accountability; community protection; and competency development. Where a juvenile has been found to be within the purview of the Juvenile Justice Act, the court shall impose a disposition that will protect the community, hold the juvenile accountable for his or her actions, and assist the juvenile in developing skills to become a contributing member of a diverse community. It is the policy of the Commonwealth that the parents or other legal guardians of the juvenile offender participate in the accomplishment of these goals through participation in counseling and treatment designed to develop positive parenting skills and an understanding of the family's role in the juvenile's behavior. The Legislature finds that the parents or legal guardians of the juvenile offender must be held accountable, where appropriate, through monetary reimbursement for supervision and confinement of the juvenile offender, and restitution to victims of the juvenile's delinquent acts. In enacting this legislation, the Legislature intends that the juvenile justice system shall encompass the following aspects: day treatment, education, community programs, probation services, observation and assessment of juveniles in residential settings, secure facilities for detained juveniles, and after-care and assistance for juveniles before they exit the juvenile justice system. The primary purpose of this Act is to provide a continuum of programs which emphasize the juvenile offender's accountability for his or her actions while assisting the juvenile offender in the development of skills necessary to function effectively and positively in the community in a manner consistent with public safety. These services and programs will individualize treatment and control of the juvenile offender for the benefit of the juvenile and the protection of society. Parents or other legal guardians are a vital part of the process. Where appropriate, parents or other legal guardians of the juvenile offender shall participate in counseling and treatment designed to develop positive parenting skills and an understanding of the family's role in the juvenile's behavior.

. . .

Section 36. Construction. Construction - This Act shall be interpreted under the laws of the Commonwealth of the Northern Mariana Islands.

**Case Annotations:** *Commonwealth v. Repeki*, 2004 MP 19, 7 N.M.I. 84 (2004); *Nakatsukasa v. Superior Ct.*, 1999 MP 25, 6 N.M.I. 59 (1999); *In re N.T.M.*, 1999 MP 24, 6 N.M.I. 53 (1999).

**JURISDICTION**

**Superior Court**

– **Juvenile Delinquency Proceedings**

Based on the N.M.I.s statutory scheme as set forth under 6 CMC § 5101, *et seq*., the constitutional language and plain meaning of Article IV, Section 28 and Article I, Subsection 4(j) of the N.M.I. Constitution, the framers intent and the consequential concern for not creating a jurisdictional gap, the Commonwealth holds that juvenile proceedings should be

afforded to persons who are adults, but who committed an offense while under the age of 18 years. *Nakatsukasa v. Superior Ct.*, 1999 MP 25 ¶ 24, 6 N.M.I. 59, 63-4 (1999).

**§ 5102. Principles.**

The Juvenile Justice System shall operate within the framework of the following principles:

(a) Provide humane, disciplined confinement to all detained juveniles.

(b) Strengthen opportunities for the juvenile's development of competency and life skills by expanding the juvenile's access to applicable programs and community resources.

(c) Hold the juvenile accountable for his or her delinquent behavior through such means as victim restitution, community service programs and payment, as appropriate, of detention and treatment costs.

(d) Invoke the participation of the juvenile offender's parent or legal guardian in assisting the juvenile to recognize and accept responsibility for his or her delinquent or other antisocial behavior and hold the parent or legal guardian accountable, where appropriate, through the payment of supervision, detention and treatment costs and restitution to victims and through attendance at programs for the development of positive parenting skills designed to promote a functional relationship between the juvenile and his or her family.

(e) Provide for the appointment and supervision of guardians ad litem in appropriate cases.

(f) Reserve secure detention as a custody setting for juvenile offenders who pose a danger of serious bodily or material harm to others or who have engaged in a pattern of serious offenses, and who cannot be controlled in a less secure setting.

**Source:** PL 16-47, § 3(b), modified.

**Commission Comment:** The commission created the title of this section.

**Case Annotations:** *Commonwealth v. Camacho*, 2002 MP 6, 6 N.M.I. 382 (2002).

**JURISDICTION**

**Superior Court**

– **Juvenile Delinquency Proceedings**

Jurisdiction over a juvenile may be waived, i.e., transferred to the adult criminal court, if, in the opinion of the court, his or her physical and mental maturity so justifies. 6 CMC § 5102. *In re J.J.C.*, 2000 MP 8 ¶ 6, 6 N.M.I. 102, 106 (2000).

The juvenile court has exclusive original jurisdiction over all juvenile delinquency proceedings. If, on the one hand, evidence exists that an offender, sixteen years or older, requires that he/she be treated in all respects as an adult person because of his/her physical and mental maturity, then the Government must not only file a complaint of delinquency with the juvenile court but also a motion or petition to certify such person as an adult. The juvenile court has the discretion to either grant or deny such a request. 6 CMC § 5102. *In re N.T.M.*, 1999 MP 24 ¶ 9, 6 N.M.I. 53, 57 (1999).

— **Generally**

The Commonwealth Code requires the courts to adopt flexible procedures in dealing with juveniles, based upon the accepted practices of juvenile courts of the United States. 6 CMC § 5012. *Nakatsukasa v. Superior Ct.*, 1999 MP 25 ¶ 17, 6 N.M.I. 59, 62 (1999).

**MINORS**

**Juvenile Delinquency Proceedings**

– **Generally**

An offender 16 years or older may be treated as an adult if, in the court's opinion, his or her physical or mental maturity so justifies. 6 CMC § 5102. *Commonwealth v. Repeki*, 2004 MP 19 ¶ 13, 7 N.M.I. 84 (2004).

In the Commonwealth, the Legislature has chosen to leave the determination of waiver of juvenile court jurisdiction to the discretion of the juvenile court by stating that juvenile jurisdiction may be waived if, in the opinion of the court, a 16 year-old minor's physical and mental maturity so justifies. The only criteria specifically identified in 6 CMC § 5102 for the courts consideration on the issue of waiver of juvenile court jurisdiction is the physical and mental maturity of the minor child. Such criteria are sufficient, as long as the four safeguards of due process are present. Of course, if the juvenile court wishes to consider additional criterion, the court is free to do so. 6 CMC § 5102. *In re J.J.C.*, 2000 MP 8 ¶ 18, 6 N.M.I. 102, 109 (2000).

Although there is no set statutory procedure governing the transfer of a juvenile case to adult court, 6 CMC § 5102 states that the court shall adopt a flexible procedure based on the accepted practices of juvenile courts of the United States. 6 CMC § 5102. *In re J.J.C.*, 2000 MP 8 ¶ 31, 6 N.M.I. 102, 111 (2000).

Article I, Section 4(j) of the Commonwealth Constitution does not prohibit a juvenile from being tried as an adult under either 6 CMC § 5102 or 6 CMC § 5103(a). N.M.I. Const. art. I, § 4(j); 6 CMC § 5102; 6 CMC § 5103(a). *In re J.C.C.*, 2000 MP 8 § 41, 6 N.M.I. 102, 112 (2000).

**STATUTES**

**Interpretation and Construction**

– **Void for Vagueness**
Section 5102 of Title 6 of the Commonwealth Code is not unconstitutionally vague. The statute merely states the method by which the juvenile court may transfer jurisdiction to the adult court. It does not put anyone in the position of not knowing what conduct is prohibited. 6 CMC § 5102. *In re J.J.C.*, 2000 MP 8 ¶ 21, 6 N.M.I. 102, 109 (2000).

### § 5103 . Juvenile Justice System Basic Components.

The basic components of the Commonwealth's juvenile justice system are as follows:

(a) Probation. Juvenile offenders ordered into the custody of DYS will be monitored by a juvenile probation officer. Juvenile probation officers shall be peace officers and shall have twenty-four hour on call responsibility for supervision of juveniles. Juvenile probation officers will be responsible for assisting juveniles and their families in accessing counseling or treatment resources, close supervision of juveniles' activities, supervision of restitution and coordination of other services provided to juveniles. Juvenile probation officers shall have the powers and duties set forth for adult probation officers in 1 CMC § 3234.

(b) Day treatment. Day treatment programs will be time-limited, nonresidential treatment and educational programs. These programs will be supervised or approved by DYS for intensive supervision of juveniles through daily contact and by counseling juveniles regarding employment, education, courts, family and life skills. Nonresidential alcohol and drug programs will provide outpatient assessment and counseling for juveniles with substance abuse problems.

(c) Community programs. It is intended that community programs will exist throughout the Commonwealth to provide twenty-four hour residential supervision and treatment options to juveniles in close proximity to their families and their community. It is intended that these programs will strengthen the juvenile's relationship with family, engender a commitment to school and employment, promote the development of competency and life skills and help juveniles generalize appropriate behavior into their environment.

(d) Observation and assessment. DYS shall conduct observation and assessment of the juvenile, where appropriate, in a short-term residential setting. These programs shall be supervised by juvenile probation officers.

(e) Secure facilities. Secure facilities will provide secure confinement, discipline and treatment of detained juveniles. Programs at the secure facilities will be designed to help juveniles

recognize accountability for delinquent behavior by confronting and eliminating delinquent behavior and making restitution to victims through community service or other restitution programs.

(f) Adjudication. Proceedings against juveniles shall be conducted in accordance with the provisions of this chapter. An adjudication of a juvenile pursuant to this chapter does not constitute a criminal conviction.

**Source:** PL 16-47, § 3(c), modified.

**Commission Comment:** The commission created the title of this section. The commission changed "this act" to "this chapter" and removed figures that repeated written words pursuant to 1 CMC § 3806(d) and (e).

**Case Annotations: . . .**

**JURISDICTION**

**Generally**
Second-degree murder is an enumerated felony automatically removed from the jurisdiction of the juvenile court pursuant to 6 CMC § 5103(a). *Commonwealth v. Repeki*, 2004 MP 19 ¶ 10, 7 N.M.I. 84, 87 (2004).

**Superior Court**

– **Adult Criminal Court, Over Minor**
Where a juvenile, 16 years of age or older, is accused of a traffic offense, murder, or rape, the juvenile court is automatically divested of jurisdiction and the accused juvenile is thereby subject to the original jurisdiction of the adult criminal court. 6 CMC § 5103(a). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 29, 6 N.M.I. 382, 392 (2002).

– **Particular Cases**
No transfer hearing was required from juvenile court to adult court where the adult court had jurisdiction over the original offense, a lesser-included offense of one of the enumerated offenses under 6 CMC § 5103(a). *Commonwealth v. Repeki*, 2004 MP 19 ¶ 13, 7 N.M.I. 84, 88 (2004).

– **Juvenile Delinquency Proceedings**
The juvenile court has exclusive original jurisdiction over all juvenile delinquency proceedings, except when an offender sixteen years of age or older is charged with a traffic offense, murder or rape. 6 CMC § 5103(a). *In re J.J.C.*, 2000 MP 8 ¶ 6, 6 N.M.I. 102, 106 (2000).

Once the juvenile court grants the request to certify a juvenile as an adult, jurisdiction is then transferred to the adult criminal court. The juvenile court does not lose jurisdiction - it merely transfers it to the adult criminal court. If, on the other hand, an offender sixteen years of age or older, is charged with murder, rape, or a traffic offense, the juvenile court is automatically divested of jurisdiction since the offender is subject to the original jurisdiction of the adult criminal court. 6 CMC § 5103(a). *In re N.T.M.*, 1999 MP 24 ¶ 9, 6 N.M.I. 53, 57 (1999).

**MINORS**

**Juvenile Delinquency Proceedings**

– **Generally**
Section 5103(a) of Title 6 of the Commonwealth Code satisfies the language, intent and requirements of Article I, Section 4(j) of the Commonwealth Constitution, whose protection of juveniles in criminal proceedings centers on shielding them from the harsh glare of publicity, helping them to avoid the life-long stigma of a criminal record, minimizing their contact with adult criminals, and rehabilitation. Section 4(j) of Article I of the Commonwealth Constitution does not prevent the legislature from directing that certain offenders who are under the age of 18 may be tried as adults in specified circumstances. 6 CMC § 5103(a); N.M.I. Const. art. I, 4(j). *In re J.C.C.*, 2000 MP 8 ¶ 40, 6 N.M.I. 102, 112 (2000).

Article I, Section 4(j) of the Commonwealth Constitution does not prohibit a juvenile from being tried as an adult under either 6 CMC § 5102 or 6 CMC § 5103(a). N.M.I. Const. art. I, § 4(j); 6 CMC § 5102; 6 CMC § 5103(a). *In re J.C.C.*, 2000 MP 8 ¶ 41, 6 N.M.I. 102, 112 (2000).

– **Constitutional Questions**
Generally, as a matter of due process, in order to determine whether a juvenile's physical or mental maturity justifies a transfer to adult court, he is entitled to a hearing, representation by counsel, access to the juvenile's records, and a statement of reasons for the transfer of jurisdiction to adult court. However, a juvenile age 16 years or older who is charged with murder, rape, or a traffic violation shall be treated in the same manner as an adult pursuant to 6 CMC § 5103(a). Once the adult court acquires jurisdiction, jurisdiction is maintained on the offense charged, including lesser-included offenses. *Commonwealth v. Repeki*, 2004 MP 19 ¶ 13, 7 N.M.I. 84, 88 (2004).

## Article 2. Responsibilities of the Division of Youth Services (DYS).

§ 5111. Powers and Duties of DYS and the Director.
§ 5112. Review of Programs for Juveniles – Certification.
§ 5113. Distribution and Reporting Requirements for Commonwealth, Other Public and Private Contract Facilities.
§ 5114. Reports by Department.
§ 5115. Restitution to Victims of Juvenile Offenders – Duties of Department.

### § 5111. Powers and Duties of DYS and the Director.

(a) DYS is the agency responsible for the services and programs for juveniles falling within the jurisdiction of this chapter. DYS shall, at a minimum:

(1) Develop efficient and effective juvenile programs within the framework of professional standards, legislative intent and available resources.

(2) Provide for a diversity of innovative, meaningful and effective programs for juveniles in and out of detention through research on delinquent behavior and the continuous evaluation of juvenile programs.

(3) Provide programs to increase public awareness of the mission of the juvenile justice system and encourage public participation in developing an effective juvenile justice system designed to aid in reducing juvenile crime in the Commonwealth.

(4) Develop and maintain a Commonwealth-wide juvenile offender information system.

(b) DYS shall be responsible for the administration and operation of the juvenile detention facility or facilities, as follows:

(1) DYS shall administer and provide general oversight of all juvenile detention centers and any other secure or nonsecure facilities as required by the this chapter.

(2) DYS shall ensure that educational services are provided to juveniles and coordinate with the Public School System to provide educational programs for juvenile detention centers which are in compliance with the educational plans and standards approved by the Commonwealth Public School System.

(3) The Department shall have the power to promulgate rules for the administration and operation of juvenile detention centers.

(c) Nothing in this section shall be construed to limit those powers and duties of DYS as provided in 1 CMC § 2374.

**Source:** PL 16-47, § 4, modified.

**Commission Comment:** The commission changed "this act" and "Juvenile Justice Act" to "this chapter" pursuant to 1 CMC § 3806(d).

**§ 5112. Review of Programs for Juveniles – Certification.**

_____DYS shall establish compliance standards for the operation of all Commonwealth operated or Commonwealth contracted programs which provide services to juvenile offenders. DYS shall certify such programs' compliance with the standards provided by DYS. DYS shall provide written reviews to the managers of those programs. Those programs which are unable or unwilling to comply with approved standards may not be certified.

**Source:** PL 16-47, § 29, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47 pursuant to 1 CMC § 3806(b).

**§ 5113. Distribution and Reporting Requirements for Commonwealth, Other Public and Private Contract Facilities.**

Each facility housing juvenile offenders in department custody, whether a Commonwealth, other public or private contract facility, shall within 15 days of the end of any calendar quarter provide to the Presiding Judge of the Superior Court, the Secretary of the Department of Community & Cultural Affairs and the Director of the Division of Youth Services the following reports:

(a) the per day population including a monthly average;

(b) any escapes or failure to return;

(c) the number of juveniles and reasons each juvenile(s) was held in high risk security confinement;

(d) any legal actions served on the facility or any employee as an employee thereof;

(e) any incident of juvenile population exceeding facility rated capacity; and

(f) any violation(s) of health & safety regulations as noted in official inspections.

**Source:** PL 16-47, § 32, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47 pursuant to 1 CMC § 3806(b).

**§ 5114. Reports by Department.**

When a juvenile offender has been committed to DYS pursuant to this chapter, DYS shall supply a report of the juvenile offender's educational and developmental progress to the committing court as often as the court deems necessary in its order of commitment, but not less frequently than every three months.

**Source:** PL 16-47, § 33, modified.

**Commission Comment:** The commission changed "this act" to "this chapter;" and removed figures that repeated written words pursuant to 1 CMC § 3806(c), (d) and (e).

**§ 5115. Restitution to Victims of Juvenile Offenders – Duties of Department.**

(a) DYS probation shall make reasonable efforts to ensure that court ordered restitution is made to the victim of the juvenile offender. Restitution may be made through the employment of juvenile offenders in work programs or through other means.

(b) Restitution, where appropriate, shall be made a condition of probation.

**Source:** PL 16-47, § 31, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47 pursuant to 1 CMC § 3806(b).

## Article 3. Jurisdiction and Transfers.

§ 5121. Jurisdiction.
§ 5122. Transfer from Other Courts.
§ 5123. Retention of Jurisdiction.
§ 5124. Waiver of Jurisdiction and Transfer to Other Court.

### § 5121. Jurisdiction.

The Superior Court shall have exclusive, original jurisdiction over any juvenile and over any adult who was a juvenile at the time of any act, omission or status offense:

(a) Where the act, omission or status offense is prohibited by federal or Commonwealth law or ordinance by reason of minority only, regardless of where the same occurred; or

(b) Where the act or omission is a violation of any federal or local law or ordinance which would be a crime if committed by an adult, regardless of where the same occurred.

(c) This chapter shall not apply to a juvenile offender transferred to another court pursuant to 6 CMC § 5124.

(d) This chapter shall not apply to juvenile violators of non-felony-level traffic statutes, except:

(1) a juvenile violator under the age of sixteen years at the time of such violation may, at the discretion of the court, be treated under the provisions of this chapter; and

(2) a juvenile charged with violation of 9 CMC § 7105(a)(5).

**Source:** PL 16-47, § 5, modified.

**Commission Comment:** The commission changed public law section references to the corresponding codified section numbers; changed "this act" to "this chapter;" and removed figures that repeated written words pursuant to 1 CMC § 3806(c), (d) and (e).

### § 5122. Transfer from Other Courts.

If during the pendency of a criminal or quasi-criminal charge against any juvenile in any other court than the juvenile court, it shall be ascertained that the juvenile was under the age of eighteen years at the time of committing the alleged offense, except where such juvenile has left the Commonwealth, or where said charge is that such juvenile is a juvenile non-felony traffic violator, or is within the purview of 6 CMC § 5124(a)(1) or (a)(2), it shall be the duty of such court forthwith to transfer the case, together with all the papers, documents and testimony connected therewith, to the court having jurisdiction over the juvenile with respect to the offense charged. The court making such transfer shall order the juvenile to be taken forthwith to the juvenile court or place of detention designated by the juvenile court or shall release the juvenile to the custody of some suitable person to be brought before the juvenile court at a time designated. The juvenile court shall then proceed as provided in this chapter.

**Source:** PL 16-47, § 6, modified.

**Commission Comment:** The commission changed public law section references to the corresponding codified section numbers; changed "this act" to "this chapter;" and removed figures that repeated written words pursuant to 1 CMC § 3806(c), (d) and (e).

### § 5123. Retention of Jurisdiction.

Jurisdiction obtained by the court in the case of a juvenile shall be retained by it for the purposes of this chapter until the juvenile becomes twenty-one years of age, unless terminated prior thereto. If a juvenile under the jurisdiction of the court is charged with a felony, after attaining eighteen years of age, the juvenile shall be treated as any other adult offender. If a person eighteen years of age or older already under court jurisdiction pursuant to this chapter is convicted of a felony, that conviction shall terminate the jurisdiction of the court, provided, however, that nothing herein contained shall prohibit any court from proceeding as provided in 6 CMC § 5131(b).

**Source:** PL 16-47, § 7, modified.

**Commission Comment:** The commission changed public law section references to the corresponding codified section numbers; changed "this act" to "this chapter;" and removed figures that repeated written words pursuant to 1 CMC § 3806(c), (d) and (e).

**§ 5124. Waiver of Jurisdiction and Transfer to Other Court.**

(a) After the filing of a petition and after full investigation and hearing, the court may waive jurisdiction over the juvenile pursuant to this chapter, and order that the juvenile be held for adult criminal proceedings when:

(1) A juvenile is alleged to have committed any of the crimes enumerated in 6 CMC § 5131; or

(2) A juvenile is alleged to have committed an act other than those enumerated in 6 CMC § 5131, after the child became sixteen years of age which would be a felony if committed by an adult subject to the provisions of this section; or

(3) An adult at the time of the filing of the petition is alleged to have committed an act prior to his or her having become eighteen years of age which would be a felony if committed by an adult, and the court finds that the adult is fit for transfer to adult court pursuant to the provisions of 6 CMC § 5124(h); or

(4) An adult already under the jurisdiction of the court as a juvenile is alleged to have committed a crime while an adult.

(b) A motion to waive jurisdiction under this chapter and prosecute a juvenile under the criminal law may be made by the prosecuting attorney or the juvenile. The motion shall be in writing and contain the grounds and reasons in support thereof.

(c) Upon the filing of a motion to waive jurisdiction under this chapter, the court shall enter an order setting the motion for hearing at a reasonable time and date certain. The court shall inform the juvenile and the parents, guardian or custodian of the juvenile's right to court-appointed counsel and shall appoint such counsel as appropriate. The court may also order a full and complete investigation of the circumstances of the alleged offense to be conducted by juvenile probation, and/or such other agency or investigation officer designated by the court. The investigative report shall be provided to the parties for review within a reasonable time before the date of the hearing.

(d) Upon setting the time for the hearing upon the motion to waive jurisdiction, the court shall give written notice of said hearing to the juvenile; to the juvenile's attorney; to the parents, guardian or custodian of the juvenile; and to the prosecuting attorney, at least thirty days before the date of the hearing, or any lesser period stipulated by the parties. Service of the notice shall be made in the manner prescribed for service of a summons under 6 CMC § 5133.

(e) The hearing upon the motion to waive jurisdiction shall be held in the same manner as an evidentiary hearing upon the original petition and shall be made part of the record.

(f) If as a result of the hearing on the motion to waive jurisdiction the court shall determine that jurisdiction should not be waived, the petition shall be processed in the customary

manner as a proceeding under this chapter. The court shall enter findings of fact and conclusions of law upon which it bases its decision whether to waive jurisdiction, together with any order waiving jurisdiction under this chapter and binding the juvenile over to the authorities for prosecution under the criminal laws of the Commonwealth.

(g) This section does not authorize an adjudication or determination of facts beyond the existence of probable cause to believe a particular crime was committed and that a particular juvenile committed it; such determination can be based on hearsay evidence.

(h) In considering whether or not to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following factors:

(1) The seriousness of the offense and whether the protection of the community or the juvenile requires isolation of the juvenile beyond that afforded by juvenile facilities;

(2) Whether the victim has suffered injury as defined in 6 CMC § 103(o) and 103(p);

(3) Whether the alleged offense was committed in a violent manner;

(4) Whether the alleged offense was premeditated and, if so, its level of sophistication, including motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident;

(5) Whether the alleged offense was against persons;

(6) The emotional and mental maturity of the juvenile as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living;

(7) The juvenile's record and previous history of contacts with the juvenile justice system, including prior adjudications that would be either felonies or violent misdemeanors if committed by an adult;

(8) The likelihood that the juvenile will develop sufficient life skills to become a contributing member of the community; and

(9) Whether the juvenile is a dangerous individual; that there exists a real possibility he or she will not be rehabilitated before reaching the age of 21; and that protection of the community requires the waiver. All of the factors listed in this subsection shall be considered by the court. The amount of weight to be given to each of the factors is discretionary with the court, and a determination that the juvenile is not a fit and proper subject to be dealt with under this chapter may be based on any one or a combination of the factors set forth above. The court's consideration of each factor shall be recited in the order of waiver or non-waiver of juvenile court jurisdiction. Nothing in this section shall preclude the participation of the victim during these proceedings.

(10) Upon conviction of a juvenile held for adult criminal proceedings under this section, the judge shall, if a finding is made that adult disposition measures would be inappropriate:

(i) Order disposition of the juvenile in accordance with the juvenile disposition options set forth in this chapter; or

(ii) Remand the convicted juvenile to the custody of the Department of Corrections but suspend any ordered term of detention or withhold judgment and commit the juvenile to the custody of DYS for an indeterminate period of time in accordance with 1 CMC § 2374. The court, in its discretion, may order that the suspended disposition or withheld judgment be conditioned upon the convicted juvenile's full compliance with all reasonable program requirements of DYS, whether in the custody of juvenile detention or juvenile probation. Such a disposition may also set additional terms of probation, which may be served under the supervision of

juvenile probation. However, in no event may the total of the actual time spent by the convicted juvenile in the custody of DYS plus any adult sentence imposed by the court exceed the maximum period of imprisonment that could be imposed on an adult convicted of the same crime.

(iii) If the convicted juvenile is given a suspended term of detention or withheld judgment conditioned upon the convicted juvenile's compliance with all reasonable program requirements of DYS pursuant to paragraph (ii) of this subsection, and if DYS reasonably believes that the convicted juvenile is failing to comply with all reasonable program requirements or that continued commitment to juvenile detention or juvenile probation is no longer appropriate, DYS may request the Attorney General's office to move the court to revoke the commitment to DYS and transfer the juvenile to the custody of the DOC or adult probation for the remainder of any term of detention. The court shall then determine whether commitment of the juvenile to DYS, or to the Department of Corrections or adult probation, is most appropriate, using the factors set forth in subsection (h), above.

**Source:** PL 16-47, § 8, modified.

**Commission Comment:** The commission changed public law section references to the corresponding codified section numbers; changed references to "this act" and "Juvenile Justice Act" to "this chapter;" and removed figures that repeated written words pursuant to 1 CMC § 3806(c), (d) and (e).

**Article 4. Proceedings.**

§ 5131. Violent Offenses.
§ 5132. Diversion or Informal Disposition of the Petition.
§ 5133. Summons – Notice – Custody of Juvenile.
§ 5134. Failure to Obey Summons, Contempt – Warrant.
§ 5135. Appointment of Counsel – Payment of Cost of Legal Services.
§ 5136. Adjudication Hearing.
§ 5137. Disposition.

**§ 5131. Violent Offenses.**

(a) Any juvenile, age sixteen years or age seventeen years, who is alleged to have committed any of the crimes listed in subsection (b) of this section, or any person under age sixteen years who is alleged to have committed any of the crimes listed in subsection (b) of this section and, pursuant to 6 CMC § 5124, has been ordered by the court to be held for adult criminal proceedings shall be proceeded against as an adult. All other felonies or misdemeanors charged, which are based on the same act or transaction as the § 5131(b) offense , shall similarly be charged and proceeded against as an adult. Any juvenile proceeded against pursuant to this section shall be accorded all constitutional and statutory rights, including bail and trial by jury, and procedural safeguards as if that juvenile were an adult defendant.

(b) The commission of the following crimes shall result in adult criminal proceedings pursuant to subsection (a) of this section.

(1) Murder; or

(2) Sexual assault as defined in 6 CMC § 1301 or 6 CMC § 1302.

(c) Once a juvenile has been transferred for criminal prosecution as an adult pursuant to the waiver provisions of 6 CMC § 5124, or this section, the juvenile shall be held in the adult prison

facility but separated from the adult prison population unless the court, after finding good cause, orders otherwise.

(d) Upon the conviction of a juvenile pursuant to this section, the judge may, if a finding is made that adult sentencing measures would be inappropriate, sentence the convicted juvenile in accordance with the juvenile disposition options set forth in 6 CMC § 5124(h).

**Source:** PL 16-47, § 9, modified.

**Commission Comment:** The commission changed public law section references to the corresponding codified section numbers and removed figures that repeated written words pursuant to 1 CMC § 3806(c) and (e).

**§ 5132. Diversion or Informal Disposition of the Petition.**

Prior to any adjudication under this chapter, the prosecuting attorney may request a preliminary inquiry from the juvenile probation officer to determine whether the interest of the public or the juvenile requires a formal court proceeding. If court action is not required, the prosecuting attorney may utilize the diversion process and refer the case directly to the juvenile probation officer for a community based-diversion program.

**Source:** PL 16-47, § 10, modified.

**Commission Comment:** The commission replaced "this Act" with "this chapter" pursuant to 1 CMC § 3806(d).

**§ 5133. Summons – Notice – Custody of Juvenile.**

After a petition has been filed and after such further investigation as the court may direct, and if the matter is set for hearing, the court shall issue a summons requiring the person or persons who have custody or control of the juvenile to appear personally and bring the juvenile before the court at a time and place stated. If the person so summoned shall be other than a parent or guardian of the juvenile, then the parent or guardian or both shall also be notified of the pendency of the case and of the time and place appointed for the hearing. Notice shall be given as hereinafter provided. A subpoena may be issued requiring the appearance of any other person whose presence is required by the juvenile, the juvenile's guardian or any other person who, in the opinion of the judge, is necessary. If it appears the juvenile is in such condition or surroundings that the best interests of the juvenile requires that he be taken into custody immediately and probable cause exists to believe the offense has occurred, the judge may order by endorsement upon the summons that the officer serving the same shall at once take the juvenile into custody and bring him before the court within twenty-four hours excluding weekends and holidays. However, the judge may not authorize, by use of summons, the detention of a juvenile who is alleged to have committed only a status offense.

**Source:** PL 16-47, § 11, modified.

**Commission Comment:** The commission removed figures that repeated written words pursuant to 1 CMC § 3806(e).

**§ 5134. Failure to Obey Summons, Contempt – Warrant.**

If any person summoned as herein provided shall, without reasonable cause, fails to appear, he may be proceeded against for contempt of court. In case the summons cannot be served, or the party served fails to obey the same, or in any case when it shall be made to appear to the judge that the

service will be ineffectual, or that the best interests of the juvenile requires that he be brought forthwith into the custody of the court, a warrant may be issued for the parent, guardian or the juvenile.

**Source:** PL 16-47, § 12.

**§ 5135. Appointment of Counsel – Payment of Cost of Legal Services.**

As early as possible in the proceedings, and in any event before the hearing of the petition on the merits, the juvenile and his parents, or guardian, shall be notified of the juvenile's right to representation by counsel. When it appears to the court that the juvenile or his parents or guardian desire counsel for the juvenile but are financially unable to pay for such legal services, the court shall appoint counsel to represent the juvenile. In the event of proceedings against the parents or guardian arising from the juvenile proceedings, and the parents or guardian are financially unable to pay for legal services, the court may appoint the juvenile's counsel to represent the parents; provided, that if the court finds that there is a conflict of interest between the interests of the juvenile and his parents or guardian, then the court shall appoint separate counsel for the parents or guardian.

**Source:** PL 16-47, § 13.

**§ 5136. Adjudication Hearing.**

(a) If the juvenile denies the allegations in the petition, the court shall conduct a full evidentiary adjudication hearing, in the manner prescribed by the Commonwealth Rules of Evidence. The juvenile shall have the same constitutional rights afforded to criminal defendants. A record shall be made in all proceedings connected with the case and shall be preserved in the event of appeal. If at the conclusion of the evidentiary hearing the court finds that the juvenile comes within the purview of this chapter, the court shall so rule, and then shall set the matter down for disposition, or may, in the interest of time, hold a disposition hearing at the conclusion of the evidentiary hearing if all information necessary to the disposition of the case is available at the time.

(b) When a juvenile, other than the juvenile against whom the petition has been filed, is summoned as a witness in any hearing under this chapter, notwithstanding any other statutory provision, parents, a counselor, a friend or other person having a supportive relationship with the juvenile shall, if available, be permitted to remain in the courtroom unless, in written findings made and entered, the court finds that the juvenile's constitutional right to a fair trial will be unduly prejudiced.

(c) Nothing in this section shall preclude the court from accepting an alternate disposition of any petition.

**Source:** PL 16-47, § 17, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47 and replaced all occurrences of "this Act" with "this chapter" pursuant to 1 CMC § 3806(b) and (d).

**§ 5137. Disposition.**

(a) Upon the entry of an order finding the juvenile is within the purview of this chapter, the court shall then hold a hearing in the manner consistent with the Commonwealth Rules of Criminal Procedure to determine the disposition that best will promote accountability, competency development and community protection. Prior to the entry of an order disposing of the case, other than an order of discharge or dismissal, the court may request and, if requested, shall receive a report containing the results of an inquiry into the home environment, past history, competency development, prevention or

out of home placement services provided, and the social, physical and mental condition of the juvenile. Upon presentation and consideration of the report by the court, the court may proceed to order disposition of the juvenile as follows:

(1) Place the juvenile on probation for a period not to exceed three years from the date of the order, except the court may place a juvenile on probation for a period not to exceed the juvenile's twenty-first birthday if the court finds that the juvenile has committed a crime of a sexual nature. Such period of probation may be imposed in addition to any period of detention, provided that no such period of probation may continue beyond the juvenile's twenty-first birthday;

(2) Commit the juvenile to a period of detention, pursuant to this chapter, for a period of time not to exceed ninety days for each unlawful or criminal act the juvenile is found to have committed, if the unlawful or criminal act would be a misdemeanor if committed by an adult, or where the juvenile has been adjudicated as a habitual status offender as defined in 6 CMC § 5101(k);

(3) If the juvenile has committed an unlawful or criminal act which would be a felony if committed by an adult, the court may commit the juvenile to detention for a period not to exceed three hundred sixty-five days for each unlawful or criminal act;

(4) Commit the juvenile to detention and suspend all or part of the disposition on specific probationary conditions;

(5) Whenever a court commits a juvenile to a period of detention, DYS shall notify the school that the juvenile attended prior to detention;

(6) The court may order that the juvenile be examined or treated by a physician, psychiatrist or psychologist, or that he receive other special care, or that he submit to an alcohol or drug evaluation, if needed, and for such purposes may place the juvenile in a hospital or other suitable facility;

(7) In support of an order under the provisions of this section, the court may make an additional order setting forth reasonable conditions to be complied with by the parents, the juvenile, his legal guardian or custodian, or any other person who has been made a party to the proceedings, including, but not limited to, restrictions on visitation by the parents or one parent, restrictions on the juvenile's associates, occupation and other activities, and requirements to be observed by the parents, guardian or custodian;

(8) The court may make any other reasonable order which is in the best interest of the juvenile or is required for the protection of the public, except that no person under the age of eighteen years may be committed to jail, prison or a secure facility which does not meet the standards set forth in this chapter unless jurisdiction over the individual has been waived pursuant to 6 CMC § 5124.

(9) The court may combine several of the above-listed modes of disposition where they are compatible;

(10) An order under the provisions of this section for probation or placement of a juvenile with an individual or an agency may provide a schedule for review of the case by the court;

(11) Order such other terms, conditions, care or treatment as appears to the court will best serve the interests of the juvenile and the community;

(12) Notwithstanding any other provision of this section, a court may not commit a juvenile offender under the age of ten years to a period of detention or to the custody of DYS of juvenile justice for placement in secure confinement;

(13) Notwithstanding any other provision of this section, no juvenile who is found to come within the purview of this chapter for the commission of a status offense shall be remanded to detention in a detention facility unless an adjudication has been made that the juvenile is a habitual status offender; or

(14) The court, in addition to any other judgment it may make regarding the juvenile, may render judgement that the parent, guardian, or person having the control or charge of the juvenile shall deliver the juvenile to school and/or escort him to each class or program designated by school authorities;

(b) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order the juvenile or his parents or both to pay restitution to or make whole any victim who suffers an economic loss as a result of the juvenile's conduct in accordance with the standards and requirements 6 CMC § 4109. Court-ordered restitution shall be paid prior to any other court-ordered payments unless the court specifically orders otherwise.

(c) The court may order any non-indigent juvenile's parents, legal guardian or custodian to pay the charges imposed by community programs ordered by the court for the juvenile, or the juvenile's parents, legal guardian or custodian.

(d) Any parent, legal guardian or custodian violating any order of the court entered against the person under the provisions of this chapter shall be subject to contempt proceedings under the provisions 6 CMC § 3307.

**Source:** PL 16-47, § 18, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47; changed public law section references to the corresponding codified section numbers; replaced "Act" with "chapter;" and removed figures that repeated written words pursuant to 1 CMC § 3806(b), (c), (d) and (e).

**Article 5. Custody and Detention.**

§ 5141. Apprehension and Release of Juveniles – Detention.
§ 5142. Juvenile Detention Centers.
§ 5143. Standards for Detention.
§ 5144. Secure Facilities.

**§ 5141. Apprehension and Release of Juveniles – Detention.**

(a) A peace officer may take a juvenile into custody without order of the court:

(1) When he has probable cause to believe that the juvenile has committed an act which would be a misdemeanor or felony if committed by an adult; or

(2) When in the presence of a peace officer or private citizen the juvenile has violated any local or federal law or municipal ordinance; or

(3) When there are reasonable grounds to believe the juvenile has committed a status offense. Status offenders shall not be placed in any jail facility but instead may be placed in shelter care facilities, except in the case of runaways, when there is a specific detention request in writing from a foreign jurisdiction to hold the juvenile pending transportation arrangements. The request by the foreign jurisdiction must be made within 24 hours of the runaway being placed in the custody of DYS.

(b) A peace officer may take a juvenile into custody upon a written order or warrant signed by a judge. The judge may issue the order or warrant after finding that there is reasonable cause to believe that the juvenile comes within the purview of this chapter. Jurisdiction of the court

shall attach from the time the juvenile is taken into custody. When an officer takes a juvenile into custody, the officer shall attempt to notify the parent, guardian or custodian of the juvenile immediately and, if not successful, shall continue to attempt notification until the parent, guardian or custodian receives notice that the juvenile is in custody.

(1) Subject to certain limitations set forth herein, all custodial interrogation(s) of a minor shall be in the presence of at least one of the following: the minor's attorney, if any, a parent, a legal guardian, or an adult relative with whom the minor is residing.

(2) Notwithstanding this requirement, a minor may nonetheless be interrogated outside the presence of the minor's attorney, parent, legal guardian, or adult relative with whom the minor is residing, in the following cases:

(i) where there are exigent circumstances or circumstances where there is a reasonable belief that the interrogation is necessary to avoid the risk of significant bodily harm or the imminent risk of loss of property or evidence;

(ii) where the interrogation should be conducted outside the presence of a parent, guardian, or adult relative, because the best interests of the minor are reasonably served by limiting or prohibiting access to the minor (such as in the case where there is reasonable belief that a parent or adult relative is involved in the perpetration of a crime involving or against the minor); or

(iii) when notice to the minor's parent, guardian, or adult relative with whom the minor is residing, is provided and the parent, guardian, or adult relative expressly waives the opportunity to be present.

(c) Unless otherwise ordered by the court, or unless it appears to the officer taking the juvenile into custody that it is contrary to the welfare of society or the juvenile, the juvenile shall be released to the custody of the juvenile's parent, guardian, custodian or other responsible adult upon written promise, signed by such person, to bring the juvenile to the court at a stated time. Such written promise shall be submitted to the court as soon as possible. If the responsible person shall fail to produce the juvenile as agreed, or upon notice from the court, a summons for that person may be issued by the court and a warrant may be issued for apprehension of the juvenile.

(d) A juvenile who is not released shall be taken forthwith to the court or place of detention specified by the court and then, not later than twenty-four hours, excluding Saturdays, Sundays and holidays, shall be brought before the court for a detention hearing to determine where the juvenile will be placed until the next hearing. Juveniles shall not be placed in any jail facility. Allowable juvenile placements include, but are not limited to, the following:

(1) Parents of the juvenile;
(2) Relatives of the juvenile;
(3) Foster care;
(4) Group care;
(5) A juvenile detention facility;
(6) Community-based diversion programs; or
(7) Shelter care.

(e) The person in charge of a detention facility shall give immediate notice to the court that the juvenile is in custody.

(f) As soon as a juvenile is detained by court order, the juvenile's parents, guardian or legal custodian shall be informed by notice in writing in form acceptable to the court that the juvenile may have a prompt hearing regarding release or detention.

(g) A juvenile taken into detention for a nonstatus offense shall be fingerprinted and photographed. Fingerprints and photographs taken of juveniles shall be forwarded to the Juvenile

Justice Information System. Access to any information in the juvenile justice information system shall be controlled by DYS, subject to the provisions of 6 CMC § 5325. If the court finds good cause it may order the fingerprints and photographs of the juvenile expunged.

(h) Peace officers' records of juveniles shall be kept separate from records of adults and shall be subject to disclosure only according to 6 CMC § 5325.

**Source:** PL 16-47, § 14, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47; replaced "Act" with "chapter;" and removed figures that repeated written words pursuant to 1 CMC § 3806(b), (d) and (e). The commission also designated subsection (c), which had no subsection designation in the original public law, and redesignated subsections (c)-(g) to (d)-(h), respectively.

**§ 5142. Juvenile Detention Centers.**

The purposes of a juvenile detention center shall be:

(a) The care, control and development of adjudicated juvenile offenders;

(b) The provision of detention services for juveniles subject to administrative or court order;

(c) The provision of observation and assessment services for juveniles committed to DYS; and

(d) To accept for placement those individuals remanded to a juvenile detention center by a court of competent jurisdiction.

**Source:** PL 16-47, § 15.

**§ 5143. Standards for Detention**.

The following shall be minimum standards for the detention of juveniles provided for in this chapter:

(a) Juvenile detention facilities must be so constructed and/or maintained as to keep juveniles segregated from adult offenders or those being treated as adult offenders under this chapter, with no contact as to sight and/or sound between the two classes.

(b) Juvenile detention facilities must provide supervision and observation of juvenile detainees sufficient to protect the physical and mental health of the detainees.

(c) Juveniles held in detention must be provided with at least three adequate and nutritional meals per day.

(d) Juveniles held in detention must have access to reading materials on a regular and systematic basis. Detained juveniles may receive books, newspapers and periodicals from any source including delivery to the detention facilities by family members, subject to the right of detention authorities to inspect and remove dangerous or harmful materials. Detention authorities may forbid the introduction of obscene books or periodicals.

(e) A visiting program shall be established in juvenile detention facilities which will allow for family visits to each juvenile for at least two hours each week.

**Source:** PL 16-47, § 16, modified.

**Commission Comment:** The commission replaced "Act" with "chapter" and removed figures that repeated written words pursuant to 1 CMC § 3806(d) and (e).

**§ 5144. Secure Facilities.**

(a) DYS shall maintain and operate secure facilities for the custody of juvenile offenders who are pending adjudication by the court or have been committed to a period of detention by the court.

(b) DYS shall only place minors in facilities that provide humane care and developmental opportunities for the juveniles while promoting accountability and community protection.

(c) DYS shall adopt standards, policies, regulations and procedures for the operation of secure juvenile facilities in compliance with law. Such standards, policies and procedures shall not be inconsistent with law.

(d) Facilities designated by DYS to house juveniles shall do an assessment of each individual to determine behavior, need for and amenability to treatment and counseling, abilities, learning disabilities, interests, attitudes and similar matters.

(e) The institution(s) shall then insure provision of educational instruction appropriate to the age, needs and range of abilities. Training in the development of competency and life skills designed to assist the juvenile in operating effectively within and becoming a contributing member of the community shall be provided.

**Source:** PL 16-47, § 26, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47 pursuant to 1 CMC § 3806(b).

**Article 6. Appeals; Post-disposition Procedures and Requirements.**

§ 5151. Appeals.
§ 5152. Reassessment of Committed Juveniles – Records – Failure to Reassess.
§ 5153. Term of Commitment – Review After Commitment.
§ 5154. Release from Custody of DYS.
§ 5155. Compensation – Amount – Crediting Account of Juvenile – Juveniles Not Employees – Accountability of Other Than Restitution Funds.

**§ 5151. Appeals.**

All orders or final judgments made by any court in matters affecting a juvenile within the purview of this chapter may be appealed by the juvenile or the Commonwealth in accordance with 6 CMC § 8101. Appeals shall be reviewed as provided by the Commonwealth Rules of Appellate Procedure. Upon filing of the notice of appeal, the Commonwealth Supreme Court shall take jurisdiction of the case and if the juvenile is in detention shall promptly hold a hearing after the filing of the request to determine whether the juvenile shall remain in detention.

**Source:** PL 16-47, § 24, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47 and replaced "Act" with "chapter" pursuant to 1 CMC § 3806(b) and (d).

**§ 5152. Reassessment of Committed Juveniles – Records – Failure to Reassess.**

(a) DYS shall make periodic reassessments of all juveniles committed to detention for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. Assessments may be made as frequently as DYS considers desirable and shall be made with respect to every juvenile at intervals not exceeding one year. Reports of

periodic reassessments made pursuant to this section shall be filed with the court from which the juvenile was committed.

(b) DYS shall keep written records of assessments, prognosis, and all orders concerning disposition or treatment of every juvenile committed to detention.

(c) Failure of DYS to assess a juvenile committed to detention or to reassess him within one year of a previous assessment shall not of itself entitle the juvenile to discharge from the control of DYS but shall entitle him to petition the committing court for an order of discharge and the court shall discharge him unless DYS satisfies the court of the need for further control.

**Source:** PL 16-47, § 25, modified.

**Commission Comment:** The commission removed figures that repeated written words pursuant to 1 CMC § 3806(e).

**_____§ 5153. Term of Commitment – Review After Commitment.**

A juvenile offender committed to a secure facility shall remain until the offender reaches eighteen years of age, is retained for extended custody pursuant to 4 CMC § 5137, or is released or discharged. For every, juvenile offender committed to a secure facility, DYS shall conduct a review of the juvenile's treatment plan and make modifications, if necessary, within ninety days after commitment.

**Source:** PL 16-47, § 27, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47; changed public law section references to the corresponding codified section numbers; and removed figures that repeated written words pursuant to 1 CMC § 3806(b), (c), and (e).

**§ 5154. Release from Custody of DYS.**

(a) DYS may recommend that the juvenile court order the early release of a juvenile who has been committed to the detention facility.

(b) Juvenile offenders may be released to their own home, to a residential community based program, to a nonresidential community based treatment program, to an approved independent living setting, or to other appropriate residences, but shall remain on probation until the probation is terminated by the court. Following the release of a juvenile offender the court shall conduct a hearing to determine the appropriate conditions of probation.

(c) Juvenile probation officers shall enforce probation conditions and supervise juvenile offenders while on probation. As authorized by court order, probation officers may establish additional reasonable conditions of probation with which the juvenile offender must comply. The juvenile may move for a hearing before the court to contest any conditions imposed by the probation officer. If the probation officer establishes additional conditions of probation, the probation officer shall advise the juvenile at the time such additional conditions are imposed of the juvenile's right to move the court for a hearing to contest those conditions.

(d) When DYS recommends the release of a juvenile offender committed to DYS for confinement, DYS shall notify:

(1) The Office of the Attorney General;
(2) The juvenile court;
(3) The parents or guardian of the juvenile; and
(4) The victim(s) of the juvenile offender's unlawful conduct.

**Source:** PL 16-47, § 28.

**§ 5155. Compensation – Amount – Crediting Account of Juvenile – Juveniles not Employees – Accountability of Other Than Restitution Funds.**

Each juvenile who is engaged in productive work for compensation while under the jurisdiction and in the custody of DYS, or while participating in any DYS approved work program, shall have the compensation accounted for as follows:

(a) Upon receiving any funds credited to a juvenile the receiving official shall deposit the funds in a savings account established by the juvenile's guardian in the name of the juvenile at an FDIC insured bank, or another financial institution requested in writing by the juvenile's guardian, and managed by the DYS and the juvenile for the purpose set forth herein. The detention facility shall not physically manage or store any funds belonging to any juvenile at the facility.

(b) Funds the juvenile is entitled to receive while in the custody of the DYS Juvenile Detention Facility will be strictly money earned through employment which will be deposited in the juveniles savings account with the supervision of the juvenile's assigned social worker and acknowledged by the supervisor of the facility where the juvenile is lodged. Acceptable purposes include:

(1) To pay any court ordered fines or restitution. No more than 50% of a juvenile's earnings under this section may be used for this purpose, unless the juvenile and the juvenile's guardian request a higher percentage, in writing;

(2) To purchase items approved by the supervisor of any placement facility for the benefit of the juvenile; and

(3) Through the request of the juvenile a withdrawal from his/her savings account may be permitted for the purpose of providing financial assistance to the family. This request is subject to prior approval by the juvenile's assigned social worker.

(c) No juvenile compensated under this chapter shall be considered an employee of the Commonwealth or DYS, nor shall any juvenile come within any of the provisions of the worker's compensation law, or be entitled to any benefits thereunder whether on behalf of himself or any other person.

**Source:** PL 16-47, § 34, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47 and changed "act" to "chapter" pursuant to 1 CMC § 3806(b) and (d).

**Article 7. Juvenile Justice Act Violations and School Intervention.**

§ 5161. Truancy.
§ 5162. Encouraging Violations.
§ 5163. School Attendance - Jurisdiction Over Students and Parents.

**§ 5161. Truancy.**

(a) Any juvenile subject to compulsory education pursuant to 3 CMC § 1141 who has not been granted a waiver from the Commissioner of Education and who is absent without valid excuse for

(1) five days in one semester under block scheduling; or

(2) ten days in one semester for schools without block scheduling

is truant, except as otherwise provided in this section.

(b) Block schedules, semesters and valid excused absences under this section shall be interpreted in accordance with Board of Education and Public School System rules, regulations, policies and procedures.

(c) School ordered suspensions and expulsions shall not be considered when determining truancy pursuant to this section.

(d) Violation of this section may be punishable by a fine, not to exceed $500.

(e) Truancy is a status offense that is not punishable by detention unless the juvenile is a habitual status offender.

**Source:** PL 16-47, § 19, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47 and changed capitalization pursuant to 1 CMC § 3806(b) and (f).

**§ 5162. Encouraging Violations.**

(a) A person shall be guilty of a misdemeanor as defined in 6 CMC § 102(s) when such person by any act or neglect

(1) encourages, aids or causes a juvenile to come within the purview or jurisdiction of this chapter, or

(2) fails to comply with the requirements of compulsory school attendance pursuant to 3 CMC § 1141, or

(3) who after notice that the driving privileges of the juvenile have been suspended or restricted under the provisions of this chapter knowingly permits or encourages said juvenile to operate a motor vehicle in violation of such suspension or restriction.

(b) The court may impose conditions upon any person found guilty under this section, and so long as such person shall comply therewith to the satisfaction of the court, the disposition imposed may be suspended.

**Source:** PL 16-47, § 23, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47; replaced "Act" with "chapter;" and designated subsection (b) which did not have a subsection designation in the public law pursuant to 1 CMC § 3806(b) and (d).

**§ 5163. School Attendance - Jurisdiction Over Students and Parents.**

(a) The Board of Education shall establish a School Attendance Review Committee. The School Attendance Review Committee shall include, but need not be limited to, a parent of a school age child and representatives of:

(1) the Public School System;

(2) the Coalition of Private Schools, CNMI or any successor organization recognized by the Board of Education;

(3) the Juvenile Probation Unit of DYS;

(4) the Child Protective Unit of DYS; and

(5) the Department of Public Safety (DPS).

The Public School System representative shall be appointed by the Commissioner of Education. All other members shall be appointed by the Board of Education with the input and consent of the representative agencies. Every effort shall be made to ensure members of the School Attendance Review Committee shall be individuals whose primary job responsibilities are working directly with students or juvenile clients.

(b) It is the intent of this section to provide intervention for juveniles and their families to address truancy, irregular attendance or insubordinate or disorderly behavior in school at the community level before referral to the juvenile justice system. The School Attendance Review Committee's duties shall include, but are not limited to, the following:

(1) proposing, promoting and providing alternatives to the juvenile justice system, where possible;

(2) addressing matters regarding an individual juvenile's truancy, failure to regularly attend school in accordance with school policies and regulations, or insubordinate or disorderly behavior;

(3) setting and conducting meetings with juveniles and/or their parents to discuss consequences of the student's truancy and/or behavior and establish terms, conditions and options to reduce and eliminate the truancy of the student and improve his or her attendance. The meeting format shall be that of mediation and not adversarial; and

(4) referring juveniles and their families to other agencies, such as Community Guidance Center, DYS, DPS and the Attorney General's Office for services or action, as appropriate.

(c) The Board of Education may adopt such policies, procedures, rules and regulations, not inconsistent with this chapter, that may be needed for the operation of the School Attendance Review Committee and to fulfill its obligations pursuant to this section.

(d) The School Attendance Review Committee shall strive to maintain a continuing inventory of community resources, including alternative educational programs, and make recommendations for the creation of new resources and programs where none exist.

(e) In every case in which a juvenile has been referred to it, the School Attendance Review Committee has the authority to issue subpoenas pursuant to the procedures provided in 1 CMC § 9109(d), requiring the production of pertinent information and documents and/or the attendance of any of the following persons:

(1) The juvenile;

(2) The juvenile's parents, guardians, or other person having control of the juvenile;

(3) The school authority referring the juvenile; and

(4) Any other person who has pertinent or material information concerning the juvenile. The purpose of any meeting under this section is to establish and agree upon terms, conditions and options to reduce and eliminate the truancy of the student. The meeting format shall be that of mediation and not adversarial.

(f) The enforcement of a subpoena issued by a School Attendance Review Committee is within the jurisdiction of the juvenile court.

(g) In the event a juvenile, parent, guardian and/or person in charge of the juvenile fails to respond to the directives of the School Attendance Review Committee, or to services offered on behalf of the juvenile or the Committee determines that available community resources cannot resolve the problems with the juvenile's school attendance or behavior, the Committee shall direct that the juvenile be referred to the Juvenile Probation Unit and request that the Office of the Attorney General file a complaint against the juvenile, parent, guardian, and/or other person having control of the juvenile.

(h) Whenever a committee member appointed by an agency is unavailable to participate in the School Attendance Review Committee, that member's agency may assign personnel to represent the agency either temporarily or on a continuing basis in accordance with the intent of this section. The duties, obligations, or responsibilities which may be imposed on governmental entities by this section are such that the related costs are incurred as a part of their normal operating procedures.

(i) Nothing in this section shall be construed to interfere with the juvenile's school's authority to establish truancy procedures and to determine whether or not a matter should be referred to the Review Committee or to the Department of Public Safety or the Office of the Attorney General.

(j) Nothing in this section alters any policy or regulation of the Board of Education or the authority of any school or the Commissioner of Education to take appropriate corrective measures, including without limitation suspension or expulsion of the juvenile.

**Source:** PL 16-47, § 20, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47; replaced "this law" with "this chapter;" replaced "this section 20" with "this section;" and replaced "irregularly" with "irregular" pursuant to 1 CMC § 3806(b), (d) and (g).

**Article 8. Records and Expungement.**

§ 5171. Records – Privileged Information.
§ 5172. Program Records as Property of Department – Control of Records.
§ 5173. Expungement of record – Hearing – Findings Necessary – Special Index – Effect of Order.

**§ 5171. Records – Privileged Information.**

(a) The court shall maintain records of all cases brought before it. In proceedings under this chapter, juvenile courtroom proceedings and records shall not be open to the public and shall remain confidential except upon order of the court.

(b) These records shall be open to inspection by the juvenile, the juvenile's parents while the juvenile remains a minor, DYS Juvenile Probation, the Family Court, AGO and any attorney representing the juvenile.

**Source:** PL 16-47, § 21, modified.

**Commission Comment:** The commission replaced "act" with "chapter" pursuant to 1 CMC § 3806(d).

**§ 5172. Program Records as Property of Department – Control of Records.**

Copies of records regarding individual juveniles, which records are maintained by providers under contract with DYS to provide services to juvenile offenders, and which records are not protected by privilege, are the property of DYS and shall be returned to it when each juvenile offender is terminated from the provider's programs.

**Source:** PL 16-47, § 30, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47 pursuant to 1 CMC § 3806(b).

**§ 5173. Expungement of record – Hearing – Findings Necessary – Special Index – Effect of Order.**

(a) Any person who has been adjudicated delinquent in a case under this chapter may, after the expiration of five years from the date of termination of the continuing jurisdiction of the court, or after reaching age eighteen, whichever occurs last, petition the court for the expungement of his/her record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify

the prosecuting attorney of the pendency of the petition and of the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing. Expungement proceedings and records shall be confidential, and expungement hearings shall be closed to the public.

(b) The court may not expunge a conviction for any of the following crimes from a juvenile's record:

(1) Murder; or

(2) Sexual assault as defined in 6 CMC § 1301 or 6 CMC § 1302.

(c) If the court finds after hearing that the petitioner has not been adjudicated as a juvenile for any of the crimes identified in subsection (b) of this section, and has not been convicted of a felony, or of a misdemeanor wherein violence toward another person was attempted or committed since the termination of the court's jurisdiction or the juvenile's release from the juvenile justice center, and that no proceeding involving such felony or misdemeanor is pending or being instituted against him, and if the court further finds to its satisfaction that the petitioner has been held accountable, is developing life skills necessary to become a contributing member of the community and that the expungement of the petitioner's record will not compromise public safety, it shall order all records in the petitioner's case in the custody of the court and all such records in the custody of any other agency or official sealed; and shall further order all references to said adjudication removed from all indices and from all other records available to the public. However, a special index of the expungement proceedings and records shall be kept by the court ordering expungement, which index shall not be available to the public and shall be revealed only upon order of Commonwealth Superior Court or the Commonwealth Supreme Court. Copies of the order shall be sent to each agency or official named in the order. Upon the entry of the order the proceedings in the petitioner's case shall be deemed never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter be permitted only by the court upon petition by the person who is the subject of the records or by any other court of competent jurisdiction, and only to persons named in the petition.

(d) If a juvenile case does not proceed to adjudication, the juvenile may petition for expungement of the record as set forth in this section.

**Source:** PL 16-47, § 22, modified.

**Commission Comment:** The commission changed the order of this section from its original placement in PL 16-47; replaced "this section 21" with "this section" and replaced "section 22(b) of this Act" with "subsection (b) of this section" pursuant to 1 CMC § 3806(b), (d) and (g).

## CHAPTER 3. ABUSE OR NEGLECT OF CHILDREN.

**Article 1. Child Abuse or Neglect; Duty to Report.**

§ 5311. Purposes of Chapter.
§ 5312. Child Abuse: Defined.
§ 5313. Duty to Report Incidents of Child Abuse.
§ 5314. Immunity from Liability for Good-Faith Efforts to Report.
§ 5315. Criminal Penalties for Failure to Report.
§ 5316. Criminal Penalties for Interfering With Good Faith Efforts to Report.
§ 5317. Privileges Not Applicable.

**§ 5311. Purposes of Chapter.**

This chapter seeks to:

(a) Ensure that each abused child and the child's family receives such care, preferably in their own home, as will serve the emotional, mental, and physical welfare of the minor and the best interests of the Commonwealth, and

(b) Require reporting of incidents where children are abused so such children and their families may be identified and given any treatment and assistance deemed to be in the best interests of the child and the Commonwealth.

**Source:** . . . repealed and reenacted by PL 16-53 § 3 (January 29, 2010).

**Commission Comment:** . . . Public Law 16-53 (enacted January 29, 2010) contained the following in addition to severability and savings provisions:

Section 1. Short Title. This Act may be cited as the "Revised Child Abuse Act of 2009."

Section 2. Findings and Purpose. The Commonwealth Legislature finds the current child abuse and neglect laws of the Commonwealth to be in need of revision. This Act provides for the protection of minors and the prosecution of persons who are charged or convicted of the crime of [c]hild [a]buse by clarifying the definition of [c]hild [a]buse, clarifying the duties of certain persons to report instances of [c]hild [a]buse and providing criminal penalties for interference with good faith efforts to report instances of [c]hild [a]buse.

As set forth in more detail in the respective statutes herein, this Act revises the definition of "[c]hild [a]buse" to remove antiquated crimes such as "molestation" and to include the modern scheme of vary degrees of "[s]exual [a]buse of a [m]inor". In addition, the definition of "[c]hild [a]buse" shall now include not only actions taken against children in a person's “custody”, but also actions taken against children by persons who occupy a “position of authority” over the child.

Significantly, this Act also criminalizes any actions taken with the purpose of interfering with the mandatory or voluntary reporting of cases of [c]hild [a]buse in addition to the criminal acts of failing to make a mandatory report and imposes pretrial release considerations in cases of [c]hild [a]buse that prohibit release from custody absent a determination by a judge regarding the enumerated factors set forth herein.

**§ 5312. Child Abuse: Defined.**

(a) A person commits the offense of child abuse if the person:

(1) Willfully and intentionally strikes, beats or by any other act or omission inflicts physical pain, injury or mental distress upon a child under the age of 18 who is in the person's custody or over which the person occupies a position of authority, such pain or injury being clearly beyond the scope of reasonable corporal punishment, with the result that the child’s physical or mental health and well-being are harmed or threatened;

(2) Through willful or negligent act or omission fails to provide a child under the age of 18, who is in the person’s custody or over which the person occupies a position of authority, with adequate supervision, medical care, food, clothing or shelter with the result that the child’s physical or mental health and well-being are harmed or threatened; or

(3) Commits any act that would constitute a criminal offense under 6 CMC §§ 1306-1311 against a child under the age of 18 who is in the person’s custody or over which the person occupies a position of authority.

(b) Child abuse does not include the exercise of reasonable and traditional parental discipline, which may be determined in reference to prevailing community and cultural standards.

(c) A person convicted of child abuse may be punished by imprisonment for not more than five years, a fine of not more than $2,000, or both; however, the court may, upon conviction, order that the person be provided with appropriate counseling to cure, alleviate or prevent psychological problems that are judged to be related to the child abuse incident.

(d) As used in this chapter, "position of authority" means an employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, babysitter, or a substantially similar position, and a police officer or probation officer other than when the officer is exercising custodial control over a minor.

(e) As used in this chapter, "in the person's custody" means in the custody of the child's parent (including natural parents, stepparents and adopted parents), legal guardian, foster parent, an employee of a public or private residential home or facility, or any other person over the age of 18 responsible for the child's welfare in a residential setting.

(f) As used in this chapter, "willful or negligent action or omission" includes both negligent treatment and maltreatment as defined by federal regulation.

(g) As used in this chapter, "mental distress" means an effect on the intellectual or psychological capacity of a child as evidenced by observable and substantial impairment of his ability to function within normal ranges of performance and behavior, with due regard to his culture.

**Source:** . . . repealed and reenacted by PL 16-53 § 3 (January 29, 2010), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f). . . .

**Case Annotations:** *Commonwealth v. Perez*, 2006 MP 24, 7 N.M.I. 372 (2006).

**§ 5313. Duty to Report Incidents of Child Abuse.**

(a) Any health care worker, school teacher or other school official, day care provider, counselor, social worker, peace officer or other law enforcement official who comes into contact in a professional capacity with a child who the person knows or has reasonable cause to suspect is, or will become, a victim of child abuse shall report this knowledge or suspicion directly to the Department of Public Safety.

(1) Any report required under this chapter shall be made to the Department of Public Safety promptly, which in no circumstances shall exceed 24 hours from the time that the person making the report first knew, or had reasonable cause to suspect that the child in question is, or will become, a victim of child abuse.

(2) The report shall contain a statement of the time, date, circumstances and details or information which gave rise to the knowledge or suspicion that the child in question is, or will become, a victim of child abuse.

(3) All reports required under this chapter to be made to the Department of Public Safety may not be disclosed to the public.

(b) The Department of Public Safety shall promptly notify the office of the Attorney General and Division of Youth Services of all reports made under this chapter. This notification shall be within 24 hours of receipt of any such report by DPS.

(c) Any person or official required to report cases of known or suspected child abuse may take or cause to be taken photographs of the areas of trauma visible on a child who is the subject of a report and, if medically indicated, cause a radiological examination to be performed on the child. Any photographs or x-ray taken shall be sent to the Department of Public Safety at the time the report is sent or as soon thereafter as possible.

(d) Any person or official required to report cases of known or suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report that fact to the medical examiner. The medical examiner shall accept the report for investigation and report its findings to the Department of Public Safety, the Attorney General and the Division of Youth Services and, if the report is made by the hospital, to the Director of Public Health and Environmental Services.

(e) Any person not obligated to do so by this chapter, may, at any time, voluntarily report known or suspected instances of child abuse to the Department of Public Safety.

(f) In any instance where a report required under this chapter involved an act or omission of the Department of Public Safety or its personnel or agents, notification of the report may, alternatively, be made to the Office of the Attorney General. Any such report shall comport with the same requirements as set forth above.

(g) For purposes of this section:

(1) "health care worker" includes a person who is, or purports to be, an anesthesiologist, acupuncturist, chiropractor, dentist, health aide, hypnotist, massage therapist, mental health counselor, midwife, nurse, nurse practitioner, osteopath, naturopath, physical therapist, physical therapy assistant, physician, physician's assistant, psychiatrist, psychologist, psychological associate, radiologist, religious healing practitioner, surgeon, x-ray technician, or a substantially similar position.

(2) "day care provider" includes persons who operate or are employed by day-care centers, nurseries or alternative schools; nannies; au-pair workers; or any other person who is entrusted with the temporary care of a minor child in return for compensation, but does not include babysitters who are themselves minor children.

**Source:** . . . repealed and reenacted by PL 16-53 § 3 (January 29, 2010), modified.

**Commission Comment:** The commission corrected capitalization throughout this section and added an apostrophe to "physicians assistant" in subsection (g)(1) pursuant to 1 CMC § 3806(f) and (g). . . .

### § 5314. Immunity from Liability for Good-Faith Efforts to Report.

Any person making a good faith effort to make a report under this chapter shall be immune from any and all civil or criminal liability which might otherwise arise from such action.

**Source:** . . . repealed and reenacted by PL 16-53 § 3 (January 29, 2010).

### § 5315. Criminal Penalties for Failure to Report.

Knowing or willful failure of any person required to make any report or notification required under this chapter shall, upon conviction, be punished by imprisonment for up to one year, or a fine of $1,000, or both.

**Source:** . . . repealed and reenacted by PL 16-53 § 3 (January 29, 2010).

**Commission Comment:**

### § 5316. Criminal Penalties for Interfering With Good Faith Efforts to Report.

Knowing or willful interference by any person with the good-faith efforts of any person making or attempting to make a report under this chapter shall, upon conviction, be punished by imprisonment for up to one year, or a fine of $1,000, or both.

**Source:** . . . repealed and reenacted by PL 16-53 § 3 (January 29, 2010).

**§ 5317. Privileges Not Applicable.**

Common law and statutory privileges as to communications between husband and wife, and a professional person and his patient or client, except for that between attorney and client, do not apply to communications relating to the reporting of child abuse offenses.

**Source:** PL 3-18, § 6; reenacted by PL 16-53 § 4(6317) (January 29, 2010), modified.

**Commission Comment:** This section was formerly § 5316, which was repealed and reenacted as § 5317 by PL 16-53 without change. The commission changed capitalization pursuant to 1 CMC § 3806(f).

**Article 2. Protection of Abused Children.**

§ 5321. Protection of Abused Children: Protective Custody.
§ 5322. Protection of Abused: Investigation.
§ 5323. Protection of Abused Children: Court Procedures.
§ 5324. Protection of Abused Children: Wardship.
§ 5325. Confidentiality of Records.

**§ 5321. Protection of Abused Children: Protective Custody.**

(a) A police or law enforcement official, Division of Youth Services worker, or any physician treating a child may take a child into protective custody without the consent of parents, guardian, or others exercising temporary or permanent control over the child when:

(1) The person has reasonable cause to believe that there exists an imminent danger to the child's life or safety;

(2) The parents or guardian are unavailable or have been asked and do not consent to the child's removal from their custody; and

(3) There is not time to apply for a court order.

(b) The person in charge of any hospital or similar medical institution may retain custody of a child reasonably suspected of being a victim of child abuse, when the person believes the facts so warrant, whether or not the parents or other person responsible for the child's welfare request the child's return.

(c) The child shall be placed into the custody and care of the Division of Youth Services who shall place the child in a safe non-custodial environment. No child taken into custody under this provision shall be detained during such protective custody, except in an appropriate facility approved by the Division of Youth Services.

**Source:** . . . repealed and reenacted by PL 16-53 § 3 (January 29, 2010), modified.

**Commission Comment:** The commission corrected capitalization pursuant to 1 CMC § 3806(f).

**§ 5322. Protection of Abused: Investigation.**

If a child is taken into custody, the Division of Youth Services shall immediately commence a child protective investigation to determine if it is necessary to make the child a ward of the court. The Division of Youth Services shall recommend to the Office of the Attorney General within 24 hours of initiation of protective custody whether it is necessary to make the child a ward of the court.

**Source:** . . . repealed and reenacted by PL 16-53 § 3 (January 29, 2010).

**§ 5323. Protection of Abused Children: Court Procedures.**

(a) The child shall be released within 48 hours unless during that period the Office of the Attorney General files a petition in the Superior Court to have the child declared a ward of the court. The hearing shall be conducted before the close of the following judicial day and in no event more than 48 hours after the petition is filed. On weekends, holidays, and evenings the petition shall be considered filed when presented to a judge or clerk of the Superior Court.

(b) The court shall determine if there is reasonable cause to believe that the child's safety would be imminently endangered by a return to the parent or guardian. If the court determines that the child's safety would be imminently endangered by a return to the parent or guardian, the court may make the child a temporary ward of the court under the supervision of the Division of Youth Services. Such temporary wardship shall expire in 30 days. If the court determines that the child's safety would not be imminently endangered by a return to the parent or guardian, the court shall order the child returned to the parent or guardian upon any conditions appropriate to the child's safety.

(c) Hearsay is admissible at the hearing. The Office of the Attorney General shall represent the government. The court shall appoint a guardian ad litem for the child in all judicial proceedings involving allegations of child abuse. However, the guardian ad litem may not be the attorney responsible for presenting the evidence alleging child abuse.

**Source:** . . . repealed and reenacted by PL 16-53 § 3 (January 29, 2010), modified.

**Commission Comment:** The commission corrected capitalization pursuant to 1 CMC § 3806(f).

**§ 5324. Protection of Abused Children: Wardship.**

(a) Within 30 days of a temporary wardship finding, the court shall determine whether the wardship should be continued. In order to continue a wardship, the Office of the Attorney General shall prove by a preponderance of the evidence that the child is either:

(1) In need of proper and effective parental care or control and has no parent or guardian willing to exercise or capable of exercising such care or control; or

(2) Within a home that is an unfit place for the child by reason of neglect, cruelty, depravity, or physical abuse by the parents, guardians, or persons in whose custody or care the child is in.

(b) If the court determines that a wardship should continue, it shall declare the child a ward of the court for any period up to one year. At the end of one year, wardship may be continued only upon a new finding based on another hearing.

(c) If a child is declared a ward of the court, the court may:

(1) Limit the control to be exercised over the ward by any parent or guardian; or

(2) Place the child under the care, custody, and control of the Division of Youth Services who shall place the child with a reputable person of good moral character who consents to take care of the child or a group whose objective is to care for such children or with a public agency organized to provide care for children.

(d) The court shall not remove the child from a parent or guardian and place the child with the Division of Youth Services unless it first makes a finding that the removal is in the best interests of the child.

**Source:** . . . repealed and reenacted by PL 16-53 § 3 (January 29, 2010).

**§ 5325. Confidentiality of Records.**

(a) All written reports made as well as any other information obtained, or photographs or x-rays taken concerning alleged instances of child abuse shall be confidential and shall only be made available to:

(1) A duly authorized official of the Division of Youth Services in the course of his or her duties;

(2) A physician examining or treating a child whom the physician reasonably suspects may be abused or neglected;

(3) A guardian ad litem for the child;

(4) The Office of the Attorney General;

(5) A court of competent jurisdiction; provided, however, that information, reports or x-rays concerning alleged instances of child abuse shall not be excluded from consideration of the court on the ground that the matter is or may be the subject of a physician-patient privilege, other privileges or any rule against disclosure;

(6) The Department of Health and Human Services and the Comptroller General of the United States or any of their representatives pursuant to 45 C.F.R. 74.24.

(b) The release of data that would identify the person who made a report of suspected child abuse or person who cooperated in a subsequent investigation is prohibited.

(c) Any person who without authorization releases or permits the release of any data or information contained in any records compiled in furtherance of the purposes of this chapter shall be guilty of a crime and shall be punished by not more than one year in prison, or by a fine of not more than $1,000, or both.

**Source:** . . . repealed and reenacted by PL 16-53 § 3 (January 29, 2010).

**Commission Comment:** The commission corrected capitalization throughout this section and changed "compiles" to "compiled" in subsection (c) to correct a manifest error pursuant to 1 CMC § 3806(f) and (g).

# DIVISION 6: CRIMINAL PROCEDURE

## CHAPTER 1. PROCESS: WARRANTS AND ARREST.

### § 6103. Authority to Arrest or Detain Without Warrant.

**Case Annotations:** . . .

**Criminal Procedure**

**– Counsel, Right to Assistance of**

In order for the statutory right to counsel, provided in 6 CMC § 6105(a) to come into play, a person seeking to assert the right must have been subject to a temporary detention that meets the specific requirements of 6 CMC § 6103(d). 6 CMC § 6105(a); 6 CMC § 6103(d). *Commonwealth v. Suda*, 1999 MP 17 ¶ 31, 6 N.M.I. 24, 32 (1999).

### § 6104. Use of Force in Making Arrest.

**Case Annotations:** *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26, 7 N.M.I. 388 (2006).

### § 6105. Rights of Persons Arrested.

**Case Annotations:** . . .

**Criminal Procedure**

– **Counsel, Right to Assistance of**
In order for the statutory right to counsel, provided in 6 CMC § 6105(a) to come into play, a person seeking to assert the right must have been subject to a temporary detention that meets the specific requirements of 6 CMC § 6103(d). 6 CMC § 6105(a); 6 CMC § 6103(d). *Commonwealth v. Suda*, 1999 MP 17 ¶ 31, 6 N.M.I. 24, 32 (1999).

The plain language of 6 CMC § 6105(a) provides that the right to counsel attaches, in the case of temporary detention for examination, only where a person is temporarily detained on suspicion that they have committed or intend to commit a felony. 6 CMC § 6105(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 32, 6 N.M.I. 24, 32 (1999).

Section 6105 of Title 6 of the Commonwealth Code indicates that the rights of an arrested person are violated only where such rights are denied prior to interrogation. 6 CMC § 6105. *Commonwealth v. Suda*, 1999 MP 17 ¶ 34, 6 N.M.I. 24, 32 (1999).

It is unlawful for those having custody of an arrested individual to fail to inform that individual of his or her rights and obligations under the law, before questioning the arrested individual about participation in any crime. 6 CMC § 6105(a)(4). *Commonwealth v. Suda*, 1999 MP 17 ¶ 34, 6 N.M.I. 24, 32 (1999).

### § 6107. Effect of Violation of Division.

**Case Annotations:** *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26, 7 N.M.I. 388 (2006).

## CHAPTER 4. BAIL.

. . .

§ 6408. Bail and Conditions of Release in Child Abuse Cases. [new section]

### § 6402. Who May Fix Bail; Allowing Bail After Conviction.

**Case Annotations:** *Commonwealth v. Camacho*, 2002 MP 14, 6 N.M.I. 440 (2002).

### § 6408. Bail and Conditions of Release in Child Abuse Cases. [new section]

(a) In making a decision concerning the bail or conditions of release of a person who is arrested for or charged with Child Abuse as defined in 6 CMC § 5312, the court shall consider:

(1) The nature and circumstances of the offense charged, including the effect of the offense upon the alleged victim;

(2) The weight of the evidence against the person;

(3) The person's family ties;

(4) The person's employment;

(5) The person's financial resources;

(6) The person's character and mental condition;

(7) The length of the person's residence in the community;

(8) The person's record of convictions;

(9) The person's record of appearance at court proceedings;

(10) The flight of the accused to avoid prosecution or the person's failure to appear at court proceedings;

(11) Threats the person has made, and the danger the person poses, to the alleged victim; and

(12) Whether the defendant has a history of child abuse, as indicated by criminal information or complaints filed, judgments of conviction, incident reports, victim statements, medical records, petitions for orders of protection, orders of protection issued, or other credible information, whether or not charges were filed, and irrespective of whether a conviction was obtained. In any case in which the court finds the defendant has a history of child abuse with the alleged victim in the instant case, the court shall consider any available evidence concerning whether the frequency or severity of the abuse appears to be escalating.

(b) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of child abuse, the court shall consider the safety of the alleged victim or other household members. To protect the alleged victim, household members, and the public, and to reasonably assure the person's appearance, the court may impose bail and any of the conditions authorized under this chapter, any provision listed in section 205(c) or 206(b) or (c), as enacted by Public Law 12-19, codified in 8 CMC §§ 1915( c) and 1916(b) and (c), respectively, and any other condition necessary to protect the alleged victim, household members, and the public, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

(c) A court may not order or permit a person released under (a) of this section to return to the residence of the alleged victim, or the residence of a petitioner who has an order of protection directed to the person and issued or filed under Title 8, Division 1, Chapter 9, Article 2, codified in 8 CMC § 1911 et seq.

(d) If the court imposes conditions of release under (a) of this section, the court shall:

(1) Issue a written order specifying the conditions of release;

(2) Provide a copy of the order to the person arrested or charged; and

(3) Immediately distribute a copy of the order to the law enforcement agency that arrested the person, the Office of Adult Probation, and any other agency or individual responsible for supervision of the defendant.

(e) When a person is released from custody under (a) of this section,

(1) From a correctional facility, the correctional facility shall notify the prosecuting authority and the prosecuting authority shall make reasonable efforts to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release;

(2) From other than a correctional facility, the arresting authority shall make reasonable efforts to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release.

(f) A person arrested for child abuse may not be released from custody until the person has appeared before a judge for determination of the person's release conditions under (a) of this section.

(g) A person may not bring a civil action for damages for a failure to comply with the provisions of this section.

**Source:** PL 16-53, § 4(6408) (January 29, 2010), modified.

**Commission Comment:** The commission changed "Title 6 section" with "6 CMC §"; changed capitalization throughout this section; and changed "persons" to "person's" where appropriate pursuant to 1 CMC § 3806(d), (f) and (g).

## CHAPTER 5. WITNESSES.

### § 6502. Witness Immunity.

**Case Annotations:** *Commonwealth v. Repeki*, 2004 MP 19, 7 N.M.I. 84 (2004); *Commonwealth v. Repecki*, 2003 MP 1, 6 N.M.I. 523 (2002).

## CHAPTER 6. MENTAL ILLNESS.

### § 6601. Definitions.

**Case Annotations:** *Commonwealth v. Sibetang*, 2002 MP 9, 6 N.M.I. 414 (2002).

### § 6603. Competency at Time of Trial and Sentencing.

**Case Annotations:** *Commonwealth v. Camacho*, 2002 MP 22, 6 N.M.I. 505 (2002).

# DIVISION 7: HABEAS CORPUS

## CHAPTER 1. HABEAS CORPUS.

### § 7101. Power to Grant Writs of Habeas Corpus.

**Case Annotation:** *Commonwealth v. Appleby*, 2007 MP 19, 7 N.M.I. 485 (2007).

### § 7102. Application for Writ.

**CRIMINAL PROCEDURE**

**Habeas Corpus**

– **Generally**
In applying for a writ of habeas corpus in the Commonwealth, a defendant must comply with several requirements. The defendant must apply for the writ of habeas corpus to the court, and set forth facts concerning the imprisonment. The application for the writ must also name the defendant's custodian, usually either the warden of the facility or the parole board, who is

administering the unlawful confinement. 6 CMC § 7102. *Commonwealth v. Appleby*, 2007 MP 19 ¶ 10, 7 N.M.I. 485, 487 (2007).

### § 7107. Appeals.

**Case Annotations:** *Commonwealth v. Palacios*, 2004 MP 23, 7 N.M.I. 105 (2004).

# DIVISION 8: APPEALS

## CHAPTER 1. APPEALS

### § 8101. Right of Commonwealth to Appeal.

**Case Annotations:** *Commonwealth v. Blas*, 2007 MP 17, 7 N.M.I. 480 (2007); *Commonwealth v. Pua*, 2006 MP 19, 7 N.M.I. 350 (2006); *Commonwealth v. Chen*, 2006 MP 14, 7 N.M.I. 318 (2006); *Commonwealth v. Sibetang*, 2002 MP 9, 6 N.M.I. 414 (2002); *Commonwealth v. Arriola*, 2002 MP 8, 6 N.M.I. 412 (2002).

**CRIMINAL PROCEDURE**

**Appeal by Government**
Because a dismissal without prejudice based on a finding of no probable cause is not a final judgment, it does not fit within the meaning of section 8101(b) of Title 6 of the Commonwealth Code, which allows appellate jurisdiction over a decision, judgment or order of the Superior Court dismissing an information. 6 CMC § 8101(b). *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 13, 7 N.M.I. 216, 219 (2005).

A criminal statute providing the government with a limited right to appeal is to be strictly construed. 6 CMC § 8101(a). *Commonwealth v. Nethon*, 1 N.M.I. 458 (1990).

**JURISDICTION**

**Generally**
The Final Judgment Rule extends to all statutes allowing appeals, including 6 CMC § 8101(b). *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 12, 7 N.M.I. 216, 219 (2005).

**Particular Cases**
NMI Supreme Court had jurisdiction, pursuant 1 CMC § 3102, over appeal by government of order dismissing prosecution for driving under the influence of alcohol or other drug. 9 CMC § 7105. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), aff'd, 42 F.3d 546 (9th Cir. 1994).

# DIVISION 9: CRIMINAL JUSTICE SYSTEM COMPONENTS

## CHAPTER 1. VICTIM WITNESS ADVOCACY UNIT OF THE ATTORNEY GENERAL'S OFFICE [renamed chapter]

. . .

§ 9102. Establishment of Victim Witness Advocacy Unit. [renamed section]

### § 9102. Establishment of Victim Witness Advocacy Unit. [renamed section]

A Victim Witness Advocacy Unit is hereby established within the Office of the Attorney General, Criminal Division. The Victim Witness Advocacy Unit shall be headed by a Victim Witness Coordinator. The Victim Witness Coordinator shall be designated by and report to the Chief of the Criminal Division. The Victim Witness Coordinator may not hold any other position within the Commonwealth government, and shall not engage in any employment other than that of serving as the Victim Witness Coordinator. The Victim Witness Coordinator shall have the necessary education, training, and experience in criminal procedure, victims' rights and compensation and counseling to be an advocate for the victim.

**Source:** . . . PL 16-52, § 2 (January 29, 2010), modified.

**Commission Comment**: Public Law 16-52 (enacted on January 29, 2010) contained severability and savings provisions and the following:

> Section 1. Findings. The Legislature finds that the Office of Victims' Rights was conceived in 1996 to be placed within the Office of the Attorney General rather than the Criminal Justice Planning Agency as presently set forth in 6 CMC § 9102. The Office of Victims' Rights was initially established to assist and support victims of domestic violence. Through the years, the Office of Victims' Rights in the Office of the Attorney General has served victims of all crimes.
>
> The Legislature further finds that the Office of the Attorney General enforces all criminal laws and works closely with victims of crimes to prosecute criminal cases. Accordingly, in order to provide continuous and consistent victim advocacy services and to avoid any funding difficulties, the Office of Victims' Rights should legally exist within the Office of the Attorney General where it has existed as a matter of practice since its establishment.

### § 9103. Duties and Responsibilities.

(a) The duties and responsibilities of the Victim Witness Advocacy Unit shall include, but not be limited to:

(1) - (11) [unchanged]

(b) [unchanged]

**Source:** . . . (a) amended by PL 16-52, § 3 (January 29, 2010), modified.

**Commission Comment:** . . . Although PL 16-52 failed to reenact subparts (1)-(11) and subsection (b) and did not specifically provide that the amendment was intended for subsection (a) only, the commission retained subparts (1)-(11) and subsection (b) because it appears the omission was inadvertent.

### § 9106. Appeal Information.

The Attorney General's office shall inform the victim or victim's family if the defendant seeks appellate review of a conviction or sentence, the status of the case on appeal, and the decision of the appellate court upon disposition.

**Source:** . . . PL 16-52, § 4 (January 29, 2010), modified.

**§ 9107. Submission of Victim Impact Statement to the Court.**

(a) Prior to imposition of sentence in a felony case, the Victim Witness Advocacy Unit shall prepare a written victim impact statement which shall be appended to the pre-sentence report on the defendant prepared by the probation department. The statement shall include applicable information obtained during consultation with the victim. If the victim cannot be located or declines to submit information for the preparation of the statement, the probation department shall include a notation to that effect in the report. If there are multiple victims and preparation of individual victim impact statements is not feasible, the probation department shall submit one or more representative statements.

(b) [unchanged]

**Source:** . . . (a) amended by PL 16-52, § 5 (January 29, 2010), modified.

**Commission Comment:** . . . Although PL 16-52 failed to reenact subsection (b) and did not specifically provide that the amendment was intended for subsection (a) only, the commission retained subsection (b) because it appears the omission was inadvertent.

## CHAPTER 2. CRIMINAL HISTORY AND RECORDS.

**§ 9201. Definitions.**

(a) [unchanged]

(b) "Criminal justice agency" means:

(1) [unchanged]

(2) A CNMI law enforcement agency which performs the administration of criminal justice pursuant to a statute or executive order which provides for criminal penalties or enforcement of CNMI laws. including the Department of Labor ~~and Immigration~~; the Department of Lands and Natural Resources; the Department of Public Safety; the Office of Adult Probation; the Board of Parole; the Division of Customs; the Office of the Attorney General; the Bureau of Motor Vehicles; or their successor agencies.

(c)-(f) [unchanged]

**Source:** . . . (b)(2) amended by PL 17-1 § 7(C) (March 22, 2010).*

**Commission Comment:** . . .* PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein..