

TWELFTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

FOURTH REGULAR SESSION, 2001

*PUBLIC LAW NO. 12-82*  
**SENATE BILL**  
**NO. 12-125**

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**AN ACT**

To revise and reform the criminal laws concerning **sexual** assault and sexual abuse of minors in the Commonwealth.

**BE IT ENACTED BY THE TWELFTH NORTHERN MARIANAS  
COMMONWEALTH LEGISLATURE:**

Section 1. Findings. The Legislature finds that the laws of the Commonwealth dealing with crimes of sexual assault and **sexual abuse** of children are in need of revision. This revision will correct a number of problems that have become evident in recent years. For example, the crime of Sexual Abuse of a Child, prior to revision, makes no distinction between different types of conduct that an offender might engage in; nor does it draw any distinction based on the respective ages of the offender and the victim. Under the current law, a **50-year-old** offender having sexual intercourse with an infant child is treated the same as an **18-year-old** offender who fondles the breast of his **15-year-old girlfriend**. Both are charged with Sexual Abuse of a Child, both face a maximum sentence of only five years on each count charged, and both are required to serve a **20-month** mandatory prison term under the mandatory sentencing provisions of 6 CMC § 4102(d).

The revision would correct the deficiencies in the current code, by providing different levels of crime, such as Sexual Abuse of a Minor in the First Degree, Sexual Abuse of a Minor in the Second Degree, and so forth. Each of the new crimes proscribes different conduct, and provides more severe penalties for conduct which is more harmful and offensive to public safety.

The Legislature **also finds that the code** sections dealing with sex **crimes** do not provide **penalties** which are **severe** enough to **ensure** the protection of the **community** or to adequately deter **persons from** engaging in the **prohibited** conduct. Thus, this revision would increase the maximum penalty for the most severe sex crimes to imprisonment for not more than **30 years, a level of penalty more** in line with that of other jurisdictions. **By the same** token, the **Legislature finds** that **judges should** have the discretion to **sentence** those **accused** Of relatively **minor** sex offenses without the mandatory imposition of **one-third the maximum** sentence, and therefore removes those lower-level sex offenses **from the** mandatory sentencing provisions of 6 **CMC § 4102(d)**.

**In** increasing the penalties for the more severe crimes, the Legislature has found it **necessary** to restore the right of jury **trial** to those accused of such crimes. Those persons facing **lengthy** prison terms for **their** crimes should have the right to have a jury determine their guilt or innocence.

However, the **Legislature finds** that the **rights** of the accused are not unlimited, and must be balanced with the **rights** of the **general** public and individual victims, **particularly** when those victims are **minors**. **Therefore**, this revision authorizes minor children who testify in criminal proceedings to **testify via** closed-circuit television or behind one-way mirrors, if the **trial judge finds** that **normal trial** procedures would **result** in a minor **child** being unable to effectively **communicate his** or her knowledge to the trier of **fact**.

The revision **also corrects** a deficiency in the **current** statutes of **limitation in** operation under **CNMI** law, **which provide** too **brief** a period for discovery, investigation and prosecution of crimes of **sexual abuse against** minors. The **current** law prohibits the Commonwealth **from** filing charges for sexual abuse of a child after four years have **elapsed from** the date of the crime. **In** many **instances, particularly** when the victims are **very young**, such crimes may not even come to **light until** many more years have passed. In cases where the offender is a **close** family member of the victim, the offender may be **able** to exert **influence** over the victim to prevent any **report** of the crime for four years or more. **In** such situations, these crimes are unlikely to come to **light**, and if they do, they may come to **light** after the statute of **limitations** has **passed**. **Other** jurisdictions **have** responded to this

problem in recent years by expanding their **statutes of limitation**. The Legislature **finds** this solution is preferable to the current situation., **and** has **expanded the** statute of limitations **applicable** to such crimes by tolling the **period of** limitation for sexual crimes against minors until the victim reaches the age of 18, after which the **normal** period of limitation **will begin** to l-m.

The revision **also** does away with the archaic terms of usage such as “**rape**” and “sodomy,” **which** carry connotations that may not accurately describe. prohibited conduct under the statutes, and which evoke a **visceral response**, in favor of more generic terms such as “sexual assault.”

The Legislature also **finds** that other sections of the code need revision, in order to bring the Commonwealth code in line with the law of other jurisdictions. This revision therefore authorizes by statute the admission of DNA evidence in criminal proceedings, provides for exceptions to the testimonial **privileges** based on marital status and confidentiality of **marital** communications in certain circumstances, and statutorily. authorizes the admission of other acts evidence in the prosecution of sex crimes under certain limited circumstances.

**Section 2. 6 CMC § 107 is amended by adding the following subsection:**

**§ 107. Time Limitations for Beginning Prosecutions.**

- (a) A prosecution for murder may be commenced at any time.
- (b) Except as otherwise provided in this section, prosecutions for offenses other than traffic offenses are subject to the following time limitations:
  - (1) A prosecution for an offense which is punishable by imprisonment for five years or more must be commenced within four years after it is **committed**.
  - (2) A prosecution for an offense which is punishable by imprisonment for **six** months or less, or by a **fine** only must be commenced within one year after it is committed.

**(3) A** prosecution for any other offense must be commenced within two-years **after** it is committed.

(c) If the time limitation set forth in subsection **(b)** of this section & as expired, a prosecution may nevertheless be commenced for:

(1) Any offense, an element of which is either fraud or a breach of fiduciary obligation, within one year **after** discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case **shall** this provision extend the period of limitation otherwise applicable by more than three years.

(2) Any offense based on misconduct in office by a public officer or employee at any time when the defendant is in the same public office or employment **or** within two years thereafter.

(3) Any offense for which a pending prosecution results in a dismissal without prejudice within one year **from** the date of such dismissal.

**(4) Any** offense involving or against the **former Saipan Credit Union**, or its depositors, shareholders, investors, or guarantors **on** account of or in connection with their interest therein, within **10 years** after it was committed.

(d) The time limitation does not run:

(1) During any **time** when the accused is absent from **this** jurisdiction or has no reasonably determinable **place** of **abode** or work within this jurisdiction; or

(2) During any time when a prosecution against the accused is pending in this jurisdiction.

**(3) In** a prosecution for **any** crime involving sexual **contact**, physical or **sexual** abuse, exhibitionism or sexual exploitation, committed against a person under the age of **18**, the time limitation does not begin to run until the alleged victim reaches the age of 18.

(e) A prosecution is commenced either when **an** information or complaint is filed, or when an **arrest warrant** or other process is executed without unreasonable delay.

Source: **PL 3-71, § 1** (§ 105); **amended** by **PL 10-37, § 8**.

**Section 3. 6 CMC §§ 1301-1311 are repealed and replaced by the following sections:**

**Sec. 1301. Sexual assault in the first degree.**

(a) An offender **commits** the crime of sexual assault in the first degree if

(1) the offender engages in sexual penetration with another person without consent **of** that person;

(2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious bodily injury to that person;

(3) the offender engages in sexual penetration with another person

(A) who the offender knows is mentally incapable;

and

(B) who is in the **offender's** care

(i) by authority of **law**; or

(ii) in a facility or program that is required by law to be licensed by the Commonwealth; or

(4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and

(A) the offender **is** a health care worker; and

(B) the offense takes **place** during the course of professional treatment of the victim.

(b) Sexual assault in the first degree is punishable by imprisonment for not more than 30. years, a **fine** of not more than **\$50,000**, or both, and the mandatory sentencing provisions of 6 CMC § 4102.

Sec. 1302. **Sexual assault in the second degree.**

(a) An offender commits the crime of sexual assault in the second degree if

(1) the offender engages in sexual contact with another **person without** consent *of* that person;

(2) the offender engages in sexual contact with a person

(A) who the offender knows is mentally incapable;

and

(B) who is in the offender's care

(i) by **authority** of law; or

(ii) in a **facility** or program that is required by law to be licensed by the Commonwealth;

(3) the offender engages in sexual penetration with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware **that** a **sexual** act is being committed; or

(4) the offender engages in sexual contact with a person who the offender knows is unaware that a sexual act is being committed and

(A) the offender is a health care worker; and

(B) the offense takes place during the course of professional treatment of the victim.

(b) Sexual **assault** in the second degree is punishable by imprisonment of not more than 10 years, a fine of not more than \$10,000, or both.

**Sec. 1303. Sexual assault in the third degree.**

(a) An offender commits the crime of sexual assault in the third **degree** if the offender

(1) engages in **sexual** contact with a person who the **offender** knows is

(A) mentally **incapable**;

(B) incapacitated; or

(C) unaware that a sexual act is being committed;

(2) while employed in a **Commonwealth** correctional facility or other **placement** designated by the commissioner of corrections for the **custody** and **care of** prisoners, engages in **sexual** penetration with a person who the offender knows is committed to the custody of the Department of Corrections to-serve a **term** of imprisonment or period of temporary commitment; or

(3) engages in sexual penetration with a person 18 or 19 years of age who the **offender** knows is committed to the custody of the Department of Public **Health** and Environmental Services under the **Commonwealth's** civil or criminal commitment laws, and the offender is the legal guardian of the person.

(b) Sexual assault in the third degree is punishable by imprisonment of not more than five years, a fine of **not** more than X2,000, or both.

**Sec. 1304. Sexual assault in the fourth degree.**

(a) An offender commits the crime of sexual assault in the fourth degree if

(1) while **employed** in a Commonwealth correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender **knows** is committed to the

custody of the **Department of Corrections** to **serve** a **term** of imprisonment or period of temporary commitment; or

(2) the offender engages in **sexual** contact with a person 18 or 19 years of age **who** the offender knows is committed to the custody of the Department of **Public Health and Environmental Services** under **the civil** or criminal commitment laws, and the offender is the legal **guardian of the person**.

**(b) Sexual assault** in the fourth degree is punishable by imprisonment for not more than one year, a fine of **\$1,000**, or both.

Sec. 1305. **Defenses.**

(a) **It** is a defense to a crime charged under **6 CMC § 1301(a)(3)**, **6 CMC § 1302(a)(2)** or (a)(3), or **6 CMC § 1303(a)(1)** that the **offender** is

(1) mentally **incapable**; or

(2) **married** to the person **and** neither party has **filed** with the court for **a separation, divorce**, or dissolution of the marriage.

**(b)** Except as provided in (a) of this section, in a **prosecution** under **6 CMC § 1301** or **6 CMC § 1302**, it is not a defense that the victim was, at the time of the alleged **offense**, the **legal spouse** of the defendant.

Sec. 1306. Sexual **abuse of a minor in the first degree.**

**(a) An offender commits the crime** of sexual abuse of a minor in the first degree if

(1) being **16 years of age** or older, the offender engages in **sexual penetration with** a person who is under 13 years of age or aids, induces, causes, or **encourages** a person who is under 13 years of age to engage in **sexual** penetration with another person;

(2) being **18 years of age** or older, the offender engages in sexual penetration with a person who **is** under 18 years of age, and the offender is the victim's **natural parent**, stepparent, adopted parent, or **legal** guardian; or

(3) being 18 years of age or **older**, the offender engages in **sexual** penetration with a person who is under 16 years of age, and

(A) **the** victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or

(B) the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the first degree is punishable by imprisonment for not more than 30 years, a fine of not more than \$50,000, or both, and the mandatory sentencing provisions of 6 CMC § 4102.

Sec. 1307. **Sexual abuse of a minor in the second degree.**

(a) An offender commits the crime of sexual abuse of a minor in the second degree if

(1) being 16 years **of** age or older, the offender engages in sexual penetration **with** a person who is 13, 14, or 15 years of age and at **least** three years **younger than** the offender, or aids, induces, causes **or** encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of **age** or older, the offender engages in sexual contact **with** a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian;

(4) being **16 years** of age or **older, the** offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct **described** in 6 CMC § 13 14(a)(2) - (6); or

(5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years **of age, and**

(A) the victim at the time of the offense is residing in the same **household as** the offender and the offender has authority over the victim; or

(B) the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the second degree is punishable by imprisonment for not more than 10 years, a fine of not more than **\$10,000**, or both.

**Sec. 1308. Sexual abuse of a minor in the third degree.**

(a) An offender commits the crime of sexual abuse of a minor in the third degree if

(1) being 16 years of age or older, the offender engages in sexual contact **with a person** who is 13, 14, or 15 years of age and at least three years younger than the offender; or

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in **relation** to the **victim**.

(b) **Sexual** abuse of a minor in the third degree is punishable. by imprisonment for not more than 5 years, a fine of not more than 52,000, or both.

**Sec. 1309. Sexual abuse of a minor in the fourth degree.**

(a) An offender commits the crime of sexual abuse of a minor in the fourth degree if

(1) being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and **at** least three years younger than the offender, or

(2) being 18 years of age or **older, the offender** engages in sexual contact with **a person who is 16 or 17 years of age and at least three** years younger than the offender, and the offender occupies a position of authority in relation to the victim.

**(b)** Sexual abuse of a minor in the fourth degree is punishable by imprisonment for not more than one year, a **fine** of not more than \$1,000, or both.

**Sec. 1310. General provisions.**

**(a)** In a prosecution under 6 CMC §§ 1306-1309 it is an **affirmative** defense that, at the time of the **alleged** offense, the victim was the legal spouse of the defendant, unless the offense was committed without the consent of the victim.

**(b)** In a prosecution under 6 CMC §§ 1303-1309, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an **affirmative** defense that, at the time of the alleged offense, the defendant reasonably believed the victim to be that age or older, unless the victim was under 13 years of age at the time of the alleged offense.

**Sec. 1311. Incest.**

**(a)** A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

1) an ancestor or descendant of the whole or half blood;

2) a brother or sister of the whole **or half** blood; or

3) an uncle, aunt, nephew, or niece by blood.

**(b)** Incest is punishable by imprisonment for not more than five years, a fine of not more than \$2,000, or both.

**Section 4. The following new sections, 6 CMC §§ 1314-1317 are hereby added:**

**Sec. 1314. Unlawful exploitation of a minor.**

(a) A person commits the crime of **unlawful** exploitation of a minor if, in the Commonwealth and with the intent **of** producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the **following** actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the **child's** genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition **of the child's** genitals; or
- (7) sexual masochism or sadism.

(b) A parent, **legal** guardian, or person having custody or control of a child under 18 years of age commits the crime of **unlawful** exploitation of a minor **if**, in the Commonwealth, the person permits the child to engage in conduct described in (a) **of** this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

(c) Unlawful exploitation of a minor is punishable by imprisonment for not more than ten years, a fine of not more than \$10,000, or both.

(d) **In** this section, “audio recording” means a **nonbook** prerecorded item without a **visual** component, and **includes** a record, tape, cassette, and compact disc.

**Sec. 1315. Indecent exposure in the first degree,**

(a) An offender commits the crime of indecent exposure in the **first** degree if

(1) the offender violates **6 CMC § 1316;**

(2) while committing the act constituting the offense, the offender knowingly masturbates; and

(3) the offense occurs within the observation of a person under 16 years **of age.**

(b) Indecent exposure in the first degree is punishable by imprisonment for not more than five years, a fine of not more than 32,000, or both.

**Sec. 1316. Indecent exposure in the second degree.**

(a) An offender **commits the crime of** indecent exposure in the second degree if the offender knowingly exposes the offender’s genitals in the presence of another person with reckless disregard for the offensive, **insulting,** or frightening effect the act may have.

(b) Indecent exposure in the second degree before a person under 16 years of age is punishable by imprisonment for not more than one year, a **fine** of not more than \$1,000, or both, and the mandatory sentencing provisions of **6 CMC § 4102. Indecent exposure** in the second degree before a person **16 years of age or older** is punishable by imprisonment for not more than six months, a fine of not more **than** \$500, or both.

**Sec. 1317. Definitions.** For **purposes of** this chapter, unless the context requires otherwise,

(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 assistant, psychiatrist, psychologist, psychological associate, radiologist, religious healing practitioner, surgeon, x-ray technician, or a substantially similar position;

(2) “incapacitated” means temporarily incapable **of** appraising the nature of one’s own conduct or physically unable to express unwillingness to act;

(3) “legal guardian” means a person who is under a duty to exercise **general** supervision over a minor or other person committed to the custody of the Department of Public **Health** and Environmental Services under the **civil** or criminal commitment **laws** of the Commonwealth as a result of a **court** order, statute, or regulation, and **includes** Department of Public Health and Environmental Services employees, foster parents, and staff members and other employees of group homes or youth facilities where the minor or other person is placed as a result of a **court** order or the action of the Department of **Public** Health and Environmental Services, and police officers, probation officers, and **social workers** when those persons are exercising **custodial** control over a minor or other person.

(4) “mentally **incapable**” means suffering **from** a mental disease or defect that renders the person incapable of understanding the nature or consequences of the person’s conduct, including the potential for harm to **that** person;

(5) “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**;

(6) “**sexual act**” means sexual penetration or **sexual** contact;

(7) “sexual contact” means

(A) the defendant’s

(i) **knowingly** touching, directly or through **clothing**, the victim’s genitals, anus, or female breast; or

(ii) **knowingly** causing the victim to touch, directly or through **clothing**, the defendant’s or victim’s genitals, anus, or **female** breast;

**(B)** but “sexual contact” does not include acts

(i) that may reasonably be construed to be **normal** caretaker responsibilities for a child, interactions with a child, or affection for a child; or

(ii) performed for the purpose of administering a recognized and **lawful** form of **treatment** that is reasonably adapted to promoting the physical or mental health of the person being treated;

(8) “sexual penetration” means

(A) genital intercourse, **cunnilingus**, fellatio, anal intercourse, or an intrusion, however **slight**, of an object or any part of a person’s body into the genital or anal opening of another person’s body;

**(B)** but “sexual penetration” does not **include** acts performed for the purpose of administering a recognized and lawful **form** of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated;

**(C)** each party to any of the acts defined as “sexual penetration” is considered to be engaged in **sexual** penetration;

(9) “victim” means the person alleged to **have** been **subjected** to **sexual** assault in any degree or sexual abuse of a minor **in any** degree;

10) “without consent” means that a person

(A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

(B) is incapacitated as a result of an act of the defendant.

**Section 5. The following new section, 6 CMC § 1318, dealing with the testimony of children in criminal proceedings, is hereby added:**

**Sec. 1318. Testimony of children in criminal proceedings.**

(a) In a criminal proceeding under this Title involving the prosecution of an offense committed against a child under the age of 16, or witnessed by a child under the age of 16, the court

(1) may appoint a guardian ad **litem** for the child;

(2) on its own **motion** or on the motion of the party presenting the witness or on the motion of the guardian ad **litem** of the child, may order that the testimony of the child be taken by closed circuit television or through one-way mirrors if the court determines that the testimony by the child victim or witness under **normal court** procedures would **result** in the.. child's inability to effectively communicate.

**(b)** In making a determination under (a)(2) of this section, the court **shall** consider factors it considers relevant, including

(1) the child's chronological age;

(2) the child's level of development;

(3) the child's general physical **health**;

(4) any physical, emotional, or psychological injury experienced by the child, and

(5) the mental or emotional strain that **will** be caused by requiring the child to testify under normal courtroom procedures.

(c) If the court determines under (a)(2) of this section that the testimony by the child victim or **witness** under normal court **procedures** would result in the child's inability to effectively communicate, the court may order that the testimony of the child be taken in a **room** other than **the** courtroom and be televised by closed circuit equipment in the **courtroom** to be viewed by the defendant, the **court**, and the **finder of fact** in the proceeding. If the court authorizes use of **closed** circuit televised testimony under this subsection,

(1) each of the **following** may be in the room with the child when the child testifies:

(A) the prosecuting attorney;

(B) the attorney for the defendant; and

(C) **operators** of the **closed-circuit** television equipment;

(2) the court may, in addition to persons specified in (1) of this subsection, admit a person whose presence, in the opinion of the court, contributes to the **well-being** of the child.

(d) When a child is to **testify** under (c) of this section, only the court and counsel may question the child. The persons operating the equipment shall do so in as unobtrusive a manner as possible. If the defendant requests, the court shall excuse the defendant from the courtroom, shall **permit** the defendant to attend in another location, and **shall** afford the defendant a **means** of viewing the child's testimony and of communicating with the defendant's attorney throughout the proceedings. Upon request of the defendant or the defendant's attorney, the court shall permit a recess to **allow** them to confer. The court **shall** provide a means of communicating with the attorneys during the questioning of the child. Objections made by the attorneys to questions of a child witness may be resolved in the courtroom if the court finds it necessary.

fe) If the court determines under (a)(2) of this section that the testimony by the **child** victim or witness under normal court procedures would result in the child's **inability** to effectively communicate, the court **may** authorize the use of one-way mirrors in conjunction with the **taking** of the child's testimony. **The** attorneys may pose questions to the child and have visual contact with the child during questioning, but the mirrors **shall** be placed to provide a physical shield so that the child does not have visual contact **with** the defendant and jurors.

(f) If the court does not **find** under (a)(2) of **this** section that the testimony by the **child** victim or witness under **normal** court procedures will result in the child's inability to effectively communicate, the court may, **after** taking into consideration the factors specified in (b) of this section, supervise the spatial arrangements of the **courtroom** and the location, movement, and department of all persons in attendance so as to safeguard the **child from** emotional harm or stress. **In** addition to other procedures it finds appropriate, the court may

(1) allow the child to testify while sitting on the floor or on an appropriately sized chair,

(2) **schedule the** procedure in a room that provides adequate privacy, **freedom** from distractions, informality, and comfort appropriate to the child's developmental age; and

(3) order a recess when the energy, comfort, or attention span of the child warrants.

**Section 6. The following new section, 6 CMC § 1319, dealing with admissibility of DNA evidence, is hereby added:**

**Section 1319. Admissibility of DNA profiles.**

(a) In a criminal action or proceeding, evidence of a DNA profile is admissible to prove or disprove any relevant fact, if the court **finds that the** technique underlying the evidence is **scientifically** valid. The admission of

the **DNA** profile does not require a finding of **general** acceptance in the **relevant** scientific community of DNA profile evidence.

(b) In this section,

(1) "**deoxyribonucleic** acid" means the molecules in **all cellular** forms that contain genetic information in a **patterned chemical** structure for each individual;

(2) "DNA profile"

(A) means an analysis of blood, semen, tissue, or other cells bearing deoxyribonucleic acid resulting in the identification of the individual's patterned chemical structure of genetic information;

(B) includes statistical **population** frequency comparisons of the patterned chemical structures described in (A) of this paragraph.

Section 7.7 CMC § 3302 is hereby amended as follows:

Sec. 3302. **Privileges:** Spouses.

(a). Privileges: Spouses.

Neither husband nor wife may be compelled to testify against the other in the trial of an information, complaint, citation or other criminal proceeding.

(b) Exceptions. There is no privilege under this subdivision:

(1) In a civil proceeding brought by or on behalf of one spouse against the other spouse; or

(2) In a proceeding to commit or otherwise place his spouse, the property of his **spouse** or both the spouse and the property of the spouse under the control of another because of the alleged mental or physical condition of the spouse; or

(3) In a proceeding brought by or on behalf of a spouse to establish his competence; or

(4) **In** a proceeding in which one spouse is charged with:

(A) A crime against the person or the property of the other spouse or of a child of either, whether such **crime** was committed before or during marriage.

**(B) Bigamy, incest, adultery, pimping, or prostitution.**

**(C)** A crime **related** to abandonment of a child or nonsupport of a spouse or child.

**(D)** A crime prior to the marriage.

(E) A crime involving domestic violence as defined under Commonwealth law.

(5) In a proceeding involving custody of a child.

(6) Evidence derived **from** or related to a business relationship involving the spouses.

**(c) Confidential Marital Communications.**

(1) General Rule. Neither during the marriage nor afterwards **shall** either spouse be examined as **to** any confidential communications made by one spouse to the other during the marriage, without the consent of the other spouse.

(2) Exceptions. There is no privilege under this subdivision:

(A) **If** any of the exceptions under subdivision (b) of this section apply; or

(B) If the **communication** was made, in whole or in part, to enable or aid anyone to commit or plan to commit a crime or a fraud; or

(C) In a proceeding between a surviving spouse and a person who claims through the deceased spouse, regardless of whether such claim is by testate or intestate succession or by inter vivos transaction; or

**(D) In a criminal proceeding in which the** communication is offered in evidence by a defendant who is one of the spouses between **whom** the communication was made; or

**(E) In a proceeding under the Rules of Children's** Procedure; or

**(F) If the communication was primarily related to and** made in the context of a business relationship involving both spouses or the spouses and third parties.

source: 7 TTC § I.

**Section 8. The following new section,, 6 CMC § 1320, dealing with admissibility of evidence of similar crimes in prosecutions of crimes invoking sexual assault or sexual abuse of minors, is hereby added, and the existing sections, 6 CMC §§ 1321-1325, are repealed:**

**Sec. 1320. Admission of Prior Act Evidence.**

(a) In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or another **child** is admissible if **the** prior conduct

(i) occurred within **the 10** years preceding the date of the offense charged;

(ii) is similar to the offense **charged; and**

(iii) was committed upon persons similar to the prosecuting witness.

(b) **In a prosecution for a crime of sexual assault in any degree,** evidence of other sexual assaults or attempted sexual assaults by the defendant against **the** same or another person is admissible if the defendant relies on a defense of consent. **In a prosecution for a crime of attempt to commit sexual assault in any degree,** evidence of other sexual assaults or

attempted **sexual assaults** by the defendant against the same or another person is admissible.

(c) For purposes of this section, the prior conduct referred to in subsections (a) and (b) need not have resulted in any criminal charge or conviction in order to be admissible.

(d) In a prosecution for a crime involving **domestic** violence or of interfering with -a report of a crime involving domestic violence, evidence of other crimes involving domestic violence by the defendant against the same or another person is admissible.

**Section 9. 6 CMC § 4102 is amended as follows:**

**§ 4102. Mandatory Sentencing.**

(a) Any person, **who** is armed with a **dangerous** weapon in the commission of an **offense** shall be sentenced to serve no less than one-third the maximum term of imprisonment **which** may otherwise **be** imposed upon conviction of the offense, which sentence may not be suspended unless the court determines that unique circumstances exist in the light of which imprisonment of the **convicted** person is inhumane, cruel or otherwise extremely detrimental to the interest of justice, and is not necessary for the protection of the public or any witness.

(b) Any person who is armed with a dangerous weapon which is **also** a firearm in the commission of an offense shall be sentenced to serve no less than one-third the maximum term of imprisonment which may otherwise be imposed upon conviction **of** the offense, which sentence may not be suspended.

(c) No penalties pursuant to this section shall be imposed unless being armed with a dangerous weapon is alleged and proved as an element of the underlying offense.

(d) Notwithstanding any provisions in this section, any person convicted of sexual assault in the first degree or sexual abuse of a minor in

the first degree as adopted, **shall** be sentenced to serve a mandatory term of imprisonment of no **less than**

(i) eight years if the **person** convicted has no **record** of **prior** felony conviction, which sentence may not be suspended **unless** the court determines **that** unique circumstances exist in the light of which imprisonment of the convicted person is inhumane; cruel or otherwise extremely **detrimental** to the interest of justice, and is not necessary for the protection of the public or any witness; and

(ii) fifteen years if the person convicted has a prior felony conviction

(e) For purposes of this section, “prior felony conviction”\* means a conviction in this or another jurisdiction of **an** offense having elements similar to those of a felony defined as such under the laws of the Commonwealth at the time the offense was committed. A prior felony conviction may not be considered if a period of ten years or more has elapsed since the defendant’s unconditional discharge **from** all disability arising under the sentence on **the** preceding offense, including probation and parole, and the commission of the present offense.

Source: **PL 3-71, § 1 (§ 1202); amended by PL 7-15, § 1.**

**Case Annotations: 3 N.M.I. 186–198.**

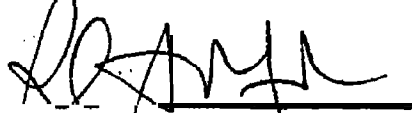
Section 10. **Severability.** If any provision of this Act or the **application** of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is **held** invalid shall not be affected.

**Section 11. Savings Clause.** **This Act** and any repealer contained herein shall not be construed as affecting **any** existing right acquired under contract or acquired under statutes **repealed** or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect **any proceeding** instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way

modifying, any liability, civil or criminal, which is already in existence on the date this Act becomes effective.

Section 12. Effective **Date**. This Act shall take **effect** upon its approval by the Governor or upon its becoming law without such approval.

**CERTIFIED BY:**



**PAUL A. MANGLONA**

resident of the Senate


**ATTESTED BY:**



**JOAQUIN G. ADRIANO**

Senate Legislative Secretary

*Approved* this 7<sup>th</sup> day of January, 2002



**PEDRO P. TENORIO**

Governor

Commonwealth of the Northern Mariana Islands