



GOV. COMM. **12-206**  
(HOUSE)

## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Pedro P. Tenorio**  
Governor

**Jesus R. Sablan**  
Lt. Governor

Caller Box 10007  
Saipan, MP 96950  
Telephone: (670) 664-2200/2300  
Fax: (670) 664-2211/2311

The Honorable Paul **A.** Manglona  
Senate President  
Twelfth Northern Marianas  
Commonwealth Legislature  
Saipan, MP 96950

JAN 07 2002

The Honorable Benigno R. Fitial  
Speaker, House of Representatives  
Twelfth Northern Marianas  
Commonwealth Legislature  
Saipan, MP 96950

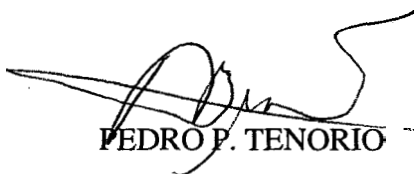
Dear Mr. President and Mr. Speaker:

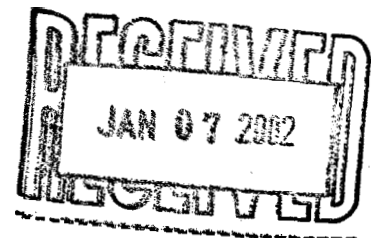
This is to inform you that I have signed into law Senate Bill No. **12-125**, entitled, "To revise and reform the criminal laws concerning sexual assault and sexual abuse of minors in the Commonwealth," which was passed by the Twelfth Northern Marianas Commonwealth Legislature.

This bill implements necessary changes to the current law relating to sexual assault and sexual abuse of minors. It provides for varying degrees of those crimes, based on the conduct engaged in, and based on the respective ages of the perpetrator and the victim. It expands the statute of limitations for the prosecution of sexual crimes against children. It provides for exceptions to the testimonial privileges based on marital status and confidential communications when the spouse is charged with a sex crime and the victim is a family member, and restores the right to jury trial for those charged with most sexual offenses.

This bill becomes **Public Law No. 12-82**. Copies bearing my signature are forwarded for your reference.

Sincerely,

  
PEDRO P. TENORIO



CC: Attorney General; Secretary of Public Health; Commissioner of Public Safety; Director of Youth Services; Commissioner of Public School System; Department of Finance/Licensing & Regulatory; Acting Special Assistant for Programs & Legislative Review.



# *The Senate*

NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

P.O. Box 500129  
Saipan, MP 96950

PUBLIC LAW NO. 12-82

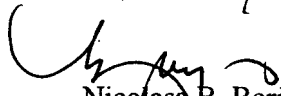
JAN 02 2002

Honorable Pedro P. Tenorio  
Governor  
Commonwealth of the Northern  
Mariana Islands  
Capitol Hill  
Saipan, MP 96950

Dear Governor Tenorio:

I have the honor to transmit herewith for your action one (1) original copy of Senate Bill No. 12-125, entitled, "**An Act** to revise and reform the criminal laws concerning sexual assault and sexual abuse of minors in the Commonwealth," which was passed by the Senate and the House of Representatives of the Twelfth Northern Marianas Commonwealth Legislature.

Sincerely yours,

  
Nicolasa B. Borja  
Senate Clerk

Attachment

Recd 1/2/02

**THE SENATE**  
**TWELFTH NORTHERN MARIANAS COMMONWEALTH**  
**LEGISLATURE**

*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.**

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**Offered by Senator(s):** Pete P. Reyes

**Date:** August 30,2001

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**SENATE ACTION**

**Standing Committee Report:** None

**Final Reading:** December 18,2001


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**HOUSE ACTION**

**Standing Committee Report:** None

**First and Final Reading:** December 20,2001

  
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JOAQUIN G. ADRIANO  
Senate Legislative Secretary

**TWELFTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE**

**FOURTH REGULAR SESSION, 2001**

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

**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:**

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

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

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

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

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

20           The revision also corrects a deficiency in the current statutes of limitation in  
21 peration under CNMI law, which provide too brief a period for discovery, investigation and  
22 rosecution of crimes of sexual abuse against minors. The current law prohibits the  
23 'ommonwealth from filing charges for sexual abuse of a child after four years have elapsed  
24 from the date of the crime. In many instances, particularly when the victims are very young,  
25 ach crimes may not even come to light until many more years have passed. In cases where  
26 the offender is a close family member of the victim, the offender may be able to exert  
27 nfluence over the victim to prevent any report of the crime for four years or more. In such  
28 tuations, these crimes are unlikely to come to light, and if they do, they may come to light  
29 after the statute of limitations has passed. Other jurisdictions have responded to this

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

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

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

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

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

19 (a) A prosecution for murder may be commenced at any time.

20 (b) Except as otherwise provided in this section, prosecutions for  
21 offenses other than traffic offenses are subject to the following time  
22 limitations:

23 (1) A prosecution for an offense which is punishable by  
24 imprisonment for five years or more must be commenced within four  
25 years after it is committed.

26 (2) A prosecution for an offense which is punishable by  
27 imprisonment for six months or less, or by a fine only must be  
28 commenced within one year after it is committed.

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

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

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

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

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

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

20 (d) The time limitation does not run:

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

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

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

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

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

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

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

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

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

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

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

17 (A) who the offender knows is mentally incapable;

18 and

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

20 (i) by authority of law; or

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

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

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

27 (B) the offense takes place during the course of  
28 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 \$2,000, 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

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

3 (2) the offender engages in sexual contact with a person 18 or  
4 19 years of age who the offender knows is committed to the custody  
5 of the Department of Public Health and Environmental Services under  
6 the civil or criminal commitment laws, and the offender is the legal  
7 guardian of the person.

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

10 **Sec. 1305. Defenses.**

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

13 (1) mentally incapable; or

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

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

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

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

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

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

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

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

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

8 (b) Sexual abuse of a minor in the first degree is punishable by  
9 imprisonment for not more than 30 years, a fine of not more than \$50,000, or  
10 both, and the mandatory sentencing provisions of 6 CMC § 4 102.

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

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

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

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

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

4 (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 § 1314(a)(2) - (6); or

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

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

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

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

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

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

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

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

24 (b) Sexual abuse of a minor in the third degree is punishable by  
25 imprisonment for not more than 5 years, a fine of not more than \$2,000, or  
26 both.

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

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

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

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

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

11 **Sec. 1310. General provisions.**

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

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

21 **Sec. 1311. Incest.**

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

- 25 1) an ancestor or descendant of the whole or half blood;  
26 (2) a brother or sister of the whole or half blood; or  
27 (3) an uncle, aunt, nephew, or niece by blood.

28 (b) Incest is punishable by imprisonment for not more than five years,  
29 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 \$2,000, 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,



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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;

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(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

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

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

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

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

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

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

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

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

22 (1) the child's chronological age;

23 (2) the child's level of development;

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

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

27 (5) the mental or emotional strain that will be caused by  
28 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.

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

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

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

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

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

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

29 **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 **an** 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

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

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

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

10 Source: 7 TTC § 1.

11 **Section 8. The following new section, 6 CMC § 1320, dealing with admissibility**  
12 **of evidence of similar crimes in prosecutions of crimes involving sexual assault or**  
13 **sexual abuse of minors, is hereby added, and the existing sections, 6 CMC §§ 1321-**  
14 **1325, are repealed:**

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

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

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

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

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

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



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

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

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

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

11 **§ 4102. Mandatory Sentencing.**

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

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

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

28 (d) Notwithstanding any provisions in this section, any person  
29 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.

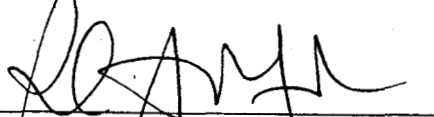
**Section 10. Severability.** If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to 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.

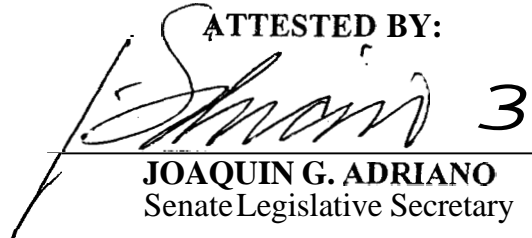
**Section 12. Effective Date.** This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

**CERTIFIED BY:**




**PAUL A. MANGLONA**  
President 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