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A BILL FOR AN ACT

To further amend title 12 of the Code of the Federated States of Micronesia, as amended, by adding a new chapter 16 to establish a pretrial diversion program, and for other purposes.

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

1           Section 1. Title 12 of the Code of the Federated States of  
2 Micronesia, as amended, is hereby further amended by adding a new  
3 section 1601 to read as follows:

4           "Section 1601. Citation.

5           This Act may be cited as the Pretrial Diversion Act of  
6           2004."

7           Section 2. Title 12 of the Code of the Federated States of  
8 Micronesia, as amended, is hereby further amended by adding a new  
9 section 1602 to read as follows:

10           "Section 1602. Statement of Policy.

11           Pretrial diversion is an alternative to prosecution that  
12           seeks to divert certain offenders from conventional  
13           criminal justice processing into a program of  
14           supervision and restitution. Participants who  
15           successfully complete the program will not be charged  
16           or, if charged, will have the charges against them  
17           dismissed; unsuccessful participants may be charged and  
18           prosecuted. The major objectives of pretrial diversion  
19           are:

20           (1) To prevent future criminal activity;

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1           (2) To save prosecutorial and judicial resources;  
2           (3) to provide, where appropriate, a vehicle for  
3           restitution to communities and victims of crime."

4           Section 3. Title 12 of the Code of the Federated States of  
5 Micronesia, as amended, is hereby further amended by adding a new  
6 section 1603 to read as follows:

7           "Section 1603. Definitions.

8           As used in this chapter:

9           (1) 'Divertee or offender' means a person against whom  
10           a prosecutable criminal case exists, and who has  
11           participated or is participating in a pretrial diversion  
12           program whether successfully or unsuccessfully;

13           (2) 'Secretary' means the Secretary of Justice of the  
14           Federated States of Micronesia, or his designee."

15           Section 4. Title 12 of the Code of the Federated States of  
16 Micronesia, as amended, is hereby further amended by adding a new  
17 section 1604 to read as follows:

18           "Section 1604. Eligibility Criteria.

19           The Secretary, at his discretion, may divert any  
20           individual against whom a prosecutable case exists  
21           except that no matter may be diverted for:

22           (1) a person accused of an offense that must be  
23           diverted to a State for prosecution; or

24           (2) a person who has participated in a pretrial  
25           diversion program as a divertee within the past five

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1           years, measured from the date that the person completed  
2           the program successfully, or the date that the Secretary  
3           provided written notice to the participant that he had  
4           failed the program and was subject to prosecution; or  
5           (3) any offense punishable by more than five years  
6           imprisonment."

7           Section 5. Title 12 of the Code of the Federated States of  
8           Micronesia, as amended, is hereby further amended by adding a new  
9           section 1605 to read as follows:

10           "Section 1605. Procedures.

11           (1) Divertees may be selected by the Secretary based  
12           upon the eligibility criteria provided in section 1604  
13           of this chapter at any point prior to trial.

14           (a) Once trial has commenced and the first  
15           witness sworn, an offender is not eligible to be a  
16           participant in a pretrial diversion program and the  
17           Secretary shall have no authority to make any exceptions  
18           to this limitation.

19           (b) In the event a case has already been filed  
20           with a court of competent jurisdiction, then the  
21           prosecutor shall file a notice with the court that a  
22           Diversion Agreement has been entered into between the  
23           Secretary and the defendant divertree. Upon filing such  
24           notice, the court shall stay all proceedings pending the  
25           prosecution filing a notice with the court, pursuant to

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1 section (5) or section (6) herein, that the program was  
2 successfully completed, in which event the case shall be  
3 dismissed without prejudice or the prosecution filing a  
4 notice that the program was terminated by the Secretary  
5 for failing to meet the terms and conditions of the  
6 agreement, in which event the Court shall lift the stay  
7 and the prosecution shall resume.

8 (2) Participation in the program by an offender shall  
9 be voluntary. Before a Diversion Agreement may be  
10 entered into, the following must occur:

11 (a) The offender shall agree in writing to waive  
12 his rights of a speedy trial and presentation of his  
13 case within the statute of limitations; and

14 (b) The offender shall receive advice of counsel  
15 prior to entering into a pretrial diversion agreement.  
16 No waiver shall be made or entered into for this  
17 requirement.

18 (3) The Divertee and the Secretary shall enter into an  
19 agreement setting forth in detail the duties and  
20 obligations of the parties. The agreement shall be  
21 designed, supervised and administered by the Secretary,  
22 and shall include provisions for:

23 (a) restitution, if appropriate;

24 (b) permission from the Secretary prior to travel  
25 between states or outside the Federated States of

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1           Micronesia; and

2                   (c) such other provisions as the Secretary shall  
3           determine appropriate and consistent with the purposes  
4           of this chapter and law.

5           (4) The division period shall begin upon execution of  
6           the agreement.

7           (5) Upon satisfactory completion of the program  
8           requirement, the Secretary shall formally decline  
9           prosecution or if a case has already been filed with the  
10          court, the prosecution shall file a notice of dismissal  
11          and the court shall enter an order dismissing the  
12          action.

13          (6) Upon breach of a condition of the agreement by the  
14          Divertee, as determined by the Secretary in the  
15          Secretary's sole discretion, the Secretary may:

16                  (a) terminate the agreement and initiate or  
17          resume prosecution based upon the original and/or any  
18          subsequent charges;

19                  (b) reinstate the Divertee in the program under  
20          such additional or different conditions as he deems  
21          appropriate; or

22                  (c) make such other provisions as the Secretary  
23          shall determine appropriate and consistent with the  
24          purposes of this chapter and law."

25          Section 6. Title 12 of the Code of the Federated States of

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1 Micronesia, as amended, is hereby further amended by adding a new  
2 section 1606 to read as follows:

3 "Section 1606. Judicial Review.

4 (1) In keeping with the stated purposes of this Act,  
5 no offender may have as a cause of action, by civil  
6 suit, write or other pleading:

7 (a) that the Secretary has declined to enter into  
8 a pretrial diversion agreement with that offender. The  
9 decision of whether to enter into an agreement is solely  
10 within the discretion exercised by the Secretary in  
11 deciding whether to prosecute a matter or not; and

12 (b) that the Secretary has decided to terminate a  
13 pretrial diversion agreement based upon the Secretary's  
14 determination that a breach of the agreement has  
15 occurred."

16 Section 7. Title 12 of the Code of the Federated States of  
17 Micronesia, as amended, is hereby further amended by adding a new  
18 section 1607 to read as follows:

19 "Section 1607. Rules and Regulations.

20 The Secretary is hereby authorized to issue and  
21 promulgate rules and regulations implementing the  
22 provisions of this chapter, which, upon approval by the  
23 President of the Federated States of Micronesia, shall  
24 have the force and effect of law."

1           Section 8. This act shall become law upon approval by the  
2 President of the Federated States of Micronesia or upon its  
3 becoming law without such approval.

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5 Date: 11/09/04

Introduced by: Resio S. Moses  
*for Henry C. Asugar*  
(by request)

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