

ENACT [sic]

To create a Koror State Law Enforcement Department and to provide for other matters.

THE PEOPLE OF KOROR REPRESENTED IN THE LEGISLATURE OF THE STATE OF KOROR DO ENACT AS FOLLOWS:

SECTION 1. POLICY AND FINDINGS.

It is the policy of the State to enforce promptly, uniformly, and fairly its State laws. The National Government's executive branch has encouraged the State to create its own police force and to prosecute violations of its laws. In order to do so, the State needs a law enforcement department.

SECTION 2. POPULAR NAME.

This Act maybe known as the Law Enforcement Act of 1989.

SECTION 3. DEFINITIONS.

A. "Administrator" means the person appointed, pursuant to the Koror Constitution Arts. VI and VII, as the Koror State Executive Administrator.

B. "Arrest" means placing any person under any form of legal detention by legal authority.

C. "Citation" means a written order to appear before a court at a time and place named therein to answer a criminal charge briefly described in the citation. It shall contain a warning that failure to obey it will render the accused liable to have a complaint filed against him upon which a warrant of arrest may be issued. The statement of the charge or charges in a citation or a copy thereof may be accepted by the court in place of an information in any misdemeanor tried .in the first instance in the Court of Common Pleas.

D. "Complaint" means a statement of the essential facts constituting a criminal offense by one or more persons named or described therein. It shall be made under oath before a court or an official authorized to issue a warrant. It may be either written or oral, but

whenever the court or official hearing it deems practicable it shall be reduced to writing, signed by the complainant, and bear a record of oath signed by the person who administered it. The complaint shall refer to the State Code section, native custom, or other provision of the law which the accused is alleged to have violated, but any error in this reference or its omission may be corrected by leave of court at any time prior to sentence and shall not be ground for reversal of a conviction if the error or omission did not mislead the accused to his prejudice. If a felony is not charged, the court may accept a complaint in lieu of an information.

E. "Department" means the State Law Enforcement Department created by this Act,

F. "Judge or Justice" means any member of the Supreme Court, National Court, or Court of Common Pleas.

G. "Oath" shall include a solemn affirmation.

H. "Penal summons" means a written order summoning a person or persons to appear before a court at a time and place named therein, instead of commanding an arrest. Otherwise it shall meet all the requirements of a warrant. It shall contain a warning that failure to obey it will render the accused liable to arrest upon a warrant.

I. "Personal recognizance" means a promise made before an official authorized to accept bail that in consideration of the release of the person he will appear in accordance with all orders of the court and that if he fails to do so he will pay a stated sum of money.

J. "Policeman" means any member, employee, or agent of the Law Enforcement Department authorized by law, regulation, or the Administrator to enforce the State laws and to act as a State police officer.

K. "Search warrant" means a written order directed to a policeman, commanding him to search for and, if found, to seize and bring a particular court or official certain articles supposed to be in the possession of a person or at a place name or described in the search warrant. It shall be signed by the Clerk of Courts or by the official issuing it, it shall state the grounds or probable cause for its issuance and the name of the person or persons whose statements, under oath, have been taken in support thereof, and it shall designate the court or official to whom it shall be returned.

L. "State" means the State of Koror.

M. "State Attorney" means the legal officer or the staff of the State or any person appointed by the Administrator to supervise prosecutions throughout the State.

N. "Warrant of arrest" means a written order commanding that a person or persons be arrested and brought without unnecessary delay before a court named therein or otherwise dealt with according to law. It shall be signed by the Clerk of the Courts or by the official issuing it and shall contain the name of the accused or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the criminal offense charged and may do so by referring to either the original or a copy of the complaint or information attached to or on the same sheet as the warrant. Except where otherwise indicated, the word "Warrant" in this title refers to a "Warrant of Arrest."

SECTION 4. CREATION; COMPOSITION; SUPERVISION.

There shall be and hereby, is created a State police force to be known as the State Law Enforcement Department consisting of an armed, uniformed, and trained group of persons in sufficient numbers and ranks to maintain efficiently law and order within the State. The Department shall function under the general supervision of the Director of the Department and such technical supervisors as the Administrator shall appoint from time to time.

SECTION 5. RANKS WITHIN DEPARTMENT; STRENGTH.

A. The Department shall be organized by voluntary recruitment. It shall consist of the following ranks:

1. The Director (the equivalent of a chief of police), appointed under the provisions of Section 4 of this Act;

2. Captains of police, appointed under the provisions of Section of this Act;

3. Sergeants;

4. Patrolmen; and

5. Probationary patrolmen.

B. The strength of the Department shall be determined by the administrator upon recommendation of the Director and State Attorney.

SECTION 6. DUTIES OF DEPARTMENT.

It shall be the duty of the Department, under the direction of the Director, to preserve the peace, maintain order, enforce all laws, conduct criminal investigations, assist in the conduct of prosecutions in the courts of the State or of the Republic in the name, of the State, act as bailiffs and other court attendants as necessary, serve legal process issued by competent judicial authority, and, operate and administer all penal institutions in the State

SECTION 7. PROMULGATION OF RULES AND REGULATIONS FOR ADMINISTRATION AND OPERATION..

The Department shall be administered and operate under rules and regulations issued by the Administrator, who shall have the power to prescribe such rules nad regulations as he may deem advisable to implement this Act. Such rules and regulations shall have the force and effect of law.

SECTION 8. DIRECTOR OF DEPARTMENT; APPOINTMENT.

A. There shall be a Director of the Department who shall be responsible to the Administrator. The Director shall be appointed by the Administrator subject to the advise and consent of the House of Traditional Leaders and shall serve for a term of three years unless reappointed.

B. The Administrator may appoint an.acting director in case of death, incapacity, or prolonged absence of the Director. An acting director shall serve for a period no longer than ninety (90) days.

SECTION 9. DIRECTOR'S DUTIES.

The Director shall:

A. Head the Department and be responsible for the supervision of all members of the Department and for carrying out all rules and regulations regarding the organization, operation, and duties of the Department;

B. Supervise the prisons and jails in the State and be responsible for the receipt and proper treatment, housing, feeding, and clothing of all prisoners committed to his charge;

C. Serve or execute promptly every lawful process directed to him by a court or an officer authorized to issue process. Delivery of a process directed to the Director or to a captain of police shall be considered delivery to the Director and, subject to the directions of the Director, the captain receiving such process shall proceed to execute the same without delay;

D. When commanded by a court, personally attend any session of court and obey all lawful orders and directions issued by such court;

E. Provide a bailiff for all sessions of the courts of the State; and

F. Perform such other duties as may be prescribed by law or assigned to him by the Administrator.

SECTION 10. POLICE CAPTAINS; APPOINTMENT; DUTIES.

A. There shall be in the Department a sufficient number of regularly appointed police captains to enable the Director to carry out his duties promptly and efficiently.

B. Captains shall be appointed by the Administrator from nominations made by the Director. In an emergency, whenever required for the efficient performance of his duties, the Director shall appoint special captains, subject to the Administrator's approval. Captains shall serve for two years, unless sooner removed for cause or by reason of a reduction in force; they may be reappointed. Persons appointed special captains in an emergency shall serve until released as such by the Director or Administrator.

C. A captain shall act under the direction of the Director and shall have all of the authority and responsibility of the Director when so acting. In the absence of specific directives and when the Director is not available, as in the case of police captain on an outer island, a captain shall act in all respects as though he were the Director and shall be liable for his acts or failure to act to the same extent that the Director would in like circumstances.

SECTION 11. LIABILITY OF DIRECTORS AND CAPTAINS FOR DAMAGES.

A. The Director shall not be liable for any damages resulting from the lawful execution of the duties imposed by this Act or any other law of the State or Republic, but he shall act upon his own private accountability for all excesses of his official powers and for any departure from the lawful provisions of any process in his hands.

B. The Director or a captain to whom any lawful process is delivered shall be personally liable for any and all damages caused by his failure to serve or otherwise execute the same with reasonable diligence.

SECTION 12. PROCESS OBLIGATORY UPON POLICE.

A. All process in any criminal proceedings, in all contempt proceedings, and in any proceedings affecting or brought by the State proceedings, issued in accordance, with law and the Courts of the Republic of Palau Rules of Criminal Procedure prescribed in accordance with law, shall be obligatory upon all policemen having knowledge thereof, and any policeman to whom such process is given shall promptly make diligent effort to execute or serve the same either personally or through another policeman.

SECTION 13. LIMITATION OF ARREST WITHOUT A WARRANT.

No arrest of any person shall be made without first obtaining a warrant therefore, except in the cases authorized in this Act or as otherwise provided by law.

SECTION 14. USE OF PENAL SUMMONS IN LIEU OF WARRANT OF ARREST.

A. In the case of all criminal offenses for which the lawful punishment does not exceed a fine of \$100.00 or six months imprisonment, or both, a penal summons to appear before a court at a time and place

fixed in the penal summons shall be issued instead of a warrant of arrest, unless it shall appear to the court or official issuing the process that the public interest requires the arrest of the accused.

B. Upon request of the complainant, a penal summons instead of a warrant may be issued in any case.

C. If, after a penal summons has been served upon him, the accused fails to appear in response to the penal summons without an excuse known to and deemed adequate by the court named therein, a warrant shall be issued.

SECTION 15. EXECUTION OF WARRANTS AND SERVICE OF PENAL SUMMONS.

A warrant of arrest shall be executed or the penal summons served by a policeman or by a person specifically authorized in the warrant or summons to execute or serve it. The warrant may be executed or the summons served at any place within the jurisdiction of the State. A penal summons shall be served upon the accused by delivering a copy to him personally and orally explaining the substance thereof to him in language generally understood in the State and, if practicable, in one understood by the accused, or by leaving it at his dwelling house or usual place of abode or of business with some person of suitable age and discretion then residing or employed therein and orally explaining to such person the substance thereof.

SECTION 16. RETURN OF SERVICE.

A. The person executing a warrant shall endorse thereon and sign a statement of the arrest showing the date and place of arrest and shall have such warrant delivered to the court or official before whom the accused is brought or to the court named in the warrant if the accused is brought or to the court named in the warrant if the accused is released on bail or personal recognizance before being brought before a court or official.

B. At or before the time stated in penal summons for appearance of the accused, the person to whom a penal summons is delivered for service shall endorse and sign a report of his action thereon and have such summons delivered to the court named therein. If he has served the summons, his report shall show the date, place, and method of service.

SECTION 17. ISSUANCE OF ORAL ORDER IN LIEU OF WARRANT OR PENAL
SUMMONS BY COURT.

A. A court or any judge or justice thereof may, if the court or judge or justice deems the public interest so requires, issue an oral order in place of either a warrant of arrest or a penal summons, which shall

have the same force and effect within the territorial jurisdiction of that court as a warrant or penal summons.

B. Such an oral order may be served by orally communicating the substance thereof to the accused and the report of execution or service of such an order may be made orally.

C. Any person making an arrest on an oral order or serving such an order in place of a penal summons shall report all the essential facts to the court or official before whom the accused is brought or ordered to appear.

D. Any person by going to trial before a court without requesting a copy of the charges against him thereby waives his right to receive a copy in advance of trial in that court, but he does not thereby waive his right to such copy before trial in a court in the event of an appeal.

SECTION 18. ISSUANCE OF WARRANT OR PENAL SUMMONS ON INFORMATION.

The State Attorney may file an information signed by him in any court competent to try the accused for a criminal offenses or offenses charged therein. If the information states the essential facts constituting a criminal offense or offenses by one or more persons named or described therein and is supported by one or more written statements under oath showing to the satisfaction of the court that there is probable cause to believe or strongly suspect that the offense complained of has been committed by such person or persons, the court shall, upon request of the State Attorney, issue its warrant or penal summons as upon a complaint.

SECTION 19. AUTHORITY TO ARREST WITHOUT WARRANT.

Arrest without a warrant is authorized in the following situations:

A. Where a breach of the peace or other criminal offense has been committed and the offender shall endeavor to escape, he may be arrested by virtue of an oral order of any official authorized to issue a warrant

or without such order if no such official be present.

B. Anyone in the act of committing a criminal offense may be arrested without a warrant by any person present.

C. When a criminal offense has been committed and a policeman has reasonable ground to believe that the person to be arrested has committed it, such policeman may arrest the person without a warrant.

D. Policemen, even in cases where it is not certain that a criminal offense has been committed, may, without a warrant, arrest and detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony.

SECTION 20. USE OF CITATIONS.

A policeman in any case in which he may lawfully arrest a person without a warrant, may, subject to such limitations as his superiors may, if he deems that the public interest does not require an arrest, impose, issue, and serve a citation upon the person instead of making an arrest.

SECTION 21. COMPLAINTS IN CASES OF ARREST WITHOUT WARRANT.

When a person arrested without a warrant, a complaint shall be made against him forthwith, if that has not already been done.

SECTION 22. ARRESTED PERSON TO BE INFORMED OF CAUSE AND AUTHORITY OF ARREST.

A. Any person making an arrest shall, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest.

B. A policeman making an arrest by virtue of a warrant need not have the warrant in his possession at the time of the arrest. After the arrest, the person arrested may request to see the warrant, and it shall be shown to him as soon as possible.

SECTION 23. USE OF FORCE IN MAKING ARREST.

In all cases where the person arrested refuses to submit or attempts to escape, such degree of force may be used as is necessary to compel submission.

SECTION 24. DISPOSITION OF PERSONS ARRESTED BY PRIVATE PERSONS.

(Intro. as Bill No. 3-2)

Any private person making an arrest shall deliver the arrested person to a policeman or an official authorized to issue a warrant without unnecessary delay and shall explain the cause of the arrest. Except where transportation difficulties are involved or neither a policeman nor an official authorized to issue a warrant can be located promptly, such delay should not extend beyond a few hours during the daytime or early evening nor beyond 10 o'clock on the following morning in the case of persons arrested during the night time.

SECTION 25. DISPOSITION OF ARRESTED PERSONS BY POLICEMAN.

Persons either arrested by a policeman or delivered to him after arrest by a private person shall be brought without unnecessary delay before a court competent to try the offender for the criminal offense charged, subject to the following:

A. If bail has been fixed, it shall be accepted and the arrested person released to appear in accordance with all orders of the court named in the warrant or any court to which the case may be transferred. Reasonable opportunity to raise bail shall be afforded by permitting the person arrested to send a message or messages, through a policeman or other persons by telephone, cable, wireless, messenger, or other expeditious means, to any person likely to assist in securing bail. Such message must be sent without expense to the government or the arrested person must prepay any expense there may be to the government.

B. If it appears that it will not be practicable to bring the arrested person promptly before a court competent to try him for the offense charged and if he has not been released on bail or personal recognizance, he shall be brought before an official authorized to issue a warrant without unnecessary delay. This official shall commit the arrested person, discharge him, or release him on bail or personal recognizance as provided in this title. Whenever a judge or justice of
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court is available, the arrested person shall be brought before such a judge or justice in preference to any other official authorized to issue a warrant.

SECTION 26. RIGHTS of PERSONS ARRESTED

A. In any case of arrest, it shall be unlawful:

1. To deny to the person so arrested the right to see at reasonable intervals and for a reasonable time at the place of his detention, counsel, members of his family, his employer, or a representative of his employer; or

2. To refuse or fail to make a reasonable effort to send a message, by telephone, cable, wireless, messenger or other expeditious means, to any person mentioned in subsection (A)1 of this Section, provided the arrested person so requests and such message can be sent without expense to the government or the arrested person prepays any expense there may be to the government; or

3. To fail either to release or charge such arrested person with a criminal offense within a reasonable time, which under no circumstances shall exceed 24 hours; and

4. For those having custody of one arrested, before questioning him about his participation in any crime, to fail to inform him of his rights and their obligations under subsections (A)1-3 of this Section.

B. In addition, any person arrested shall be advised as follows:

1. That the individual. has a right to remain silent and that any statement he makes may be used against him in a court;

2. That the police will, if the individual so requests, endeavor to call counsel to the place of detention and allow the individual to confer with counsel there before he is questioned further and allow him to have counsel present while he is questioned by the police if he so desires; and

3. That the services of the public defender, when in the

vicinity of his local representative, are available for these purposes without charge.

SECTION 27, EFFECT OF VIOLATION OF ACT.

No violation of the provisions of this Act shall in and of itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused. Any person detained in custody in violation of any provision of this Act may, upon motion by any person in his behalf and after such notice as the court may order, be released from custody by the court named in the warrant or before which he has been hold to answer. The release shall be upon such terms as the court may deem law and justice require. The relief authorized by this Section shall be in addition, to, and shall not bar, all forms of relief to which the arrested person may be entitled otherwise by law.

SECTION 28. SEVERABILITY; SAVINGS CLAUSE; APPLICATION.

A. If a court of competent jurisdiction holds that a portion or portions of this Act are unlawful, such holding shall not affect or invalidate any of the remaining parts of this Act.

B. No provision of this Act shall apply or be construed in any way so as to conflict with the laws or Constitution of the Republic of Palau.

SECTION 29. EFFECTIVE DATE.

This Act becomes effective upon its being approved by the House of Traditional Leaders or upon its becoming law without such approval.

CERTIFIED BY:

ATTESTED TO BY:

_____/s/
ROMAN YANO, SPEAKER

_____/s/
RENA ILUCHES, CLERK

APPROVED THIS 22ND DAY OF December 1989.

_____/s/
IBEDUL YUTAKA M. GIBBONS
CHIEF KOROR STATE