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A BILL FOR AN ACT

To further amend title 11 of the Code of the Federated States of Micronesia by amending chapter 9, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1           Section 1. Section 903 of title 11 of the Code of the Federated  
2 States of Micronesia, as amended, is hereby further amended to read as  
3 follows:

4           "Section 903. Definitions. Under this chapter, unless the  
5 context otherwise requires:

6           (1) 'Account' shall have the meaning given to it by section  
7 1803 of title 12 of the Code of the Federated States of  
8 Micronesia. [~~means any facility or arrangement by which a~~  
9 ~~financial institution or cash dealer does any one or more of~~  
10 ~~the following:~~

11                           ~~[(a) accepts deposits of currency;~~

12                           ~~(b) allows withdrawals of currency or transfers~~  
13 ~~into or out of the account;~~

14                           ~~(c) pays checks or payment orders drawn on a~~  
15 ~~financial institution or cash dealer by, or collects checks~~  
16 ~~or payment orders, made by or on behalf of, a person; or~~

17                           ~~(d) supplies a facility or arrangement for a~~  
18 ~~safety deposit box.]~~

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1           (2) 'Appeal' includes proceedings by way of discharging or  
2 setting aside a judgment, and an application for a new trial  
3 or for a stay of execution.

4           (3) 'Authorized officer' means a person or class of persons  
5 designated by the Secretary pursuant to applicable law as an  
6 authorized officer or officers for the purposes of enforcing  
7 or implementing the provisions of this chapter and related  
8 laws.

9           ~~[(4) 'Cash dealer' means:~~

10                     ~~(a) a person who carries on a business of an~~  
11 ~~insurer, an insurance intermediary, a securities dealer or a~~  
12 ~~futures broker;~~

13                     ~~(b) a person who carries on a business of dealing~~  
14 ~~in bullion, of issuing, selling or redeeming travelers'~~  
15 ~~checks, money orders or similar instruments, or of collecting~~  
16 ~~holding and delivering cash as part of a business of~~  
17 ~~providing payroll services;~~

18                     ~~(c) an operator of a gambling house, bingo parlor,~~  
19 ~~casino or lottery;~~

20                     ~~(d) a trustee, or manager of a unit trust.]~~

21           (4[5]) 'Covered property' means:

22                     (a) any property held by a defendant;

23                     (b) any property in which defendant has an interest;

24           or

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1 (c) any property held by a person to whom a defendant  
2 has directly or indirectly made a gift caught by this chapter  
3 ~~[act]~~.

4 (~~5~~[6]) 'Currency' shall have the meaning given to it by  
5 section 1803 of title 12 of the Code of the Federated States  
6 of Micronesia. ~~[means the coin and paper money of the~~  
7 ~~Federated States of Micronesia or of a foreign country that~~  
8 ~~is designated as legal tender and which is customarily used~~  
9 ~~and accepted as a medium of exchange in the country of~~  
10 ~~issue.]~~

11 (~~6~~ [7]) 'Defendant' means a person charged or about to be  
12 charged with a serious offense, whether or not he or she has  
13 been convicted of the offense, and includes in the case of  
14 proceedings for a restraining order under section 957, a  
15 person who is about to be charged with a serious offense.

16 (~~7~~ [8]) 'Document' shall have the meaning given to it by  
17 section 1803 of title 12 of the Code of the Federated States  
18 of Micronesia. ~~[means any material on which data is recorded~~  
19 ~~or marked and which is capable of being read or understood by~~  
20 ~~a person, computer system or other device, and any record of~~  
21 ~~information, and includes:~~

22 ~~(a) anything on which there is writing;~~

23 ~~[(b) anything on which there are marks, figures,~~  
24 ~~symbols, or perforations having meaning for persons qualified~~  
25 ~~to interpret them;~~

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1                   ~~(c) anything from which sounds, images or writings can~~  
2                   ~~be produced, with or without the aid of anything else;~~

3                   ~~(d) a map, plan, drawing, photograph or similar thing;~~

4                   ~~(e) an electronic document.]~~

5                   (8 ~~[9]~~) 'Financial institution' shall have the meaning  
6                   given to it by section 1803 of title 12 of the Code of the  
7                   Federated States of Micronesia. ~~[means any person who or~~  
8                   ~~entity which carries on a business of:~~

9                   ~~[(a) acceptance of deposits and other repayable funds~~  
10                   ~~from the public;~~

11                   ~~(b) lending, including consumer credit, mortgage~~  
12                   ~~credit, factoring (with or without recourse) and financing of~~  
13                   ~~commercial transactions;~~

14                   ~~(c) financial leasing;~~

15                   ~~(d) money transmission services;~~

16                   ~~(e) issuing and administering means of payment (such~~  
17                   ~~as credit cards, travelers' checks and bankers' drafts);~~

18                   ~~(f) guarantees and commitments;]~~

19                   ~~[(g) trading for their own account or for account of~~  
20                   ~~customers in money market instruments (such as checks, bills,~~  
21                   ~~certificates of deposit), foreign exchange, financial futures~~  
22                   ~~and options, exchange and interest rate instruments, and~~  
23                   ~~transferable securities;~~

24                   ~~(h) underwriting share issues and participation in~~  
25                   ~~such issues;~~

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1           ~~(i) advice to undertakings on capital structure,~~  
2           ~~industrial strategy and related questions, and advice and~~  
3           ~~services relating to mergers and the purchase of~~  
4           ~~undertakings;~~

5           ~~(j) money brokering;~~

6           ~~(k) portfolio management and advice;~~

7           ~~(l) safekeeping and administration of securities;~~

8           ~~(m) credit reference services; or~~

9           ~~(n) safe custody services.]~~

10       (9 [10]) 'Gift' includes any transfer of property by a  
11       person to another person directly or indirectly:

12           (a) after the commission of a serious crime by the  
13       first person;

14           (b) for a consideration the value of which is  
15       significantly less than the value of the property  
16       transferred; and

17           (c) to the extent of the difference between the market  
18       value of the property transferred and the consideration  
19       provided by the transferee.

20       (10 [11]) 'Interest', in relation to property, means:

21           (a) a legal or equitable estate or interest in the  
22       property; or

23           (b) a right, power or privilege in connection with the  
24       property.

25       (11 [12]) 'Money laundering' shall have the meaning given  
26       to it by section 912 of this chapter. [~~means:~~

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1           ~~[(a) engaging, directly or indirectly, in a transaction~~  
2           ~~that involves property that is proceeds of crime;~~

3           ~~(b) receiving, possessing, concealing, disguising,~~  
4           ~~transferring, converting, disposing of, removing from or~~  
5           ~~bringing into the country any property which is a proceeds of~~  
6           ~~crime;~~

7           ~~(c) knowing, or having reasonable grounds for~~  
8           ~~suspecting that the property is derived or realized, directly~~  
9           ~~or indirectly, from some form of unlawful activity;~~

10          ~~(d) where the conduct is conduct of a natural person,~~  
11          ~~without reasonable excuse, failing to take reasonable steps~~  
12          ~~to ascertain whether or not the]-[property is derived or~~  
13          ~~realized directly or indirectly, from some form of unlawful~~  
14          ~~activity; or~~

15          ~~(d) where the conduct is a conduct of a financial~~  
16          ~~institution, failing to implement or apply procedures and~~  
17          ~~control to prevent or combat money laundering.]~~

18          (12[13]) 'Person' means any natural or legal person.

19          (13[14]) 'Proceeding' or 'proceedings' means any procedure  
20          conducted by or under the supervision of a judge or judicial  
21          officer, however described, in relation to any alleged or  
22          proven offense, or property derived from such offense, and  
23          includes an inquiry, investigation, or preliminary or final  
24          determination of facts.

25          (14 [15]) 'Proceeds of crime' means fruits of a crime, or  
26          any property that is:

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1            (a) wholly or partly derived or realized directly or  
2 indirectly from the commission of a serious offense;

3            (b) wholly or partly derived or realized from a  
4 disposal or other dealing with proceeds of the offense; or

5            (c) wholly or partly acquired using proceeds of the  
6 offense; and includes, on a proportional basis, property into  
7 which any property derived or realized directly from the  
8 offense was later successively converted, transformed or  
9 intermingled, as well as income, capital or other economic  
10 gains wholly or partially derived or realized from such  
11 property at any time since the offense.

12 (15 [16]) 'Property' shall have the meaning given to  
13 it by section 1803 of title 12 of the Code of the Federated  
14 States of Micronesia. ~~means currency and all other real or~~  
15 ~~personal property of every description, whether situated in~~  
16 ~~the Federated States of Micronesia or elsewhere and whether~~  
17 ~~tangible or intangible, and includes an interest in any such~~  
18 ~~property.~~

19 (16 [17]) 'Property of or in the possession or control of  
20 any person' includes any gift made by that person.

21 (17 [18]) 'Realizable', with respect to 'covered property'  
22 as defined by subsection (4 6), means:

23            (a) capable of being acquired, obtained, taken,  
24 seized, confiscated, or procured, and is either cash or is  
25 capable of being liquidated and converted into cash; or

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1 (b) capable of being detected, located, found,  
2 discovered, and converted into cash through payment of the  
3 amount or value of the defendant's interest therein.

4 (18[19]) 'Secretary' means [~~and is synonymous with~~] the  
5 Secretary of the Department of Justice of the Federated  
6 States of Micronesia, or either an Assistant Attorney General  
7 with the Department of Justice of the Federated States of  
8 Micronesia or an Attorney General for one of the States of  
9 Micronesia who is acting on behalf and under the authority of  
10 the Secretary [~~or with the chief law enforcement officer of~~  
11 ~~the Federated States of Micronesia, whatever the title of~~  
12 ~~such position is or in the future becomes~~].

13 (19 [20]) 'Serious offense' means a violation of:

14 (a) any law of Federated States of Micronesia or any  
15 of its States or political subdivisions, which is a criminal  
16 offense punishable by imprisonment for a term of more than  
17 one year or a fine of more than \$10,000; or

18 (b) a law of a foreign State, in relation to acts or  
19 omissions, which, had they occurred in Federated States of  
20 Micronesia or any of its States or political subdivisions,  
21 would have constituted a criminal offense punishable by  
22 imprisonment for a term of more than one year or a fine of  
23 more than \$10,000.

24 (20 [21]) 'Supreme Court' means the Supreme Court of  
25 the Federated States of Micronesia, and all its divisions,  
26 wherever or whenever constituted.



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1           (21 [22]) 'Tainted property' means:

2                   (a) property used in or in connection with, or  
3                   intended to be used in or in connection with the commission  
4                   of a serious offense; or

5                   (b) proceeds of crime, as defined in subsection (14  
6                   16) of this section.

7           (22 [23]) 'Unit trust' means any arrangement made for  
8                   the purpose or having the effect of providing for a person to  
9                   have funds available for investment; facilities for the  
10                   participation by a person as a beneficiary under a trust, or  
11                   in any profits or income arising from the acquisition,  
12                   holding, management or disposal of any property pursuant to  
13                   the trust.

14           (23 [24]) A reference in this chapter to the law of:

15                   (a) the Federated States of Micronesia;

16                   (b) any State of the Federated States of Micronesia;

17                   or

18                   (c) any foreign State,

19                   includes a reference to a written or unwritten law of, or in  
20                   force in, any part of the Federated States of Micronesia  
21                   (including its States and political subdivisions), any part  
22                   of that State of the Federated States of Micronesia, or any  
23                   part of that foreign State, as the case may be."

24           Section 2. Section 908 of title 11 of the Code of the Federated  
25 States of Micronesia, as amended, is hereby further amended by adding  
26 to read as follows:

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1           "Section 908. Dealing with property. For the purposes of  
2           this chapter [~~act~~], dealing with property held by any person  
3           includes, without prejudice to the generality of the  
4           expression:

5           (1) where the property is a debt owed to that person,  
6           making a payment to any person in reduction or full  
7           settlement of the amount of the debt;

8           (2) giving, taking [~~making~~] or receiving property as a gift  
9           [~~of the property~~]; or

10          (3) removing the property from Federated States of  
11          Micronesia."

12          Section 3. Section 911 of title 11 of the Code of the Federated  
13          States of Micronesia, as amended, is hereby further amended to read as  
14          follows:

15          "Section 912. Benefiting from the proceeds of a serious  
16          offense. For the purposes of this chapter [~~act~~]:

17          (1) a person has benefited from an offense if that person  
18          has at any time (whether before or after the commencement of  
19          this chapter [~~act~~]) received any payment or other reward in  
20          connection with, or derived any pecuniary advantage from, the  
21          commission of a serious offense, whether committed by that  
22          person or someone else.

23          [~~(2) a person's proceeds of a serious offense (whether~~  
24          ~~received or derived before or after the commencement of this~~  
25          ~~Act) are:~~

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1           ~~(a) any payments or other rewards received by the~~  
2           ~~person at any time in connection with the offense; and/or]~~

3           ~~[(b) any pecuniary advantage derived by the person at~~  
4           ~~any time from the commission of offense.]~~

5           (2 [3]) The value of a person's proceeds of a serious  
6           offense is the aggregate of the values of all payments,  
7           rewards or pecuniary advantages received by that person in  
8           connection with, or derived by the person from, the  
9           commission of the offense."

10          Section 4. Section 912 of title 11 of the Code of the Federated  
11 States of Micronesia, as amended, is hereby deleted in its entirety and  
12 a new section 912 is enacted to read as follows:

13           "Section 912. Money laundering offenses.

14           (1) A person commits the offense of money laundering if the  
15           person:

16           (a) acquires, possesses or uses property, knowing or  
17           having reason to believe that it is derived directly or  
18           indirectly from acts or omissions that would constitute a  
19           serious offense;

20           (b) conceals, disguises, converts, transfers, removes  
21           from or brings into the Federated States of Micronesia  
22           property knowing or having reason to believe that it is  
23           derived directly or indirectly from acts or omissions that  
24           would constitute a serious offense;

25           (c) engages directly or indirectly in a transaction  
26           that involves property knowing or having reason to believe

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1 that it is derived directly or indirectly from acts or  
2 omissions that would constitute a serious offense; or

3 (d) enters into or becomes concerned in an arrangement  
4 knowing or having reason to believe that it facilitates (by  
5 whatever means) the acquisition, retention, use or control of  
6 property derived directly or indirectly from acts or  
7 omissions that would constitute a serious offense.

8 (2) Concealing or disguising property includes concealing  
9 or disguising its nature, source, location, disposition,  
10 movement, ownership or any rights with respect to it.

11 (3) An offense under subsection (1) of this section is  
12 committed by a person who:

13 (a) commits or attempts to commit the offense;

14 (b) organizes, solicits or directs another person to  
15 commit the offense;

16 (c) conspires with another person to commit the  
17 offense;

18 (d) participates as an accomplice to a person  
19 committing, or attempting to commit, the offense; or

20 (e) aids or abets another person to commit the  
21 offense.

22 (4) The offense of money laundering, established under  
23 subsection (1) or (3) of this section, is a felony offense,  
24 punishable by imprisonment for a maximum term of ten years or  
25 a maximum fine of \$100,000, or both; provided, however, in  
26 the case of a corporation, company, commercial enterprise,

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1           commercial entity or other legal person, the maximum fine  
2           shall be increased to \$500,000.

3           (5) Any person may be convicted of a money laundering  
4           offense under subsection (1) or (3) of this section  
5           notwithstanding the absence of a conviction in respect of the  
6           underlying serious offense which generated the proceeds  
7           alleged to have been laundered."

8           Section 5. Section 913 of title 11 of the Code of the Federated  
9 States of Micronesia, as amended, is hereby deleted in its entirety and  
10 a new section 913 is enacted to read as follows:

11           "Section 913. Property tracking. For the purpose of  
12           determining whether any property belongs to, or is in the  
13           possession or under the control of, any person subject to an  
14           investigation of a serious offense or a money laundering  
15           offense, the Department of Justice for the Federated States  
16           of Micronesia may, upon application to the Supreme Court,  
17           obtain an production order pursuant to section 971 of this  
18           chapter."

19           Section 6. Section 914 of title 11 of the Code of the Federated  
20 States of Micronesia, as amended, is hereby deleted in its entirety and  
21 a new section 914 is enacted to read as follows:

22           "Section 914. Secrecy and confidentiality obligations  
23           overridden. The provisions of this chapter shall have effect  
24           notwithstanding any obligation as to secrecy,  
25           confidentiality, or other restriction on disclosure of  
26           information imposed by law or otherwise."

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1 Section 7. Section 915 of title 11 of the Code of the Federated  
2 States of Micronesia, as amended, is hereby deleted in its entirety and  
3 a new section 915 is enacted to read as follows:

4 "Section 915. Immunity where official powers or functions  
5 exercised in good faith. No suit, prosecution or other legal  
6 proceedings shall lie against the government of the Federated  
7 States of Micronesia, or any officer or other person in  
8 respect of anything done by or on behalf of that person, with  
9 due diligence and in good faith, in the exercise of any power  
10 or the performance of any function under this chapter or any  
11 regulation or order made pursuant to this chapter."

12 Section 8. Sections 916, 917, 918, 919, 920, 921, 922, 923, 924,  
13 925, 926, 927 and 928 of title 11 of the Code of the Federated States  
14 of Micronesia, as amended, are hereby deleted in their entirety.

15 Section 9. Section 929 of title 11 of the Code of the Federated  
16 States of Micronesia, as amended, is hereby further amended to read as  
17 follows:

18 "Section 929. Application for confiscation and pecuniary  
19 penalty orders.

20 (1) Where a defendant is convicted of a serious offense,  
21 has committed a serious offense, or property has been seized  
22 or restrained, the Secretary may apply to the Supreme Court  
23 for one or both of the following orders:

24 (a) a confiscation order against property that is  
25 tainted property [~~in respect of the offense~~]; or

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1           (b) where a defendant has been convicted of a serious  
2 offense, a pecuniary penalty order against the defendant in  
3 respect of benefits derived by the defendant from the  
4 commission of the offense; provided however, such application  
5 must be made within six years of the date the defendant was  
6 convicted for the serious offense; or;

7           (c) where a defendant has not been convicted of a  
8 serious offense, a pecuniary penalty order against the  
9 defendant in respect of benefits derived by the defendant  
10 from the commission of the offense; provided however, such  
11 application must be made within three [~~one~~] years of the date  
12 the defendant committed [~~was convicted for~~] the serious  
13 offense.

14           (2) An application under subsection (1) of this section may  
15 be made in respect of one or more than one offense.

16           (3) Where an application under this section is finally  
17 determined, no further application for a confiscation order  
18 or a pecuniary penalty order may be made [~~in respect of the~~  
19 ~~offense for which the defendant~~]-[~~was convicted~~] without the  
20 leave of the Supreme Court. The Supreme Court shall not give  
21 such leave unless it is satisfied that:

22           (a) the property or benefit to which the new  
23 application relates [~~7~~] was acquired, accrued or [~~was~~]  
24 identified after the previous application was determined;

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1 (b) necessary evidence became available after the  
2 previous application was determined and could not reasonably  
3 have been discovered before such determination; or

4 (c) it is in the interest of justice that the new  
5 application be made.

6 (4) Proceedings on an application for a confiscation or  
7 pecuniary penalty order shall be civil proceedings and the  
8 standard of proof shall be by the preponderance of the  
9 evidence."

10 Section 10. Section 930 of title 11 of the Code of the Federated  
11 States of Micronesia, as amended, is hereby further amended to read as  
12 follows:

13 "Section 930. Notice of application.

14 (1) Where Secretary applies for a confiscation order  
15 pursuant to section 929 of this chapter [~~against property in~~  
16 ~~respect of the defendant's conviction of a serious offense~~]:

17 (a) the Secretary must give no less than 14 days  
18 written notice of the application to the defendant and to any  
19 other person who the Secretary has reason to believe may have  
20 an interest in the property;

21 (b) the defendant and any other person who claims an  
22 interest in the property may appear and adduce evidence at  
23 the hearing of the application; and

24 (c) the Supreme Court may, at any time before the  
25 final determination of the application, direct the Secretary  
26 to:



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1 (i) give notice of the application to any other  
2 person who, in the opinion of the Supreme Court, appears to  
3 have an interest in the property;

4 (ii) announce on public radio, post a notice at  
5 the main Post Office and all branch offices, and at the  
6 National Government headquarters in Palikir, and publish in a  
7 newspaper published and circulating in the Federated States  
8 of Micronesia, a notice of the application.

9 (2) Where the Secretary applies for a pecuniary penalty  
10 order against a defendant:

11 (a) the Secretary shall give the defendant no less  
12 than 14 days notice of the application; and

13 (b) the defendant may appear and adduce evidence at  
14 the hearing of the application."

15 Section 11. Section 931 of title 11 of the Code of the Federated  
16 States of Micronesia, as amended, is hereby further amended to read as  
17 follows:

18 "Section 931. Amendment of application.

19 (1) The Supreme Court hearing the application under  
20 subsection 929(1) of this chapter may, before the final  
21 determination of the application, and on the application of  
22 the Secretary, amend the application to include any other  
23 property or benefit, as the case may be, upon being satisfied  
24 that:

25 (a) the property or benefit was not reasonably capable  
26 of identification when the application was made;

1 (b) necessary evidence became available only after the  
2 application was originally made; or

3 (c) the property was acquired after the application  
4 was made.

5 (2) Where the Secretary applies to amend an application for  
6 a confiscation order and the amendment would have the effect  
7 of including additional property in the application for  
8 confiscation, the Secretary must give no less than 14 days  
9 written notice of the application to amend, to any person who  
10 the Secretary has a reason to believe may have an interest in  
11 the property to be included in the application for a  
12 confiscation order.

13 (3) Any person who claims an interest in the property to be  
14 included in the application of a confiscation order may  
15 appear and adduce evidence at the hearing of the application  
16 to amend.

17 (4) Where the Secretary applies to amend an application for  
18 a pecuniary penalty order against a defendant and the effect  
19 of the amendment would be to include an additional benefit in  
20 the application the Secretary must give the defendant no less  
21 than 14 days written notice of the application to amend."

22 Section 12. Section 932 of title 11 of the Code of the Federated  
23 States of Micronesia, as amended, is hereby further amended to read as  
24 follows:

25 "Section 932. Procedure on application.

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1 (1) Where an application is made to the Supreme Court for a  
2 confiscation order or a pecuniary penalty order [~~in respect~~  
3 ~~of a defendant's conviction of a serious offense~~], the  
4 Supreme Court may, in determining the application, have  
5 regard to the transcript of any proceedings against the  
6 defendant for [~~the~~] a related offense.

7 (2) Where an application is made for a confiscation order  
8 or a pecuniary penalty order to the Supreme Court before  
9 which the defendant was convicted, and the Supreme Court has  
10 not, when the application is made, passed sentence on the  
11 defendant for the offense, the Supreme Court may, if it is  
12 satisfied that it is reasonable to do so in all the  
13 circumstances, defer passing sentence until it has determined  
14 the application for the order."

15 Section 13. Section 935 of title 11 of the Code of the Federated  
16 States of Micronesia, as amended, is hereby further amended to read as  
17 follows:

18 "Section 935. Confiscation order [on conviction].

19 (1) Where, upon application by the Secretary, the Supreme  
20 Court is satisfied that property is tainted property [~~in~~  
21 ~~respect of a serious offense of which a person has been~~  
22 ~~convicted~~], the Supreme Court may order that specified  
23 property be confiscated.

24 (2) In determining whether property is tainted property the  
25 Supreme Court may presume, in the absence of evidence to the  
26 contrary:

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1 (a) that the property was used in or in connection  
2 with, or was intended to be used in or in connection with,  
3 the commission of the offense if it was in the person's  
4 possession or effective control at the time of, or  
5 immediately after the commission of the offense [~~for which~~  
6 ~~the person was convicted~~]; and/or

7 (b) that the property was derived, obtained or  
8 realized as a result of the commission of the offense if

9 (i) the property was found during investigations  
10 before or after the person was arrested for and charged with  
11 the offense, in the person's possession or under the person's  
12 control in a building, vehicle, receptacle or place; or

13 (ii) the property [~~it~~] was acquired by the person  
14 before, during or within a reasonable time after the period  
15 of the commission of the offense [~~of which the person was~~  
16 ~~convicted~~], and the Supreme Court is satisfied that the  
17 income of that person from sources unrelated to criminal  
18 activity of that person, cannot reasonably account for the  
19 acquisition of that property.

20 (3) For purposes of subsection 935(2)(a) of this section,  
21 'effective control' shall have the meaning given to it under  
22 subsections 947(1) and (2) of this chapter.

23 (4 [3]) Where the Supreme Court orders that property,  
24 other than money, be confiscated, the Supreme Court shall  
25 specify in the order the amount that it considers to be the  
26 value of the property at the time when the order is made,

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1 taking account of how such value is to be determined under  
2 section 907 of this chapter [~~act~~].

3 (5 [~~4~~]) In considering whether a confiscation order  
4 should be made under subsection (1) of this section the  
5 Supreme Court shall have regard to:

6 (a) the rights and interests, if any, of innocent  
7 third parties in the property;

8 (b) the gravity of the offense concerned;

9 (c) any hardship that may reasonably be expected to be  
10 caused to any innocent person by the operation of the order;  
11 and

12 (d) the use that is ordinarily made of the property,  
13 or the use to which the property was intended to be put.

14 (6 [~~5~~]) Where the Supreme Court makes a confiscation  
15 order, the Supreme Court may give such directions as are  
16 necessary or convenient for giving effect to the order."

17 Section 14. Section 937 of title 11 of the Code of the Federated  
18 States of Micronesia, as amended, is hereby further to read as follows:

19 "Section 937. Voidable transfers. The Supreme Court may,  
20 before making a confiscation order or pecuniary penalty  
21 order, and in the case of property in respect of which a  
22 restraining order was made, where the order was served in  
23 accordance with section 960 of this chapter [~~title~~], set  
24 aside any conveyance or transfer of the property [~~that~~  
25 ~~occurred after the seizure of the property or~~] that occurred  
26 in circumstances that give rise to a reasonable inference

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1           that the property was transferred for the purpose of avoiding  
2           a restraining, confiscation or pecuniary penalty order [the  
3           ~~service of the restraining order]~~, unless the conveyance or  
4           transfer was made for valuable consideration to a person  
5           acting in good faith and without notice.”

6           Section 15. Section 940 of title 11 of the Code of the Federated  
7 States of Micronesia, as amended, is hereby further amended to read as  
8 follows:

9           “Section 940. Payment instead of a confiscation order.

10           Where the Supreme Court is satisfied that a confiscation  
11           order should be made in respect of the property of a person  
12           ~~[convicted of a serious offense]~~, but that the property or  
13           any part thereof or interest therein cannot be made subject  
14           to such an order and, in particular:

15           (1) cannot, on the exercise of due diligence be located;

16           (2) has been transferred to a bona fide third party  
17           purchaser for value and without notice, or to a third party  
18           in circumstances which do not give rise to a reasonable  
19           inference that the title or interest was transferred for the  
20           purpose of avoiding the confiscation of the property;

21           (3) is located outside Federated States of Micronesia;

22           (4) has been substantially diminished in value or rendered  
23           worthless; ~~[or]~~

24           (5) has been commingled with other property that cannot be  
25           divided without difficulty; or

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1           (6) is subject to customary or native land rights and  
2           cannot be confiscated;  
3           the Supreme Court may, instead of ordering the property or  
4           part thereof or interest therein to be confiscated, order the  
5           person to pay to the Federated States of Micronesia an amount  
6           equal to the value of the property, part or interest, or to  
7           forfeit other property of equivalent value, taking account of  
8           section 907 of this chapter [~~act~~].”

9           Section 16. Section 942 of title 11 of the Code of the Federated  
10          States of Micronesia, as amended, is hereby further amended to read as  
11          follows:

12           “Section 942. Pecuniary penalty [~~order on conviction~~].

13           (1) Subject to this section, where the Secretary applies to  
14           the Supreme Court for a pecuniary penalty order against a  
15           defendant [~~in respect of the defendant's conviction for a~~  
16           ~~serious offense~~], the Court shall, if it is satisfied that  
17           the defendant has benefited from [~~that~~] a serious offense,  
18           order the defendant to pay to the Federated States of  
19           Micronesia an amount equal to the value of the defendant's  
20           benefit from the offense or such lesser amount as the Court  
21           determines in accordance with section 945 of this chapter  
22           [~~title~~], to be the amount that might be recovered at the time  
23           the pecuniary penalty order is made.

24           (2) The Supreme Court shall assess the value of the  
25           benefits derived by a person from the commission of an

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1 offense in accordance with sections 943, 944, 945, and 946 of  
2 this chapter [~~title~~].

3 (3) Where a defendant has been convicted of a serious  
4 offense, [F]the Supreme Court shall not make a pecuniary  
5 penalty order under this section:

6 (a) until the period allowed by the rules of court for  
7 the lodging of an appeal against the conviction has expired  
8 without such appeal having been lodged; or

9 (b) where an appeal against the conviction has been  
10 lodged, until the appeal is dismissed in accordance with the  
11 rules of court or is finally determined; whichever is the  
12 later date."

13 Section 17. Section 943 of title 11 of the Code of the Federated  
14 States of Micronesia, as amended, is hereby further amended to read as  
15 follows:

16 "Section 943. Determination of benefit and assessment of  
17 value.

18 (1) Where a defendant obtains property as the result of,  
19 or in connection with the commission of a serious offense,  
20 the defendant's benefit is the value of the property so  
21 obtained. Value means fair market value at the time the  
22 property was obtained or at the time of conviction, at  
23 whichever time the value is greater.

24 (2) Where a defendant derived an advantage as a result of  
25 or in connection with the commission of a serious offense,



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1 the defendant's advantage shall be deemed to be a sum of  
2 money equal to the value of the advantage so derived.

3 (3) The Supreme Court, in determining whether a person has  
4 benefited from the commission of a serious offense or from  
5 that offense taken together with other serious offenses  
6 shall, unless the contrary is proved by the defendant beyond  
7 a reasonable doubt, presume:

8 (a) all property appearing to the Supreme Court to be  
9 held by the person:

10 (i) on the day on which the application is made;

11 (ii) at any time within the period between the day  
12 the serious offense, or the earliest serious offense, was  
13 committed and the day on which the application is made; or

14 (iii) within the period of six years immediately  
15 before the day on which the application is made;

16 whichever is the longer, to be property that came into the  
17 possession or under the control of the person by reason of  
18 the commission of that serious offense or those serious  
19 offenses [~~for which the defendant was convicted~~];

20 (b) any expenditure by the defendant since the  
21 commission of the offense to be expenditure meted out of  
22 payments received by the defendant as a result of, or in  
23 connection with, the commission of that serious offense or  
24 those serious offenses; and

25 (c) any property received or deemed to have been  
26 received by the defendant at any time as a result of, or in

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1 connection with the commission by the defendant of that  
2 serious offense, or those serious offenses, to be property  
3 received by the defendant free of any interest therein.

4 (4) Where a pecuniary penalty order has been previously  
5 made against a defendant, in assessing the value of any  
6 benefit derived by the defendant from the commission of the  
7 serious offense, the Supreme Court shall leave out of account  
8 any benefits that are shown to the Supreme Court to have been  
9 taken into account in determining the amount to be recovered  
10 under that order.

11 (5) If evidence is given at the hearing of the application  
12 that the value of the defendant's property at any time after  
13 the commission of the serious offense exceeded the value of  
14 the defendant's property before the commission of the  
15 offense, then the Supreme Court shall, subject to subsection  
16 (6) of this section, treat the value of the benefit as being  
17 not less than the amount of that excess.

18 (6) If, after evidence of the kind referred to in  
19 subsection (5) of this section is given, the defendant  
20 satisfies the Supreme Court beyond a reasonable doubt that  
21 the whole or part of the excess was due to causes unrelated  
22 to the commission of the serious offense, subsection (5) of  
23 this section does not apply to the excess or, as the case may  
24 be, that part."

1           Section 18. Section 944 of title 11 of the Code of the Federated  
2 States of Micronesia, as amended, is hereby further amended to read as  
3 follows:

4           "Section 944. Statements relating to benefits from  
5 commission of serious offenses.

6           (1) Where:

7                   (a) a defendant has committed [~~been convicted of~~] a  
8 serious offense and the Secretary tenders to the Supreme  
9 Court a statement as to any matters relevant to:

10                           (i) determining whether the defendant has  
11 benefited from the offense or from any other serious offense  
12 of which defendant is convicted in the same proceedings or  
13 which is taken into account in determining his or her  
14 sentence; or

15                           (ii) an assessment of the value of the defendant's  
16 benefit from the offense or any other serious offense of  
17 which defendant is convicted in the same proceedings or which  
18 is taken into account; and

19                   (b) the defendant admits to any extent an allegation  
20 in the statement;

21 the Supreme Court may, for the purposes of so determining or  
22 making that assessment, treat the defendant's admission as  
23 conclusive of the matters to which it relates.

24           (2) Where:

25                   (a) a statement is tendered under subsection (1)(a) of  
26 this section; and

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1 (b) the Court is satisfied that a copy of that  
2 statement has been served on the defendant;  
3 the Supreme Court may require the defendant to indicate to  
4 what extent the defendant admits each allegation in the  
5 statement and, so far as the defendant does not admit any  
6 allegation, to indicate any matters the defendant proposes to  
7 deny or reply on.

8 (3) Where the defendant fails in any respect to comply with  
9 a requirement under subsection (2) of this section, the  
10 defendant may be treated for the purposes of this section, as  
11 having admitted every allegation in the statement except for  
12 any allegation in respect of which the defendant complied  
13 with the requirements of subsection (2) of this section.

14 (4) Where:

15 (a) the defendant tenders to the Supreme Court a  
16 statement as to any matters relevant to determining the  
17 amount that might be recovered at the time the pecuniary  
18 penalty order is made; and

19 (b) the Secretary admits to any extent any allegation  
20 in the statement;  
21 the Supreme Court may, for the purposes of that  
22 determination, treat the admission of the Secretary as  
23 conclusive of the matters to which it relates.

24 (5) An allegation may be admitted, denied, or a matter  
25 indicated for the purposes of this section, either:

26 (a) orally before the Supreme Court; or

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1 (b) in writing, in accordance with rules of court.

2 (6) An admission by a defendant under this section that the  
3 defendant received any benefits from the commission of a  
4 serious offense is admissible in any proceedings for any  
5 offense."

6 Section 19. Section 949 of title 11 of the Code of the Federated  
7 States of Micronesia, as amended, is hereby further amended to read as  
8 follows:

9 "Section 949. Discharge of pecuniary penalty orders. A  
10 pecuniary penalty order is discharged:

11 [~~(1) If the conviction of the serious offense or offenses in~~  
12 ~~reliance on which the order was made is reversed and no~~  
13 ~~conviction for the offense is substituted;]~~

14 (1) [~~(2)~~] if the order is rescinded; or

15 (2) [~~(3)~~] on the satisfaction of the order by payment  
16 of the amount due under the order.

17 Section 20. Section 950 of title 11 of the Code of the Federated  
18 States of Micronesia, as amended, is hereby further amended to read as  
19 follows:

20 "Section 950. Powers to search for and seize tainted  
21 property.

22 (1) In addition to any powers granted under title 12 of the  
23 Code of the Federated States of Micronesia and other  
24 applicable laws, a police officer may:

25 (a) search a person for tainted property;

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1 (b) enter upon land or upon or into premises and  
2 search the land or premises for tainted property or evidence  
3 relating to a serious offense; and

4 (c) in either case, seize any property found in the  
5 course of the search that the police officer believes, on  
6 reasonable grounds to be tainted property or evidence  
7 relating to a serious offense, provided that the search or  
8 seizure is made:

9 (i) with the consent of the person or the  
10 occupier of the land or premises as the case may be;

11 (ii) under a warrant issued under section 951 of  
12 this chapter [~~title~~]; or

13 (iii) under section 953 of this chapter [~~title~~].

14 (2) Where a police officer may search a person under this  
15 chapter [~~act~~], the officer may also search:

16 (a) the clothing that is being worn by the person; and

17 (b) any property in, or apparently in, the person's  
18 immediate control."

19 Section 21. Section 951 of title 11 of the Code of the Federated  
20 States of Micronesia, as amended, is hereby further amended to read as  
21 follows:

22 "Section 951. Search warrants in relation to tainted  
23 property.

24 (1) Where a police officer has probable cause to believe  
25 that there is, or may be [~~within the next 72 hours~~], tainted

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1 property of a particular kind or evidence relating to a  
2 serious offense - [÷]

3 (a) on a person;

4 (b) in the clothing that is being worn by a person;

5 (c) otherwise in a person's immediate control; or

6 (d) upon land or upon or in any premises,

7 the police officer may lay before a judge, a sworn affidavit  
8 setting out those grounds and apply for the issuance of a  
9 warrant under this chapter [~~act~~] or under title 12 of the  
10 Code of the Federated States of Micronesia, to search the  
11 person, the land or the premises as the case may be, for  
12 tainted property of that kind or evidence relating to a  
13 serious offense.

14 (2) Where an application is made under subsection (1) of  
15 this section for a warrant to search a person, land or  
16 premises, the justice may, subject to subsection (4) of this  
17 section issue a warrant authorizing a police officer (whether  
18 or not named in the warrant) with such assistance and by such  
19 force as is necessary and reasonable:

20 (a) to search the person for tainted property of that  
21 kind or evidence of a serious offense;

22 (b) to enter upon the land or in or upon any premises  
23 and to search the land or premises for tainted property of  
24 that kind or evidence of a serious offense; and

25 (c) to seize property found in the course of the  
26 search that the police officer has probable cause to believe

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1 to be tainted property of that kind or evidence of a serious  
2 offense.

3 (3) A warrant may be issued under subsection (2) of this  
4 section in relation to tainted property or evidence of a  
5 serious offense, whether or not an information or complaint  
6 has been filed in respect of the relevant offense.

7 (4) A judge shall not issue a warrant under subsection (2)  
8 of this section unless, where an information or complaint has  
9 not been filed in respect of the relevant offense at the time  
10 when the application for the warrant is made, the judge is  
11 satisfied that there is probable cause to believe a crime has  
12 been or is about to be committed and that tainted property or  
13 evidence of such crime is located at the place or on the  
14 person or thing to be searched.

15 (5) A warrant issued under this section shall state:

16 (a) the purpose for which it is issued, including a  
17 reference to the nature of the relevant offense;

18 (b) a description of the kind of property authorized  
19 to be seized;

20 (c) a time at which the warrant ceases to be in force;  
21 and

22 (d) whether entry is authorized to be made at any time  
23 of the day or night or during specified hours.

24 (6) If during the course of searching under a warrant  
25 issued under this section, a police officer finds:



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1 (a) property that the police officer has probable  
2 cause to believe to be tainted property either of a type not  
3 specified in the warrant or tainted property in relation to  
4 another serious offense; or

5 (b) any thing the police officer has probable cause to  
6 believe will afford evidence as to the commission of a  
7 serious offense (whether or not such offense is the same as  
8 that described in the warrant);  
9 the police officer may seize that property or thing and the  
10 warrant shall be deemed to authorize such seizure.”

11 Section 22. Section 953 of title 11 of the Code of the Federated  
12 States of Micronesia, as amended, is hereby further amended to read as  
13 follows:

14 “Section 953. Searches in emergencies.

15 (1) Where a police officer has probable cause to believe  
16 that:

17 (a) particular property is tainted property or  
18 evidence relating to a serious offense;

19 (b) it is necessary to exercise the power of search  
20 and seizure in order to prevent the concealment, loss or  
21 destruction of the property; and

22 (c) the circumstances are so urgent that they require  
23 immediate exercise of the power without the authority of a  
24 warrant or the order of a court;  
25 the police officer may:

26 (i) search a person;

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1                   (ii) enter upon land, or upon or into premises and  
2 search for the property; and

3                   (iii) if property is found, seize the property.

4           (2) If during the course of a search conducted under this  
5 section, a police officer finds:

6                   (a) property that the police officer has probable  
7 cause to believe to be tainted property; or

8                   (b) anything the police officer has probable cause to  
9 believe will afford evidence as to the commission of a  
10 serious offense;

11           the police officer may seize that property or thing.”

12           Section 23. Section 957 of title 11 of the Code of the Federated  
13 States of Micronesia, as amended, is hereby further amended to read as  
14 follows:

15           “Section 957. Application for restraining order.

16                   (1) The Secretary may apply to the Supreme Court for a  
17 restraining order against any covered property whether held  
18 by a defendant or held by a person other than a defendant.

19                   (2) An application for a restraining order may be made ex  
20 parte and shall be in writing and be accompanied by an  
21 affidavit stating:

22                   (a) where a defendant has been convicted of a serious  
23 offense, the serious offense for which the defendant was  
24 convicted, the date of the conviction, the court before which  
25 the conviction was obtained and whether an appeal has been  
26 lodged against the conviction;

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1 (b) where a defendant has not been convicted of a  
2 serious offense, the serious offense with which the defendant  
3 is charged or about to be charged, or is believe to have  
4 committed, and the grounds for believing that the defendant  
5 committed the offense;

6 (c) a description of the property sought to be  
7 restrained;

8 (d) the name and address of the person who is believed  
9 to be in possession of the property;

10 (e) the grounds for the belief that the property is  
11 tainted property in relation to an [~~the~~] offense;

12 (f) the grounds for the belief that the defendant  
13 derived a benefit directly or indirectly from the commission  
14 of an [~~the~~] offense;

15 (g) where the application seeks a restraining order  
16 against property of a person other than the defendant, the  
17 grounds for the belief that the property is tainted property  
18 in relation to an [~~the~~] offense or [~~and~~] is subject to the  
19 effective control of the defendant; and

20 (h) the grounds for the belief that a confiscation  
21 order or a pecuniary penalty order may be or is likely to be  
22 made under this subchapter in respect of the property.”

23 Section 24. Section 958 of title 11 of the Code of the Federated  
24 States of Micronesia, as amended, is hereby further amended to read as  
25 follows:

26 “Section 958. Restraining orders.”

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1           (1) Subject to this section, where the Secretary applies  
2 to the Supreme Court for a restraining order against property  
3 and the Supreme Court is satisfied that:

4           (a) the defendant has been convicted of a serious  
5 offense, or has been charged or is about to be charged with a  
6 serious offense;

7           (b) where the defendant has not been convicted of a  
8 serious offense, there are reasonable grounds for believing  
9 that the defendant committed the offense;

10          (c) there is reasonable cause to believe that the  
11 property is tainted property in relation to an offense, or  
12 that the defendant derived a benefit directly or indirectly  
13 from the commission of an ~~[the]~~ offense;

14          (d) where the application seeks a restraining order  
15 against property of a person other than the defendant, there  
16 are reasonable grounds for believing that the property is  
17 tainted property ~~[in relation to an offense]~~, or ~~[and]~~ that  
18 the property is subject to the effective control of the  
19 defendant; and

20          (e) there are reasonable grounds for believing that a  
21 confiscation order or a pecuniary penalty order is likely to  
22 be made under this subchapter in respect of the property;  
23 the Supreme Court may make an order prohibiting the defendant  
24 or any person from disposing of, or otherwise dealing with,  
25 the property or such part thereof or interest therein as is  
26 specified in the order, except in such manner as may be

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1 specified in the order, and at the request of the Secretary,  
2 or upon its own motion, where the Supreme Court is satisfied  
3 that the circumstances so require:

4 (i) [~~the court is authorized to~~] appoint a  
5 receiver or fiduciary to take custody of the property or such  
6 part thereof as is specified in the order, and to manage or  
7 otherwise deal with all or any part of the property in  
8 accordance with the directions of the Supreme Court; and

9 (ii) require any person having possession of the  
10 property to give possession thereof to the receiver or  
11 fiduciary.

12 (2) In extreme cases, where undue hardship to innocent  
13 parties would otherwise occur, an order under subsection (1)  
14 of this section may be made subject to such conditions as the  
15 Supreme Court deems fit providing for meting out of the  
16 property, or a specified part of the property, the reasonable  
17 living expenses of defendant's immediate family where the  
18 Court is satisfied that such expenses cannot be covered out  
19 of property that is not subject to a restraining order.

20 (3) In determining whether there are reasonable grounds for  
21 believing property is subject to the effective control of the  
22 defendant, the Court may take into account the matters  
23 referred to in section 947 of this chapter [~~title~~].

24 (4) Where the court appointed receiver or fiduciary is  
25 given a direction in relation to any property, he or she may  
26 apply to the Supreme Court for directions or any question

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1           respecting the management or preservation of the property  
2           under his or her control.

3           ~~[(5) An application under section 957 of this title shall be~~  
4           ~~served on all persons interested in the application or such~~  
5           ~~of them as the Court deems expedient and all such persons~~  
6           ~~shall have the right to appear at the hearing and be heard.]~~

7           (5) The Supreme Court may issue a restraining order even if  
8           there is no risk of the property being dissipated, disposed  
9           of or otherwise dealt with.

10          (6) The Supreme Court may specify that a restraining order  
11          cover property that is acquired by the defendant after the  
12          issuance of the order.

13          (7) Proceedings on an application for restraining order  
14          shall be civil proceedings and the standard of proof shall be  
15          by the preponderance of the evidence."

16          ~~[(6) When the application is made under section 957 of this~~  
17          ~~title on the basis that a person is about to be charged, any~~  
18          ~~order made by the Supreme Court shall lapse if the person is~~  
19          ~~not charged:~~

20                 ~~(a) where the offense is an offense against the law of~~  
21                 ~~the Federated States of Micronesia, within five working days;~~  
22                 ~~and~~

23                 ~~(b) where the offense is an offense against the law of~~  
24                 ~~a foreign State, within 150 working days.]"~~

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1           Section 25. Section 959 of title 11 of the Code of the Federated  
2 States of Micronesia, as amended, is hereby further amended to read as  
3 follows:

4           "Section 959. Notice of application for restraining order.  
5 Before entering a restraining order the Supreme Court shall  
6 [~~may~~] require notice be given to, and may hear, any person  
7 who, in the opinion of the Supreme Court, appears to have an  
8 interest in the property, unless the Supreme Court is of the  
9 opinion that giving such notice before making the order would  
10 result in the disappearance, dissipation or reduction in  
11 value of the property."

12          Section 26. Section 963 of title 11 of the Code of the Federated  
13 States of Micronesia, as amended, is hereby further  
14 amended to read as follows:

15          "Section 963. Duration of restraining order.

16           (1) Where a defendant has not been charged with a serious  
17 offense, a ~~A~~ restraining order issued under this subchapter  
18 [~~act~~] shall remain~~s~~ in force until:

19           ~~[(1) it is discharged, revoked or varied;]~~

20           (a [2]) the period of 6 months from the date on  
21 which it is made or such later time as the Supreme Court may  
22 determine, not to exceed one year; or

23           (b [3]) an application for a confiscation order or a  
24 pecuniary penalty order, as the case may be, is made in  
25 respect of property which is the subject of the order;  
26 whichever occurs first.

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1           (2) Where a defendant has been charged with a serious  
2           offense, a restraining order shall remain in force until:

3           (a) the period of 6 months from the final disposition  
4           of the criminal proceedings against the defendant, or such  
5           later time as the Supreme Court may determine; or

6           (b) an application for a confiscation order or a  
7           pecuniary penalty order, as the case may be, is made in  
8           respect of property which is the subject of the order;  
9           whichever occurs first.

10          (3) The Secretary may apply to the Supreme Court for an  
11          extension of a restraining order for a specified period.  
12          After a hearing, with notice to any person that in the  
13          opinion of the Supreme Court appears to have an interest in  
14          the restrained property, the Supreme Court may grant the  
15          extension requested, or such lesser period it deems  
16          appropriate, if it is satisfied that an application for a  
17          confiscation or pecuniary penalty order may be made against a  
18          person with respect to that property.

19          (4) In the event that a restraining order expires before an  
20          application for a confiscation or pecuniary penalty order is  
21          made, the property subject to the restraining order shall be  
22          released to the person or persons determined by the Supreme  
23          Court to have a lawful ownership interest in the property or  
24          who are entitled to lawful possession of the property.



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1           (5) Nothing in this section shall require the discharge of  
2           property that is relevant evidence in a pending criminal  
3           proceeding against a defendant."

4           Section 27. Section 964 of title 11 of the Code of the Federated  
5 States of Micronesia, as amended, is hereby further amended to read as  
6 follows:

7           "Section 964. Review of restraining orders.

8           (1) A person, other than the defendant, who has an interest  
9 in property in respect of which a restraining order was  
10 entered, or has been appointed by the Supreme Court as a  
11 receiver or fiduciary of the property, may, at any time,  
12 apply to the Supreme Court for an order under subsection (4)  
13 of this section.

14           (2) An application made under subsection (1) shall not be  
15 heard by the Supreme Court unless the applicant has given the  
16 Secretary at least 14 [~~5-working~~] days notice in writing of  
17 the application.

18           (3) The Supreme Court shall not hear an application under  
19 subsection (1) of this section unless the applicant has given  
20 reasonable written notice of the application to every person  
21 who has an interest in the property at issue. The Supreme  
22 Court may require notice of the application to be given to,  
23 and may hear, any person who in the opinion of the Supreme  
24 Court, appears to have an interest in the property.

25           (4) On an application under subsection (1) of this section  
26 the Supreme Court may revoke or vary the order or make the

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1 order subject to such conditions as the Supreme Court deems  
2 appropriate. For the purposes of this subsection the Supreme  
3 Court may:

4 (a) impose conditions on the applicant; ~~[or]~~

5 (b) vary the order to permit the payment of reasonable  
6 living expenses of the applicant, including his or her  
7 dependents, if any, and reasonable legal or business expenses  
8 of the applicant;

9 (c) vary the property to which the restraining order  
10 relates;

11 (d) order a person to be examined under oath before  
12 the Court concerning the affairs of the owner of the property  
13 or the defendant;

14 (e) direct the owner of the property or the defendant  
15 to give a specified person a statement under oath setting out  
16 the particulars of the property or dealings with the  
17 property; or

18 (f) if the restraining order directs a receiver or  
19 fiduciary to take custody and control of the property:

20 (i) regulate the performance of the duties or  
21 powers of the receiver or fiduciary under the restraining  
22 order;

23 (ii) decide a question relating to the property;

24 (iii) order a person to do anything to enable the  
25 receiver or fiduciary to take custody or control of the  
26 property;

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1           (iv) if the restraining order provides that a  
2           person's reasonable expenses in defending a criminal charge  
3           be met out of the property, direct that those expenses be  
4           taxed as provided in the ancillary order before being met; or

5           (v) provide for the payment to the receiver or  
6           fiduciary out of the property of the costs, charges and  
7           expenses incurred in connection with the performance of the  
8           receiver or fiduciary's duties under the restraining order;  
9           or

10           (g) anything else that the Supreme Court considers  
11           necessary under the circumstances.

12           (5) Where the applicant is a person who claims an interest  
13           in the property, an order under subsection (4) of this  
14           section may only be made if the Supreme Court is satisfied  
15           that ~~[the]~~:

16           (a) the applicant is the lawful owner of the property  
17           or is entitled to lawful possession thereof~~[, and appears to~~  
18           ~~be innocent of any complicity in the commission of a serious~~  
19           ~~offense or of]~~;

20           (b) the applicant was not involved in the commission  
21           of the offense or in any collusion in relation to such  
22           offense; ~~[and]~~

23           (c) if the applicant acquired interest in the property  
24           at the time of or after the alleged commission of the  
25           offense, the applicant acquired the interest:

26           (i) for sufficient consideration; and

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1                   (ii) without knowing, and in circumstances such as  
2                   not to raise a reasonable suspicion, that the property was  
3                   tainted property or that the property was a benefit obtained  
4                   as a result of or in connection with the commission of a  
5                   serious offense;

6                   (d [b]) [~~that~~] the property will no longer be required for  
7                   the purposes of any investigation or as evidence in any  
8                   proceedings; and

9                   (e) the property is not tainted property and is not  
10                   required to satisfy any confiscation or pecuniary penalty  
11                   order.

12                   (6) If a person is required, in accordance with an order  
13                   pursuant to subsection (4)(d) or (4)(e) of this section to  
14                   make a statement under oath:

15                   (a) the person is not excused from making the  
16                   statement on the ground that the statement, or part of it,  
17                   might tend to incriminate the person or make the person's  
18                   property liable to confiscation or penalty; and

19                   (b) the statement, and any information, document or  
20                   thing obtained as a direct or indirect consequence of the  
21                   statement, is not admissible against the person in any  
22                   criminal proceedings except a proceeding for perjury in  
23                   making the statement."

24                   Section 28. Section 965 of title 11 of the Code of the Federated  
25 States of Micronesia, as amended, is hereby deleted in its entirety.

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1 Section 29. Section 966 of title 11 of the Code of the Federated  
2 States of Micronesia, as amended, is hereby further amended to read as  
3 follows:

4 "Section 966. Realization of covered property.

5 (1) Where:

6 (a) a restraining order, confiscation order or  
7 pecuniary penalty order is made in respect to covered  
8 property;

9 (b) all conditions of the order have been met; and

10 (c) the order is not discharged;

11 the Supreme Court may, on an application by the Secretary,  
12 exercise the powers conferred upon the Supreme Court by this  
13 section with respect to covered property [~~as defined by~~  
14 ~~section 903(1)(f) of this title~~].

15 (2) The Supreme Court may appoint a receiver in respect of  
16 covered property.

17 (3) The Supreme Court may empower a receiver appointed  
18 under subsection (2) of this section to take possession of  
19 any covered property subject to such conditions or exceptions  
20 as may be specified by the Supreme Court.

21 (4) The Supreme Court may order any person having  
22 possession of covered property to give possession of it to  
23 any such receiver.

24 (5) The Supreme Court may empower any such receiver to  
25 realize [~~liquidate and convert into cash and/or obtain~~  
26 ~~payment of the value of defendant's interest~~] any covered

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1 property in such manner as the Supreme Court may direct,  
2 including empowering the receiver to liquidate and convert  
3 into cash, or obtain payment of the value of a defendant's  
4 interest.

5 (6) The Supreme Court may order any person holding an  
6 interest in covered property to make such payment to the  
7 receiver in respect of any interest held by the defendant or,  
8 as the case may be, the recipient of a gift caught by this  
9 chapter [~~act~~] as the Supreme Court may direct, and the  
10 Supreme Court may, on the payment being made, by order  
11 transfer, grant or extinguish any interest in the property.

12 (7) The Supreme Court shall not, in respect of any  
13 property, exercise the powers conferred by subsections (3),  
14 (4), (5) or (6) of this section, unless a reasonable  
15 opportunity has been given for persons holding any interest  
16 in the property to make representations to the Supreme  
17 Court."

18 Section 30. Section 967 of title 11 of the Code of the Federated  
19 States of Micronesia, as amended, is hereby further amended to read as  
20 follows:

21 "Section 967. Application of proceeds of realization and  
22 other sums.

23 (1) Subject to subsection (2) of this section, the  
24 following property in the hands of a receiver appointed under  
25 this chapter [~~act~~], being:

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1 (a) the proceeds of the realization of any property  
2 under section 966; and

3 (b) any other sums, being property held by the  
4 defendant;  
5 shall, after such payments, if any, as the Supreme Court may  
6 direct have been made out of those sums, be payable to the  
7 Clerk of the Supreme Court and be applied on the defendant's  
8 behalf towards the satisfaction of the confiscation order or  
9 pecuniary penalty order in the manner provided by subsection  
10 (3) of this section.

11 (2) If, after the amount payable under the confiscation  
12 order or pecuniary penalty order has been fully paid, any  
13 such sums remain in the hands of such a receiver, the  
14 receiver shall distribute those sums:

15 (a) among such of those innocent third persons who  
16 held covered property which has been recovered under this  
17 subchapter (either through seizure and liquidation or by  
18 payment of the defendant's interest therein by the holder)  
19 who have come forward and made application to the Court for  
20 return of the property; and

21 (b) in such proportions, as the Supreme Court may  
22 direct, after giving a reasonable opportunity for those  
23 persons to make representations to the Supreme Court.

24 (3) Property received by the Clerk of the Supreme Court on  
25 account of an amount payable under a confiscation order or  
26 pecuniary penalty order shall be applied as follows:

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1 (a) if received by the Clerk from a receiver under  
2 subsection (1) of this section, it shall first be applied in  
3 payment of the receiver's remuneration and expenses; and

4 (b) the balance shall be paid or, as the case may be,  
5 transferred, to the Forfeited Assets Fund established under  
6 section 980 of this chapter [~~General Fund of the Federated~~  
7 ~~States of Micronesia until such time that a Federated States~~  
8 ~~of Micronesia Fund For Drug Abuse Prevention And Control is~~  
9 ~~established pursuant to law, at which time, any balance then~~  
10 ~~accrued, shall be paid, or as the case may be, transferred,~~  
11 ~~to said Fund.]”~~

12 Section 31. Section 971 of title 11 of the Code of the Federated  
13 States of Micronesia, as amended, is hereby further amended to read as  
14 follows:

15 “Section 971. Production orders.

16 (1) Where a defendant has been charged with or convicted of  
17 a serious offense, or there is probable cause to believe that  
18 a person has committed a serious offense, and a police  
19 officer has reasonable grounds [~~probable cause~~] to believe  
20 that any person has possession or control of:

21 (a) a document relevant to identifying, locating or  
22 quantifying property of the defendant, or to identifying or  
23 locating a document necessary for the transfer of property of  
24 the defendant; or

25 (b) a document relevant to identifying, locating or  
26 quantifying tainted property in relation to the offense, or



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1 to identifying or locating a document necessary for the  
2 transfer of tainted property in relation to the offense;  
3 the police officer may apply ex parte and in writing to a  
4 judge for an order against the person suspected of having  
5 possession or control of a document of the kind referred. The  
6 application shall be supported by an affidavit.

7 (2) The judge may, if he or she finds [~~considers~~] there is  
8 probable cause for so doing, make an order under this chapter  
9 [~~act~~], that the person produce to a police officer, or make  
10 available to a police officer for inspection, at a time and  
11 place specified in the order, any documents of the kind  
12 referred to in subsection (1) of this section.

13 (3) A police officer to whom documents are produced may:

14 (a) inspect the documents;

15 (b) make hard or electronic copies of or print the  
16 documents; [~~or~~]

17 (c) retain the documents for so long as is reasonably  
18 necessary for the purposes of this chapter [~~act~~]; or

19 (d) take extracts from it.

20 (4) Where a police officer retains the documents produced,  
21 the officer shall make a copy of the documents available to  
22 the person who produced them.

23 (5) A person is not entitled to refuse to produce documents  
24 ordered to be produced under this section on the ground that  
25 the document might tend to incriminate that person or make  
26 such person liable to a penalty, or the production of the

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1 document would be in breach of an obligation of the person  
2 not to disclose the existence or contents of the document.

3 (6) Where a document is stored on a computer, the person in  
4 possession or control of the computer shall grant the police  
5 officer access to the computer and any software necessary to  
6 open and inspect the document."

7 Section 32. Section 976 of title 11 of the Code of the Federated  
8 States of Micronesia, as amended, is hereby further amended to read as  
9 follows:

10 "Section 976. Search warrant for location of documents  
11 relevant to locating property.

12 (1) Where:

13 (a) a defendant has been charged or convicted of a  
14 serious offense, or there is probable cause to believe that  
15 person has committed a serious offense; or

16 (b) the police officer has probable cause to believe  
17 that there is, or may be [~~within the next 72 hours~~], upon any  
18 land or upon or in any premises, a document of the type  
19 described in subsection 971(1) of this chapter [~~title~~] in  
20 relation to the offense;

21 the police officer may make an application supported by sworn  
22 affidavit to a judge for a search warrant in respect of that  
23 land or those premises.

24 (2) Where an application is made under subsection (1) of  
25 this section for a warrant to search land or premises, the  
26 judge may, subject to subsection (4) of this section issue a

1 warrant authorizing a police officer (whether or not named in  
2 the warrant), with such assistance and by such force as is  
3 necessary and reasonable:

4 (a) to enter upon the land or in or upon any premises  
5 and to search the land or premises for property of that kind;  
6 and

7 (b) to seize property found in the course of the  
8 search that the police officer has probable cause to believe  
9 to be property of that kind.

10 (3) A judge shall not issue a warrant under subsection (2)  
11 of this section unless the judge is satisfied that:

12 (a) a production order has been issued in respect of  
13 the document and has not been complied with;

14 (b) a production order in respect of the document  
15 would be unlikely to be effective, or the document may be  
16 destroyed or altered if notice is given to any person;

17 (c) the investigation for the purposes of which the  
18 search warrant is being sought might be seriously prejudiced  
19 if the police officer does not gain immediate access to the  
20 document without any notice to any person; or

21 (d) the document involved cannot be identified or  
22 described with sufficient particularity to enable a  
23 production order to be obtained.

24 (4) A warrant issued under this section shall state:

25 (a) the purpose for which it is issued, including a  
26 reference to the nature of the relevant offense;

1 (b) a description of the kind of documents authorized  
2 to be seized;

3 (c) a time at which the warrant ceases to be in force;  
4 and

5 (d) whether entry is authorized to be made at any time  
6 of the day or night or during specified hours.

7 (5) If during the course of searching under a warrant  
8 issued under this section, a police officer finds:

9 (a) a document of the type described in section 971(1)  
10 that the police officer believes on probable cause, to relate  
11 to the relevant offense, or to another serious offense; or

12 (b) any thing the police officer believes on probable  
13 cause will afford evidence as to the commission of a serious  
14 offense;

15 the police officer may seize that property or thing and the  
16 warrant shall be deemed to authorize such seizure."

17 Section 33. Sections 978 and 979 of title 11 of the Code of the  
18 Federated States of Micronesia, as amended, are hereby deleted in their  
19 entirety.

20 Section 34. Title 11 of the Code of the Federated  
21 States of Micronesia, as amended, is hereby amended by adding a new  
22 part 7 of subchapter III of chapter 9 entitled "Forfeited Assets  
23 Fund".

24 Section 35. Title 11 of the Code of the Federated States of  
25 Micronesia, as amended, is hereby amended by adding a new section  
26 980 of chapter 9 to read as follows:

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1           "Section 980. Establishment of Forfeited Assets Fund. There  
2           is hereby established the Forfeited Assets Fund and the  
3           Secretary may make regulations for the administration and use  
4           of this fund."

5           Section 36. Title 11 of the Code of the Federated States of  
6           Micronesia, as amended, is hereby amended by adding a new section  
7           981 of chapter 9 to read as follows:

8           "Section 981. Credit to fund. There shall be placed in the  
9           Forfeited Assets Fund amounts equal to:

- 10           (1) proceeds of confiscation orders;  
11           (2) proceeds paid pursuant to section 940 of this chapter;  
12           (3) proceeds of pecuniary penalty orders;  
13           (4) money paid to the Federated States of Micronesia by a  
14           foreign country in connection with assistance provided by the  
15           Federated States of Micronesia in relation to the recovery by  
16           that country of the proceeds of unlawful activity or the  
17           investigation or prosecution of unlawful activity; and  
18           (5) proceeds of forfeiture order made under any other law."

19           Section 37. Title 11 of the Code of the Federated States of  
20           Micronesia, as amended, is hereby amended by adding a new section  
21           982 of chapter 9 to read as follows:

22           "Section 982. Payments out of fund. Funds in the Forfeited  
23           Assets Fund may be used for the following purposes:

- 24           (1) making any payments to foreign countries that the  
25           Secretary deems appropriate under an equitable sharing

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1 program pursuant to section 1728 of title 12 of the Code of  
2 the Federated States of Micronesia;

3 (2) making any payments under a program approved by the  
4 Secretary under section 983 of this chapter;

5 (3) making any payments that the Secretary deems necessary  
6 to satisfy the obligation of the Federated States of  
7 Micronesia in respect of a registered foreign forfeiture  
8 order or a registered foreign pecuniary penalty order;

9 (4) making any payments necessary for the administration of  
10 the Forfeited Assets Fund; and

11 (5) for such other purposes as Congress shall from time to  
12 time legislate.”

13 Section 38. Title 11 of the Code of the Federated States of  
14 Micronesia, as amended, is hereby amended by adding a new section  
15 983 of chapter 9 to read as follows:

16 “Section 983. Special programs. The Secretary may, in  
17 writing, approve a program for the expenditure in a  
18 particular fiscal year of funds in the Forfeited Assets Fund  
19 for the following purposes:

20 (1) to assist in the treatment of persons convicted of  
21 crimes who suffer from drug or alcohol addiction;

22 (2) to assist the treatment of persons who as a result of a  
23 mental condition pose a danger to themselves or persons in  
24 the community;

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1           (3) to promote awareness of National and international  
2           efforts to combat money laundering and the financing of  
3           terrorism; and

4           (4) to renovate the prisons in the Federated State of  
5           Micronesia."

6           Section 39. Title 11 of the Code of the Federated States of  
7 Micronesia, as amended, is hereby amended by adding a new section 984  
8 of chapter 9 to read as follows:

9           "Section 984. Annual report. The Secretary shall report to  
10           the President and the Congress of the Federated States of  
11           Micronesia on the status of the fund prior to the close of  
12           each fiscal year.

13           Section 40. This act shall become law upon approval by the  
14 President of the Federated States of Micronesia or upon its becoming  
15 law without such approval.

16

17 Date: 5/31/08

Introduced by: /s/ Joe N. Suka

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Joe N. Suka  
(by request)

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