

§ 103. Further Definitions.

The definitions in this section also apply throughout this title, unless otherwise specified or a different meaning is plainly required:

(a) “Obtain” means:

(1) In relation to property, to bring about a transfer or purported transfer of a legal interest in the property.

(2) In relation to labor or service, to secure performance thereof.

(b) “Occupied structure” means any structure, vehicle, vessel or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present. If a building or structure is divided into separately occupied units, any unit not occupied by the defendant is an occupied structure of another.

(c) “Offense” means an act or omission which is punishable by penal sanctions under the provisions of this title.

(d) “Official detention” means detention by a public servant of the Commonwealth or by any other person legally authorized or empowered under Commonwealth law to arrest or detain persons on behalf of the Commonwealth government, and does not include probation or parole, or constraints incidental to release on bail.

(e) “Official duty” means those obligations of performance, care, action, assistance, forbearance, or observance which rest upon a person in an official capacity.

(f) “Official proceeding” means a proceeding conducted or heard, or which may be conducted or heard, before any legislative, judicial, administrative or other lawfully established body or agency of the Commonwealth and includes proceedings conducted or heard before government bodies and officials authorized to administer oaths, compel the appearance of witnesses and production of records, and notaries public or other persons taking testimony or any deposition in connection with any such proceeding, and includes all judicial and administrative proceedings of the government of the Trust Territory of the Pacific Islands which arise in the Commonwealth.

(g) “Person” means any natural human being and, where relevant, a corporation, unincorporated association or other entity.

(h) “Property” means anything of value, including money, negotiable instruments, real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, and electric or other power.

(i) “Property of another” means any property in which any person other than the defendant has a possessory or proprietary interest, and includes property in which any person other than the defendant has an interest which the defendant is not privileged to infringe, regardless of the fact that the defendant also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the

defendant shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(j) “Public place” means a place where the general public has a right, permission, or license to resort, gather together, or pass to and fro, and which is usually accessible and normally visited by many persons.

(k) “Public accommodation” means any establishment which provides lodging to transient guests for charge, or any establishment which is engaged in selling food, beverage or gasoline to the public, or any place of recreation, amusement, exhibition, sightseeing, or entertainment which is open to members of the public, or any facility for the public transportation of persons or goods.

(l) “Public servant” means any elected or appointed official, employee, or authorized agent of any branch, department, agency, public authorized corporation, association, commission, council or other instrumentality of the Commonwealth government; including mayors, legislators and judges, and any person acting as an advisor, consultant or otherwise, in performing a governmental function. The term “public servant” does not include witnesses.

(m) “Reckless” or “recklessly” means conduct manifesting a willful or wanton disregard for the nature and consequences of the act, or for the physical safety of another.

(n) “Serious bodily injury” means bodily injury that

(1) creates risk of death or causes death;

(2) causes permanent disfigurement; or

(3) causes a permanent or protracted loss or impairment of the function of any bodily member, organ, or mental faculty.

(o) “Serious psychological injury” means psychological or emotional damage that requires protracted psychological treatment or is characterized by extreme behavioral changes or severe physical symptoms.

(p) “Services” includes labor, professional service, transportation, telephone or other public service, accommodation in or food from hotels, restaurants or elsewhere, admission to exhibitions, and use of vehicles or other movable property.

(q) “Sexual Contact” is the intentional touching of the victim’s or actor’s intimate parts which include but are not limited to the primary genital area, groin, inner thigh, anus, buttock, or breast of a human being or the intentional touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.

(r) “Sexual intercourse” means coitus whether or not there is any emission.

(s) “Spouse” includes the husband or wife of a customary marriage.

(t) “Transfer” means sale, gift, purchase or any other means by which ownership or temporary rights of use and control are conveyed or shifted from one person to another.

(u) “Unlawfully” means without lawful authority or purpose, or contrary to law, regulation or order of the detaining authority.

(v) “Usurps” means to seize, take possession of or otherwise control with wrongful intent, or without lawful authority.

(w) “Writing” includes printing or any other method of recording information, money, coins, tokens, checks, negotiable instruments, stamps, seals, credit cards, badges, trade-marks, and other symbols of value, right, privilege, or identification.

(x) “Vandalize” or “Vandalism” shall mean the action involving destruction, damage, and/or defacing to public or private property.

Source: PL 3-71, § 1 (§ 104); amended by PL 3-72, § 2 (§ 104); subsection (r) amended by PL 18-3, § 8 (Mar. 15, 2013); (n) repealed by PL 19-42, § 3 (Apr. 11, 2016); amended by PL 21-18, § 2 (Mar. 21, 2020); PL 23-6, § 1 (Aug. 1, 2023); PL 23-14, § 4 (Dec. 12, 2023), modified.

Commission Comment: The Commission inserted quotation marks around the phrase “Sexual Contact” in subsection (r) pursuant to 1 CMC § 3806(g).

Legislative Findings of 2023 Amendment.—In addition to severability and savings clause provisions, PL 23-6 included the following Findings and Purposes section:

Section 1. Findings and Purposes. The Legislature finds that public service is a privilege entrusted to certain individuals, commonly referred to as public servants and/or public officials, to provide service to all members of the community. Cognizant of such an honorable privilege, these individuals, whether elected or appointed, are regarded in high esteem as they are intended to serve for the common good of the general population. The Legislature further finds that as public servants/public officials, they must be held to a standard commensurate to the high esteem in which they are held.

This legislation provides an expanded and clarified definition of official misconduct and assigns specific felony and misdemeanor punishments, depending on the type of underlying misconduct. As the CNMI Supreme Court has noted, the Penal Code does not expressly define who is a “public official” for the offense of official misconduct, making it subject to some interpretation. *CNMI v. Kaipat*, 2 N.M.I 322 (SC 1991) (discussing whether police officer is a public official in the absence of statutory definition). This bill defines the phrase by referencing the statutory definition of “public servant” in the Penal Code. This bill also enhances the punishments associated with the crime of misconduct in public office by applying felony punishment ranges to the most serious acts of misconduct and the loss of substantial amounts of public funds.

Short Title and Legislative Purpose of 2023 Amendment.—For Short Title and Purpose section of PL 23-14, see Commission comment to 6 CMC § 102.

Drafting Marks Omitted.—In codifying PL 23-14, the Commission omitted text marked with strikethrough and removed underlines from new statutory text.