§ 1302. Sexual Assault in the Second Degree.

(a) An offender commits the crime of sexual assault in the second degree if

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

(2) the offender engages in sexual contact with a person

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

(B) who is in the offender's care

(i) by authority of law; or

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

(3) the offender engages in sexual penetration with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed; or

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

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

(B) the offense takes place during the course of professional treatment of the victim.

(b) Sexual Assault in the second degree is punishable by imprisonment of not less than two years and not more than fifteen years, a fine of not more than $10,000, or both. Notwithstanding any other provision of law, a person sentenced under this provision and 6 CMC section 4252 shall not be eligible for parole, if at all, until two-thirds of this minimum sentence (487 days) has been served.

Source: PL 3-71, § 1 (§ 405); amended by PL 3-72, § 2 (§ 405); repealed and replaced by PL 12-82, § 3 (1302); subsection (b) amended by PL 18-3, § 2 (March 15, 2013).

Commission Comment: See comment to 6 CMC § 1301 regarding PL 12-82. The Commission struck the figures "2" and "15" from subsection (b) pursuant to 1 CMC § 3806(e). PL 18-3, in addition to savings and severability clauses, contained the following:

> Section 1. Findings. The Legislature finds that existing laws governing domestic violence and sex crimes require serious revision to better protect the victims of sexual violence and domestic violence crimes. Together with the Northern Marianas Coalition Against Domestic & Sexual Violence and the significant input of the Criminal Division of the Office of the Attorney General, the Legislature hereby amends current CNMI law with the best interests of the victims of sexual and domestic violence in mind. While it has been asserted that portions of the legislation proposed herein "would hinder prosecution; the legislative intent is based on

a misstatement of the law; and, policy-wise, CNMI prosecutors believe it may have the opposite effect of resulting in fewer convictions," (See Governor's Communication 17-464 re veto of HB 17-193 HD1) We, the Legislature as policy makers, strongly disagree.

For the record, this bill was introduced in May of 2011 after it was reviewed and approved by the Criminal Division of the CNMI Office of the Attorney General and the Northern Marianas Coalition Against Domestic & Sexual Violence in the form of House Bill 17-193. It was later amended and passed by the House in the form of HB 17-193-HDl after the House Judiciary and Governmental Operations Committee (JGO) issued Standing Committee Report 17-090. The JGO Committee recommended passage in the form of House Draft 1, which increased the penalties after considering comments from the CNMI Board of Parole and the Northern Marianas Coalition Against Domestic & Sexual Violence, both of whom fully supported the Act. *See* SCR1 7-90 (Aug. 8, 2011) at 3.

After passage by the Senate, HB 17-193 HDI was vetoed by Governor Benigno R. Filtial on November 30, 2012. In his veto message Governor Filial cited an "Opinion" signed by Dep. AG Viola Alepuyo. However, after careful review, none of the reasons put forth in the "opinion" were sufficient—even taken as a whole, to veto the original legislation. Any technical errors that may have existed could easily have been addressed by the CNMI Law Revision Commission in the codification process. Any concerns that the bill would result in fewer convictions because of the increased penalties were unsupported. Accordingly, We find this opinion has no merit.

Moreover, we specifically deem the suggestion that prosecutors may under-charge crimes for whatever reason to be patently offensive and grossly insulting to the victims of domestic and sexual violence.

After reviewing comments from both the CNMI Board of Parole and the Northern Marianas Coalition Against Domestic & Sexual Violence in favor of the legislation which was drafted with the active participation of the CNMI Office of the Attorney General's Criminal Division, We expressly disagree with Alepuyo's opinion upon which the Governor relied. The instant bill contains very minor technical revisions which would have been addressed by the CNMI Law Revision Commission adequately had it been passed into law in its original form.

Furthermore, We find it necessary to note that since the veto of this bill's original version, HB 17-193 HD1, on November 30, 2012, there were 4 cases charged by the Office of Attorney General relating to Sexual Abuse of a Minor. Prior to this, there were a total of 9 cases charged in October and November 2012 alone. Not one of these 13 cases will be subject to the reasonable and proper increased penalties contained herein. The present laws are simply not deterring criminal activity well enough. Clearly, too many victims are not getting justice due to the lack of real teeth in the present laws. Accordingly, the passage of this law is long overdue.

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 1: CRIMES AGAINST THE PERSON

Having addressed the background and record of this bill, We turn now to address its clear necessity: the urgent need to strengthen provisions regarding sex crimes and domestic violence by establishing minimum mandatory sentences for Sexual Assault and Sexual Abuse of a Minor, increasing the time-served component necessary for parole eligibility, and amending existing definitions to clarify provisions relating to sex crimes and domestic violence.

This Act revises the penalty provisions for crimes involving Sexual Assault as set forth in 6 CMC sections 1302-1304 and Sexual Abuse of a Minor as set forth in 6 CMC sections 1307-1309. It also increases the "time-served" component necessary for parole eligibility. In some cases, this legislation raises the maximum term of imprisonment with the intention of deterring crime or providing more time for victims to recover or mature prior to a sex offender's release from custody or his first appearance at a parole hearing.

The Legislature finds that the present range for Sexual Assault as well as Sexual Abuse of a Minor in the second degree is punishment by zero (0) days incarceration all the way up to ten (10) years. The lack of a minimum sentence coupled with the lack of a ceiling that imposes any serious deterrent effect must be addressed immediately. Thus, the new penalty will raise the minimum sentence from no time at all to at least two years as set forth herein. This Act will also increase the maximum sentence from ten to fifteen years in serious cases of sexual abuse or assault.

In doing so, the Legislature will adjust the penalty for crimes which may include acts such as the sexual penetration of a minor, or of a mentally incapable adult, or someone who is incapacitated—to an amount that may deter more crime or at a minimum, provide more retributive justice to victims of sexual abuse.

Similarly, the crimes of third degree Sexual Assault and Sexual Abuse of a Minor have an upper limit of five (5) years but presently no minimum amount of time to serve. The same applies to fourth degree Sexual Assault as well as fourth degree Sexual Abuse of a Minor where the maximum penalty is one (1) year and again, there is absolutely no minimum. The Legislature finds the maximum amount of time governing the punishment of third and fourth degree Sexual Assault as well as Sexual Abuse of a Minor to be dangerously low. A maximum sentence of five years for crimes that may involve not just sexual contact but actual sexual *penetration* is insufficient.

For example, the current maximum penalty for someone who engages in penetration and occupies a position of authority over the victim is 5 years under 6 CMC section 1308(b). Significantly, there is no minimum penalty whatsoever. Furthermore, an offender who is under 16 years of age and engages in penetration with a person who is under 13 years of age and at least 3 years younger than the offender is subject to not more than a one year sentence under 6 CMC section 1309 as a violation of Sexual Abuse of a Minor in the fourth degree.

This legislation will ensure that the offender will be sentenced to at least two thirds of the minimum relevant sentence, where the current minimum is absolutely zero. This legislation will also lift the current low "ceilings." The maximum sentences in cases of Second Degree Sexual Abuse of a Minor and Second Degree Sexual Assault should be lifted from 10 to 15 years to allow for more deterrence or at a minimum, more protection for victims.

Furthermore, the Legislature also finds that the time-served component of a sentence is currently too low in cases of Sexual Abuse of a Minor and Sexual Assault where a convicted sex offender may be paroled after serving only one third of a sentence. This is especially true in cases involving second, third, and fourth degree violations where the mandatory sentencing provisions of 6 CMC section 4102 do not apply. (We appreciate the CNMI Board of Parole's comments. This version incorporates completely and without substantive amendment the parole-related items that the Board approved.)

To illustrate the point, even with the revised upper limit of fifteen years as in the case of second degree Sexual Assault, a victim of a second degree sex crime could very well be a minor child-both at the time of the crime, as well as at the time of the parole hearing five years later. For example, a victim who is 11 to 16 years of age would be no older than 16 or 21 years of age when the need to testify at a parole hearing would arise. To address the foregoing, the Legislature finds that the present requirement of serving one-third of a sentence under 6 CMC section 4252 to be seriously deficient given the nature of the crime.

It is especially deficient considering the potential tender years of the victims-both at the time of the crime and relevantly, at the time of the parole hearing. For this reason, the present minimum amount of one third time-served shall be increased to no less than two-thirds "time-served" relative to the amount of the unsuspended sentence before a convicted sex offender is allowed to seek parole.

The Legislature also finds that there is a need to revise the definition of "sexual contact." This revision is necessary to address the present ambiguity that may exist because there are two statutory definitions—one set forth in 6 CMC section 103(r) and one set forth in 6 CMC section 1317(7). The revised definition herein deletes both original definitions and makes both provisions: 6 CMC sections 103(r) and 1317(7), exactly the same. (The CNMI Law Revision Commission is authorized by law to codify legislation in a manner that is in line with the clear and express intent of the legislation notwithstanding technical errors. For example, the omission of the text "subsection (r)" would have been easily and quickly addressed by the LRC via a "Comment" to the codified version.)

In addition, the new definition lists parts of the human anatomy that are governed, including the clothing of a victim, while also expanding the definition to include any sexual contact of an improper sexual nature-as opposed to focusing and limiting the areas of contact to a particular part

of the body. This revision should place the focus properly on the mental state of the perpetrator who may touch or grope a victim on any part of the victim-even those not currently governed by the statute.

Consequently, this new definition will allow the proper prosecution of the illegal sexual conduct that is not limited to the part of the anatomy that was contacted nor the gender of the victim. We disagree with the notion that this new definition, one that harmonizes the two present dissimilar provisions, is flawed in that it may criminalize benign conduct and make criminal prosecutions of actual abuse more difficult.

In addition, the revisions to the definitions are necessary to remove potential loopholes in the law pertaining to grooming activity and crimes targeting young boys. For example, if a young boy reported initial touching of his breast or initial touching of a "grooming nature" as it is understood by law enforcement experts, such activity would not be considered sexual assault under the current definitions. It is unthinkable to have to wait for the offender's abuse to progress for the young boys' cries to be heard. These are not "relatively benign" acts. As stated by the Northern Marianas Coalition Against Domestic & Sexual Violence, these acts "are abusive and assaultive, not only to a person's body, but to his or her spirit and soul."

Finally, the Legislature also finds that there is a need to revise the definition of "burglary" to provide express authority to allow for the prosecution of individuals that harm or attempt to harm not just property but also "persons." By doing this, prosecutions involving individuals breaking and entering for purposes of attacking a domestic partner or any person for that matter, will be expressly possible even absent the intent to commit a traditional, narrowly defined, burglary.