



HOUSE OF REPRESENTATIVES  
FIFTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE  
FIRST REGULAR SESSION, 2006

PUBLIC LAW No. 15-46  
H. B. No. 15-31, HS1, SD1

AN ACT

To reform the laws governing probation and suspended execution and imposition of sentence, to establish an Adult Diversion program in the Commonwealth; and for other purposes.

BE IT ENACTED BY THE FIFTEENTH NORTHERN MARIANAS COMMONWEALTH  
LEGISLATURE:

1           **Section 1. Short Title.** This Act may be cited as the “Probation Reform Act of  
2 2006.”

3           **Section 2. Findings and Purpose.** The Legislature finds that the purposes of  
4 probation are to provide guidance in future conduct to those persons who have been  
5 convicted of crimes, to promote their rehabilitation, and to provide restitution to their victims  
6 pursuant to Article I, § 11 of the Commonwealth Constitution. The Legislature also finds  
7 that court opinions, including *Commonwealth v. Hemley*, *Commonwealth v. Santos*,  
8 *Commonwealth v. Cristobal*, *Commonwealth v. Baulechong*, *Commonwealth v. Udei*,  
9 *Commonwealth v. Rebuenog*, and *Commonwealth v. Sablan*, have pointed out the need to  
10 amend the probation statutes, to enhance the effectiveness of the Commonwealth's probation  
11 procedures, and to ensure that the recognized goals of probation are realized.

12           These amendments will improve the ability of the system to fully compensate crime  
13 victims, strengthen the court's ability to ensure compliance with its orders imposing  
14 probationary terms, and will codify the rights and responsibilities of probationers in the  
15 revocation process.

16           In addition, the Legislature recognizes the need to supplement the tools available to  
17 the court and the Attorney General's Office to divert from the court's caseload the  
18 uncontested cases of eligible first-time offenders who are likely to benefit from a community-

1 based rehabilitation program, so the court may give priority to cases that must be tried, and to  
2 allow eligible first-time offenders to avoid getting a criminal record, thus better equipping  
3 them to compete for satisfactory employment, educational opportunities, military service and  
4 other benefits of citizenship.

5         These amendments are intended to address several problems which have become  
6 evident since the passage of the existing statutes.

7         The Act increases the period of probation the court may impose, up to three years  
8 after any period of incarceration for any misdemeanor conviction, and up to ten years after  
9 any period of incarceration for any felony conviction. This amendment is necessary because  
10 some misdemeanor crimes have either 90-day or six-month maximum sentences. These  
11 periods of time are too brief to give probationers a realistic opportunity to pay fines and  
12 restitution, which results in the Commonwealth and crime victims not being compensated in  
13 many instances. It is also desirable for some probationers to be placed on supervised  
14 probation for lengthier periods of time, in order to keep them from committing crimes, such  
15 as cases where a probationer has a very lengthy misdemeanor history. Other examples of  
16 probationers who might require lengthier periods of supervision include cases where a  
17 probationer needs mental health counseling or monitoring of psychotropic medication on an  
18 ongoing basis, and poses a threat to society only when he stops taking such medication or  
19 stops seeing his counselor; repeat sex offenders; and those whose criminal offenses are  
20 related to chronic alcohol or substance-abuse problems.

21         The Act also provides for tolling the period of probation upon the filing of a petition  
22 to revoke probation or suspended imposition of sentence. Currently, if someone is on  
23 probation for six months, and the Commonwealth receives notice from the probation officer  
24 that he has failed to pay his restitution after five months, the Attorney General must notify  
25 the court, serve him with notice of his violation, secure his attendance in court, adjudicate his  
26 violation and revoke his probation, all before his probation expires. If the probationer simply  
27 avoids service of the summons, or even fails to appear in court after having been summoned,  
28 the petition is dismissed when the probation is expired, no matter what the violation, or what  
29 efforts the probation office and attorney general have taken to bring the violation before the

1 court. This gives the probationer who intends to avoid his obligations an unfair advantage,  
2 and makes the system appear ineffective. Tolling of the probationary period will resolve this  
3 problem.

4 This Act also codifies some of the rights, procedures and proof burdens already  
5 applicable to probation revocation, and streamlines the documentation to be filed to  
6 commence such proceedings. For example, currently, if the Attorney General receives an  
7 affidavit from the Office of Adult Probation indicating a probationer has failed to pay his  
8 fine, the Attorney General must prepare and file numerous separate documents, including: a  
9 Motion to Revoke Probation; a Declaration in Support of the Motion to Revoke Probation; a  
10 Notice of Hearing; a Notice of Rights Associated with Revocation; and a Notice of Intent to  
11 Revoke Probation. The sheer number of documents necessary to commence such revocation  
12 proceedings makes it extremely burdensome to ensure that all probationers are held to the  
13 same standards of compliance, and many have "fallen through the cracks" in the past.

14 The Act also specifies some of the terms and conditions that can be imposed as  
15 conditions of probation, and provides special conditions of probation for those convicted of  
16 crimes involving domestic violence, and crimes related to drug and alcohol abuse.

17 The Act defines "restitution" and provides for procedures to determine the amount of  
18 a restitution order, and for enforcement of those orders. The term "victim" is also defined  
19 more expansively, to provide guidance to the courts in determining who a victim is for  
20 purposes of a restitution order. The Act also provides that restitution orders are enforceable  
21 as civil judgments, and allows victims to pursue payment of restitution civilly, even after the  
22 probationer's probation has expired.

23 Finally, the Act establishes an Adult Diversion Program, to allow the Attorney  
24 General to divert first-time offenders who do not wish to contest their guilt to the Office of  
25 Adult Probation. If the first-time offender agrees to make restitution, and to be supervised by  
26 the Office of Adult Probation, he or she may avoid a criminal conviction.

27 **Section 3. Amendment.** Title 1, Section §2204 of the Commonwealth Code is  
28 amended to read:

1           “§ 2204. Public Defender: Eligibility.

2           Except as provided by 6 CMC §4105 as amended and 6 CMC §4113 as  
3           amended, the Public Defender shall establish eligibility criteria and may promulgate  
4           rules and regulations regarding eligibility criteria, to take effect upon their approval  
5           by the Governor. The determination as to whether a defendant is indigent or whether  
6           a person is unable to afford a private attorney, however, shall be at the discretion of  
7           the judge before whom such person is appearing.”

8           **Section 4. Repealer and Re-enactment.** Title 6, Division 4, Chapter 1, Section  
9           4104 of the Commonwealth Code of the Northern Mariana Islands is hereby repealed and re-  
10          enacted to read as follows:

11          “§ 4104. Alternative Sentence: Conditions of Probation.

12               (a) Whenever a sentencing Court of the Commonwealth suspends execution  
13               or imposition of any sentence of imprisonment or fine, for any violation of the  
14               Commonwealth Code, the court may impose any terms and conditions of probation  
15               which benefit the community and serve the interests of justice, and shall order the  
16               defendant, during the period of probation:

17                       (1) to obey all laws of the Commonwealth and of the United States;

18                       (2) to contribute to the support of persons he or she is legally  
19                       obligated to support;

20                       (3) to pay restitution, as defined at 6 CMC § 4109, and in accordance  
21                       with Article I, Section 11 of the Commonwealth Constitution, to any victim or  
22                       other person injured by the defendant’s criminal conduct;

23                       (4) to pay fees associated with the costs of supervision, or other  
24                       surcharges authorized by statute;

25                       (5) to abide by the general conditions of probation as specified by the  
26                       Office of Adult Probation.

27               (b) In addition to the conditions set forth in subsection (a) of this section,  
28               the sentencing Court may impose any of the following conditions:

- 1                   (1) a term of unsuspended incarceration as a special condition of  
2 probation, not subject to parole;
- 3                   (2) the payment of a fine in one or several sums, pursuant to 6 CMC  
4 § 4101, or reimbursement to the Commonwealth for the costs of court-  
5 appointed counsel, as authorized by statute;
- 6                   (3) to perform community work service in accordance with the  
7 provisions of 6 CMC § 4111;
- 8                   (4) to satisfy the screening, evaluation, referral and program  
9 requirements of an agency authorized by the Court to make referrals to  
10 programs or treatment reasonably related to the probationer's rehabilitation;
- 11                   (5) to participate in or comply with the treatment plan of an outpatient  
12 rehabilitation program specified by either the court or the Office of Adult  
13 Probation that is related to the probationer's offense or to the probationer's  
14 rehabilitation;
- 15                   (6) to participate in or comply with the treatment plan of an inpatient  
16 rehabilitation program specified by either the court or the Office of Adult  
17 Probation that is related to the probationer's offense or to the probationer's  
18 rehabilitation, provided that
- 19                   (A) such treatment is specifically authorized in the sentencing order  
20 or judgment for a term not to exceed a stated maximum, either in  
21 addition to any term of suspended or unsuspended incarceration, or in  
22 lieu thereof; and
- 23                   (B) the defendant is given credit for time served in any inpatient  
24 treatment program authorized under this subsection, against any  
25 suspended time subsequently revoked for a violation of any term or  
26 condition of probation.
- 27                   (7) to refrain from any contact, direct or indirect, with any victim or  
28 witness;

- 1 (8) to comply with restrictions regarding place of abode, and with  
2 whom the probationer may or may not reside during the period of probation;
- 3 (9) to observe a curfew during specified hours, or to remain under  
4 house arrest during certain times, under the supervision of the Office of Adult  
5 Probation;
- 6 (10) to be subject to electronic monitoring, under the supervision of  
7 the Office of Adult Probation;
- 8 (11) any other conditions which will serve the interests of justice.
- 9 (c) If the probationer is convicted of any offense involving the use,  
10 consumption or possession of any alcoholic beverage or controlled substance, the  
11 sentencing court may require, in addition to the conditions in subsections (a) and (b)  
12 of this section, that the probationer
- 13 (1) refrain from the possession or consumption of alcoholic beverages  
14 or controlled substances;
- 15 (2) refrain from entering into any bar, tavern, or other establishment  
16 whose primary purpose is the sale or consumption of alcohol;
- 17 (3) not reside in any residence where alcohol or controlled substances  
18 are present;
- 19 (4) refrain from associating with persons who are consuming alcoholic  
20 beverages or controlled substances, or who are under the influence of alcohol  
21 or controlled substances;
- 22 (5) not to drive any motor vehicle during the period of probation;
- 23 (6) meaningfully participate in and successfully complete one or more  
24 outpatient or inpatient programs authorized by the court for the treatment of  
25 alcohol or substance abuse, in accordance with subsection (b) of this section;  
26 and
- 27 (7) submit to urinalysis, portable breath tests, intoximeter or similar  
28 tests at the request of a Probation officer, to monitor compliance with the  
29 above conditions.

1           For purposes of this subsection, “controlled substance” or “controlled  
2 substances” shall have the meaning set forth in 6 CMC § 2102(c), but does not  
3 include prescription medications for which the person has a valid prescription.

4           (d) If the probationer is convicted of any crime involving domestic violence,  
5 as defined under Commonwealth law, the sentencing court may require, in addition to  
6 the conditions of probation in subsections (a), (b) and (c) of this section, that the  
7 probationer

8                   (1) meaningfully participate in and successfully complete one or more  
9 programs authorized by the court for the rehabilitation of perpetrators of  
10 domestic violence, if such programs are available in the community where the  
11 probationer resides;

12                   (2) refrain from committing any further crimes involving domestic  
13 violence;

14                   (3) refrain from violating any domestic violence restraining order; and

15                   (4) refrain from any contact, direct or indirect, with the victim of the  
16 crime, any minor child in the custody of the victim, or any other member of  
17 the victim’s household, during the period of probation.

18           (e) A person placed on probation pursuant to 6 CMC §4105 or §4113 shall,  
19 unless found to be indigent by the Court, pay a probation service fee in a sum not less  
20 than \$20 and nor more than \$360 annually during the term of probation. In  
21 determining the fee the Court shall consider the nature of the offense and the level of  
22 supervision required. The fee shall be deposited in the Probation Services Fund  
23 established in 1 CMC § 3406.”

24           **Section 5. Amendment.** Title 6, Division 4, Chapter 1, Section 4105 of the  
25 Commonwealth Code of the Northern Mariana Islands is hereby amended as follows:

26           “§ 4105. Alternative Sentence: Probation and Suspension of Execution of Sentence.

27                   (a) Except as restricted by a specific provision of a section of this title or by 6  
28 CMC § 4102, the court may suspend or modify all or part of a sentence and order  
29 probation or other sentencing where that action is deemed to be in the best interests of

1 justice, and may re-impose all or part of the suspended sentence upon violation of the  
2 terms of the suspension. Probation may be limited to one or more counts, but in the  
3 absence of express limitation, shall extend to the entire sentence or judgment.

4 (b) The court may impose any period of probation, not to exceed:

5 (1) three (3) years from the date the probationer is sentenced, or  
6 released from any period of incarceration, whichever is greater, upon  
7 conviction for any misdemeanor; and

8 (2) ten (10) years from the date the probationer is sentenced, or  
9 released from any period of incarceration, whichever is greater, upon  
10 conviction for any felony.

11 (c) Upon the filing of a petition to revoke probation, or an affidavit, or the  
12 presentation of sworn testimony from a Probation Officer or a representative of the  
13 Attorney General's Office setting forth probable cause to believe the probationer has  
14 violated any term of his probation, the court shall issue a summons for the probationer  
15 to appear before the court, or a warrant for the arrest of the probationer if the court  
16 finds a summons may be ineffective in securing the appearance of the probationer or  
17 that the probationer may pose a danger to the public.

18 (d) Upon the filing of a petition to revoke probation, an affidavit or the  
19 presentation of sworn testimony setting forth probable cause to establish a violation of  
20 any term of probation, the period of probation shall be tolled until final disposition of  
21 the alleged violation. If a probationer is found to have violated his or her probation,  
22 the court shall extend probation for the period of time from the filing of the petition to  
23 revoke until the final disposition on the petition, up to the maximum period allowable  
24 by law under subsection (b) of this section for the crime for which the probationer  
25 was sentenced. Probation revocation proceedings are civil in nature, not criminal.

26 (e) A probationer accused of violating any term of probation shall be entitled  
27 to reasonable notice of the alleged violation, and the right to be represented by  
28 counsel. No portion of a suspended sentence may be revoked, except for good cause  
29 shown.



1           (f) At the probationer’s initial appearance after the commencement of  
2 probation revocation proceedings described in subsection (c), the probationer shall be  
3 advised of his rights by the court, including the right to court-appointed counsel if he  
4 is indigent. If the probationer asks for court-appointed counsel, the court shall  
5 examine the probationer as to his financial resources in order to determine if he is an  
6 indigent person, and if the court finds the probationer to be indigent, shall appoint  
7 counsel for the probationer.

8           (g) The court shall call upon the probationer to enter either a denial or an  
9 admission to the alleged violation. If the probationer admits the violation, the court  
10 shall find the probationer has violated his probation, and may immediately revoke all  
11 or part of any suspended portion of the probationer's sentence. In lieu of immediate  
12 revocation, the court may schedule a separate disposition hearing, in order to allow  
13 evidence to be presented by either party in support of a recommended disposition. If  
14 the probationer denies the violation, the court shall schedule an adjudication hearing  
15 before any judge, regardless of who imposed the condition of probation. The  
16 probationer is entitled to reasonable bail pending adjudication of the petition to the  
17 same extent as a criminal defendant under Title 6, Chapter 4 of the criminal code.

18           (h) At the adjudication hearing, the government must prove the alleged  
19 violation by a preponderance of the evidence, and the probationer may be heard. The  
20 Rules of Evidence do not apply to probation revocation proceedings. If the court  
21 finds the probationer has violated any term or condition of probation, the court may  
22 proceed to disposition, or the court may schedule a separate disposition hearing.

23           (i) A judgment of conviction on a new criminal charge based on conduct  
24 which occurred during the period of probation shall be conclusive proof that a  
25 violation of the probation has occurred. Some portion of a suspended sentence  
26 revoked for a violation of law occurring during the period of probation shall be  
27 consecutive to any sentence imposed for the violation of law. The sentencing court  
28 shall clearly state what portion of the revoked time is consecutive, and what portion is  
29 concurrent, if any, to time imposed for a subsequent violation of law.

1           (j) If the court finds a violation of probation based on the probationer’s  
2 failure to perform any special condition of probation, pay restitution, fees or fines,  
3 participate in counseling, or perform community work service, the court may  
4 immediately revoke all or part of any suspended portion of the probationer’s sentence,  
5 and may, in addition, extend the period of probation up to the maximum period  
6 allowable by law under subsection (b) of this section for the crime for which the  
7 probationer was sentenced, in order to ensure compliance with the conditions  
8 originally imposed. Before finding a violation of probation based on the failure to  
9 pay restitution, fees, or fines, the Court must find by a preponderance of the evidence  
10 that the probationer has made no efforts to pay and has the ability to do so.

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

20       **Section 6. Amendment.** Title 6, Division 4, Chapter 1, Section 4109 of the  
21 Commonwealth Code of the Northern Mariana Islands is hereby amended as follows:

22       “§ 4109. Restitution, Compensation, or Forfeiture.

23           (a) If a person is convicted of any offense defined in this title or any violation  
24 of the Commonwealth Code, the court shall, if appropriate, order the person to pay  
25 restitution as a condition of probation. This section also authorizes ~~or~~ the forfeiture  
26 of wrongfully obtained property to the Commonwealth.

27           (b) For the purposes of this Title, “restitution” means reimbursement or  
28 compensation to the victim or victims, as defined in 6 CMC §9101, for every

1           determined economic loss incurred as a result of the person’s criminal conduct,  
2           including, but not limited to:

3                       (1) full or partial payment for the value of stolen or damaged property.

4           The value of stolen or damaged property shall be the replacement cost of like  
5           property, or the actual cost of repairing the property when repair is feasible;

6                       (2) medical expenses;

7                       (3) mental health counseling expenses;

8                       (4) burial, funeral, cremation or other expenses incurred by the family  
9           or estate of a homicide victim as a result of the crime;

10                      (5) wages or profits lost due to injury incurred by the victim, and if the  
11           victim is a minor, wages or profits lost by the minor’s parent, parents,  
12           guardian or guardians, while caring for the injured minor;

13                      (6) wages or profits lost by the victim, and if the victim is a minor,  
14           wages or profits lost by the minor’s parent, parents, guardian or guardians, due  
15           to time spent as a witness or in assisting the police or prosecution;

16                      (7) expenses to retrofit a residence or vehicle, or both, to make the  
17           residence accessible to the victim or the vehicle operational by the victim, if  
18           the victim is permanently disabled, whether the disability is partial or total, as  
19           a direct result of the crime;

20                      (8) expenses incurred by an adult victim of a crime involving domestic  
21           violence to install or increase residential security incurred related to the crime,  
22           including, but not limited to, a home security device or system, or replacing or  
23           increasing the number of locks;

24                      (9) expenses incurred by an adult victim of a crime involving domestic  
25           violence in relocating away from the probationer, including, but not limited to,  
26           deposits for utilities or phone service, deposits for rental housing, temporary  
27           lodging and food expenses, clothing and personal items. Expenses incurred  
28           pursuant to this section must be verified by law enforcement to be necessary

1                   for the personal safety of the victim or by a mental health treatment provider  
2                   to be necessary for the emotional well-being of the victim;

3                   (10) pre-judgment or post-judgment interest, as provided by statute or  
4                   court rule, that accrues as of the date of loss or sentencing, as determined by  
5                   the court;

6                   (11) actual and reasonable attorney's fees and costs of collection  
7                   accrued by a private entity on behalf of the victim.

8                   (c) Garnishment. The Court may order that a probationer's wages from  
9                   employment be garnished to satisfy any outstanding restitution sum.

10                  (d) In determining the amount of any restitution award, the court shall order  
11                  the probationer to pay full restitution, unless it finds compelling and extraordinary  
12                  reasons for not doing so, and states them on the record. If the amount of the award  
13                  cannot be determined at the time of sentencing, the restitution order shall include a  
14                  provision that the amount shall be determined at the direction of the court. A  
15                  probationer's inability to pay shall not be considered a compelling and extraordinary  
16                  reason not to impose a restitution order, nor shall inability to pay be a consideration in  
17                  determining the amount of any restitution order.

18                  (e) The probationer has the right to a hearing before the sentencing judge to  
19                  contest the amount of the restitution. The court may modify the amount, on its own  
20                  motion, or on that of the prosecutor, the victim or victims, or the probationer. If a  
21                  motion for hearing on the restitution amount is filed, the victim shall be notified at  
22                  least 10 days prior to the hearing on the motion. The amount of restitution shall be  
23                  determined by the judge, and proven by a preponderance of the evidence.

24                  (f) A restitution order under this section does not limit any civil liability of the  
25                  probationer arising from the probationer's conduct. Nor is the amount of restitution  
26                  ordered pursuant to this section affected by the indemnification or subrogation rights  
27                  of any third party.

1                   (g) Regardless of whether restitution is ordered as a condition of probation or  
2 as part of a direct sentence, a restitution order under this section is not discharged by  
3 the completion of any period of probation, or by the serving of any sentence imposed.

4                   (h) A restitution order under this section is a judgment lien that

5                               (1) attaches to the property of the person subject to the order;

6                               (2) may be perfected; and

7                               (3) may be enforced against a probationer as if the order were a civil  
8 judgment enforceable by execution, to satisfy any payment that is delinquent  
9 under the restitution order by the person in whose favor the order is issued, or  
10 the person's assignee. Nothing in this section limits the authority of the court  
11 to enforce fines and orders of restitution to victims, including, but not limited  
12 to, the court's authority to revoke the probationer's probation for failure to  
13 comply with any part of the restitution order.

14                   (i) If the probationer defaults in the payment of any fine or restitution, or in  
15 any installment payment authorized by the court for periodic payment of a fine or  
16 restitution, the court may order the probationer to show cause why the probationer  
17 should not be held in contempt of court for nonpayment and, if the payment was made  
18 a condition of the probationer's probation, may revoke the probationer's probation,  
19 pursuant to the procedures set out in 6 CMC § 4105. In a contempt or probation  
20 revocation proceeding brought as a result of the probationer's failure to pay a fine,  
21 restitution, or other financial obligation imposed as part of a sentence or probation  
22 condition, it is an affirmative defense that the probationer was unable to pay despite  
23 having made continuing good faith efforts to do so. If the court finds the probationer  
24 was unable to pay despite having made continuing good faith efforts to do so, the  
25 probationer may not be imprisoned solely because of the inability to pay. If the court  
26 does not find the probationer's default attributable to an inability to pay, despite  
27 continuing good faith efforts, the court may revoke all or part of the suspended  
28 sentence. A term of imprisonment or any contempt sanction imposed solely for  
29 failure to pay restitution may be consecutive to any portion of the probationer's

1 sentence revoked for other noncompliance with conditions of probation, and may not  
2 exceed one day for each \$50 of the unpaid fine or restitution, or one year, whichever  
3 is shorter.

4 (j) A probationer who has been sentenced to pay a fine or restitution may  
5 request a hearing regarding the probationer's ability to pay the fine or restitution. The  
6 court may deny the request for hearing if it has previously considered the  
7 probationer's ability to pay and the probationer's request does not allege a substantial  
8 change in circumstances. The victim shall be notified at least 10 days prior to the  
9 hearing, and shall be given an opportunity to be heard at the hearing. If at the hearing  
10 under this subsection, the probationer proves by a preponderance of the evidence that  
11 the probationer will be unable to pay through good faith efforts to satisfy the order  
12 requiring payment of the fine or restitution, the court shall modify the order so that  
13 the probationer can pay the fine or restitution through good faith efforts. The court  
14 may, for good cause shown, reduce the fine or restitution ordered, change the  
15 payment schedule, extend the probationer's probation up to the maximum period of  
16 time allowed under the law, or otherwise modify the order.

17 (k) Nothing in this section prohibits a person who has been ordered to pay  
18 restitution from satisfying the obligation by means of traditional or customary  
19 restitution, barter, or other means, with the consent of the victim, unless the crime for  
20 which the restitution has been ordered is a crime involving domestic violence, or the  
21 court has ordered the defendant not to have any contact with the victim during the  
22 period of probation.

23 (l) In the event that any restitution paid is unclaimed by the victim more than  
24 180 days after it is paid, it may be forfeited by order of the court. The Office of Adult  
25 Probation shall file with the court a notice of intent to seek forfeiture, summarizing its  
26 efforts to locate the victim, and shall publish the notice in a publication of general  
27 distribution for three consecutive weeks after the notice is filed with the court, stating  
28 the name of the victim entitled to the restitution, the amount of the restitution, and the  
29 date and time of the forfeiture hearing set by the court. At that hearing, if the court

1 finds a diligent, good faith effort has been made to locate the victim prior to  
2 forfeiture, and if it appears unlikely that the victim will claim the restitution in the  
3 future, the court may order it forfeited in whole or in part to programs providing aid  
4 victims of domestic violence, sexual assault and sexual abuse, provided such  
5 programs are approved by the Attorney General.”

6 **Section 7. Repealer and Reenactment.** Title 6, Division 4, Chapter 1, Section 4113  
7 of the Commonwealth Code of the Northern Mariana Islands is hereby repealed and  
8 reenacted as follows:

9 “§ 4113. *Alternative Sentence: Probation and Suspension of Imposition of Sentence.*

10 (a) Except as restricted by a specific provision of a section of this Title, upon  
11 entering a judgment of conviction of any offense under this title not punishable by life  
12 imprisonment, the court, when satisfied that the ends of justice and the best interests  
13 of the public as well as the probationer will be served, may suspend the imposition of  
14 sentence upon the terms and conditions which the court determines and may direct  
15 that the suspension continue for a period of time, not to exceed:

16 (1) three (3) years from the date suspended imposition is granted, or  
17 the probationer is released from any period of incarceration imposed as a  
18 special condition of probation, whichever is greater, upon conviction for any  
19 misdemeanor; and

20 (2) ten (10) years from the date suspended imposition is granted, or  
21 the probationer is released from any period of incarceration imposed as a  
22 special condition of probation, whichever is greater, upon conviction for any  
23 felony.

24 The court shall place the person on probation, under the charge and  
25 supervision of the Office of Adult Probation during the suspension.

26 (b) Upon the filing of a petition to revoke probation, or an affidavit, or the  
27 presentation of sworn testimony, from a Probation Officer or a representative of the  
28 Attorney General's Office setting forth probable cause to believe the probationer has  
29 violated any term of his probation, the court shall issue a summons for the probationer

1 to appear before the court, or a warrant for the arrest of the probationer if the court  
2 finds a summons may be ineffective in securing the appearance of the probationer or  
3 that the probationer may pose a danger to the public.

4 (c) Upon the filing of a petition to revoke probation, an affidavit or the  
5 presentation of sworn testimony setting forth probable cause to establish a violation of  
6 any term of probation, the period of probation shall be tolled until final disposition of  
7 the alleged violation. Probation revocation proceedings are civil in nature, not  
8 criminal.

9 (d) A probationer accused of violating any term of probation shall be entitled  
10 to reasonable notice of the alleged violation, and the right to be represented by  
11 counsel. A suspended imposition of sentence may not be revoked, and sentence  
12 imposed, except for good cause shown.

13 (e) At the probationer's initial appearance after the commencement of  
14 probation revocation proceedings described in subsection (b), the probationer shall be  
15 advised of his rights by the court, , including the right to court-appointed counsel if he  
16 is indigent. If the probationer asks for court-appointed counsel, the court shall  
17 examine the probationer as to his financial resources in order to determine if he is an  
18 indigent person, and if the court finds the probationer to be indigent, shall appoint  
19 counsel for the probationer.

20 (f) The court shall call upon the probationer to enter either a denial or an  
21 admission to the alleged violation. If the probationer admits the violation, the court  
22 shall find the probationer has violated his probation, and may immediately impose  
23 any sentence which could have been lawfully imposed when suspended imposition  
24 was granted. In lieu of immediate revocation, the court may schedule a separate  
25 disposition hearing, in order to allow evidence to be presented by either party in  
26 support of a recommended sentence. If the probationer denies the violation, the court  
27 shall schedule an adjudication hearing before any judge of the Superior court. The  
28 probationer is entitled to reasonable bail pending adjudication of the petition to the  
29 same extent as a criminal defendant under Title 6, Chapter 4 of the criminal code.



1           (g) At the adjudication hearing, the government must prove the alleged  
2 violation by a preponderance of the evidence, and the probationer may be heard. The  
3 Rules of Evidence do not apply to probation revocation proceedings. If the court  
4 finds the probationer has violated any term or condition of probation, a conviction of  
5 record shall enter. The court may immediately proceed to sentencing, or the court  
6 may schedule a separate sentencing hearing.

7           (h) A judgment of conviction on a new criminal charge based on conduct  
8 which occurred during the period of probation shall be conclusive proof that a  
9 violation of the probation has occurred. Some portion of any sentence imposed on the  
10 conviction for which the probationer was originally granted suspended imposition  
11 shall be consecutive to any sentence imposed for the subsequent conviction.

12           (i) If the court finds a violation of probation based on the probationer's failure  
13 to perform any special condition of probation, pay restitution, fees or fines, participate  
14 in counseling, or perform community work service, a conviction of record shall enter,  
15 and the court may impose sentence as described in §4113(e), and may, in addition,  
16 extend the period of probation up to the maximum period allowable by law for the  
17 crime for which the probationer was granted suspended imposition, in order to ensure  
18 compliance with the conditions originally imposed. Before finding a violation of  
19 probation based on the failure to pay restitution, fees, or fines, the Court must find by  
20 a preponderance of the evidence that the probationer has made no efforts to pay and  
21 has the ability to do so.

22           (j) The court may at any time during the period of probation modify its order  
23 of suspension of imposition of sentence. The court may at any time, when the ends of  
24 justice and the best interests of the public as well as the probationer will be served,  
25 and when the good conduct and reform of the person held on probation warrants it,  
26 terminate the period of probation and discharge the person held.

27           (k) If it appears the probationer has successfully completed his probation  
28 period, the Office of Adult Probation shall file a "Motion to Set Aside Conviction"  
29 with the court within thirty (30) days of the end of the probation period. A copy must

1           be provided to the prosecutor’s office. The prosecutor shall have 20 days to object to  
2           the set-aside, setting forth the reasons for objection. The court shall then give the  
3           probationer 20 days to respond to the objection. The prosecutor shall have the burden  
4           of proving to the court, by a preponderance of the evidence, that the probationer has  
5           failed to satisfy one or more of the conditions of probation. If the court finds that the  
6           probationer has failed to satisfy any condition of the suspended imposition of  
7           sentence, the court may deny set-aside, and enter a conviction of record, without  
8           imposing any sentence. The court may also take judicial notice of a probationer’s  
9           failure to satisfy the conditions of the suspended imposition, whether or not the  
10          prosecutor objects to the probationer’s motion, if the probationer is given an  
11          opportunity to be heard. If the prosecutor does not object to the Motion to Set Aside  
12          Conviction, and it appears to the court that the motion is well taken, the court shall  
13          vacate the judgment of conviction and the probationer may not be deemed to have  
14          been convicted of the crime for any purpose.

15                   (l) Whenever restitution, payment of a fine or fee, the performance of  
16                   community work service, or other special condition of probation is ordered, the court  
17                   shall place the probationer on probation. The court shall review financial compliance  
18                   sufficiently prior to the termination of probation to permit an extension of supervision  
19                   if necessary.

20                   (m) Notwithstanding any other provision of this section, the court may not  
21                   suspend imposition of sentence of a person who:

22                           (1) is convicted of a violation of murder in the first or second degree;  
23                           voluntary or involuntary manslaughter; assault with a dangerous weapon;  
24                           aggravated assault and battery; any sexual offense listed in 6 CMC  
25                           §§ 1301-1311, 1323, 1343 or 1344; robbery; kidnapping; criminal coercion  
26                           punishable under 6 CMC § 1431(c); arson and related offenses listed in  
27                           6 CMC § 1802, trafficking offenses listed in 6 CMC §§ 2141 or 2147; or  
28                           escape.

1                   (2) is convicted of a crime involving the possession, use, attempted  
2 use or threatened use of a firearm by the probationer or any accomplice, in the  
3 commission of any offense;

4                   (3) is convicted of any crime involving domestic violence; or

5                   (4) has previously been accepted into the Adult Diversion Program or  
6 been granted a suspended imposition of sentence, whether or not diversion  
7 resulted in dismissal or the conviction was set aside.”

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

17                   **Section 8. Amendment.** Title 6, Division 9, Chapter 1, Section 9101(a) of the  
18 Commonwealth Code of the Northern Mariana Islands is hereby amended as follows:

19                   “(a) “Victim” means a person, other than a perpetrator, who has suffered  
20 direct physical, emotional or economic harm as a result of the commission of a crime;  
21 including, but not limited to:

22                                 (1) the actual victim of the crime;

23                                 (2) the immediate surviving family of the actual victim;

24                                 (3) in the case of a victim who is under 18 years of age, incompetent,  
25 incapacitated, or deceased, any of the following (in order of preference):

26   (A) A spouse;

27   (B) A legal guardian;

28   (C) A parent;

29   (D) A child;

- 1 (E) A sibling;
- 2 (F) Another family member; or
- 3 (G) Another person designated by the court.
- 4 (4) any corporation, business, estate, trust, partnership, association,
- 5 joint venture, government, governmental department, agency or
- 6 instrumentality, or any other legal or commercial entity when that entity is a
- 7 direct victim of a crime; and
- 8 (5) any other person whom the court determines has suffered economic
- 9 loss as a result of the probationer's criminal activities.

10 The term "victim" shall not include the defendant, any co-probationer,

11 accomplice or co-participant in the probationer's criminal activities."

12 **Section 9. New Article.** A new Article 3 is added to Title 6, Division 4, Chapter 2 of

13 the Commonwealth Code, to read as follows:

- 14 "Article 3. Adult Diversion Program.
- 15 § 4150. Short Title.
- 16 § 4151. Purpose.
- 17 § 4152. Definitions.
- 18 § 4153. Adult Diversion Program: General Provisions.
- 19 § 4154. Adult Diversion Program: Eligibility Criteria.
- 20 § 4155. Program Content.
- 21 § 4156. Diversion Agreement.
- 22 § 4157. Program Completion.

23 § 4150. *Short Title.*

24 This chapter may be cited as the Adult Diversion Act.

25 § 4151. *Purpose.*

26 The purposes of the Adult Diversion Act are to divert from the Court's caseload the

27 uncontested cases of certain eligible first-time offenders who are likely to benefit from a

28 community-based rehabilitation program, so that the Court may give more prompt and

29 efficient attention to cases which must be tried, and to allow eligible first-time offenders to

1 avoid getting a criminal record, thus better equipping them to compete for satisfactory  
2 employment, educational opportunities, military service and the other benefits of citizenship.

3 § 4152. *Definitions.*

4 As used in this Article, the certain terms and phrases have the following  
5 meaning, unless the context clearly indicates otherwise:

6 (a) “Adult Diversion Program” means a special supervision program  
7 allowing the Attorney General's Office to divert, prior to the entry of a guilty  
8 plea or trial, the prosecution of an eligible person suspected of having  
9 committed a crime.

10 (b) “Criminal Division” means the Criminal Division of the Office of  
11 the Attorney General.

12 (c) “Dangerous Offense” means

13 (1) any crime involving the possession, use, attempted use, or  
14 threatened use of a dangerous device or a dangerous weapon by a  
15 person or an accomplice of that person;

16 (2) any crime resulting in death or serious bodily injury to  
17 another;

18 (3) any crime of sexual assault in any degree, sexual abuse of a  
19 minor in any degree, sexual molestation, or any other sexual offense  
20 set out in 6 CMC §§ 1301—1316 or 6 CMC § 5312;

21 (4) any crime of man-amko physical abuse or a crime against a  
22 person involving domestic violence; or

23 (5) any violation of 6 CMC §§ 1323, 1411, 1421, 1802(a),  
24 2141(b)(1), 2147, or 3203.

25 (d) “Eligible person” means a person charged with engaging in any  
26 criminal act, other than a violation of Title 9 of the Commonwealth Code, any  
27 Fish & Game violation, or any “dangerous offense” who has not previously

28 (1) been convicted of any crime in the Commonwealth, or  
29 convicted in another jurisdiction of a crime having substantially

1 similar elements to a crime described under the laws of the  
2 Commonwealth;

3 (2) been granted a suspended imposition of sentence in this or  
4 another jurisdiction;

5 (3) been adjudicated a delinquent minor in this or another  
6 jurisdiction, for the commission of an act that would have been a  
7 felony under the laws of the Commonwealth if committed by an adult;  
8 or

9 (4) been referred to the Adult Diversion program prior to the  
10 enactment of this Act.

11 (e) “Probation” means the Office of Adult Probation.

12 (f) “Program” means the Adult Diversion Program.

13 (g) For purpose of this section, “restitution” has the meaning set forth  
14 under 6 CMC § 4109(b) as amended.

15 *§ 4153. Adult Diversion Program: General Provisions.*

16 There is hereby established an Adult Diversion Program, to be administered  
17 by the Commonwealth Superior Court’s Office of Probation. The Office of Probation  
18 shall promulgate guidelines, program rules and regulations, in accordance with this  
19 Act and other applicable law, in order to effect the purposes of the Act, as defined  
20 above. The Office of Adult Probation is authorized to establish and collect fees  
21 associated with the supervision of the participant and the administration of the  
22 Program.

23 *§ 4154. Adult Diversion Program: Eligibility Criteria.*

24 (a) Eligibility for the Adult Diversion Program is a privilege, not an  
25 entitlement. A person’s suitability for referral or acceptance into the Program is  
26 entirely within the discretion of the Criminal Division and the Office of Adult  
27 Probation, respectively. In order to be referred to the Adult Diversion Program, a  
28 person

1                   (1) must be charged with having committed a criminal act, other than  
2                   one set forth in § 4152(b), a violation of Title 9 of the Commonwealth Code,  
3                   or any Fish & Game violation;

4                   (2) must meet the definition of “eligible person” as set forth in §  
5                   4152(c);

6                   (3) must be referred to the program in writing by the Criminal Division  
7                   of the Attorney General’s Office after the filing of formal criminal charges  
8                   against the person, but prior to the formal acceptance of a plea by the Court or  
9                   before jeopardy has attached in the trial of the matter;

10                  (4) must be accepted by the Program Coordinator after a review of the  
11                  Diversion Notice and an investigation into the person’s suitability for the  
12                  Program, to include an interview with the person by the Program Coordinator;  
13                  and

14                  (5) must be willing to enter into a Diversion Agreement as described  
15                  below.

16                  (b) Reserved.

17                  § 4155. *Program Content.*

18                  If an eligible person is accepted into the Program, the person shall be subject  
19                  to the supervision of the Office of Probation under the terms and conditions set out in  
20                  the Diversion Agreement. The Diversion Agreement may include any of the terms  
21                  and conditions that could be lawfully imposed by the court upon granting a suspended  
22                  imposition or execution of sentence, but shall include, at a minimum:

23                  (a) *Supervision.* Program participants shall be supervised by the  
24                  Office of Adult Probation for a period not to exceed two years. Regular  
25                  contact shall be required. Such contact between probation and program  
26                  participants may be in person, by written communication of information  
27                  required of the participant by probation, or by telephone, at the discretion of  
28                  the Office of Probation. The Office of Probation may also place restrictions  
29                  on the travel, abode and association of the Diversion participant, require him

1 to seek or maintain employment, to provide support for his family, or to  
2 observe a curfew during certain hours of the day or night. The participant  
3 may be required to refrain from the possession or use of alcoholic beverages  
4 or controlled substances, and shall be subject to random urinalysis upon the  
5 request of the Office of Probation to enforce any such requirement. The  
6 participant may also be required to participate in educational and vocational  
7 training programs, counseling services, in-patient or out-patient treatment  
8 programs, to the same extent that such requirements could be lawfully  
9 imposed by the court upon granting a suspended imposition or execution of  
10 sentence.

11 (b) *Restitution.* Each participant shall be required to make  
12 restitution in a manner and amount to be determined by the Office of  
13 Probation. The goal in each case shall be to make the victim whole, and to  
14 reimburse third parties who have incurred out-of-pocket expenses for the  
15 benefit of the victim, as a result of the participant's criminal acts, in  
16 accordance with Article I, section 11 of the Commonwealth Constitution.

17 (c) *Community Work Service.* All participants shall  
18 perform a minimum of 40 hours of community work service, at the discretion  
19 of the Office of Probation.

20 § 4156. *Diversion Agreement.*

21 (a) As a condition of an otherwise eligible person's participation in the  
22 Diversion Program, the person shall be required to enter into an agreement with the  
23 Office of Probation. Prior to signing the agreement, the person must fully cooperate  
24 with the Probation Office's investigation into the person's conduct leading up to his  
25 referral to Adult Diversion. The agreement shall contain, at a minimum

26 (1) the amount of restitution the person agrees to be responsible for,  
27 with a schedule of payments to be followed in satisfying any restitution  
28 obligation. The victim or victims and the Criminal Division of the Attorney



1           General’s Office shall be consulted in formulating this portion of the  
2           agreement;

3                     (2) an admission of the conduct leading up to the person’s referral; and

4                     (3) a stipulation that upon the person’s acceptance into the Program,  
5           the police may make a photographic record of any physical evidence in the  
6           case, and return the evidence itself to its rightful owner. In the event the  
7           person is revoked or fails to complete the requirements of the Program, the  
8           photographic record of the evidence may be admitted into evidence at trial or  
9           any hearing, and the person waives any foundation, chain of custody or best  
10          evidence objections to its admission.

11                   (b) Reserved.

12           § 4157. *Program Completion.*

13                   (a) Upon satisfactory completion of the requirements of the Program, the  
14           Office of Adult Probation shall provide notice to the Criminal Division of the  
15           Attorney General’s Office. The Criminal Division shall thereupon file a notice of  
16           dismissal with the Court, if charges have already been filed. If charges have not  
17           previously been filed, upon receipt of the notice of completion from the Office of  
18           Adult Probation, the Criminal Division of the Attorney General’s Office shall close  
19           out its case file, and may not reinstate prosecution or refile the criminal charges.

20                   (b) In the event that a participant in the Adult Diversion Program fails to  
21           complete all of the program requirements in a timely fashion, or violates any term or  
22           condition of the probation agreement or his supervision, the Office of Adult Probation  
23           shall provide timely notice of noncompliance to the Criminal Division, which shall  
24           commence or reinstate prosecution.”

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

1           **Section 11. Savings Clause.** This Act and any repealer contained herein shall not be  
2 construed as affecting any existing right acquired under contract or acquired under statutes  
3 repealed or under any rule, regulation or order adopted under the statutes. Repealers  
4 contained in this Act shall not affect any proceeding instituted under or pursuant to prior law.  
5 The enactment of this Act shall not have the effect of terminating, or in any way modifying,  
6 any liability, civil or criminal, which is already in existence on the date this Act becomes  
7 effective.

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

**CERTIFIED BY:**

**ATTESTED TO BY:**

/S/ \_\_\_\_\_

**OSCAR M. BABAUTA**  
SPEAKER OF THE HOUSE

/S/ \_\_\_\_\_

**EVELYN C. FLEMING**  
HOUSE CLERK

**APPROVED on this 29<sup>th</sup> day of January, 2007**

/S/ \_\_\_\_\_

**BENIGNO R. FITIAL**  
GOVERNOR  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS