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**FOR PUBLICATION**

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

BY:   
DEPARTMENT OF THE COURT

<b>COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,</b>	)	<b>CRIMINAL CASE NO. 16-0067</b>
	)	
<b>Plaintiff,</b>	)	
	)	<b>ORDER DENYING DEFENDANT'S</b>
<b>v.</b>	)	<b>REQUEST FOR JURY TRIAL FOR</b>
	)	<b>CHILD ABUSE OR NEGLECT IN</b>
<b>JESSE BILLY MAILUW JR.,</b>	)	<b>VIOLATION OF 6 CMC § 5312 BECAUSE</b>
	)	<b>PROVIDING APPROPRIATE</b>
<b>Defendant.</b>	)	<b>COUNSELING DOES NOT ENTITLE A</b>
	)	<b>DEFENDANT TO A JURY TRIAL</b>
	)	<b>UNDER 7 CMC § 3101(a)</b>

**I. INTRODUCTION**

This matter initially came before the Court on April 27, 2016 for a Status Conference at 9:00 a.m. in Courtroom 220A. This Status Conference was regarding Defendant's request for a jury trial at his April 25, 2016 arraignment. The Court subsequently ordered supplemental briefing from the parties on April 29, 2016. The Court heard arguments from the parties as to their supplemental briefs on June 29, 2016. The Commonwealth was represented by Assistant Attorney General Shannon Foley. Defendant Jesse Billy Mailuw Jr. appeared in Department of Corrections' custody and was represented by Assistant Public Defender Michael Sato.

Based on a review of the filings, oral arguments, and applicable law, the Court **DENIES** the Defendant's request for a jury trial.

**II. BACKGROUND**

On April 18, 2016, the Defendant was charged by Information with Disturbing the Peace in violation of 6 CMC § 3101(a), made punishable by 6 CMC § 3101(b); Assault in violation of 6

1 CMC § 1201(a), made punishable by 6 CMC § 1201(b); and Child Abuse or Neglect in violation of  
2 6 CMC § 5312, made punishable by 6 CMC § 5312(c).

3 The Defendant filed his Court Ordered brief<sup>1</sup> on April 26, 2016, arguing that the Child  
4 Abuse or Neglect charge entitled him to a jury trial. The Commonwealth filed its Opposition<sup>2</sup> to  
5 Demand for Jury Trial in Court on April 27, 2016. The Defendant did not file a Reply.

6 On April 29, 2016, the Court ordered supplemental briefing due to the limited time the  
7 parties had to brief the issue.<sup>3</sup> The Defendant filed his Opening Brief on May 27, 2016. The  
8 Commonwealth filed its Response to Defendant’s Opening Brief, on June 17, 2016. The Defendant  
9 filed his Reply on June 24, 2016. The Court heard arguments as to the supplemental briefs on June  
10 29, 2016.

### 11 III. DISCUSSION

#### 12 **A. The Right to a Jury Trial in the Commonwealth of the Northern Mariana Islands is 13 Enumerated In 7 CMC § 3101(a)**

14 In the Commonwealth of the Northern Mariana Islands, a defendant’s right to a jury trial is  
15 dictated by the Northern Marianas Commonwealth Legislature<sup>4</sup> (“Commonwealth Legislature”).  
16 NMI CONST. ART. I, § 8 (“The legislature may provide for trial by jury in criminal or civil cases.”).  
17 The Commonwealth Legislature articulates the right to a jury trial in both criminal and civil cases in  
18 7 CMC § 3101. In criminal cases, a defendant “accused by information of committing a felony

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21 <sup>1</sup> At the April 25, 2016 arraignment, Assistant Public Defender Tillman Clark stated that the Defendant would be  
22 requesting a jury trial, and indicated his office’s intention to brief the issue. Assistant Public Defender Michael Sato’s  
23 “Court Ordered Brief” is the Defendant’s brief on this issue.

24 <sup>2</sup> The Court notes that the Defendant was previously acquitted of Child Abuse or Neglect by a jury in Crim. No. 14-  
0058. In that case, the Commonwealth did not object to a jury trial on the Child Abuse or Neglect charge. In the present  
case, the Commonwealth opposes the Defendant’s request for a jury trial.

<sup>3</sup> The parties had between April 25, 2016 and April 27, 2016 to brief this issue initially. In the interest of a more robust  
record and to allow the parties to flesh out their arguments, the Court ordered the parties to submit supplemental briefs.

<sup>4</sup> The full official name of the Commonwealth Legislature is the Northern Marianas Commonwealth Legislature. NMI  
Const. art. II, § 1.

1 punishable by *more than five years imprisonment or by more than \$2,000 fine, or both*, shall be  
2 entitled to a jury of six persons.” 7 CMC § 3101(a) (emphasis added).

3 This limited right to a jury trial has been upheld time and time again. *See Commonwealth v.*  
4 *Atalig*, 723 F.2d 682 (9th Cir. 1984) (upholding the Commonwealth’s limited right to jury trial  
5 under Section 501 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands  
6 and 5 TTC § 501(1)); *Commonwealth v. Peters*, 1 NMI 466, 473-474 (1991) (holding that, although  
7 the Commonwealth is no longer a trust territory, the reasoning in *Atalig* is still valid);  
8 *Commonwealth v. Zhen*, 2002 MP 4 ¶14 (upholding the constitutionality of 7 CMC § 3101(a));  
9 *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶21 (upholding the constitutionality of 7 CMC §  
10 3101(a)); *Commonwealth v. Diaz*, 2013 MP 20 ¶¶30-45 (declining to overturn *Atalig* and its  
11 progeny); *Commonwealth v. Calvo*, 2014 MP 7 ¶¶17-23 (again declining to overturn *Atalig* and its  
12 progeny).

13 **B. The Maximum Penalty For Child Abuse or Neglect under 6 CMC § 5312(c) Does Not**  
14 **Entitle a Defendant to a Jury Trial under 7 CMC § 3101(a)**

15 The Defendant is charged with Child Abuse or Neglect in violation of 6 CMC § 5312,  
16 which is made punishable by 6 CMC § 5312(c). Under 6 CMC § 5312(c):

17 A person convicted of child abuse may be punished by imprisonment for not more  
18 than five years, a fine of not more than \$2,000, or both; however, the court may,  
19 *upon conviction, order that the person be provided with appropriate counseling to*  
20 *cure, alleviate or prevent psychological problems that are judged to be related to the*  
21 *child abuse incident.*

22 6 CMC § 5312(c) (emphasis added).

23 The crux of the Defendant’s argument is that, since the punishment for Child Abuse or  
24 Neglect may include court-ordered counseling upon conviction, that this exceeds the threshold  
sentence outlined in 7 CMC § 3101(a). In its opposition and supplemental briefs, the  
Commonwealth focuses its arguments on the constitutionality of 7 CMC § 3101(a), rather than

1 focusing on whether the court-order counseling would exceed the threshold required for a jury trial  
2 under 7 CMC § 3101(a). Despite this, the Commonwealth does address the Defendant’s argument  
3 head on in its opposition, stating that the counseling mentioned in 6 CMC § 5312(c) is a  
4 “permissible condition that does not pose additional restrictions on the defendant’s freedom.” Opp.  
5 at 2.

6 In examining the statutory right to a jury trial outlined in 7 CMC § 3101(a), the Court turns  
7 to principles of statutory construction. “A basic principle of statutory construction is that language  
8 must be given its plain meaning.” *Century Insurance Co., Ltd. v. Guerrero*, 2009 MP 16 ¶ 20  
9 (quoting *Estate of Faisao v. Tenorio*, 4 NMI 260, 265 (1995)). Further, courts “should avoid  
10 interpretations of a statutory provision which would defy common sense [or] lead to absurd  
11 results.” *Kabir v. CNMI Public School System, et al.*, 2009 MP 19 ¶ 35 (quoting *Commonwealth*  
12 *Ports Auth. v. Hakubotan Saipan Enterprises*, 2 NMI 212, 224 (1991)).

13 The Commonwealth argues that a plain reading of 7 CMC § 3101(a) shows that the statute  
14 only considers two types of punishments: imprisonment and a fine. Commonwealth’s Resp. at 5.  
15 Thus, under the Commonwealth’s theory, any counseling would be outside of the two types of  
16 punishment contemplated by 7 CMC § 3101(a). The Commonwealth also argues that any  
17 counseling under 6 CMC § 5312(c) must merely be “provided” to the Defendant, and that it is not  
18 an additional punishment under the meaning of 7 CMC § 3101(a). Commonwealth’s Resp. at 6.

19 The Defendant argues that the Commonwealth Legislature intended to include counseling as  
20 a part of a defendant’s sentence under 6 CMC § 5312(c). Further, the Defendant argues that the  
21 “provided” counseling, if ordered by the Court, would expose a defendant to contempt of court  
22 should he fail to attend the counseling sessions. Def.’s Reply at 3.

23 Under 7 CMC § 3101(a), a defendant has the right to a jury trial in cases involving “a felony  
24 punishable by more than five years imprisonment or by more than \$2,000 fine, or both.” 7 CMC §

1 3101(a) (emphasis added). The jury trial threshold is “by more than five years imprisonment” or  
2 “by more than \$2,000 fine.” *Id.* This phrasing indicates that “by more than” modifies either the term  
3 of imprisonment or the fine, and does not reference any additional conditions, such as counseling.

4 Ordinarily, conditions such as restitution and probation can only be imposed if a defendant’s  
5 sentence includes a suspended sentence. *Commonwealth v. Calvo*, 2014 MP 7 ¶ 64 (citing 6 CMC §  
6 4104(a)). A suspended sentence is a sentence where the Court “suspends execution or imposition of  
7 any sentence of imprisonment or fine.” 6 CMC § 4104(a). This allows the Court to then “impose  
8 any terms and conditions of probation which benefit the community and serves the interests of  
9 justice,” which can include, for example, treatment plans for rehabilitation related to the charged  
10 offense. 6 CMC § 4104.

11 In 6 CMC § 5312(c), the Commonwealth Legislature allows the court to “order that the  
12 person be provided with appropriate counseling to cure, alleviate or prevent psychological problems  
13 that are judged to be related to the child abuse incident.” By including this in the penalty for Child  
14 Abuse or Neglect, the Commonwealth Legislature allows the Court to impose a condition upon the  
15 defendant outside of the typical suspended sentence framework. Sentencing under 6 CMC §  
16 5312(c) allows a court to “order that the person be provided with appropriate counseling” even if  
17 there is no suspended sentence. By allowing counseling as part of the sentence for Child Abuse or  
18 Neglect, the Commonwealth Legislature is focused on rehabilitative sentencing options without  
19 requiring a suspended sentence.

20 Allowing counseling in Child Abuse or Neglect cases without a suspended sentence allows  
21 the Court to address the individual needs of each case. For instance, in one case, a defendant could  
22 be sentenced to the maximum penalty of five years and \$2,000. In that case, the Court would still be  
23 able to order counseling for that defendant despite the lack of a suspended sentence. On the other  
24 end of the sentencing spectrum, the Court could also sentence a defendant to no imprisonment and

1 no fine, but the Court would still be able to order counseling despite the lack of a suspended  
2 sentence.

3 By its nature, Child Abuse or Neglect is a crime that involves family members. Traditional  
4 punishments for convicted criminal defendants involving incarceration, retribution, or deterrence  
5 may not be able to give defendants the necessary skills needed to prevent Child Abuse or Neglect.  
6 By including counseling in 6 CMC § 5312(c), the Commonwealth Legislature is acknowledging  
7 that often defendants in Child Abuse or Neglect cases may be better served by learning parental  
8 skills or anger management to cure the root cause of the abuse or neglect.

9 If the Commonwealth Legislature had intended to mandate a jury trial for the offense of  
10 Child Abuse or Neglect, as the Defendant argues, the Commonwealth Legislature could have  
11 simply worked within the framework of 7 CMC § 3101(a) and crafted a sentence such as “not more  
12 than five years and one day, or not more than \$2,001, or both.” Instead, the Commonwealth  
13 Legislature expressly enacted Child Abuse or Neglect under 6 CMC § 5312 with a maximum  
14 penalty of “not more than five years, a fine of not more than \$2,000, or both;” therefore, a  
15 defendant charged with Child Abuse or Neglect is not entitled to a jury trial under 7 CMC §  
16 3101(a). The law as written does not entitle the Defendant to a jury trial for the charge of Child  
17 Abuse or Neglect.

#### 18 IV. CONCLUSION

19 Accordingly, the Defendant’s request for jury trial is **DENIED**.

20 **IT IS SO ORDERED** this 16<sup>th</sup> day of August, 2016.

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JOSEPH N. CAMACHO  
Associate Judge