

**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS**

Plaintiff,

vs.

JOSEPH A. ARRIOLA,

Defendant.

Criminal Case No. 00-127-C

**ORDER GRANTING MOTION FOR
JURY TRIAL**

I. INTRODUCTION

In the Commonwealth, any person accused by information of committing a felony punishable by more than five years imprisonment, by a fine greater than \$2,000, or both, is entitled to a jury trial.¹ This matter came before the court on May 3, 2000 on Defendant's motion, in which the Defendant contends that he was wrongly denied a jury trial as he faces the possibility of a fine greater than \$2,000 on each count of the Information.

At the hearing on this matter, Anthony G. Long, Esq. appeared on behalf of the Defendant, Joseph A. Arriola. Assistant Attorney General James J. Benedetto appeared on behalf of the Commonwealth. The court, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its decision. [p. 2]

II. BACKGROUND

On March 2, 2000, the Government filed an Information charging the Defendant, Joseph A. Arriola, with five counts of sexual abuse of a child in violation of 6 CMC § 1311(a). Since a conviction for sexual abuse of a child carries with it a sentence of not more than five years

¹ See 7 CMC § 3 101(a).

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imprisonment, or a fine of not more than \$2,000, or both, an individual charged with sexual abuse of a child has no right to a jury trial under CNMI law. *See* 6 CMC § 1311(c).²

Under the law of the Commonwealth, the crime of sexual molestation is a form of child abuse. *See* 6 CMC § 5312(c). The conduct prohibited by the crime of sexual molestation, however, is identical to that prohibited by the offense of sexual abuse of a child. *See* 6 CMC § 5312(d).³ Unlike other forms of child abuse which call for the victim to be in the perpetrator's custody,⁴ the crime of sexual molestation has no such requirement. In contrast to the offense of sexual abuse of a child, an act of sexual molestation calls for imprisonment of not more than five years, a fine of not more than \$5,000, or both. *See* 6 CMC § 5312(c).⁵ Thus, although an individual charged with sexual molestation is entitled to a jury trial, an individual charged with sexual abuse of a child has no such right.

On March 20, 2000, the Defendant filed a motion for a jury trial, contending that because 6 CMC § 5312 punishes conduct identical to 6 CMC § 1311, denying him a jury trial violates due process and his [p. 3] right to equal protection under the law. Defendant further claims that since 6 CMC § 410(g) permits a person convicted of any offense to be fined "[a]ny higher amount specifically authorized by statute," even though he has been charged under § 1311, he still faces the specter of a \$5,000 fine under § 5312(c) for the conduct at issue in this case. Finally Defendant

² The offense of sexual abuse of a child, moreover, also calls for a mandatory minimum sentence of no less than one-third the maximum term of imprisonment which may otherwise be imposed upon conviction. The court may not suspend the sentence unless it first determines that unique circumstances exist in the light of which imprisonment would be inhumane, cruel or otherwise extremely detrimental to the interest of justice, and is not necessary for the protection of the public or any witness. 6 CMC § 4102(d).

³ "Sexual molestation" means "all conduct prohibited by 6 CMC § 1311 and by division 1, chapter 3, article 2 of this title [6 CMC § 1321 et seq.]." Conduct prohibited by 6 CMC § 1321 is child pornography.

⁴ Compare 6 CMC § 5312(a)(1)(prohibiting willful and intentional striking, beating, or physical or mental abuse of a child under the age of 18 who is in the person's custody) and 6 CMC § 5312(a)(2) (prohibiting willful or negligent neglect of child under the age of 18 who is in the person's custody) with 6 CMC § 5312(a)(3) (prohibiting acts of sexual molestation).

⁵ In contrast to the offense of sexual abuse of a child, moreover, a conviction for sexual molestation does not carry with it a mandatory term of imprisonment, and a court may instead direct that the perpetrator be provided with appropriate counseling "to cure, alleviate or prevent the psychological problems that are judged to be related to the child abuse and neglect incident." *See, e.g.* 6 CMC § 5312(c).

contends that he was purposefully charged with the offense of sexual abuse of a child, and not sexual molestation of a child, in order to deny him a jury trial (Reply at 2).

The Government does not deny that 6 CMC § 5312(c) and 6 CMC § 1311 punish the same crime. In response, however, the Government maintains that the Defendant has no right to a jury trial, since he has not been charged with committing any felony punishable by more than five years imprisonment, or more than \$2,000 in fines. The Government further contends that there is no equal protection violation because there is a rational basis for denying jury trials to those accused of sexual abuse of a child. The Government asserts, moreover, that limiting the Defendant to a bench trial for the same conduct prohibited by the offense of sexual molestation of a child is no denial of due process.

III. ISSUE

Whether denying the Defendant a jury trial under the circumstances presented denies the Defendant due process and equal protection of the law.

IV. ANALYSIS

In prosecutions for serious criminal offenses, the right to a jury trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution "is a fundamental right, essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants." *Duncan v. Louisiana*, 391 U.S. 145, 158, 88 S.Ct. 1444, 1452, 20 L.Ed.2d 491 (1968); *see also Baldwin v. New York*, 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970) (right to jury trial attaches to offenses punishable by more than six months imprisonment). Under a line of cases known as the Insular Cases,⁶ [p. 4] however, the Ninth Circuit has ruled that the Sixth Amendment right to trial

⁶ The Insular Cases are a line of Supreme Court decisions concerning the doctrine of territorial incorporation. They are generally deemed to include *Balzac v. Porto Rico*, 258 U.S. 298, 42 S.Ct. 343, 66 L.Ed. 627 (1922) (constitutional right to jury trial does not apply to territories not incorporated into the United States; neither Puerto Rico Organic Act nor organization of United States District Court served to incorporate Puerto Rico into United States); *Rasmussen v. United States*, 197 U.S. 516, 25 S.Ct. 514, 49 L.Ed. 862 (1905) (Alaska was incorporated into United States by the treaty under which it was acquired as well as subsequent federal legislation made applicable to Alaska; therefore, Sixth Amendment right to jury trial applied to territory); *Dorr v. United States*, 195 U.S. 138, 24 S.Ct. 808, 49 L.Ed. 128 (1904) (right to jury trial was not extended by the Federal Constitution, without legislation, and of its own force, to the Philippines, because they were not incorporated by congressional action); *Territory of Hawaii v. Mankichi*, 190 U.S. 197, 23 S.Ct. 787, 47 L.Ed. 1016 (1903) (constitutional right to grand and petit juries not extended to Hawaiian Islands by their annexation); *Downes v. Bidwell*, 182 U.S. 244, 21 S.Ct. 770, 45 L.Ed. 1088 (1901) (revenue clauses of the Constitution are inapplicable to Puerto Rico).

by jury is not a fundamental right in unincorporated territories such as the CNMI. *See Commonwealth v. Atalig*, 723 F.2d 682, 685 (9th Cir. 1984). Thus, although the right to a jury trial applies in the Commonwealth, “neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law.” *See COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA*, § 503(a), 48 U.S.C. § 1601 note, *reprinted in Commonwealth Code at B-101 et seq.* (hereinafter, the “Covenant”). Under the Covenant, therefore, as well as under N.M.I. Const. art. I, § 8, the right to a trial by jury in criminal proceedings based on local law is statutory. *See N.M.I. Const.*, art. I, § 8 (stating that “[t]he legislature may provide for trial by jury in criminal or civil cases”).⁷

The question in this case is not, as the Government contends, whether the legislature may deny or otherwise limit the right to trial by jury, for *Atalig* and its progeny have settled that issue. Instead, the sole question before the court is whether the legislature may deny the right to trial by jury to one group of individuals when the same conduct, committed under the same circumstances, merits a jury trial elsewhere in the Code and when the elements of proof essential to either conviction are exactly the same.⁸ [p. 5]

The right to equal protection of the law, guaranteed under the Fourteenth Amendment and the Commonwealth Constitution, assures like treatment and similar punishment of persons convicted of the same acts committed under similar circumstances. *See U.S. CONST.* amend. VI, §; N.M.I. CONST. Art. I § 6 (1976).⁹ Article I, Section 5 of the Commonwealth Constitution, moreover,

⁷ The limited right to a jury trial set forth in 7 CMC § 3101(a) has withstood constitutional scrutiny. *See Commonwealth v. Atalig*, 723 F.2d 682, 690 (9th Cir. 1984), *cert. denied*. 467 U.S. 1244, 104 S.Ct. 3518, 82 L.Ed.2d 826 (1984) (Northern Mariana Islands statutory provisions, providing that trial by jury is not required in any civil action or criminal prosecution based on local law except when required by local law, and which require jury trial only when an offense is punishable by more than five years' imprisonment or \$2,000 fine, do not violate either the Sixth or Fourteenth Amendments).

⁸ Although Defendant has not lodged a challenge to § 1311 on this ground, the statutes at issue also prescribe significantly different punishment for the same crime. *See* footnotes 2 and 5, *supra*.

⁹ Article I, Section 6 of the Commonwealth Constitution, entitled “Equal Protection,” provides as follows:

No person shall be denied the equal protection of the laws. No person shall be denied the enjoyment of civil rights or be discriminated against in the exercise thereof on account of race, color, religion,

provides that “[n]o person shall be deprived of life, liberty or property without due process of law.” N.M.I. Const. art. I, § 5. At a minimum, both the equal protection and due process clauses demand that a government apply its laws in a rational and nonarbitrary way. *See In re Seman*, 3 N.M.I. 57, 67 (1992); *Pangelinan v. Castro*, 2 CR 429 (Dist. Ct. 1986). While it is the legislature’s prerogative to establish and even reduce the penalties that apply to particular criminal offenses, equal protection demands that statutory classifications of crimes be based on differences that are real in fact and reasonably related to purposes of the legislation. *See, e.g., Stanton v. Stanton*, 421 U.S. 7, 14, 95 S.Ct. 1373, 1377, 43 L.Ed.2d 688 (1975) *citing Reed v. Reed*, 404 U.S. 71, 76, 92 S.Ct. 251, 254, 30 L.Ed.2d 225 (1971); *Taitano v. Northern Mariana Islands Amateur Softball Assoc.*, Case No. 93-0356 (N.M.I. Super.Ct. Feb. 2, 1994) (Decision and Order). “A statute which prescribes different degrees of punishment for the same acts committed under like circumstances by persons in like situations” violates a person's right to equal protection of the law. *People v. Calvaresi*, 188 Colo. 277, 282, 534 P.2d 316, 318 (1975). *See also Hawaii v. Modica*, 58 Haw. 249, 251, 567 P.2d 420, 422 (1977); *Olsen v. Delmore*, 48 Wash.2d 545, 295 P.2d 324 (1956).

Applying these principles to the case at bar, the court finds that in 1983, the legislature made a decision to lower the penalties that could be imposed on those charged with sexual abuse of a child for the [p. 6] express purpose of denying these individuals the right to trial by jury. *See House Standing Committee Report No. 3-153* (August 30, 1983). In so doing, the legislature determined that it was “in the best interest of society to spare a sexually abused child and his family the emotional trauma that a jury trial would cause.” *See also House Standing Committee Report No. 3-258* (Oct. 28, 1983) (“the abused child and his family does not need to go through another traumatic experience in [front] of the jurors and the public audience, when they have suffered enough with what they have already gone through”). While protecting child victims of sexual abuse and limiting further injury are certainly commendable objectives, however, these same considerations

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The Equal Protection Clause of the Commonwealth Constitution is given the same meaning and interpretation as the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *See Sablan v. Board of Elections*, 1 CR 741, 754 (Dist. Ct. App. Div. 1983).

apply with equal force to victims of child molestation. There is no rational basis for preferring one class of child victims over the other, particularly absent the “in custody” requirement attending conduct otherwise constituting child abuse.

In eliminating the right to a jury trial for those accused of sexual abuse of a child, while leaving the right to a jury trial intact for those individuals who happen, fortuitously, to be charged with sexual molestation/child abuse, the legislature has accomplished two things: first, it has effectively created two statutes prescribing different punishments for the same act committed under the same circumstances -- by persons in identical situations. Second, it has impermissibly vested the prosecutor with the arbitrary and unbridled discretion to charge the same conduct either as sexual abuse of a child under § 1311, or sexual molestation under § 5312(a)(3). *See Washington v. Ensminger*, 77 Wash.2d 535, 463 P.2d 612 (1970); *Olsen v. Delmore*, 48 Wash.2d 545, 295 P.2d 324 (1956).

A statutory scheme violates equal protection and due process of law when, as here, it affords benefits to some while denying those benefits to others in a manner that is capricious or arbitrary. *See Renaldi v. Yeager*, 384 U.S. 305, 308, 86 S.Ct. 1497, 1499, 16 L.Ed.2d 577 (1976); *In re Seman*, 3 N.M.I. at 67 . To condition the right to a jury trial upon the shifting sands of mere semantics does just that. Accordingly, the court finds that a statutory scheme which permits the Government the unfettered option of charging the Defendant with either sexual abuse of a child or child abuse violates equal protection and due process. *See Modica*, 58 Haw. 249, 251, 567 P.2d 420, 422 (1977); *State v. Pirkey*, 203 Or. 697, 281 P.2d 698 (Or.1955). [p. 7]

Under these circumstances, the Defendant’s Motion for Jury Trial is GRANTED.

So ORDERED this 15 day of September, 2000.

/s/ Timothy H. Bellas
TIMOTHY H. BELLAS, Associate Judge