

# **LAW NO 6/2014**

## **PENAL CODE**

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# **DRAFT CRIMES & SENTENCING CODE**

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#### **CHAPTER 10. PRELIMINARY PROVISIONS**

- Section 10 – Introduction, Title and Effective Date
- Section 11 – Principle of Construction; General Purposes
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#### **Section 10 – Introduction, Title and Effective Date**

- (a) This Act prescribes criminal offenses, requirements of offense liability, offence elements, penalties of offences, offence grades and implications, defenses against offences, sentencing guidelines and punishments along with all the procedures relating to determining of penalties.
- (b) This Act shall be cited as the “Penal Code of the Maldives.
- (c) Effective Date. This Code shall take effect on the date following 12 months of this Act being approved and published in the Government Gazette.
- (d) Prior Offenses. As a general principle this Code does not apply to offenses occurring or committed prior to its effective date. Notwithstanding the aforesaid, in determining a sentence after commencement of this Code, for a offence which has occurred or has been committed prior to the effective date of this Code, where the sentence prescribed for the offence under this Code is less than the sentence prescribed under the previous Act, the penalty for the offence shall be prescribed in accordance with this Code.

#### **Section 11 – Principle of Construction; General Purposes**

- (a) Principle of Construction. The provisions of the Code shall be construed according to the fair import of their terms, but when the language is susceptible to differing constructions it shall be interpreted to further the general purposes stated in this Section and the special purposes of the particular provision involved. The discretionary powers conferred by the Code shall be exercised in accordance with the criteria stated in the Code and, insofar

as such criteria are not decisive, to further the general purposes stated in this Section.

(b) **General Purpose.** The general purpose of this Code is to establish a system of prohibitions and penalties to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests entitled to legal protection, including Islam, life, lineage, mind, and property. To this end, the provisions of this Code are intended, and shall be construed, to achieve the following objectives:

- (1) to prescribe penalties that are proportionate to the blameworthiness of the offender and the seriousness of the offense,
- (2) to safeguard guiltless conduct from condemnation as criminal and to condemn guilty conduct as criminal,
- (3) to prevent arbitrary or oppressive treatment of persons accused or convicted of offenses, and
- (4) by the definition and grading of offenses, to define the limits of punishment and to give fair warning of what is prohibited and the consequences of violation.

(c) **Additional Purposes.** Subject to the purposes described in Subsection (b), the Code also seeks to ensure the public safety through:

- (1) vindication of public norms by the imposition of merited punishment,
  - (2) the deterrent influence of the penalties provided subsequently, and
  - (3) such confinement as may be necessary to prevent likely recurrence of criminal behavior.
- (4) **Public Norms.** Public norms, as referred to in Subsection (c)(1) include widely-held moral values.

## **Section 12 – Non-Statutory Crimes Abolished**

No conduct constitutes an offense unless it is an offense under this Code or another statute of the Maldives.

## **Section 13 – Jurisdiction**

- (a) **Statement of Jurisdiction.** The State has jurisdiction to prosecute:
- (1) (A) any offense for which any conduct, described as an element of that offense, is committed in the Maldives; or
  - (B) any offense in which the results cause substantial harm, described as an element of that offense, in the Maldives; or
  - (C) any inchoate offense that, if completed, would include the conduct or result described above in the Maldives; or
  - (D) any inchoate offense for which:
    - (aa) an element of such an offense is committed in the Maldives, and
    - (bb) the intended place for the completion or the effect of the offense is outside the Maldives, and
    - (cc) the offense would be illegal both in the intended place of completion or effect, if completed, and

in the Maldives, if it were performed there; and

(2) any offense that results in substantial harm to citizens, agents, or property of the State, and any inchoate offense that, if completed, would have likely resulted in substantial harm to citizens, agents, or property of the State; and

(3) any offense committed by or in cooperation with a citizen of the Maldives or a person domiciled in the Maldives regardless of the location of the offense; and

(4) [any offense committed in gross violation of international law, regardless of the site of such offenses or the domiciles of the parties involved,]<sup>1</sup> and any offense over which the State is required to assume jurisdiction due to the State's adoption of an international treaty, though, unless stipulated otherwise, such a treaty shall not limit the jurisdiction of the State over such offenses; and

(5) any offense committed against or on board vessels or aircraft flagged or registered in the Maldives.

(b) Jurisdiction Not an Element of an Offense. Establishing jurisdiction is a prerequisite to prosecution and not an element of an offense. The prosecution need not prove the culpability of the defendant as to any of the criteria for jurisdiction.

(c) Power of the Court. This Section does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or civil judgment.

(d) Claims for Extradition. Unless explicitly stipulated in an international treaty, a defendant has no standing to challenge a failure of the State to extradite him to another country.

(e) Definitions.

(1) The "Maldives" includes the land, water, and the air space above such land and water over which the Maldivian government has jurisdiction, including the inhabited and uninhabited islands, and territorial waters, as defined by law and treaty.

(2) The "State" means the government and territory of the Maldives.

(f) Exclusive Economic Zone. The State has jurisdiction under international law to enforce criminal law in order to explore, exploit, conserve, and manage the natural resources within the Exclusive Economic Zone. For any offense committed in the Exclusive Economic Zone over which the State may seize jurisdiction under international law, the term the "Maldives" as used in this Section shall also include the Exclusive Economic Zone, as defined by law and treaty. The range of penalties available in such a case may also be defined by international law.

## **Section 14 – Civil Right to Recovery Preserved**

The Code does not bar, suspend, or otherwise affect any right or liability to damages, civil penalty, forfeiture, or other right to recovery, and the civil

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<sup>1</sup>

injury is not merged in the offense.

### **Section 15 – Burdens of Proof; Rebuttable Presumptions**

(a) **Presumption of Innocence.** No person may be convicted of an offense unless each element of such offense is proved to a practical certainty. In the absence of such proof, the innocence of the defendant is presumed.

(b) **Burden of Persuasion.**

(1) A party who fails to meet his burden of persuasion shall have the issue decided against him.

(2) **Burden on the Prosecution.** Unless explicitly provided otherwise by this Code, the prosecution shall have the burden to:

(A) prove all elements of an offense to a practical certainty;

(B) disprove all exceptions, non-general defenses, and grading mitigations to a practical certainty; and

(C) prove all other facts required for liability by a preponderance of the evidence.

(3) **Burden on the Defendant.** Unless explicitly provided otherwise by this Code, the defendant shall have the burden to prove all elements of a general defense by a preponderance of the evidence.

(c) **Rebuttable Presumptions.** When the Code establishes a rebuttable presumption with respect to any fact, if the facts giving rise to the presumption are proven to a practical certainty, the Court shall find that the presumed fact is proven, unless the opposing party proves otherwise by a preponderance of the evidence.

(d) **Definitions.** A “general defense” means any defense provided in Chapters 40, 50, or 60.

### **Section 16 – Mandatory Legislative Review of Monetary Amounts**

(a) The Parliament shall review all monetary amounts in this Code at least once every four years to determine whether they should be adjusted for inflation.

(b) Monetary amounts in this Code remain in effect if the Parliament fails to change them.

### **Section 17 – Definitions**

Unless the context suggests that a different meaning is plainly required:

(1) “Accomplice” has the meaning given in Section 30(b).

(2) “Acquittal” means a trial judgment of “no offense” or “not guilty,” or a final judicial determination that there was insufficient evidence to warrant a conviction.

(3) “Attempt” has the meaning given in Section 80(a).

(4) “Automatic firearm” has the meaning given in Section 710(d)(1).

(5) “Automatic loading action” has the meaning given in Section 710(d)(2).

(6) “Benefit” has the meaning given in Section 315(b).

(7) “Bodily injury” means substantial physical pain, illness, or any

impairment of physical condition.

- (8) “Catastrophe” has the meaning given in Section 222(b).
- (9) “Catastrophic agent” has the meaning given in Section 121(c)(1).
- (10) “Circumstance element” has the meaning given in Section 21(b)(3).
- (11) “Clear and convincing evidence” means a higher standard of proof than a “preponderance of the evidence” but not as high as a “practical certainty.”
- (12) “Close relative” has the meaning given in Section 410(d)(2).
- (13) “Communication” has the meaning given in Section 231(d).
- (14) “Conduct element” has the meaning given in Section 21(b)(1).
- (15) “Consent” has the meaning given in Section 27.
- (16) “Consequence” has the meaning given in Section 32(b).
- (17) “Conviction” means a trial judgment of guilty that has not been reversed or vacated, or a plea of guilty accepted by the court.
- (18) “Agent” has the meaning given in Section 70(c)(4).
- (19) “Corporation” has the meaning given in Section 70(c)(1).
- (20) “Correctional employee” has the meaning given in Section 538(b).
- (21) “Correctional institution” has the meaning given in Section 537(b)(2).
- (22) “Criminal organization” has the meaning given in Section 730(b)(1).
- (23) “Custodial officer” has the meaning given in Section 532(b).
- (24) “Dangerous weapon” has the meaning given in Section 120(c)(1).
- (25) “Deceive” has the meaning given in Section 212(b)(1).
- (26) “Disproportionate” has the meaning given in Section 45(c)(2).
- (27) “Duress” has the meaning given in Section 55.
- (28) “Dwelling” has the meaning given in Section 230(d)(1).
- (29) “Elements” of an offense has the meaning given in Section 21(a).
- (30) “Exclusive Economic Zone of the Maldives” has the meaning given in Section 614(c).
- (31) “Excuse defense” and “excuse” have the meaning given in Section 50(a).
- (32) “Explosive” has the meaning given in Section 121(c)(2).
- (33) “Fiduciary” has the meaning given in Section 215(c)(3).
- (34) “Financial institution” has the meaning given in Section 215(c)(1).
- (35) “Financial instrument” has the meaning given in Section 212(b)(2).
- (36) “Financial professional” has the meaning given in Section 215(c)(2).
- (37) “Financial transaction” has the meaning given in Section 731(b)(1).
- (38) “Firearm” has the meaning given in Section 710(d)(4).
- (39) “Force” means the use or threat of physical force or violence or the creation of a risk of bodily injury, including physical restraint or confinement.
- (40) “Freedom of movement” has the meaning given in Section 140(b)(2).
- (41) “State Employee” has the meaning given in Section 533 (b) of this Act

- (42) “General defense” has the meaning given in Section 15(d).
- (43) Throughout the Code, the terms “he” and “him” are used. The intent is that “he” or “him” should generally be understood to mean any person, regardless of sex.
- (44) “High managerial agent” has the meaning given in Section 70(c)(3).
- (45) “Highly secured information” has the meaning given in Section 232(c)(1).
- (46) “Highly secured premises” has the meaning given in Section 230(d)(2).
- (47) “Home” has the meaning given in Section 120(c)(2).
- (48) “House Arrest” means an imposition of a prohibition on the offender to move out from the premises of his dwelling place, as a penalty for the offence committed.
- (49) “Inchoate offense” means the offenses defined in Sections 80, 81, and 82.
- (50) “Incompetent” has the meaning given in Section 27(d).
- (51) “Inhabited structure” has the meaning given in Section 221(b).
- (52) “Instrument of crime” has the meaning given in Section 87(b).
- (53) “Intoxication” has the meaning given in Section 31(d).
- (54) “Involuntary intoxication” has the meaning given in Section 54(b).
- (55) “Item of contraband” has the meaning given in Section 539(b).
- (56) “Justification defense” and “justification” have the meaning given in Section 40(a).
- (57) “Knowledge” or “knowingly” has the meaning given in Section 24(d).
- (58) “Lashes” has the meaning given in Section 411(d)(2).
- (59) “Law enforcement officer” has the meaning given in Section 521(d).
- (60) “Legal guardian” has the meaning given in Section 44(e)(1).
- (61) The “Maldives” has the meaning given in Section 13(e)(1).
- (62) “Material support” has the meaning given in Section 730(b)(2).
- (63) “Mercenary” has the meaning given in Section 611(b).
- (64) “Minor” means a person who is less than 18 years old.
- (65) “Minor participant” has the meaning given in Section 30(d)(4)(B).
- (66) “Monetary instrument” has the meaning given in Section 731(b)(2).
- (67) “Necessary” has the meaning given in 41(b).
- (68) “Negligence” or “negligently” has the meaning given in Section 24(f).
- (69) “Non exculpatory defense” has the meaning given in Section 60(a).
- (70) “Objective elements” has the meaning given in Section 21(b)(4).
- (71) “Obscene” has the meaning given in Section 622(d).
- (72) “Offender” means a person who has been convicted of the offense.
- (73) “Official authority” has the meaning given in Section 510(c).
- (74) “Official proceeding” has the meaning given in Section 520(f).

- (75) “Organizer” and “leader” have the meaning given in Section 30(d)(4)(A).
- (76) “Owner” has the meaning given in Section 216(b).
- (77) “Penal custody” has the meaning given in Section 537(b)(1).
- (78) “Person”<sup>\*</sup> means a human being born alive, a public or private corporation, the government, a partnership, or an unincorporated association.
- (79) “Post-marital waiting period” has the meaning given in Section 410(b)(1).
- (80) “Preponderance of the evidence” means a standard of proof lower than “clear and convincing evidence” that requires sufficient evidence to show that the proposition is true more likely than not.
- (81) “Private information” has the meaning given in Section 232(c)(2).
- (82) “Property” means anything of value, movable or immovable, tangible or intangible, and includes but is not limited to goods; services; interests in property; control of property; rights in contract; access to utilities, communications, or information; captured or domesticated animals; and official documents representing interests in property, such as tickets, deeds, and licenses.
- (83) “Property of another” has the meaning given in Section 211(b).
- (84) “Purpose” or “purposely” has the meaning given in Section 24(c).
- (85) “Pyramid sales scheme” has the meaning given in Section 319(b).
- (86) “Beyond Reasonable Doubt” means proven at the highest grade of evidence. This standard ensures that unreasonable doubt is not created in relation to the matter requiring proof of evidence.
- (87) “Recklessness” or “recklessly” has the meaning given in Section 24(e).
- (88) “Restrain” has the meaning given in Section 140(b)(1).
- (89) “Result element” has the meaning given in Section 21(b)(2).
- (90) “Semiautomatic firearm” has the meaning given in Section 710(d)(5).
- (91) “Serious bodily injury” means “bodily injury” that creates a substantial risk of death or causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.
- (92) “Services” has the meaning given in Section 214(b).
- (93) “Sexual conduct” has the meaning given in Section 131(b).
- (94) “Sexual intercourse” has the meaning given in Section 131(c).
- (95) “State” has the meaning given in Section 13(e)(2).
- (96) “Storage structure” has the meaning given in Section 230(d)(3).
- (97) “Strict liability” has the meaning given in 24(i).
- (98) “Substantial step” has the meaning given in 80(b).
- (99) “Substantive offense” means any offense that is not an “inchoate offense,” as defined in this Section.
- (100) “Suicide” has the meaning given in Section 113(c).
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- (101) “Tamper” has the meaning given in Section 220(e).
- (102) “Temporary use” has the meaning given in Section 217(b).
- (103) “Unincorporated association” has the meaning given in Section 70(c)(2).
- (104) “Unjustified” has the meaning given in Section 45(c)(1).
- (105) “Unlawful possession” has the meaning given in Section 23(b).
- (106) “Value” has the meaning given in Section 210(d).
- 107) “Violent offense” has the meaning given in Section 110(e).
- (108) “Vital public facility” has the meaning given in Section 221(d).
- (109) “Voluntary intoxication” has the meaning given in Section 31(c).
- (110) “Writing” has the meaning given in Section 310(b).

## **ACTS ANNULLED**

### **Section 18 - Acts Annulled**

- (a) On coming in to effect of this Code, Law No: 1/81 (Penal Code of Maldives (Penal Code) Chapter 1), Law No: 21/81 (Penal Code of Maldives Chapter 2), Law No: 1/66 (Penal Code of Maldives Chapter 3), and Law No: 10/68 (Penal Code of Maldives Chapter 4) shall be annulled.
- (b) In addition to the laws annulled in subsection (a) of this Section, where any Act or provision of an Act contradicts with an offence or procedure relating to an offence prescribed under this Code, the provisions of this Code shall take precedence.
- (c) The Government shall identify and submit to the Parliament prior to 6 months of the time period prescribed under Section 10 (c) of this Code, a list of laws and provisions of any other laws prescribing criminal offences which are in contradiction with this Code, which require annulment or amendment, and the Parliament shall decide on the manner in which such laws and provisions of laws shall be dealt with.

## **REQUIREMENTS OF OFFENSE LIABILITY**

### **CHAPTER 20. BASIC REQUIREMENTS OF OFFENSE LIABILITY AND DEFENSES RELATED TO THE OFFENSE HARM OR WRONG**

Section 20 – Basis of Liability

Section 21 – Offense Elements Defined

Section 22 – Causal Relationship Between Conduct and Result

Section 23 – Requirement of an Act; Possession Liability; Omission Liability

Section 24 – Culpability Requirements

Section 25 – Ignorance or Mistake Negating Required Culpability

Section 26 – Mental Disease or Defect Negating Required Culpability

Section 27 – Consent

Section 28 – Customary License; De Minimis Infraction; Conduct Not



Envisaged by Parliament as Prohibited by the Offense  
Section 29 – Definitions

**Section 20 – Basis of Liability**

Subject to the provisions of this Chapter, a person is liable for an offense if he:

- (a) satisfies all elements of the offense definition, or has all missing elements imputed by a provision of Chapter 30, and
- (b) does not satisfy the requirements of any exception to liability related to the offense, and
- (c) does not satisfy the requirements of a defense provided in Part I of this Code.

**Section 21 – Offense Elements Defined**

- (a) Offense Elements. The “elements” of an offense refer to the:
  - (1) objective elements, namely:
    - (A) conduct, or
    - (B) circumstances, or
    - (C) result of conduct; and
  - (2) culpability requirements, as defined in Section 24 (Culpability Requirements Defined),  
established by the offense definition or the provisions establishing the offense grade.
- (b) Definitions.
  - (1) A “conduct element” is that part of an offense definition that requires a person’s act or failure to act.
  - (2) A “result element” is that part of an offense definition that requires any change of circumstances caused by the person’s conduct.
  - (3) A “circumstance element” is that part of an offense definition that requires an objective element other than a conduct or result element.
  - (4) The “objective elements” of an offense definition include the conduct, circumstance, and result elements, but not culpability requirements.

**Section 22 – Causal Relationship Between Conduct and Result**

- (a) Causal Relationship Requirement. A person’s conduct is the cause of a result if:
  - (1) the result would not have occurred but for the person’s conduct, and
  - (2) the result is not too remote or accidental in its occurrence, and not too dependent upon another’s volitional act, to have a just bearing on the person’s liability or on the gravity of his offense.
- (b) Concurrent Sufficient Causes. Where the conduct of two or more persons each causally contributes to a result and each alone would have been sufficient to cause the result, the requirement of Subsection (a)(1) is satisfied as to each person.

## **Section 23 – Requirement of an Act; Possession Liability; Omission Liability**

(a) Requirements for Liability. Liability for an offense may be based only on conduct that includes either an act, unlawful possession, or an omission to perform a statutory duty.

(b) Unlawful Possession. A person may only be held liable for an offense based on possession if he knowingly:

- (1) procures or receives the thing possessed, or
- (2) controls the thing possessed for a sufficient period of time to have been able to terminate possession.

(c) Omission Liability for Causing a Prohibited Result. When an offense criminalizes causing a result, a person may be liable for the offense if:

- (1) his failure to act causes the result, as required by Section 22 (Causal Relationship Between Conduct and Result), and
- (2) his failure to act is a breach of a legal duty to act, and
- (3) he satisfies all other elements of the offense definition.

## **Section 24 – Culpability Requirements**

(a) Culpability Required as to Every Objective Element. A person is not guilty of an offense unless the person has culpability with respect to each objective element of the offense.

(b) Concurrence Required. The culpability required by Subsection (a) must exist at the time of the conduct constituting the offense.

(c) Purpose. A person acts purposely:

- (1) with respect to a conduct or result element if it is the person's conscious object to engage in such conduct or bring about such result;
- (2) with respect to a circumstance element if the person is aware of the existence of such circumstances or hopes or believes that such circumstances exist.

(3) Conditional Purpose. A person's conditional purpose satisfies the purpose requirement unless it negatives the harm or wrong to be prevented by the law defining the offense.

(d) Knowledge. A person acts knowingly:

- (1) with respect to a conduct element if the person is aware that the person's conduct is of that nature,
- (2) with respect to a circumstance element if the person is aware that it is probable that such circumstance exists,
- (3) with respect to a result element if the person is aware that it is practically certain that his conduct will cause such a result.

(e) Recklessness. A person acts recklessly with respect to an objective element if:

- (1) the person consciously disregards a substantial and unjustifiable risk that the objective element exists or will result from the person's conduct, and
- (2) the risk is of such a nature and degree that, considering the nature and purpose of the person's conduct and the circumstances known to the person, its disregard involves a gross deviation from the

acceptable standards of conduct for a person in the same situation.

(f) Negligence. A person acts negligently with respect to an objective element if:

(1) the person should be aware of a substantial and unjustifiable risk that the objective element exists or will result from the person's conduct, and

(2) the risk is of such a nature and degree that, considering the nature and purpose of the person's conduct and the circumstances known to the person, failure to perceive the risk involves a gross deviation from the acceptable standards of conduct for a person in the same situation.

(g) Proof of Higher Culpability Satisfies Lower Culpability Requirement. The culpability requirement of:

(1) knowledge is satisfied by proof of purpose;

(2) recklessness is satisfied by proof of purpose or knowledge;

(3) negligence is satisfied by proof of purpose, knowledge, or recklessness.

(h) Culpability Required Where None Stated. If a culpability requirement for an objective element is not expressly provided in an offense definition or a grading provision, the minimum culpability required as to that element is recklessness.

(i) Strict Liability. No culpability requirement is imposed for an objective element under Subsection (h) if the offense:

(1) constitutes a violation, or

(2) is defined by a statute outside of this Code, if a legislative purpose to impose strict liability for such offense, or with respect to any material element thereof, plainly appears.

(j) Effect of a Stated Culpability Requirement. If a culpability requirement is expressly provided in an offense definition, that culpability is required as to all subsequent elements in the same clause of the offense definition, or as plain meaning would otherwise require.

(k) Culpability as to Illegality of Conduct Not an Element. Unless otherwise provided in the offense definition, a person's culpability as to whether his conduct constitutes an offense is not an element of the offense.

### **Section 25 – Ignorance or Mistake Negating Required Culpability**

Except as provided in Section 33 (Mistaken Belief Consistent with a Different Offense), evidence of ignorance or mistake as to a matter of fact or law is admissible to negate the culpability required for an offense.

### **Section 26 – Mental Disease or Defect Negating Required Culpability**

(a) Negation of Culpability. Evidence of mental disease or defect is admissible to negate the culpability required for an offense.

(b) Definition. "Mental disease or defect" means any abnormal condition of the mind that substantially affects mental or emotional processes or substantially impairs behavior controls.

## **Section 27 – Consent**

(a) Consent Generally. The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent:

- (1) negatives an element of the offense, or
- (2) precludes the infliction of the harm or wrong sought to be prohibited by the law defining the offense.

(b) Consent to Bodily Injury. When conduct is charged to constitute an offense because it causes or threatens bodily injury, consent to the infliction or threat of such injury is a defense if:

- (1) the bodily injury caused or threatened by the conduct consented to is not serious, or
- (2) the conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport.

(c) Ineffective Consent. Unless otherwise provided by this Code or by the law defining the offense, assent does not constitute consent if:

- (1) it is given by a person who is legally incapable to authorize the conduct charged to constitute the offense; or
- (2) it is given by a person who is incompetent, or known by the person committing the offense to be unable to make a reasonable judgment, as to the nature or harmfulness of the conduct charged to constitute the offense; or
- (3) it is given by a person whose improvident consent is sought to be prohibited by the law defining the offense; or
- (4) it is induced by force, duress, or deception of a kind sought to be prohibited by the law defining the offense.

(d) Definition. A person is “incompetent” if, by reason of youth, mental disease or defect, intoxication, or other impairment, he is manifestly unable to make a reasonable judgment.

## **Section 28 – Customary License; De Minimis Infraction; Conduct Not Envisaged by Parliament as Prohibited by the Offense**

The court shall dismiss a charged offense if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the person’s conduct:

- (a) was within a customary license or tolerance that:
  - (1) was not expressly negated by the person whose interest was infringed, and
  - (2) is not inconsistent with the purpose of the law defining the offense; or

(b) caused a harm or wrong too trivial to warrant the condemnation of criminal conviction; or

(c) did not actually cause the harm or wrong sought to be prohibited by the law defining the offense.

(d) Requirement of Written Statement. The court shall not dismiss a charged offense under this Section without filing a written statement of its reasons.

## **Section 29 – Definitions**

- (a) “Bodily injury” has the meaning given in Section 17(7).
- (b) “Circumstance element” has the meaning given in Section 21(b)(2).
- (c) “Conduct element” has the meaning given in Section 21(b)(1).
- (d) “Incompetent” has the meaning given in Section 27(d).
- (e) “Knowledge” has the meaning given in Section 24(d).
- (f) “Negligence” has the meaning given in Section 24(f).
- (g) “Objective elements” has the meaning given in Section 21(b)(4).
- (h) “Purpose” has the meaning given in Section 24(c).
- (i) “Recklessness” has the meaning given in Section 24(e).
- (j) “Result element” has the meaning given in Section 21(b)(3).
- (k) “Serious bodily injury” has the meaning given in Section 17 (91).

## CHAPTER 30. IMPUTATION OF OFFENSE ELEMENTS

Section 30 – Accountability for the Conduct of Another

Section 31 – Voluntary Intoxication

Section 32 – Divergence Between Consequences Intended or Risked and Actual Consequences

Section 33 – Mistaken Belief Consistent with a Different Offense

Section 34 – Definitions

### Section 30 – Accountability for the Conduct of Another

(a) A person is legally accountable for conduct of another person if:

(1) acting with the culpability required for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or

(2) he is made accountable for the conduct of such other person by the Code or the law defining the offense; or

(3) he is an accomplice of such other person in the commission of the offense.

(b) **Accomplice Liability.** A person is an accomplice of another person in the commission of an offense if, acting with the culpability required for the commission of the offense:

(1) he knowingly aids such other person, with the purpose of promoting or facilitating commission of the offense; or

(2) his conduct is expressly declared by law to establish his complicity.

(c) **Exceptions to Accomplice Liability.** Unless otherwise provided by the Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(1) he is a victim of that offense; or

(2) the offense is so defined that his conduct is inevitably incident to its commission; or

(3) he terminates his complicity prior to the commission of the offense and:

(A) wholly deprives it of effectiveness in the commission of the offense, or

(B) gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

(d) **Grading of Accomplice Liability.** If the accomplice's role in the commission of the offense is that of:

(1) an organizer or leader, the grade of his liability is the grade of the offense aided;

(2) a participant, the grade of his liability is one grade lower than that of the offense aided;

(3) a minor participant, the grade of his liability is two grades lower than that of the offense aided.

(4) **Definitions.** For the purposes of this Section:

(A) an “organizer” or “leader” means an accomplice who exercises supervisory or managerial responsibility for or control over other accomplices.

(B) a “minor participant” means an accomplice who provides minimal assistance or assistance that is either incidental to or not necessary for the success of the offense.

(C) a “participant” means an accomplice whose role in the commission of the offense is less than that of an organizer or leader but more than that of a minor participant.

(e) Complicity in Uncommitted Offense. A person who would have been accountable for the offense conduct of another person under Subsection (a) if the other person had committed the offense is guilty of an attempt to commit the offense.

(f) Attempted Complicity. A person who attempts to aid another person in the commission of an offense under Subsection (b) is liable at one grade level lower than he would have been had his attempt succeeded, whether or not the offense is attempted or committed by the other person.

(g) Accountability Despite Legal Incapacity. A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

(h) Unconvictable Perpetrator. An accomplice may be convicted on proof of the commission of the offense, and of his complicity therein, though the person claimed to have committed the offense:

- (1) has not been prosecuted or convicted, or
- (2) has been convicted of a different offense or degree of offense,

or

- (3) has an immunity to prosecution or conviction, or
- (4) has been acquitted.

### **Section 31 – Voluntary Intoxication**

(a) Except as provided in Section 54 (Involuntary Intoxication) or Subsection (b), evidence of a person’s intoxication at the time of committing an offense is admissible to negate a required culpability element of the offense.

(b) Imputation of Recklessness. If, due to voluntary intoxication, a person is unaware of a risk of which he would have been aware had he been sober, recklessness as defined in Section 24(e) is imputed to him.

(c) Voluntary Intoxication. Intoxication is voluntary if it is:

(1) caused by substances that the person knowingly introduces into his body, being reckless as to the resulting intoxication, unless the person introduces the substances pursuant to medical advice or under such circumstances as would afford a justification or excuse defense; and

(2) not grossly excessive in degree, given the amount of the intoxicant, to which the person does not know and could not reasonably be expected to know he is susceptible.

(d) Definition. “Intoxication” means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.

### **Section 32 – Divergence Between Consequences Intended or Risked and Actual Consequences**

(a) If an offense requires culpability as to a particular consequence of a person’s conduct and the consequence that actually occurs is not the consequence that was designed, contemplated, or risked by the person, the required culpability nonetheless is established if the actual consequence differs only in that:

- (1) a different person or different property is injured or affected,
- or
- (2) the consequence intended, contemplated, or risked was at least as serious or extensive an injury or harm than the actual consequence.

(b) Definition. “Consequence” means a result element of an offense and the circumstance elements that characterize the result.

### **Section 33 – Mistaken Belief Consistent with a Different Offense**

The defense provided by Section 25 (Ignorance or Mistake Negating Required Culpability) is not available if the person would be guilty of an equal or greater offense had the situation been as he supposed.

### **Section 34 – Definitions**

- (a) “Consequence” has the meaning given in Section 32(b).
- (b) “Intoxication” has the meaning given in Section 31(d).
- (c) “Minor participant” has the meaning given in Section 30(d)(4)(ii).
- (d) “Organizer” or “leader” has the meaning given in Section 30(d)(4)(i).
- (e) “Participant” has the meaning given in Section 30(d)(4)(iii).



## GENERAL DEFENSES

### CHAPTER 40. JUSTIFICATION DEFENSES

Section 40 – General Provisions Governing Justification Defenses

Section 41 – Lesser Evils

Section 42 – Execution of Public Duty

Section 43 – Law Enforcement Authority

Section 44 – Conduct of Persons with Special Responsibility for Care, Discipline, or Safety of Others

Section 45 – Defense of Person

Section 46 – Defense of Property

Section 47 – Definitions

#### **Section 40 – General Provisions Governing Justification Defenses**

(a) Definition. A “justification defense” or “justification” means any defense defined in this Chapter.

(b) Justified Conduct May Not Be Resisted. Except as otherwise provided by this Code, justified conduct may not be lawfully interfered with or resisted.

(c) Causing the Justifying Circumstances No Bar to a Justification Defense. The fact that a person has caused the circumstances giving rise to a justification defense under this Chapter does not prevent his conduct from being justified. However, he nonetheless may be liable under Subsection (d).

(d) Liability for Culpably Causing Justifying Circumstances.

(1) Notwithstanding Subsection (c), a person commits an offense if, acting with the culpability required for the offense, he causes the circumstances that give rise to a justification defense for himself or another.

(2) Defense. Any general defense is available to bar liability under Subsection (d)(1).

(e) Multiple Justifications. Except as provided in Subsection (f), if a person’s conduct satisfies the requirements of more than one justification defense, all such justification defenses are available.

(f) Superiority of More Specific Justifications. The justifications provided in Section 41 (Lesser Evils) and Section 42 (Execution of Public Duty) are not available if the factual circumstances of a claimed justification are described in one of the other justification defenses in this Chapter, or if the definition of a more specific justification evinces an intent to preclude an argument for a justification under Section 41 or Section 42.

#### **Section 41 – Lesser Evils**

(a) A person’s conduct is justified if:

(1) it is necessary to avoid a harm or wrong,

(2) the harm or wrong avoided by such conduct is greater than that sought to be prevented by the statute defining the offense charged, and

(3) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(b) Definition. Conduct or the use of force is “necessary” if:

(1) the conduct could not have as effectively avoided the threatened harm or wrong if it was performed at a later time, and

(2) less harmful or wrongful conduct could not have as effectively avoided the threatened harm or wrong.

#### **Section 42 – Execution of Public Duty**

A person’s conduct is justified if it is required or authorized by:

(a) a statute defining the duties or functions of a public official or the assistance to be rendered to such an official in the performance of his duties, or

(b) a statute governing the execution of legal process, or

(c) a judgment or order of a competent court or tribunal, or

(d) a statute governing the armed services or the lawful conduct of war,

or

(e) any other statute imposing a public duty.

#### **Section 43 – Law Enforcement Authority**

(a) Subject to Subsection (b), a person’s conduct is justified if it is necessary:

(1) to make, or assist in, a lawful arrest, or

(2) to prevent the escape of an arrested person from custody, or

(3) to prevent a suicide.

(b) Use of Force Risking Death or Serious Bodily Injury. A person’s use of force that creates a substantial risk of causing death or serious bodily injury is justified under Subsection (a) only if it is necessary to prevent a risk of death or serious bodily injury to others.

#### **Section 44 – Use of Force By Persons with Special Responsibility for Care, Discipline, or Safety of Others**

A person’s use of force is justified if:

(a) he is the parent, legal guardian, teacher or other person similarly responsible for the care or supervision of a minor, or a person acting at the request of a person with such responsibility, and the force:

(1) is applied to that minor, and

(2) is necessary to safeguard or promote the welfare of that minor, including the prevention or punishment of his misconduct, and

(3) does not create a substantial risk of causing death, serious bodily injury, extreme or unnecessary pain or mental distress, or humiliation; or

(b) he is a physician or other licensed medical professional, or a person assisting him at his direction, and:

(1) the force is necessary to administer a recognized form of treatment to a person in order to promote the physical or mental health of that person, and:

(2) the treatment is administered with:

- (A) the consent of that person, or
- (B) the consent of that person’s parent, guardian or other person legally empowered to consent on his behalf if he is incompetent or physically unable to consent, or
- (C) no explicit consent if:
  - (aa) the treatment is administered in an emergency situation, and
  - (bb) no person competent to consent can be consulted, and
  - (cc) a reasonable person who wishes to safeguard that person’s welfare would consent; or
- (c) he is a custodial officer, and:
  - (1) the force is necessary to enforce the lawful rules or procedures of a correctional institution, and
  - (2) if deadly force is used, its use is otherwise justifiable under this Chapter; or
- (d) he is a person responsible for the safety of an airplane, train, motor vehicle, vessel or other carrier, or a person acting at his direction, and:
  - (1) the force is necessary to prevent interference with:
    - (A) the operation of the carrier, or
    - (B) the execution of a lawful order; and
  - (2) if deadly force is used, its use is otherwise justifiable under this Chapter.
- (e) Definition.
  - (1) A “legal guardian” means any person vested with decision-making authority for an incompetent individual.
  - (2) A “licensed medical professional” is any person who possesses medical credentials in keeping with State regulations or that of any generally recognized medical organization.

**Section 45 – Defense of Person**

- (a) Subject to Subsection (b), a person’s use of force is justified if:
  - (1) it is necessary to defend against an unjustified use or threat of force by an aggressor against:
    - (A) his own person, or
    - (B) the person of another; and
  - (2) the amount of force used is not disproportionate to the harm threatened.
- (b) Use of Force Risking Death or Serious Bodily Injury. A person’s use of force that creates a substantial risk of causing death or serious bodily injury is justified under Subsection (a) only if such force is necessary to defend against a threat of death, serious bodily injury, or forcible intercourse.
- (c) Definitions.
  - (1) Force is “unjustified” if it:
    - (A) satisfies the objective elements of an offense in Part II of this Code, and
    - (B) is not justified by a defense in this Chapter.

(2) Use of force is “disproportionate” if it is clearly in excess of what a reasonable person would consider proportionate.

#### **Section 46 – Defense of Property**

(a) Subject to Subsection (b), a person’s use of force is justified if:

(1) it is necessary to defend against an unjustified use or threat of force against, or trespass on, or interference with:

(A) his property, or

(B) the property of another; and

(2) the amount of force used is not disproportionate to the harm threatened.

(b) Use of Force Risking Death or Serious Bodily Injury. A person’s use of force that creates a substantial risk of causing death or serious bodily injury is not justified in the defense of property alone.

#### **Section 47 – Definitions**

(a) “Custodial officer” has the meaning given in Section 532(b).

(b) “Disproportionate” has the meaning given in Section 45(c)(2).

(c) “Incompetent” has the meaning given in Section 27(d).

(e) “Justification defense” and “justification” have the meaning given in Section 40(a).

(f) “Necessary” has the meaning given in Section 41(b).

(g) “Public official” has the meaning given in Section 533(b).

(h) “Serious bodily injury” has the meaning given in Section 17 (91).

(i) “Unjustified” has the meaning given in Section 45(c)(1).

## CHAPTER 50. EXCUSE DEFENSES

Section 50 – General Provisions Governing Excuse Defenses

Section 51 – Involuntary Act; Involuntary Omission

Section 52 – Insanity

Section 53 – Immaturity

Section 54 – Involuntary Intoxication

Section 55 – Duress

Section 56 – Impaired Consciousness

Section 57 – Ignorance or Mistake

Section 58 – Mistake as to a Justification

Section 59 – Definitions

### **Section 50 – General Provisions Governing Excuse Defenses**

(a) Definition. An “excuse defense” or “excuse” means any defense defined in this Chapter.

(b) Person Eligible for an Excuse Defense May Be Resisted. Except as otherwise provided by this Code, unjustified conduct for which a person is excused may be resisted and interfered with as justified by law.

(c) Excuse Defense Not Shared. A person who assists conduct for which another person has an excuse defense does not have a defense based solely upon the excuse defense of the other person.

(d) Causing the Excusing Conditions No Bar to an Excuse Defense. The fact that a person has caused the conditions giving rise to an excuse defense under this Chapter does not prevent him from being excused for his offense. However, he nonetheless may be liable under Subsection (e).

(e) Liability for Culpably Causing Excusing Conditions.

(1) Notwithstanding Subsection (d), a person commits an offense if, acting with the culpability required by the offense, he causes the conditions that give rise to an excuse defense for himself or another.

(2) Defense. Any general defense is available to bar liability under Subsection (e)(1).

(f) Mistake as to an Excuse No Defense. Except as otherwise provided by this Code, it is no defense that a person mistakenly believes he satisfies the requirements of an excuse defense.

### **Section 51 – Involuntary Act; Involuntary Omission**

A person is excused for his offense if his liability is based on:

(a) an act, and his act is not the product of his effort or determination, or

(b) an omission, and he is mentally or physically incapable of performing, or otherwise cannot reasonably be expected under the circumstances to perform, the omitted act.

### **Section 52 – Insanity**

(a) A person is excused for his offense if, at the time of the offense, as a result of mental disease or defect, he lacks substantial capacity:

(1) to accurately perceive the physical nature or physical

consequences of his conduct constituting the offense, or

(2) to appreciate the wrongfulness of his conduct constituting the offense, or

(3) to control his conduct constituting the offense so as to be justly held accountable for it.

(b) Antisocial Personality Excluded. For the purposes of Subsection (a), a mental disease or defect does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(c) Automatic Commitment for Examination Upon Acquittal. A person acquitted under this Section shall be automatically committed for an examination to determine whether he is subject to civil commitment. The duration of the automatic commitment may not exceed the time required to complete the examination or sixty days, whichever is shorter.

### **Section 53 – Immaturity**

(a) A person is excused for his offense if, at the time of the offense:

(1) he lacks the maturity of an adult, and

(2) as a result, he lacks substantial capacity:

(i) to accurately perceive the physical consequences of his conduct constituting the offense, or

(ii) to appreciate the wrongfulness of his conduct constituting the offense, or

(iii) to control his conduct constituting the offense so as to be justly held accountable for it.

(b) Immaturity Presumed. A person:

(1) less than 15 years old at the time of the offense shall be conclusively presumed to have satisfied the requirements of this excuse defense.

(2) less than 18 years old at the time of the offense shall be presumed, subject to rebuttal by the prosecution, as provided in Section 15 (Burdens of Proof; Rebuttable Presumptions), to have satisfied the requirements of this excuse defense.

(3) At least 18 years old at the time of the offence, shall be presumed, subject to rebuttal by the offender, to possess the maturity of an adult.

(c) A person who is 18 years old at the time of the offence, and who is excused for his offence under subsection (a) and (b) shall be culpable for offences for which punishments are predetermined under Islamic Sharia.

(d) Transfer to Juvenile Court. A person who is less than 18 years old at the time of the offense and who is excused for his offense under Subsections (a) and (b) shall be referred to the Juvenile Court, which shall have exclusive jurisdiction over all further proceedings in the matter.

### **Section 54 – Involuntary Intoxication**

(a) A person is excused for his offense if, at the time of the offense, as a result of involuntary intoxication, he lacks substantial capacity:

(1) to accurately perceive the physical nature or physical consequences of his conduct constituting the offense, or  
(2) to appreciate the wrongfulness of his conduct constituting the offense, or

(3) to control his conduct constituting the offense so as to be justly held accountable for it.

(b) Involuntary Intoxication. Intoxication is involuntary if it is:

(1) caused by substances that the person did not knowingly introduce into his body, or

(2) grossly excessive in degree, given the amount of intoxicant, to which he does not know and could not reasonably be expected to know he is susceptible.

### **Section 55 – Duress**

(a) A person is excused for his offense if, at the time of the offense:

(1) he is compelled to perform the offense conduct

(2) by a threat that a person of reasonable firmness in the person's situation would have been unable to resist.

(b) Limitation. The defense provided in Subsection (a) is not available in a prosecution under Section 110 (Murder).

### **Section 56 – Impaired Consciousness**

(a) A person is excused for his offense if, at the time of the offense:

(1) he suffers a physiologically confirmable disease or defect not specifically recognized or rejected as a basis for exculpation by another excuse provision in this Chapter, and

(2) as a result, he lacks substantial capacity:

(A) to accurately perceive the physical nature or physical consequences of his conduct constituting the offense, or

(B) to appreciate the wrongfulness of his conduct constituting the offense, or

(C) to control his conduct constituting the offense so as to be justly held accountable for it.

(b) Antisocial Personality Excluded. For the purposes of Subsection (a), a physiologically confirmable disease or defect does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

### **Section 57 – Ignorance or Mistake**

(a) Ignorance Due to Unavailable Law. A person is excused for his offense if:

(1) before the conduct constituting the offense was committed, the statute defining the offense was not known to him and had not been published or otherwise made reasonably available to him, and

(2) as a result of the circumstance under subsection (a)(1), at the time of the offense, he does not know his conduct is criminal.

(b) Reliance Upon Official Misstatement of Law. A person is excused

for his offense if:

(1) he acts in reasonable reliance upon an official statement of the law, subsequently determined to be invalid or erroneous, contained in:

- (i) a statute,
- (ii) a judicial decision, opinion, judgment, or rule,
- (iii) an administrative order or grant of permission, or
- (iv) an official interpretation of the law by the public official or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the offense; and

(2) as a result, at the time of the offense, he does not know his conduct is criminal.

(c) Reasonable Mistake of Law After Due Diligence. A person is excused for his offense if:

(1) he:

(i) diligently pursues all reasonable means to ascertain the meaning and application of the offense definition to his conduct, and

(ii) honestly and in good faith concludes his conduct is not an offense in circumstances in which a law-abiding and prudent person would also so conclude; and

(2) as a result, at the time of the offense, he does not know his conduct is criminal.

(d) (3) Standard of Proof. The defendant must prove a defense under Subsection (c) by clear and convincing evidence.

### **Section 58 – Mistake as to a Justification**

A person is excused for his offense if:

(a) under the circumstances as he believes them to be, his conduct satisfies the requirements of a justification defense defined in Chapter 40 (Justification Defenses), and:

(b) his mistake is:

(1) non-negligent, or

(2) less culpable than the culpability required by:

(A) the result element of the offense charged, or

(B) if no result element exists, the circumstance element most central to the offense charged.

### **Section 59 – Definitions**

(a) “Excuse defense” and “excuse” have the meaning given in Section 50(a).

(b) “Intoxication” has the meaning given in Section 31(d).

(c) “Public official” has the meaning given in Section 533 (b).



## **CHAPTER 60. NONEXCULPATORY DEFENSES**

Section 60 – General Provisions Governing Nonexculpatory Defenses

Section 61 – Prosecution Barred If Not Commenced Within Time Limitation Period

Section 62 – Unfitness to Plead, Stand Trial, or Be Sentenced

Section 63 – Diplomatic Immunity

Section 64 – Former Prosecution for Same Offense as a Bar to Present Prosecution

Section 65 – Former Prosecution for Different Offense as a Bar to Present Prosecution

Section 66 – Prosecution Not Barred Where Former Prosecution Was Before Court Lacking Jurisdiction or Was Fraudulently Procured by Defendant or Resulted in Conviction Held Invalid

Section 67 – Definitions

### **Section 60 – General Provisions Governing Nonexculpatory Defenses**

(a) Definition. A “nonexculpatory defense” means a defense or bar to prosecution or bar to pleading, trial, or sentencing defined in this Chapter.

(b) Conduct Subject to a Nonexculpatory Defense May Be Resisted. Except as otherwise provided by this Code, unjustified conduct for which a person has a nonexculpatory defense may be resisted and interfered with as justified by law.

(c) Nonexculpatory Defense Not Shared. A person who assists conduct for which another person has a nonexculpatory defense does not have a defense based solely upon the nonexculpatory defense of the other person.

(d) Mistake as to a Nonexculpatory Defense No Defense. Except as otherwise provided by this Code, it is no defense that a person mistakenly believes he satisfies the requirements of a nonexculpatory defense.

### **Section 61 – Prosecution Barred If Not Commenced Within Time Limitation Period**

(a) Time Limitation. A prosecution is barred unless commenced within:

[(1) 8 years from the time the offense is committed for a felony,

or

(2) 3 years from the time the offense is committed for a misdemeanor.

(3) Offences for which punishments are prescribed in the Holy Quran shall be exempt from the provisions under subsection (a) (1) and (2).

(b) Exception for Violent Crimes. A prosecution for a violent crime or an offense defined in Sections 211 to 216 (Theft Offenses), 411 (Unlawful Sexual Intercourse), 612 (False Accusation of Unlawful Sexual Intercourse), or 616 (1)(b)(B) (prohibiting the consumption of alcohol) may be commenced at any time after the offense is committed

(c) Start of the Limitation Period. The period of limitation starts to run

on the day after the offense is committed. An offense is committed either:

- (1) when every element of the offense occurs, or
- (2) if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated.

(d) Suspension of the Limitation Period. The period of limitation is suspended if the State commences prosecution of the offense.

(e) Commencement of Prosecution. A prosecution for the offense commences on the date the charging document is filed for the offense.

### **Section 62 – Unfitness to Plead, Stand Trial, or Be Sentenced**

(a) A person shall not be required to plead, stand trial, or be sentenced if, because of his mental or physical condition, he is unable to:

- (1) understand the nature and purpose of the proceedings against him, or
- (2) assist in his defense.

(b) Automatic Commitment for Examination Upon Acquittal. A person whose trial is delayed or abandoned under this Section shall be automatically committed for an examination to determine whether he is subject to civil commitment pursuant. The duration of the automatic commitment may not exceed the time required to complete the examination or sixty days, whichever is shorter.

### **Section 63 – Diplomatic Immunity**

A prosecution is barred if the person charged has been granted immunity by the State:

- (a) under an international treaty, or
- (b) because he is a foreign dignitary of the State, an ambassador of a foreign country, or a representative of an international institution.

### **Section 64 – Former Prosecution for Same Offense as a Bar to Present Prosecution**

A prosecution under the same provision of this Code and based upon the same facts as a former prosecution is barred if the former prosecution:

- (a) resulted in an acquittal, or
- (b) resulted in a conviction, or
- (c) (1) was terminated by a final order or judgment for the defendant that has not been set aside, reversed, or vacated, and  
(2) would have necessarily required a determination inconsistent with a fact or a legal proposition to result in conviction; or
- (d) was improperly terminated as provided in Subsection (e) of this

Section.

(e) Improper Termination. For purposes of Subsection (d) of this Section and Section 65(d):

- (1) termination is improper if it is for reasons not constituting an acquittal and it takes place after the first witness is sworn but before verdict;

- (2) termination is not improper if:
- (A) the defendant consents to the termination or waives his right to object to the termination, or
  - (B) the court finds that the termination is necessary because:
    - (aa) it is impossible to proceed with the trial in conformity with law, or
    - (bb) there is a legal defect in the proceedings that would make any judgment entered upon a verdict reversible as a matter of law, or
    - (cc) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Government.

### **Section 65 – Former Prosecution for Different Offense as a Bar to Present Prosecution**

A prosecution under a different provision of this Code than a former prosecution or based on different facts is barred if the former prosecution:

- (a) resulted in an acquittal or in a conviction and the subsequent prosecution is for any offense for which the defendant could have been convicted in the first prosecution, either based on the same conduct or arising from the same criminal episode, unless the court ordered a separate trial of the charge of such offense, or
- (b) resulted in an acquittal or in a conviction based on the same conduct, unless:
  - (1) the offense for which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each require proof of a fact not required by the other and the statutes defining these offenses are intended to prevent a substantially different harm or wrong, or
  - (2) the second offense was not consummated when the former trial began; or
- (c) (1) was terminated by a final order or judgment for the defendant that has not been set aside, reversed, or vacated, and
  - (2) would have necessarily required a determination inconsistent with a fact or a legal proposition to result in conviction; or
- (d) was improperly terminated as provided in Subsection 64(e) and the subsequent prosecution is for an offense for which the defendant could have been convicted had the former prosecution not been improperly terminated.

### **Section 66 – Prosecution Not Barred Where Former Prosecution Was Before Court Lacking Jurisdiction or Was Fraudulently Procured by Defendant or Resulted in Conviction Held Invalid**

A prosecution is not barred by a former prosecution within the meaning of Section 64 (Former Prosecution for Same Offense as a Bar to Present Prosecution) and Section 65 (Former Prosecution for Different Offense as a

Bar to Present Prosecution) if the former prosecution:

(a) was before a court that lacked jurisdiction over the defendant or the offense, or

(b) was procured by the defendant without the knowledge of the appropriate prosecuting official and with the purpose of avoiding the sentence that might otherwise be imposed, or

(c) resulted in a judgment of conviction that was held invalid in a subsequent proceeding.

**Section 67 – Definitions**

“Element” has the meaning given in Section 21(a).

“Nonexculpatory defense” has the meaning given in Section 60(a).

## LIABILITY OF CORPORATIONS AND OTHER NON-HUMAN ENTITIES

### CHAPTER 70. LIABILITY OF CORPORATIONS AND OTHER NON-HUMAN ENTITIES

Section 70 – Liability of Corporation or Unincorporated Association

Section 71 – Relationship to Corporation or Unincorporated Association No Limitation on Individual Liability or Punishment

Section 72 – Definitions

#### **Section 70 – Liability of Corporation or Unincorporated Association**

(a) A corporation or unincorporated association is liable for the commission of an offense if:

(1) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting in behalf of the corporation or association within the scope of his employment, or

(2) (A) the offense is committed by a corporate agent acting:  
(aa) in behalf of the corporation or unincorporated association, and  
(bb) within the scope of his office or employment, and

(B) the statute defining the offense does not otherwise designate the corporate agents for whose conduct the corporation or unincorporated association is accountable or the circumstances under which it is accountable, and

[(C) the offense is either graded as a misdemeanor or the statute manifests a legislative purpose to hold corporations responsible for the actions of subordinate employees]<sup>2</sup>; or

(3) the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations or unincorporated associations by statute.

(b) Due Diligence Defense. It is a defense to a prosecution under Subsection (a)(2) that the corporation or unincorporated association proves by a preponderance of the evidence that a high managerial agent having supervisory responsibility over the conduct constituting the offense exercised due diligence to prevent the commission of the offense, unless:

(1) such a defense would be inconsistent with the legislative purpose of the statute defining the offense, or

(2) the statute defining the offense expressly provides that no culpability is required.

(c) Definitions.

(1) “Corporation” means a public or private company that has satisfactorily fulfilled the statutorily-defined procedure for incorporation.

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(2) “Unincorporated association” means a trust, partnership, government or governmental subdivision or agency, or two or more persons having a joint or common economic interest.

(3) “High managerial agent” means an officer of the corporation or unincorporated association, or any other corporate agent that holds a position with the authority to formulate policy or supervise subordinate employees in a managerial capacity.

(4) “Corporate agent” means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation or unincorporated association in any capacity.

### **Section 71 – Relationship to Corporation or Unincorporated Association No Limitation on Individual Liability or Punishment**

(a) Employment by or Membership in Corporation or Unincorporated Association No Shield from Liability. A person is liable for an offense that he performs, or causes to be performed, in the name of or in behalf of a corporation or unincorporated association to the same extent as he would be liable if he performed such conduct in his own name or behalf.

(b) Authorized Punishment for Individuals. A person who has been convicted of an offense by reason of his legal accountability for the conduct of a corporation or unincorporated association is subject to the punishment authorized by statute for an individual upon conviction for such offense, although a different punishment is authorized for the corporation or association.

### **Section 72 – Definitions**

(a) “Agent” has the meaning given in Section 70(c)(4).

(b) “Corporation” has the meaning give in Section 70(c)(1).

(c) “High managerial agent” has the meaning given in Section 70(c)(3).

(d) “Unincorporated association” has the meaning given in Section 70(c)(2).

## **INCHOATE OFFENSES**

### **CHAPTER 80. INCHOATE OFFENSES**

- Section 80 – Criminal Attempt
- Section 81 – Criminal Solicitation
- Section 82 – Criminal Conspiracy
- Section 83 – Unconvictable Confederate No Defense
- Section 84 – Defense for Victims and for Conduct Inevitably Incident
- Section 85 – Defense for Renunciation Preventing Commission of the Offense
- Section 86 – Grading of Criminal Attempt, Solicitation, and Conspiracy
- Section 87 – Possession of Instruments of Crime
- Section 88 – Definition

#### **Section 80 – Criminal Attempt**

(a) Offense Defined. A person attempts to commit an offense if:

(1) acting with the culpability required for commission of the offense,

(2) he purposely engages in conduct that would constitute a substantial step toward commission of the offense if the circumstances were as he believes them to be.

(b) Conduct Constituting a Substantial Step.

(1) Corroboration of Purpose to Complete the Offense Required. Conduct constitutes a substantial step toward commission of an offense under Subsection (a)(2) only if it is strongly corroborative of the person's purpose to complete the offense.

(2) Conduct That May Be Held to Constitute a Substantial Step. The following conduct, if strongly corroborative of the person's purpose to complete the offense, shall not be held insufficient as a matter of law to constitute a substantial step:

(A) lying in wait, searching for, or following the contemplated victim of the offense;

(B) enticing or seeking to entice the contemplated victim of the offense to go to the place contemplated for its commission;

(C) reconnoitering the place contemplated for the commission of the offense;

(D) unlawful entry of a structure, vehicle, or enclosure in which it is contemplated that the offense will be committed;

(E) possession of materials to be employed in the commission of the offense, if such materials are specially designed for such unlawful use or can serve no lawful purpose of the person under the circumstances; or

(F) possession, collection, or fabrication of materials to be employed in the commission of the offense, at or near the place contemplated for its commission, if such possession, collection, or fabrication serves no lawful purpose of the person under the circumstances.

## **Section 81 – Criminal Solicitation**

(a) Offense Defined. A person solicits another person to commit an offense if:

(1) acting with:

(A) the culpability required for commission of the offense,  
and

(B) the purpose of promoting or facilitating its  
commission,

(2) he commands, encourages, or requests another person to  
engage in conduct that would:

(A) constitute the offense or an attempt to commit the  
offense, or

(B) establish the other person's complicity in the  
commission or attempted commission of the offense.

(b) Uncommunicated Solicitation. It is immaterial under Subsection (a) that the person fails to communicate with the person he solicits to commit an offense, if his conduct is designed to accomplish such communication.

## **Section 82 – Criminal Conspiracy**

(a) Offense Defined. A person conspires with another person or persons to commit an offense if:

(1) acting with:

(A) the culpability required for commission of the offense,  
and

(B) the purpose of promoting or facilitating its  
commission,

(2) he agrees with such other person or persons to engage in  
conduct that constitutes an offense; and

(3) any one of such persons engages in any conduct towards the  
objective of the conspiracy.

(b) Objective of a Conspiracy. The objective of a conspiracy includes:

(1) commission of the offense or offenses promoted or facilitated  
by the conspiracy,

(2) escape from the scene of the offense,

(3) distribution of the proceeds from the offense, and

(4) measures, other than silence, for concealing the offense or  
obstructing justice in relation to it.

(c) Parties to Conspiracy. If a person could reasonably expect that one with whom he conspires has agreed or will agree with another person to affect the same objective, he is deemed to have agreed with such other person, regardless of whether he knows the other person's identity.

(d) Duration of Conspiracy. A conspiracy is deemed to continue until its objectives are accomplished, frustrated, or abandoned. A person who commits an offense under Subsection (a) is deemed to be a continuing conspirator for the duration of the conspiracy, unless he formally withdraws from the conspiracy.



(e) **Withdrawal.** A person formally withdraws from a conspiracy if he informs:

(1) those persons with whom he conspired of his abandonment,  
or

(2) law enforcement authorities of the existence of the conspiracy and of his participation therein.

(f) **Abandonment.** As to all conspirators, a conspiracy is abandoned if no overt act towards the objective of the conspiracy has been committed by any conspirator during a period equal to the applicable period of limitations provided in Section 61 (Prosecution Barred If Not Commenced Within Time Limitation Period).

(g) **Withdrawal or Abandonment No Defense.** Neither withdrawal nor abandonment is a defense to conspiracy, except as provided by Section 85 (Defense for Renunciation Preventing Commission of the Offense).

### **Section 83 – Unconvictable Confederate No Defense**

It is no defense to a prosecution under Section 81 (Criminal Solicitation) or Section 82 (Criminal Conspiracy) that the person with whom the defendant conspired or whom the defendant solicited:

(a) is immune from prosecution or has not been prosecuted or convicted for the offense,

(b) has been acquitted,

(c) has been convicted of a different offense or a different grade of the same offense, or

(d) is otherwise not subject to justice.

### **Section 84 – Defense for Victims and for Conduct Inevitably Incident**

Unless otherwise provided by this Code, it is a defense to a prosecution under Section 81 (Criminal Solicitation) or 82 (Criminal Conspiracy) that:

(a) the defendant is the victim of the offense, or

(b) the offense is so defined that the defendant's conduct is inevitably incident to its commission.

### **Section 85 – Defense for Renunciation Preventing Commission of the Offense**

(a) In a prosecution under Section 80 (Criminal Attempt), Section 81 (Criminal Solicitation), or Section 82 (Criminal Conspiracy), it is a defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, the defendant prevented the commission of the offense.

(b) **Voluntary and Complete Renunciation.** A renunciation is not voluntary

and complete if it is motivated, in whole or in part, by:

(1) a belief that the circumstances exist that:

(A) increase the probability of detection or apprehension of the defendant or another participant in the criminal operation,  
or

(B) make more difficult the commission of the offense; or

(2) a decision:

(A) to postpone the criminal conduct until another time, or

(B) to substitute a different victim or a different but similar objective.

(c) Standard and Burden of Proof. The defendant must prove this defense by a preponderance of the evidence.

### **Section 86 – Grading of Criminal Attempt, Solicitation, and Conspiracy**

(a) Grading. Offenses under Sections 80 (Criminal Attempt), Section 81 (Criminal Solicitation), and Section 82 (Criminal Conspiracy) are offenses of one grade lower than the offense that is attempted, solicited, or is the objective of the conspiracy.

(b) Sentencing Factors.

(1) If an offender came very close to completing the offense attempted or solicited, or to completing the object of the conspiracy, then the baseline sentence shall be aggravated one level.

(2) If an offender completed:

(A) all of the conduct necessary to complete an offense, or

(B) when acting in concert with others, all the conduct which it was intended he should complete,

then the baseline offense level shall be aggravated two levels.

### **Section 87 – Possession of Instruments of Crime**

(a) Offense Defined. A person commits an offense if he possesses an instrument of crime with the purpose to employ it to commit an offense.

(b) Definition. “Instrument of crime” means anything:

(1) specially made or specially adapted for criminal use, or

(2) commonly used for a criminal purpose and possessed by the person under circumstances strongly corroborative of his criminal purpose.

(c) Grading. The offense is a Class 1 misdemeanor.

### **Section 88 – Definition**

“Instrument of crime” has the meaning given in Section 87(b).

## **OFFENSE GRADES AND THEIR IMPLICATIONS**

### **CHAPTER 90. OFFENSE GRADES AND THEIR IMPLICATIONS**

Section 90 – Classified Offenses

Section 91 – Unclassified Offenses

Section 92 – Authorized Terms of Imprisonment

Section 93 – Authorized Fines

Section 94 – Prosecution for Multiple Offenses

#### **Section 90 – Classified Offenses**

Each offense in this Code is classified as:

- (a) a Class 1 felony, or
- (b) a Class 2 felony, or
- (c) a Class 3 felony, or
- (d) a Class 4 felony, or
- (e) a Class 5 felony, or
- (f) a Class 1 misdemeanor, or
- (g) a Class 2 misdemeanor, or
- (h) a Class 3 misdemeanor, or
- (i) a violation.

(j) **Violations Not Crimes.** A violation does not constitute a crime, and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

#### **Section 91 – Unclassified Offenses**

An offense outside of the Code:

- (a) that provides a term of imprisonment of:
  - (1) more than 1 year is a Class 5 felony;
  - (2) 1 year or less but more than 6 months is a Class 1 misdemeanor;
  - (3) 6 months or less but more than 30 days is a Class 2 misdemeanor;
  - (4) 30 days or less is a Class 3 misdemeanor;
- (b) that otherwise declares itself to be:
  - (1) a felony is a class 5 felony;
  - (2) a misdemeanor is a class 2 misdemeanor;
- (c) is a violation if it:
  - (1) does not declare itself to be a felony or misdemeanor, and does not provide a sentence of imprisonment; or
  - (2) is an offense of strict liability.
  - (3) **Higher Grade Than Violation If Proof of Negligence.** An offense of strict liability may be subject to a grade higher than a violation, if the prosecution proves at least negligence as to all elements, in which case the grade of the offense is the grade provided in Subsection (a).

## **Section 92 – Authorized Terms of Imprisonment**

Except as otherwise provided, the maximum authorized term of imprisonment for a:

- (a) Class 1 felony is [death or]<sup>3</sup> imprisonment for not more than 25 years;
- (b) Class 2 felony is imprisonment for not more than 15 years;
- (c) Class 3 felony is imprisonment for not more than 8 years;
- (d) Class 4 felony is imprisonment for not more than 4 years;
- (e) Class 5 felony is imprisonment for not more than 2 years;
- (f) Class 1 misdemeanor is imprisonment for not more than 1 year;
- (g) Class 2 misdemeanor is imprisonment for not more than 6 months;
- (h) Class 3 misdemeanor is imprisonment for not more than 3 months;
- (i) No term of imprisonment or [banishment]<sup>\*</sup> is authorized for a violation.

(j) Maximum Term Reserved for Most Egregious Form of Offense. The maximum authorized term of imprisonment is an appropriate sentence only for the most egregious imaginable form of the offense.

[(k) Death Penalty Available Only for Most Egregious Form of Killing. The death penalty is available only for the most egregious imaginable form of a purposeful killing of another person in the most cruel and heinous manner.

## **Section 93 – Authorized Fines**

Except as otherwise provided, the maximum authorized fine for an offense is:

- (a) twice the harm caused or the gain derived, or
- (b)
  - (1) MVR [2,000,000]<sup>4</sup> for a Class 1 felony,
  - (2) MVR [1,000,000] for a Class 2 felony,
  - (3) MVR [400,000] for a Class 3 felony,
  - (4) MVR [200,000] for a Class 4 felony,
  - (5) MVR [100,000] for a Class 5 felony,
  - (6) MVR [50,000] for a Class 1 misdemeanor,
  - (7) MVR [24,000] for a Class 2 misdemeanor,
  - (8) MVR [12,000] for a Class 3 misdemeanor,
  - (9) MVR [4,000] for a violation.<sup>\*</sup>

(c) Corporate Fines. The maximum authorized fine for a corporation is twice that authorized for an individual, in Subsections (a) and (b).

## **Section 94 – Prosecution for Multiple Offenses**

- (a) Conviction for Multiple Offenses. When the same conduct of a
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defendant may establish the commission of more than one offense, the defendant may be convicted for each such offense.

(b) Limitations on Conviction for Multiple Related Offenses. The trier of fact may find a defendant guilty of any offense, or grade of an offense, for which he satisfies the requirements for liability, but the court shall not enter a judgment of conviction for more than one of any two offenses if:

(1) the two offenses are based on the same conduct, and:

(A) the harm or wrong of one offense is:

(aa) entirely accounted for by the other offense, or

(bb) of the same kind, but lesser degree, than that of the other offense; or

(B) the two offenses differ only in that:

(aa) one is defined to prohibit a designated kind of conduct generally and another to prohibit a specific instance of such conduct, or

(bb) one requires a lesser kind of culpability than the other; or

(C) the offenses are defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate offenses; or

(2) one offense consists only of an inchoate offense toward commission of:

(A) the other offense, or

(B) a substantive offense that is related to the other offense in the manner described in Subsection (b)(1); or

(3) each offense is an inchoate offense toward commission of a single substantive offense; or

(4) the two offenses differ only in that one is based on the defendant's own conduct and another is based on the defendant's accountability for another person's conduct, under Section 30 (Accountability for the Conduct of Another); or

(5) inconsistent findings of fact are required to establish the commission of the offenses.

(c) Entry of Judgment. Where Subsection (b) prohibits multiple judgments of conviction, the court shall enter a judgment of conviction for the most serious offense among the offenses in question, including different grades of an offense, of which the defendant has been found guilty.

## **PART II: THE SPECIAL PART**

### **OFFENSES AGAINST THE PERSON**

#### **CHAPTER 110. HOMICIDE OFFENSES**

Section 110 – Murder

Section 111 – Manslaughter

Section 112 – Negligent Homicide

Section 113 – Causing, Aiding, Soliciting, or Attempting Suicide

Section 114 – Concealing a Homicide

Section 115 – Definitions

#### **Section 110 – Murder**

(a) Offense Defined. A person commits an offense if he knowingly causes the death of another person.

(b) Reckless Murder. A person commits an offense if he recklessly causes the death of another person under circumstances manifesting an extreme indifference to the value of human life.

(c) Felony-Murder Rebuttable Presumption. The trier of fact shall presume, subject to rebuttal, the existence of the recklessness and extreme indifference required in Subsection (b) if:

- (1) the person is engaged in or is an accomplice in the commission, attempt to commit, or flight after commission of
- (2) any violent offense.

(d) Grading. The offense is a Class 1 felony.

(e) Definition. “Violent offense” means any offense likely to cause bodily injury.

#### **Section 111 – Manslaughter**

(a) Reckless Homicide. A person commits an offense if he recklessly causes the death of another person.

(b) Murder Mitigated for Reason of Extreme Mental or Emotional Disturbance. Conduct that otherwise would be an offense under Section 110 (Murder) is mitigated to an offense under Section 111 (a) if a person causes the death of another:

(1) under the influence of extreme mental or emotional disturbance,

(2) for which there is a reasonable explanation, the reasonableness of which is to be determined from the viewpoint of a person in the defendant’s situation under the circumstances as the defendant believes them to be.

(3) Burden of Persuasion. The defendant carries the burden of proof by the preponderance of the evidence on mitigation.

(c) Grading. The offense is a Class 2 felony.

### **Section 112 – Negligent Homicide**

(a) Offense Defined. A person commits an offense if he negligently causes the death of another person.

(b) Grading. The offense is a Class 4 felony.

### **Section 113 – Causing, Aiding, Soliciting, or Attempting Suicide**

(a) Causing Suicide. A person commits an offense if he causes another to commit suicide by force, threat of force, or deception.

(b) Aiding, Soliciting, or Attempting Suicide.

(1) Offense Defined. A person commits an offense if he knowingly:

(A) aids or solicits another to commit suicide, or

(B) attempts to commit suicide.

[(2) Exception. A licensed health care professional does not commit an offense under Subsection (b)(1)(A) if he:

(A) acting in compliance with the wishes of the patient, or, where the patient cannot consent, in compliance with the wishes of the patient's immediate family, withholds a life-sustaining procedure; or

(B) without purpose to kill, administers, prescribes, or dispenses medications or procedures to relieve another person's pain or discomfort, even if he knows that doing so may hasten or increase the risk of death.]<sup>5</sup>

(3) Rebuttable Presumption. The trier of fact shall presume, subject to rebuttal, that a person has attempted to commit suicide under Subsection (b)(1)(B) if the person purposely:

(A) ingests an overdose of a controlled drug, or

(B) causes serious bodily injury to himself.

(c) Definition. "Suicide" means knowingly causing one's own death.

(d) Grading.

(1) Causing Suicide. The offense in Subsection (a) is one grade lower than the offense would have been had the defendant, by his own conduct, committed the homicide, as defined in Sections 110 through 112.

(2) Aiding or Soliciting Suicide. The offense in Subsection (b)(1)(A) is a Class 5 felony if it causes another to commit or to attempt to commit suicide.

(3) Attempted Suicide. Otherwise the offense is a Class 1 misdemeanor.

### **Section 114 – Concealing a Homicide**

(a) Offense Defined. A person commits an offense if he conceals another person's death knowing that the death was caused by a person.

(b) Grading. The offense is a Class 5 felony.

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**Section 115 – Definitions**

- (a) “Bodily injury” has the meaning given in Section 17(7).
- (b) Causing by “deception” means to cause by “deceiving,” as defined in Section 212(b)(2).
- (c) “Duress” has the meaning given in Section 55.
- (d) “Serious bodily injury” has the meaning given in Section 17(91).
- (e) “Suicide” has the meaning given in Section 113(c)
- (f) “Violent offense” has the meaning given in Section 110(e).



## CHAPTER 120. ASSAULT, ENDANGERMENT, AND THREAT OFFENSES

Section 120 – Assault

Section 121 – Reckless Endangerment

Section 122 – Threats; False Alarms

Section 123 – Definitions

### Section 120 – Assault

(a) Offense Defined. A person commits an offense if he, without the consent of another person:

- (1) touches or injures such person, or
- (2) puts such person in fear of imminent bodily injury.

(b) Grading.

(1) Serious Assault. The offense is a Class 4 felony if the person:

- (A) causes serious bodily injury, or
- (B) commits the offense with a dangerous weapon.

(2) Injurious Assault. The offense is a Class 2 misdemeanor if the person causes bodily injury.

(3) Simple Assault. Otherwise the offense is a Class 3 misdemeanor.

(c) Sentencing Factor. The baseline sentence provided in the Guideline Sentence Table of Section 1002 for any offense under this Section is aggravated one level if the victim is assaulted in a home where he is a resident or guest.

(d) Definitions.

(1) “Dangerous weapon” means:

(A) anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for any lawful use it may have, or

(B) any implement for the infliction of great bodily injury that serves no common lawful purpose.

(C) any “dangerous weapon” and “sharp object” which falls within the meaning prescribed under Law No 17/2010 (Act prohibiting the use of threats, dangerous weapons, and sharp objects)

(2) “Home” means any structure or vehicle serving as a person’s place of residence.

### Section 121 – Reckless Endangerment

(a) Offense Defined. A person commits an offense if he recklessly creates a substantial risk to another of serious bodily injury or death.

(b) Rebuttable Presumption. The trier of fact shall presume, subject to rebuttal, “substantial risk to another of serious bodily injury or death” if the offense is committed in violation of laws and regulations pertaining to:

- (1) explosives or catastrophic agents, or
- (2) machinery, engines, or other mechanical devices, or
- (3) the demolition of any structure, or

- (4) the keeping or maintaining of animals, or
- (5) the cutting and dropping down of trees, or
- (6) the anchoring and bracing out to sea, the vessels used at sea.

(c) Definitions.

(1) "Catastrophic agent" means any explosive or incendiary device, including any timing or detonation mechanism for such device, poison or poisonous gas, deadly biological or chemical agent, or radioactive substance.

(2) "Explosive" means any substance that can explode and is prohibited from general use or requires a government permit.

(d) Grading.

(1) The offense is a Class 4 felony if it is committed under circumstances manifesting an extreme indifference to the value of human life.

(2) Otherwise the offense is a Class 1 misdemeanor.

**Section 122 – Threats; False Alarms**

(a) Offense Defined. A person commits an offense if he:

(1) threatens to commit any offense likely to cause bodily injury, or

(2) knowing that the information is false, informs another that a situation dangerous to human life or commission of a violent offense is imminent.

(b) Grading. The offense is a Class 1 misdemeanor.

**Section 123 – Definitions**

(a) "Bodily injury" has the meaning given in Section 17(7).

(b) "Catastrophic agent" has the meaning given in Section 121(c)(1).

(c) "Dangerous weapon" has the meaning given in Section 120(d)(1).

(d) "Explosive" has the meaning given in Section 121(c)(2).

(e) "Home" has the meaning given in Section 120(d)(2).

(f) "Serious bodily injury" has the meaning given in Section 17(91).

(g) "Violent offense" has the meaning given in Section 110(e).

## CHAPTER 130. SEXUAL ASSAULT OFFENSES

Section 130 – Sexual Assault

Section 131 – Criminal Sexual Contact

Section 132 – Indecent Exposure

Section 133 – Sexual Exploitation

Section 134 – General Provisions Relating to Sexual Assault Offenses

Section 135 – Definitions

### Section 130 – Sexual Assault

(a) Offense Defined. A person commits an offense if he engages in sexual intercourse without consent.

[(b) Rebuttable Presumption. If the person engages in the sexual intercourse with his spouse, the trier of fact shall presume, subject to rebuttal, that consent existed.]<sup>6</sup>

(c) Definition. “Sexual intercourse” has the meaning given in Section 411 (f) of this Code.

(d) Grading.

(1) Rape. The offense in Subsection (a) is a Class 2 felony if:

(A) the victim is a minor and the defendant is 4 or more years older than the victim; or

(B) the person uses force or threat of force to compel the victim to submit to intercourse.

(2) Aggravated Sexual Assault. The offense in Subsection (a) is a Class 3 felony if:

(A) the victim is a minor of under 18 years; or

(B) the defendant knows the victim cannot comprehend the nature of the act or validly consent to it; or

(C) the defendant holds a position of custodial authority in relation to the victim.

(3) Sexual Assault. Otherwise the offense in Subsection (a) is a Class 1 misdemeanor.

### Section 131 – Criminal Sexual Contact

(a) Offense Defined. A person commits an offense if he causes sexual contact with another person without consent for the purpose of producing sexual arousal or gratification.

(b) Definition. “Sexual contact” means:

(1) touching another person’s sex organs, anus or breast without a reason permitted in Islamic Sharia; or

(2) causing another person to touch the sex organs, anus or breast of any person, including himself without a reason permitted in Islamic Sharia; or

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(3) causing any transfer or emission of semen upon any part of the body of the victim, without a reason permitted in Islamic Sharia.

(c) Grading.

(1) Aggravated Sexual Contact. The offense is a Class 4 felony if:

(A) the victim is less than [18] years old; or

(B) the person uses force or threat of force to compel the victim to submit to sexual contact.

(C) Causing the act or forcing the other person to commit the act.

(2) Criminal Sexual Contact. The offense is a Class 5 felony if:

(A) the victim is a minor and the defendant is 4 or more years older; or

(B) the defendant knows the victim cannot comprehend the nature of the act or validly consent to it; or

(C) the defendant holds a position of custodial authority in relation to the victim.

(3) Misdemeanor Sexual Contact. Otherwise the offense is a Class 1 misdemeanor.

### **Section 132 – Indecent Exposure**

(a) Offense Defined. A person commits an offense if he:

(1) exposes his genitals,

(2) if the act under subsection (a) is committed under circumstances likely to cause affront or alarm, or

(3) for the purpose of producing sexual arousal or gratification.

(b) Grading. The offense is a Class 1 misdemeanor.

### **Section 133 – Sexual Exploitation**

(a) Offense Defined. A person commits an offense if:

(1) he causes another person to disrobe or to otherwise act, and

(2) causes the act in subsection (a) for the purpose of producing sexual arousal or gratification, and

(b) Grading.

(1) Aggravated Sexual Exploitation. The offense is a Class 1 misdemeanor if the victim is a person less than [18]<sup>\*</sup> years old or a legally incompetent person.

(2) Otherwise the offense is a Class 2 misdemeanor.

### **Section 134- General Provisions Relating to Sexual Assault Offenses**

(a) Consent by Minor Invalid; Exception for Marriage. Assent or acquiescence to sexual intercourse or sexual contact by a minor is invalid, except where such minor is legally married to the defendant and is more than [18] years old.

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(b) Culpability as to Age. Unless expressly provided otherwise, if an offense in this Chapter requires that the victim be under the age of [18] the defendant need only be negligent as to such victim's age.

(c) Exception for Medical Treatment. A physician or other licensed medical professional or a parent, stepmother or stepfather or legal guardian does not commit an offense under this Chapter if his conduct constitutes only a medical examination or procedure:

- (1) for the purpose of providing medical care,
- (2) in a manner consistent with accepted medical standards, and
- (3) for which he has the level of training and expertise required to perform such medical examination or procedure.

(d) Sentencing Factor. If a person uses deception as to the nature of his actions or as to his identity in order to commit an offense in this Chapter, the baseline sentence shall be aggravated by one level.

### **Section 135 – Definitions**

- (a) "Consent" has the meaning given in Section 27.
- (b) "Legal guardian" has the meaning given in Section 44(e).
- (c) "Licensed medical professional" has the meaning given in Section 44(e)(2).
- (d) "Sexual contact" has the meaning given in Section 131(b).
- (e) "Sexual intercourse" has the meaning given in Section 411(f).

## CHAPTER 140. RESTRAINT AND COERCION OFFENSES

Section 140 – Unlawful Restraint

Section 141 – Criminal Coercion

Section 142 – Definitions

### Section 140 – Unlawful Restraint

(a) Offense Defined. A person commits an offense if he without consent restrains another for a substantial period of time. (b) Definitions.

(1) “Restrain” means to confine another or to otherwise restrict another’s freedom of movement.

(2) “Freedom of movement” means the opportunity to travel from one place to another that an ordinary person normally enjoys.

(c) Grading.

(1) The offense is a Class 3 felony if the defendant restrains the person for the purpose of placing that person in involuntary servitude.

(2) The offense is a Class 4 felony if the person knowingly restrains another person for more than 1 day.

(3) Otherwise the offense is a Class 1 misdemeanor.

(4) Mitigation for Parents and Guardians. The offense is a Class 1 misdemeanor if the person reasonably believes that:

(A) he is a parent or legal guardian of the person restrained, and

(B) the person restrained is not capable of consent.

### Section 141 – Criminal Coercion

(a) Offense Defined. A person commits an offense if, with the purpose of unlawfully restricting another person's freedom of action to that person's detriment, he threatens to:

(1) commit any criminal offense; or

(2) accuse anyone of a criminal offense; or

(3) expose any secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business reputation; or

(4) take or withhold action as a public official, or cause a public official to take or withhold action.

(b) Exception. A person does not commit an offense under Subsection (a)(2), (a)(3), or (a)(4) if:

(1) he believes:

(A) the accusation or secret to be true, or

(B) the proposed official action justified in its nature, and

(2) his purpose is limited to compelling the other person to behave in a way reasonably related to the circumstances that are the subject of the accusation, exposure, or proposed official action.

(c) Grading.

(1) Felonious Coercion. The offense is a Class 5 felony if:

(A) the performance of conduct that the person purposes to compel would constitute a felony, if performed, or

(B) the person threatens harm which would be a felony if performed.

(2) Criminal Coercion. Otherwise the offense is a Class 1 misdemeanor.

**Section 142 – Definitions**

- (a) “Freedom of movement” has the meaning given in Section 140(b)(2).
- (b) “Legal guardian” has the meaning given in Section 44(e).
- (c) “Public official” has the meaning given in Section 533 (b).
- (d) “Restrain” has the meaning given in Section 140(b)(1).

## **PROPERTY AND SERVICE OFFENSES**

### **CHAPTER 210. THEFT OFFENSES**

Section 210 – Theft, misrepresentation, Deception, Extortion and Disposition

Section 211 – Theft by Taking or Disposition

Section 212 – Theft by Deception

Section 213 – Theft by Extortion

Section 214 – Theft of Services

Section 215 – Theft by Failure to Deliver Funds Entrusted

Section 216 – Theft of Property Lost, Misplaced, or Delivered by Mistake

Section 217 – Unauthorized Use of Property

Section 218 – Receiving Stolen Property

Section 219 – Definitions

#### **Section 210 – Consolidation of Theft Offenses**

(a) Conduct proscribed by Sections 211 through 216 constitutes a single offense of theft. A prosecution for theft may be supported by evidence that it was committed in any manner described in Sections 211 through 216.

(b) Grading. The offense defined in Sections 211 through 216 is a:

(1) Class 3 felony if the value of the property exceeds [500,000 MVR].\*

(2) Class 4 felony if the value of the property exceeds [50,000 MVR] or if the property is a firearm or an automobile, motorboat, or other motor vehicle.

(3) Class 5 felony if the value of the property exceeds [5,000 MVR].

(4) Class 1 misdemeanor if the value of the property exceeds [500 MVR].

(5) Otherwise the offense is a Class 2 misdemeanor.

(c) Claim of Right. A person does not commit an offense under this Chapter if he:

(1) reasonably believes that the other person would consent to his possession or use of the property, or

(2) reasonably believes that he holds a claim of right to use or possess the property.

(d) Definition. “Value” means the maximum current market value of the property of which the defendant knew or should have known at the time of the offense.

#### **Section 211 – Theft by Taking or Disposition**

(a) Offense Defined. A person commits an offense if he:

(1) knowingly takes or exerts unauthorized control over the property of another,

(2) with the purpose of permanently depriving such other person

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of possession.

(b) Definition. "Property of another" means property to which another person holds a greater claim of right, whether such claim be temporary, permanent, or illegal. A legal person, such as the government or a corporation, may hold a claim of right.

### **Section 212 – Theft by Deception**

(a) Offense Defined. A person commits an offense if he:

- (1) knowingly deprives another of property and
- (2) by deceiving such other person or another person or
- (3) by misrepresentation

(b)(1) misrepresentation means, obtaining money or property from another person, by inducing another person to gain through the provision of a benefit or service and appropriating the money or property without rendering the benefit or service as promised.

(2) Definitions.

(1) "Deceive" means:

(A) to create or to confirm a false impression, including one relating to law, value, or state of mind; or

(B) to prevent another person from gaining knowledge that might alter the outcome of a transaction; or

(C) to fail to correct a false impression previously created or confirmed by the person; or

(D) to fail to disclose a known lien, adverse claim, or other legal impediment to unencumbered possession of the property in question, regardless of the ultimate legitimacy of the impediment; or

(E) to issue or pass a check, similar sight order for the payment of money, or other common financial instrument knowing the amount will not be paid by the drawee.

(3) "Financial instrument" means anything representing a legally enforceable:

(A) ownership interest in a corporation, good, service, or other property, or

(B) promise to pay, or

(C) promise to tender property, or

(D) right in contract.

(c) Exception. A person does not commit an offense if he deceives only:

(1) regarding matters of no pecuniary significance; or

(2) by using statements unlikely to deceive persons of ordinary judgment.

(d) Presumption Not Permitted. The trier of fact shall not presume deception of another person from the defendant's mere failure to fulfill a prior promise.

(e) Rebuttable Presumptions. The trier of fact shall presume, subject to

rebuttal, the deception required in Subsection (a)(2) if:

(1) the person sought to make payment with a check, and:

(A) upon presentation within thirty days after issue, the payment was refused by the drawee for lack of funds, and the defendant failed to make payment in full within seven days after receiving notice of such refusal; or

(B) the person did not have an account with the drawee at the time the check or order was issued; or

(2) the person sought to make payment with a credit or debit card, knowing that:

(A) the card was stolen; or

(B) the card had been revoked or cancelled by the issuer;

or

(C) for any other reason his use of the card was unauthorized by the issuer or cardholder; or

(3) the person leased or rented property of another, and:

(A) did not returned the property to its owner or the owner's agent within ten days after the expiration of the lease or rental agreement; or

(B) presented to the owner false identification or identification incorrect as to name, address, place of employment, or other information for the purpose of entering into the lease or rental agreement.

(C) Duty to Demand Return of Property. Nothing in this Subsection relieves an owner of the duty to demand return of property. Mailing such a demand to an address supplied by the defendant at the time of the lease or rental agreement constitutes a proper demand.

(f) Special Grading Minimum. Notwithstanding the provisions of Section 210(b)(5), if a person commits the offense described in this Section by fraudulent use of a check, credit or debit card, money order, or other such common financial instrument, the offense is no lower than a Class 1 misdemeanor.

### **Section 213 – Theft by Extortion**

(a) Offense Defined. A person commits an offense if:

(1) he purposely obtains property of another

(2) by threatening substantial harm.

(b) Exception. A person does not commit an offense if he honestly claims the property sought as restitution or indemnification:

(1) for harm done directly related to the circumstances of the taking, or

(2) as compensation for debt or property owed pursuant to any lawful transaction.

### **Section 214 – Theft of Services**

(a) Offense Defined. A person commits an offense if:

(1) he:

(A) knowingly obtains services that are available only for compensation

(B) by deception, threat, false financial instrument, or by other means to avoid payment for such services; or

(2) having control over the disposition of services of others to which he is not entitled, he:

(A) knowingly uses or appropriates such services

(B) to his benefit, to the benefit of another not entitled thereto, or to the detriment of those who are entitled to such services.

(b) Definition. “Services” includes but is not limited to labor or professional service, transportation, public service or utilities, accommodation, admission to exhibitions, use of intellectual or movable property, or access to an electronic service.

(c) Rebuttable Presumption. The trier of fact shall presume, subject to rebuttal, the knowledge required in Subsection (a) if:

(1) the person refuses to pay or absconds without paying or offering to pay for services; and

(2) compensation for such services is ordinarily paid immediately upon their rendering, as in the case of hotels, restaurants, or other service industries.

## **Section 215 – Theft by Failure to Deliver Funds Entrusted**

(a) Offense Defined. A person commits an offense if he:

(1) knowingly obtains property of another upon agreement or subject to a legal or fiduciary obligation, in order to make a payment or other disposition of property, and

(2) deals with the property as his own, and

(3) fails to make the required payment or disposition.

(b) Rebuttable Presumptions.

(1) The trier of fact shall presume, subject to rebuttal, that a public official, officer of a financial institution, attorney, accountant, or other financial professional has knowledge of his legal obligations relevant to this Section. The defendant shall have the right to rebut this presumption of knowledge only by demonstrating that his legal obligations have not been established by unambiguous statutory language, official pronouncement, or binding judicial precedent.

(2) The trier of fact shall presume, subject to rebuttal, that the defendant has dealt with property as his own if:

(A) he fails to pay or to account for funds upon lawful demand; or

(B) an inspection reveals a shortage of funds or falsification of records.

(c) Definitions.

(1) “Financial institution” means a bank, insurance company, credit union, building and loan association, investment trust, or other

place held out to the public as a medium of savings, means of collective investment, or place for the deposit of funds.

(2) “Financial professional” means a person employed to keep, manage, audit, or deal in funds or financial instruments, whose position requires professional education.

(3) “Fiduciary” means having a legal duty to act on behalf of or in the interest of a corporation, person, or organization.

(d) Special Grading Minimum. Notwithstanding the provisions of Section 210(b)(5), where a person commits the offense described in this Section, the offense is no lower than a Class 1 misdemeanor.

### **Section 216 – Theft of Property Lost, Mislaid, or Delivered by Mistake**

(a) Offense Defined. A person commits an offense if he:

(1) comes into possession of property that he knows has been lost, mislaid, or delivered by mistake as to the nature or amount of the property or as to the recipient,

(2) with the purpose of depriving another of such property, and

(3) fails to take reasonable measures to restore the property to its owner.

(b) Definition. “Owner” means any person who has a legal claim of right to property.

### **Section 217 – Unauthorized Use of Property**

(a) Offense Defined. A person commits an offense if:

(1) he knowingly makes temporary use of property of another:

(A) without the consent of such other person; or

(B) with the consent of such other person but beyond the conditions of use imposed by that person; and

(2) the property has such substantial value that an ordinary person would expect to pay for such temporary use.

(b) Definition. “Temporary use” means use that is of shorter duration than permanent deprivation.

(c) Grading. The offense shall be graded as under Section 210(b), with the reasonably assessed value for the use described in Subsection (a) having the same meaning as “value” in subsection (d) of that Section.

### **Section 218 – Receiving Stolen Property**

(a) Offense Defined. A person commits an offense if:

(1) he receives, retains, or disposes of property of another,

(2) being reckless as to whether such property has been stolen,

(3) unless such property is received or retained for the purpose of returning it to its owner.

(b) Grading. The offense is one grade lower than theft of the property otherwise would be under Section 210(b).

**Section 219 – Definitions**

- (a) “Deceive” has the meaning given in Section 212(b)(2).
- (b) “Fiduciary” has the meaning given in Section 215(c)(3).
- (c) “Financial institution” has the meaning given in Section 215(c)(1).
- (d) “Financial instrument” has the meaning given in Section 212(b)(3).
- (e) “Financial professional” has the meaning given in Section 215(c)(2).
- (f) “Owner” has the meaning given in Section 216(b).
- (g) “Property of another” has the meaning given in Section 211(b).
- (h) “Services” has the meaning given in Section 214(b).
- (i) “Temporary use” has the meaning given in Section 217(b).
- (j) “Value” has the meaning given in Section 210(d).

## CHAPTER 220. PROPERTY DAMAGE AND DESTRUCTION OFFENSES

Section 220 – Criminal Property Damage

Section 221 – Endangering Property

Section 222 – Threatening Catastrophe

Section 223 – Definitions

### Section 220 – Criminal Property Damage

(a) Offense Defined. A person commits an offense if he recklessly and without consent:

- (1) damages property of another, or
- (2) tampers with property and thereby causes damage to any property of another.

(b) Exception. A person does not commit an offense under Subsection (a)(2) if:

- (1) he tampers only with his own property,
- (2) in a manner not exceeding his legal rights, and
- (3) the damage to the other person's property occurs because the other person has relied on property or services owned or controlled by the defendant without obtaining a legal right to such property or services.

(c) Rebuttable Presumption. The trier of fact shall presume, subject to rebuttal, the recklessness required in Subsection (a) if the damage results from the person's knowing use of fire or a catastrophic agent.

(d) Grading. The offense is:

(1) a Class 4 felony if the value of the damage caused exceeds [500,000 MVR].\*

(2) a Class 5 felony if the value of the damage caused exceeds [50,000 MVR].

(3) a Class 1 misdemeanor if the value of the damage caused exceeds [5,000 MVR].

(4) a Class 2 misdemeanor if the value of the damage caused exceeds [500 MVR].

(5) Otherwise the offense is a Class 3 misdemeanor.

(6) Aggravated Fine for Environmental Damage.

Notwithstanding Section 93 (Authorized Fines), the maximum authorized fine for the offense is [100,000,000] MVR if the person damages a place or property of environmental significance.

(7) Environmental Significance. A place, artifact, or property is of environmental significance if:

(A) it has particular environmental importance of which an ordinary person would be aware or of which the person actually knows; or

(B) such particular importance has been recognized by the government or an international organization.

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(e) Definition. “Tamper” means to interfere with or otherwise impede the ordinary function or effect of property.

### **Section 221 – Endangering Property**

(a) Offense Defined. A person commits an offense if he creates a substantial risk of destruction of any inhabited structure of another or vital public facility, or any significant portion thereof, without consent.

(b) Definition. “Inhabited structure” means a structure or vehicle, or any separately owned unit thereof, whether or not occupied at the time of the offense:

- (1) where any person lives or conducts business or other affairs,
- (2) where people assemble for purposes of business, government, worship, education, entertainment, or public or commercial transportation, or
- (3) that is used for overnight accommodations of persons.

(c) Grading. The offense is one grade less than it would be under Section 220(d) if the property had been damaged.

(d) Definition. “Vital public facility” means any property or facility that provides an important service to the general public, including but not limited to, bridges, highways, waterways, ports, communication facilities, public utilities or their means of transmission, transit centers, and government buildings providing important services.

### **Section 222 – Threatening Catastrophe**

(a) Offense Defined. A person commits an offense if he:

- (1) knowingly threatens to cause a catastrophe to a person or group of people
- (2) knowingly possess a catastrophic agent; or
- (3) commits the act prescribed in subsection (a)(2) with the purpose of using it to commit a felony or knowing that another will use it to commit a felony.

(b) Definition. “Catastrophe” means causing:

- (1) serious bodily injury to five or more people, or
- (2) substantial damage to five or more inhabited structures, or
- (3) substantial interruption or impairment of a vital public facility, or
- (4) property damage in excess of [500,000 MVR].

(c) Grading.

(1) Facilitating Catastrophe. The offense in Subsection (a)(1) is a Class 4 felony.

(2) Risking Catastrophe. The offense in Subsection (a)(2) is a Class 5 felony.

### **Section 223 – Definitions**

(a) “Catastrophe” has the meaning given in Section 222(b).

(b) “Catastrophic agent” has the meaning given in Section 121(c)(1).

(c) “Inhabited structure” has the meaning given in Section 221(b).

- (d) "Property of another" has the meaning given in Section 211(b).
- (e) "Serious bodily injury" has the meaning given in Section 17(91).
- (f) "Tamper" has the meaning given in Section 220(e).
- (g) "Vital public facility" has the meaning given in Section 221(d).



## CHAPTER 230. CRIMINAL INTRUSION OFFENSES

Section 230 – Criminal Trespass

Section 231 – Unlawful Eavesdropping or Surveillance

Section 232 – Unlawful Acquisition of Information

Section 233 – Unlawful Disclosure of Information

Section 234 – Definitions

### Section 230 – Criminal Trespass

(a) Offense Defined. A person commits an offense if he enters or remains in a place knowing that he has no consent or license to do so.

(b) Exceptions.

(1) A person does not commit an offense if:

(A) the premises are open to members of the public at the time of his entry, and

(B) he complies with all lawful conditions imposed on access to the premises.

(2) A person does not commit an offense if he reasonably believes that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.

[(c) Grading.

(1) Felony Trespass. The offense is a Class 5 felony if it is committed in a dwelling, highly secured premises, or dangerous premises so marked or signed.

(2) Misdemeanor Trespass. The offense is a Class 1 misdemeanor if it is committed in any separately secured building, inhabited structure, storage structure, or any other place enclosed in a way as to manifestly exclude intruders.

(3) Simple Trespass. Otherwise the offense is a Class 3 misdemeanor.]<sup>7</sup>

(d) Definitions.

(1) “Dwelling” means any structure, or any portion thereof, whether or not movable, that is used as a residence, whether or not occupied at the time of an offense.

(2) “Highly secured premises” means any place that is continuously guarded and where display of identification is required for entry.

(3) “Storage structure” means any structure, vehicle, vessel, or aircraft that is used primarily for storage or transportation.

### Section 231 – Unlawful Eavesdropping or Surveillance

(a) Offense Defined. A person commits an offense if, with the purpose of eavesdropping or surveilling, and without the consent of the victim, he:

(1) surveils or eavesdrops on another person in a private place or under circumstances in which the other person has a reasonable

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expectation of privacy; or

(2) intercepts, records, amplifies, or broadcasts any sound, image, event, or communication occurring on the property or inside the premises of another.

(b) Acquiescence Is Consent. A person who continues communicating after receiving notice that his communication is subject to interception or recording thereby consents to any subsequent interception, recording, or disclosure of the communication that falls within the scope of the notice.

(c) Exceptions. A person does not commit an offense if:

(1) being an agent or employee of a common carrier, he intercepts or records communications in the ordinary course of such common carrier's business; or

(2) being a party to the communication, he:

(A) intercepts or records any communication that he reasonably believes constitute evidence of an offense, and

(B) acts in good faith for the purpose of exposing wrongdoing; or

(3) being a law enforcement officer, he intercepts or records communications under the authority granted by a warrant or written authorization from the Minister of Home Affairs or Minister of Defense.

(d) Definition. "Communication" means any sound, image, writing, signal, or datum transmitted over any medium.

(e) Grading. The offense is a Class 5 felony.

### **Section 232 – Unlawful Acquisition of Information**

(a) Offense Defined. A person commits an offense if he:

(1) knowing that he has no license or authority to do so.

(2) acquires any highly secured or private information,

(b) Exception. A person does not commit an offense if he:

(1) acquires private information,

(2) in good faith for the purpose of exposing wrongdoing.

(c) Definitions.

(1) "Highly secured information" means information that is secured against unauthorized access.

(2) "Private information" means information that a reasonable person would not disclose to the general public.

(d) Grading.

(1) Unlawful Acquisition of Highly Secured Information. The offense is a Class 5 felony if the information is highly secured.

(2) Unlawful Acquisition of Private Information. The offense is a Class 1 misdemeanor if the information is private.

### **Section 233 – Unlawful Disclosure of Information**

(a) Offense Defined. A person commits an offense if he discloses to another any communication or information that he knows:

- (1) was acquired in a manner prohibited by Section 231 or 232; or
  - (2) the other person has no license or authority to acquire.
- (b) Grading. The offense is a Class 1 misdemeanor.

**Section 234 – Definitions**

- (a) “Communication” has the meaning given in Section 231(d).
- (b) “Dwelling” has the meaning given in Section 230(d)(1).
- (c) “Highly secured information” has the meaning given in Section 232(c)(1).
- (d) “Highly secured premises” has the meaning given in Section 230(d)(2).
- (e) “Inhabited structure” has the meaning given in Section 221(b).
- (f) “Law enforcement officer” has the meaning given in Section 521(d).
- (g) “Private information” has the meaning given in Section 232(c)(2).
- (h) “Storage structure” has the meaning given in Section 230(d)(3).

## **FORGERY AND FRAUDULENT PRACTICES**

### **CHAPTER 310. FORGERY AND FRAUDULENT PRACTICES**

Section 310 – Forgery and Counterfeiting; Simulating Objects of Special Value

Section 311 – Tampering with Writing, Record, or Device

Section 312 – Identity Fraud

Section 313 – Deceptive Practices

Section 314 – Commercial Bribery and Breach of Duty to Act Disinterestedly

Section 315 – Rigging Publicly Exhibited Contest or Public Bid

Section 316 – Defrauding Secured Creditors

Section 317 – Fraud in Insolvency

Section 318 – Receiving Deposits in a Failing Financial Institution

Section 319 – Selling Participation in a Pyramid Sales Scheme

Section 320 – Definitions

#### **Section 310 – Forgery and Counterfeiting; Simulating Objects of Special Value**

(a) Offense Defined. A person commits an offense if, with the purpose of deceiving another or concealing any wrongdoing, he knowingly:

(1) utters, reiterates, or refers to any writing or object known to be a forgery under Subsection (a)(1) or (a)(2).

(2) creates or alters any object or writing so that it falsely purports to have a particular antiquity, rarity, value, origin, or authorship; or

(3) makes, completes, executes, authenticates, issues, or transfers a writing so that;

(i) it falsely purports to be the act of another, or

(ii) to have been executed at a particular time or place, or in a particular manner or numbered sequence, or (iii) to be a copy of an original; or

(b) Definition. “Writing” means any symbol of value, right, privilege, or identification, regardless of medium.

(c) Grading.

(1) Counterfeiting. The offense in Subsection (a)(1) is a Class 4 felony if the writing described in Subsection (a)(1) purports to be:

(A) any instrument that does or may create, show, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status; or

(B) any writing issued or received by the government.

(2) Forgery. Otherwise the offense in Subsection (a) is a Class 5 felony.

#### **Section 311 – Tampering with Writing, Record, or Device**

(a) Offense Defined. A person commits an offense if:

(1) with the purpose of deceiving anyone or concealing any

wrongdoing,

(2) he alters, destroys, removes, or conceals any record, writing, or object,

(3) knowing that he has reason or authority to do so.

(b) Grading. The offense is a Class 5 felony.

### **Section 312 – Identity Fraud**

(a) Offense Defined. A person commits an offense if:

(1) he commits with reckless disregard for whether such conduct will:

(A) cause harm to any other person, or

(B) give himself a benefit to which he is not entitled, or

(C) cause any other person to believe that the defendant is lawfully exercising official or legislative authority when in fact he is not.

(2) He:

(A) represents himself to be another person, or

(B) manufactures, transfers, or sells the identification of another person, or

(C) purchases the identification of another person,

(b) Information Constituting Identification. For the purposes of Subsections (a)(2)(B) and (a)(2)(C), information constituting identification includes a person's name, birth date, personal identification number or code, financial information, and any other information that could be used to identify the person.

(c) Grading.

(1) Trafficking in Stolen Identities. The offenses in Subsections (a)(1)(B) and (a)(1)(C) are Class 5 felonies.

(2) Identity Fraud. Otherwise the offense is a Class 1 misdemeanor.

### **Section 313 – Deceptive Practices**

(a) Offense Defined. A person commits an offense if, in connection with any proposed or completed transaction in goods or services, he:

(1) recklessly supplies materially false or misleading information;

or

(2) knowingly deceives by acting contrary to established commercial practice.

(b) Grading. The offense is a Class 1 misdemeanor.

### **Section 314 – Commercial Bribery and Breaching a Duty to Act Disinterestedly**

(a) Soliciting or Accepting a Commercial Bribe. A person commits an offense if he:

(1) knowingly solicits or accepts any benefit;

(2) as consideration for violating a duty of fidelity to which he is

subject as:

- (A) a partner, agent, or employee of another; or
- (B) a trustee, guardian, or other fiduciary; or
- (C) a lawyer, physician, accountant, appraiser, or other professional adviser or informant; or
- (D) an officer, director, manager, or other participant in the direction of the affairs of a corporation or an unincorporated association; or
- (E) an arbitrator or other purportedly disinterested adjudicator or referee.

(b) Offering, Conferring, or Paying a Commercial Bribe. A person commits an offense if he:

- (1) knowingly offers, confers, or pays any benefit,
- (2) the acceptance of which is prohibited under Subsection (a).

(c) Breaching a Duty to Act Disinterestedly. A person commits an offense if he:

- (1) holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services, and
- (2) knowingly solicits or accepts any benefit to influence his selection, appraisal, or criticism.

(d) Grading. The offenses in this Section are Class 4 felonies.

### **Section 315 – Rigging Publicly Exhibited Contest or Public Bid**

(a) Offense Defined. A person commits an offense if:

(1) with the purpose of preventing a publicly exhibited contest or exhibition from being conducted in accordance with the rules and usages purporting to govern it, he:

- (A) offers, confers, or pays any benefit to a participant, official, or other person associated with such contest or exhibition, or
- (B) threatens bodily injury to any such participant, official, or other person, or
- (C) tampers with any person, animal, or other thing associated with the contest or exhibition; or

(2) he knowingly solicits or accepts any benefit the giving of which would be criminal under Subsection (a)(1); or

(3) he knowingly engages in conduct that violates the laws governing the bidding process for a public contract; or

(4) he:

- (A) knowingly sponsors, produces, judges, or otherwise participates in a publicly exhibited contest or exhibition,
- (B) the act under Subsection (a)(4)(i) is committed knowing that the contest or exhibition is not being conducted in accordance with the rules and usages purporting to govern it.

(b) Definition. “Benefit” means any compensation, gift, present, or

material or non-material advantage, regardless of monetary value.

(c) Grading.

(1) Arranging a Rigged Contest. The offenses in Subsections (a)(1), (a)(2), and (a)(3) are Class 4 felonies.

(2) Participating in a Rigged Contest. The offense in Subsection (a)(4) is a Class 5 felony.

### **Section 316 – Defrauding Secured Creditors**

(a) Offense Defined. A person commits an offense if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with the purpose of hindering enforcement of that interest.

(b) Grading. The offense is a Class 1 misdemeanor.

### **Section 317 – Fraud in Insolvency**

(a) Offense Defined. A person commits an offense if, knowing that proceedings have been or are about to be instituted for the appointment of any person entitled to administer property for the benefit of creditors, or that any other composition or liquidation for the benefit of creditors has been or is about to be made, he:

(1) deals with any property with the purpose of defeating or obstructing the claim of any creditor, or otherwise obstructing the operation of any law relating to administration of property for the benefit of creditors; or

(2) knowingly falsifies any writing relating to the property; or

(3) knowingly misrepresents or refuses to disclose to any person entitled to administer property for the benefit of creditors, the existence of any information that he could be legally required to furnish in relation to such administration.

(b) Grading. The offense is a Class 1 misdemeanor.

### **Section 318 – Receiving Deposits in a Failing Financial Institution**

(a) Offense Defined. A person commits an offense if, while directing or participating in the direction of a financial institution, he:

(1) knowingly receives or permits the receipt of an investment in the institution,

(2) knowing that due to serious financial difficulties the institution is about to suspend operations or go into receivership or reorganization, and

(3) is reckless as to the possibility that the person making the payment is unaware of the institution's serious financial difficulties.

(b) Grading. The offense is a Class 1 misdemeanor.

### **Section 319 – Selling Participation in a Pyramid Sales Scheme**

(a) Offense Defined. A person commits an offense if he knowingly sells the right to participate in a pyramid sales scheme.

(b) Definition. "Pyramid sales scheme" means any plan or operation:

(1) whereby a person, in exchange for anything of value, acquires the opportunity to receive anything of value,

(2) the act under Subsection (a) is primarily based upon the inducement of additional persons to participate in the same plan or operation, and

(3) not primarily contingent on the quantity of property to be sold or distributed for purposes of resale to customers.

(c) Grading. The offense is a Class 1 misdemeanor.

### **Section 320 – Definitions**

(a) “Benefit” has the meaning given in Section 315(b).

(b) “Bodily injury” has the meaning given in Section 17(7).

(c) “Corporation” has the meaning given in Section 70(c)(1).

(d) “Deceive” has the meaning given in Section 313(a).

(e) “Fiduciary” has the meaning given in Section 215(c)(3).

(f) “Pyramid sales scheme” has the meaning given in Section 319(b).

(g) “Services” has the meaning given in Section 214(b).

(h) “Agent” has the meaning given in Section 70(c)(4).

(i) “Writing” has the meaning given in Section 310(b).



## OFFENSES AGAINST THE FAMILY

### CHAPTER 410. OFFENSES AGAINST THE FAMILY

- Section 410 – Unlawful Marriage
- Section 411 – Unlawful Sexual Intercourse
- Section 412 – Unlawful Sexual Contact
- Section 413 – Incest
- Section 414 – Child Abandonment and Parental Duty of Care
- Section 415 – Non-Support
- Section 416 – Abortion
- Section 417 – Definitions

#### Section 410 – Unlawful Marriage

- (a) Unlawful Marriage. A person commits an offense if:
- (1) being already married to four wives, or during the post-marital waiting period of one of the four wives, he marries again, or
  - (2) being already married, or during the post-marital period of his divorced wife, he marries a sister of one of his current wives; or
  - (3) within the post marital period, a woman marries a man other than the man who divorced her; or
  - (4) being already married, a woman enters into a second marriage; or
  - (5) a woman divorced three times, marries the same man who divorced her, without getting married to another man and being divorced by him; or
  - (6) two people divorced due to adultery (Lian) getting re-married
  - (7) a man and woman whose marriage is forever prohibited in Islamic Sharia due to them being close relatives, or being nursed by the same woman, or due to marital relations, enters in to a marriage; or
  - (8) two persons of the same sex enter into a marriage; or
  - (9) a woman gets married to a non-muslim man; or
  - (10) a man gets married to a non-muslim woman not belonging to adherent faiths which have revealed scripture.

(b) Definitions.

- (1) “Post-marital waiting period” means:
  - (A) the time period between the date of divorce and 3 complete menstrual cycles, if the divorced woman is of menstrual age and has had sexual intercourse with her husband at least once during the period of marriage and is not pregnant at the time of divorce.
  - (B) the time period between the date of divorce and three lunar months, for a divorced woman who has not started

menstruating or has reached menopause and has never consummated with the husband in marriage.

(C) if the woman is pregnant, the period until the pregnancy ends by birth or until the period up to the end of the pregnancy.

(D) the period of 4 lunar months and 10 days following the death of a woman's husband during marriage or during the post-marital period, for a woman who is not pregnant at the time.

(c) Grading. The offenses in this Section are Class 1 misdemeanors.

### **Section 411 – Unlawful Sexual Intercourse**

(a) Unlawful Intercourse. A person commits an offense if:

(1) he engages in sexual intercourse

(2) he engages in sexual intercourse with a person of the same sex.

(b) Grading.

(1) Adultery and Fornication. The offense in Subsection (a) is:

(2) a Class 5 felony if the person is married and has intercourse.

(3) a Class 1 misdemeanor if the person is unmarried and has intercourse with a person married to another.

(4) a Class 2 misdemeanor if the person is unmarried and has intercourse with an unmarried person.

(5) a Class 4 felony if the person married or unmarried has sexual intercourse with a person with whom marriage is prohibited by virtue of being a close relative, or being nursed by the samewoman, or due to marriage.

(6) a Class 3 felony, if the person holds a special place in the family and has misused such position, even if the person is not prohibited by virtue of being a close relative, or being nursed by the same woman, or due to marriage,

[(c) Four Witnesses Rule. If the offense in Subsection (a) is proven with comparably persuasive evidence other than the testimony of four witnesses, such as DNA evidence or evidence of pregnancy, the offense is one grade lower than it would otherwise be.]<sup>8</sup>

[(d) Additional Punishment Authorized. In addition to the punishment authorized under Chapter 90, to impose the penalty imposed under Islamic Sharia, an additional punishment of 100 lashes is authorized for the offense.]\*

(e) Exception. Where the offense prescribed under subsection (a) (1) is proved in accordance with subsection (c), the offense shall not be subject to the punishment prescribed under subsection (d) of this Section.

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(f) Definitions.

(1) “unlawful sexual intercourse” means insertion even to a small degree, by a man of his penis into the vagina of a woman who is not his wife or a not a woman waiting his post-marital divorce period.

(2) “Same- sex intercourse means”;

(A) Insertion by a man his sexual organ or any object into the anus of another man for sexual gratification. Or the insertion into another mans mouth the penis of a man or

(B) Insertion of a woman’s organ or any object into the vagina or anus of another woman for sexual gratification.

(3) “Lashes” means the symbolic punishment of striking an offender’s back with a short length of rope in a manner not designed to cause bodily injury. A single person must inflict all of the lashes prescribed as punishment, and he may only drive the rope using his wrists; he may not use any other part of his arm or movement in his shoulders, hips, back, legs or torso for that purpose.]<sup>9</sup>

**Section 412 – Unlawful Sexual Contact**

(a) Unlawful Intercourse. A person commits an offense if:

(1) the person is married and has sexual contact with a person not his spouse. The offense is a Class 1 misdemeanor.

(2) the person is unmarried and has sexual contact with a person married to another. The offense is a Class 2 misdemeanor.

(3) if the person is unmarried and has sexual contact with an unmarried person. The offense is a Class 3 misdemeanor.

(4) if the person has sexual conduct with an animal. The offense is a Class 3 felony.

(5) if the person married or unmarried has sexual contact with a person prohibited for marriage by virtue of being a close relative, or being breast fed by the same mother, or due to marriage. The offense is a Class 5 felony.

(6) if the person holds a special place in the family and has misused such position to engage in sexual contact, even if the person is not prohibited by virtue of being a close relative, or being breast fed by the same mother, or due to marriage. The offense is a Class 4 felony.

(b) Offense Defined. A person engaging in sexual contact with a person of the same is committing an offense.

(c) Prohibition. “prohibited sexual contact” means indecent acts other than the offenses prescribed under Section 411 (a) of this Code, with a person of same sex, or with a person of the opposite

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sex other than with a person to whom he is married, or with an animal, for obtaining sexual gratification.

### **Section 413 – Incest**

(a) Offense Defined. A person commits an offense if he willingly engages in sexual intercourse or sexual contact with a close relative.

(b) Grading.

(1) Aggravated Incest. The offense is a Class 4 felony if the person is a parent, grandparent, or great-grandparent of the close relative.

(2) Incest. Otherwise the offense under subsection (a) is a Class 5 felony.

[(3) Additional Punishment Authorized. In addition to the punishment authorized under Chapter 90, an additional punishment of 19 lashes, as defined in Section 411(f)(3), is authorized for the offense.]\*

[(4)“Lashes” means the symbolic punishment of striking an offender’s back in a manner not designed to cause bodily injury with less than 40 lashes, using a rope (hanmushi or dhurra) in accordance with section 411(f)(3) of this Code.

(c) Sentencing Factor. If a person holds a position of special importance within a family, yet is not one of the persons mentioned in Section (b)(1), and abuses that position in order to commit an offense under this Section, then the baseline sentence shall be aggravated one level.

(d) “Close relative” means another to whom a person is related as:

- (i) Mother or Father, grandparent, great-grandparent; or
- (ii) child, grandchild, great-grandchild; or
- (iii) sibling; or
- (iv) aunt, great-aunt, uncle, great-uncle, nephew, niece; or
- (v) father-in-law, mother-in-law, daughter-in-law, son-in-law; or
- (vi) a person who was nursed by the same woman; or
- (vii) a person who by virtue of marriage has become a relation specified in Subsections (d)(2)(i) through (d)(2)(v).

### **Section 414 – Child Abandonment and Parental Duty of Care**

(a) Offense Defined. A person commits an offense if being a parent, guardian, or other person having physical custody or control of a child:

- (1) (A) under circumstances that unreasonably endanger the child’s physical health, safety, or welfare; or  
(B)he leaves the child under the age of 14 without supervision by a responsible person over the age of 14 for a period of 24 hours or more,
- (2) (A) he fails to take reasonable measures to prevent the commission of any offense in Chapters 110, 120, or 130 against the child, knowing that such an offense is reasonably likely to

occur; or

(3) he fails to register the child at the time of birth.

(b) Determination of Circumstances Unreasonably Endangering the Child's Physical Health, Safety, or Welfare. For the purposes of determining whether circumstances endangering the child's physical health, safety, or welfare, the trier of fact shall consider, among other factors:

(1) the child's age and development, and

(2) whether the abandonment is attributable to economic hardship or illness, and

(3) whether the actor made a good faith effort to provide for the child's physical health, safety, and welfare.

(c) Grading. The offense is a Class 1 misdemeanor.

### **Section 415 – Non-Support**

(a) Offense Defined. A person commits an offense if, having the ability to provide support, he:

(1) fails to provide for the support of:

(i) his child who is less than 18 years old, or

(ii) his parents who are over the age of 50 or, incapacitated

(iii) his spouse who is incapacitated; and

(2) the act under subsection (a) (1) is conducted knowing the family member is in need of such support; or

(a) a support payment is required under a court or administrative order of support, and the required support payment has been unpaid longer than 6 months, and is more than [1500 MVR] in arrears.

(b) the required support payment has been unpaid;

(1) longer than 6 months; or

(2) is more than MVR 1500/- in arrears.

(b) Incapacitation. For the purpose of this Section, incapacitation means physically or mentally unable to support oneself by working.

(c) Grading. The offense is a Class 5 felony.

### **Section 416 – Abortion**

(a) Offense Defined. A person commits an offense if, after the first 120 days of the pregnancy:

(1) he purposely terminates the pregnancy of another person by means other than live birth, or

(2) she purposely terminates her own pregnancy by using, or causing another person to use instruments, drugs or violence upon her for the purpose of terminating her pregnancy by means other than live birth.

(b) Exception for Mother at Risk. A person does not commit the offense in Subsection (a) if

(1) such person is:

- (A) the mother, or
- (B) a licensed medical professional; and
- (2) a licensed medical professional has determined that the pregnancy is putting the mother's life at risk.

(c) Exception for attempting to prevent pregnancy. Prevention of pregnancy by medically obstructing means of pregnancy or prescribing an oral contraception or any other substance that works prior to being pregnant or at the time or afterwards, is not an offence under subsection (a) of this Section.

(d) Exception for Pregnancy Resulting from Sexual Assault or Incest. It is not an offense under Subsection (a) to terminate a pregnancy if the pregnancy is the result of

- (a) sexual assault, as defined by Section 130, or
- (2) incest, as defined by Section 413.

(e) Grading. The offense is a Class 1 misdemeanor.

#### **Section 417 – Definitions**

- (a) "Close relative" has the meaning given in Section 410(d)(2).
- (b) "Incompetent" has the meaning given in Section 27(d).
- (c) "Sexual Contact" has the meaning given in Section 131(b).

## **OFFENSES AGAINST PUBLIC ADMINISTRATION**

### **CHAPTER 510. BRIBERY AND OFFICIAL MISCONDUCT OFFENSES**

Section 510 – Bribery

Section 511 – Influencing Official Conduct

Section 512 – Official Misconduct

Section 513 – Misuse of Government Information or Authority to Obtain a Benefit

Section 514 – Unauthorized Disclosure of Confidential Information

Section 515 – Definitions

#### **Section 510 – Bribery**

(a) Accepting Bribe. A person commits an offense if:

(1) being a public official or a candidate for public office;

(2) he knowingly solicits, accepts, or agrees to accept for himself or another person;

(3) a benefit not authorized by law in exchange for:

(A) influencing or agreeing to influence official authority,

or

(B) exercising or omitting to exercise official authority.

(b) Offering Bribe. A person commits an offense if he:

(1) knowingly offers or gives to a public official or a candidate for public office;

(2) a benefit not lawfully authorized by law in exchange for:

(A) influencing or agreeing to influence official authority,

or

(B) exercising or omitting to exercise official authority.

(c) Definition. “Official authority” means the performance or non-performance by a public official of a public duty or the use or non-use of state power by a public official to grant or deny a benefit to a person or group.

(d) Rebuttable Presumption. The trier of fact shall presume, subject to rebuttal, that any gift valued at more than 10,000 Rufiyaa given to a public official by a person with business under the influence of that official, or any person related to a person with such business, constitutes a benefit not authorized by law given in exchange for influencing or agreeing to influence, or exercising or omitting to exercise, official authority.

(e) Grading. The offense is a Class 3 felony.

#### **Section 511 – Influencing Official Conduct**

(a) Offense Defined. A person commits an offense if, with the purpose of influencing the exercise of official authority by a person who is or will be a public official,

(1) he commits, or threatens to commit, an offense or,

(2) directly or indirectly communicates with a public official in any manner prohibited by law

(b) Grading.

- (1) The offense defined in Subsection (a) (1) of this Section is a Class 4 felony.
- (2) The otherwise the offense shall be a Class 5 Felony.

### **Section 512 – Official Misconduct**

(a) Offense Defined. A person commits an offense if, being a public official acting in his official capacity, he knowingly:

- (1) fails to perform a mandatory duty as required by law, or
- (2) performs an act that is not lawfully authorized.

(b) Grading. The offense is a Class 1 misdemeanor.

(c) Sentencing Factor. The baseline sentence provided in the Guideline Sentence Table of Section 1004 for any offense under this Section is aggravated one level if the public official commits the offense in exchange for a benefit to himself or to a close relative or friend.

### **Section 513 – Misuse of Government Information or Authority to Obtain a Benefit**

(a) Misuse of Confidential Information. A person commits an offense if he uses:

(1) confidential information to which he had access by virtue of his status as a public official,

(2) for the purpose of obtaining a benefit for himself or for another person to which he is not entitled.

(b) Misuse of Official Authority. A person commits an offense if he:

(1) uses or influences official authority in his capacity as a public official,

(2) for the purpose of obtaining a benefit for himself or for another person to which he is not entitled.

(c) Grading. The offenses are Class 4 felonies.

### **Section 514 – Unauthorized Disclosure of Confidential Information**

(a) Offense Defined. A person commits an offense if:

(1) knowing that he is in violation of a duty imposed on him as a public official,

(2) he discloses confidential information that he has acquired as a public official.

(b) Grading. The offense is a Class 1 misdemeanor.

### **Section 515 – Definitions**

(a) “Benefit” has the meaning specified in Section 315(b).

(b) “Official authority” has the meaning specified in Section 510(c).

(c) “Public official” has the meaning specified in Section 533 (b).



## **CHAPTER 520. PERJURY AND OTHER OFFICIAL FALSIFICATION OFFENSES**

Section 520 – Perjury

Section 521 – Unsworn Falsification to Authorities

Section 522 – False Reports to Law Enforcement

Section 523 – False Alarms to Agencies of Public Safety

Section 524 – Definitions

### **Section 520 – Perjury**

(a) Offense Defined. A person commits an offense if:

(1) he makes a false statement;

(2) that he does not believe to be true:

(A) under oath or equivalent affirmation, or

(B) in swearing or affirming the truth of a statement

previously made; and

(3) the statement is made in an official proceeding.

(b) Defense for Retraction. A person does not commit an offense if:

(1) he retracts the falsification in the course of the proceeding in which it was made,

(2) before it became manifest that the falsification was or would be exposed, and

(3) before the falsification substantially affected the proceeding.

(c) Irregularities No Defense. It is not a defense to prosecution under this Section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not qualified to make the statement. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(d) Corroboration. A person does not commit an offense if proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

(e) Grading. The offense is a Class 1 misdemeanor.

(f) Definitions. An “official proceeding” means a proceeding heard by or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or a deposition in connection with any such proceeding.

### **Section 521 – Unsworn Falsification to Authorities**

(a) Written Falsification. A person commits an offense if:

(1) with the purpose of misleading a public official or law enforcement officer in performing his official function, or

(2) in an official proceeding,

(3) he:

(A) makes a written false statement that he does not believe to be true, or

(B) knowingly omits information necessary to prevent a

written statement from being misleading.

(b) False Statements. A person commits an offense if:

(1) he makes a false statement,

(2) that he does not believe to be true, and

(3) that statement is intended to mislead a public official or law enforcement officer in performing his official function.

(c) Exception. A person does not commit an offense under Subsection (a) or (b) if the written falsification or false statement is not material.

(d) Definition. "Law enforcement officer" means a person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.

(e) Grading. The offense is a Class 1 misdemeanor.

### **Section 522 – False Reports to Law Enforcement**

(a) Falsely Incriminating Another. A person commits an offense if:

(1) he gives what he knows is false information to any law enforcement officer,

(2) with the purpose to implicate another in criminal activity.

(b) Fictitious Reports. A person commits on offense if he:

(1) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur, or

(2) pretends to furnish law enforcement authorities with such information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(c) Grading.

(1) Aggravated False Incrimination and False Incrimination. The offense in Subsection (a) is:

(A) a Class 3 felony if it causes a person to be convicted of a felony that is a grade of Class 3 or higher.

(B) Otherwise the offense in Subsection (a) is a Class 5 felony.

(2) The offense in Subsection (b) is a Class 1 misdemeanor.

### **Section 523 – False Alarms to Agencies of Public Safety**

(a) Offense Defined. A person commits an offense if he:

(1) knowingly causes a false alarm of fire or other emergency,

(2) to be transmitted to an organization dealing with emergencies involving danger to life or property.

(b) Grading. The offense is a Class 2 misdemeanor

### **Section 524 – Definitions**

(a) "Law enforcement officer" has the meaning given in Section 521(d).

(b) "Official proceeding" has the meaning given in Section 520(f).

## **CHAPTER 530. INTERFERENCE WITH GOVERNMENTAL OPERATIONS AND ESCAPE**

Section 530 – Obstructing Justice

Section 531 – Failure to Report Vehicular Accident

Section 532 – Resisting or Obstructing a Law Enforcement Officer or Custodial Officer

Section 533 – Obstructing Administration of Law or Other Government Function

Section 534 – Obstructing Service of Process

Section 535 – Refusing to Aid an Officer

Section 536 – Concealing or Aiding a Fugitive

Section 537 – Escape; Failure to Report to a Correctional Institution or to Report for Periodic Imprisonment

Section 538 – Permitting Escape

Section 539 – Bringing or Allowing Contraband into a Correctional Institution; Possessing Contraband in a Correctional Institution

Section 540 – Intimidating, Improperly Influencing, or Retaliating Against a Public Official, Witness, or Voter

Section 541 – Failure to Appear

Section 542 – Definitions

### **Section 530 – Obstructing Justice**

(a) Offense Defined. A person commits an offense if, with the purpose of preventing the apprehension of or to obstruct the prosecution or defense of a person, he knowingly:

- (1) warns that person of impending discovery or apprehension; or
- (2) destroys, alters, conceals, or disguises physical evidence, plants false evidence, furnishes false information, regardless of its admissibility in evidence; or
- (3) induces a witness having knowledge material to the subject at issue to leave the State or to conceal himself; or
- (4) deters a witness from testifying freely, fully, or truthfully; or
- (5) possessing knowledge material to the subject at issue, he leaves the State or conceals himself.

(6) Subsection (a) (1) does not prohibit giving advice or warning to bring another into compliance with law.

(b) Grading. The offense is a Class 4 felony.

### **Section 531 – Failure to Report Vehicular Accident**

(a) Offense Defined. A person commits an offense if:

- (1) having been involved in a vehicular accident on land or sea,
- (2) he fails to report the accident to the appropriate authorities.

(b) Grading.

(1) Aggravated Failure to Report. The offense is a Class 1 misdemeanor if someone sustained serious bodily injury in the accident.

(2) Failure to Report. Otherwise the offense is a Class 2

misdemeanor.

### **Section 532 – Resisting or Obstructing a Law Enforcement Officer or Custodial Officer**

- (a) Offense Defined. A person commits an offense if:
- (1) he knowingly resists, obstructs, or interferes with the performance of an authorized act within the official capacity of a person as defined in subsection (2) of this section,
  - (2) whom he knows to be a law enforcement officer or custodial officer.
- (b) Definition. “Custodial officer” means:
- (1) a person employed to supervise and control inmates incarcerated in, or in the custody of, a correctional institution, or
  - (2) a person employed to supervise and control persons who have been civilly committed or are being detained awaiting civil commitment.
- (c) Grading. The offense is a Class 1 misdemeanor.

### **Section 533 – Obstructing Administration of Law or Other Government Function**

- (a) Offense Defined. A person commits an offense if he:
- (1) knowingly obstructs, impairs, or perverts the administration of law or other governmental function by
  - (2) (A) physical interference or obstacle, breach of official duty, or any unlawful act; or
  - (B) failing to report income, revenue, or other information for which reporting is required by law to revenue officers or other public officials who collect taxes; or
  - (C) failing to pay taxes or duties owed.
- (b) Definition. “Public Official” shall include in its meaning members of the Executive, Legislature, Judiciary and Independent Institutions. Such persons shall include Judges, Members of Parliament, and persons contending for elected posts of the State.
- (c) Grading. The offense is a Class 1 misdemeanor.

### **Section 534 – Obstructing Service of Process**

- (a) Offense Defined. A person commits an offense if he knowingly resists or obstructs the authorized service or execution of a civil or criminal process or order of a court.
- (b) Grading. The offense is a Class 2 misdemeanor.

### **Section 535 – Refusing to Aid an Officer**

- (a) Offense Defined. A person commits an offense if:
- (1) when requested to provide aid by a person known by him to be a law enforcement officer,
  - (2) he knowingly fails to provide reasonable aid to the officer in:
    - (A) apprehending a person whom the officer is authorized

to apprehend, or

(B) preventing the commission of an offense by another.

(b) Grading. The offense is a Class 3 misdemeanor.

### **Section 536 – Concealing or Aiding a Fugitive**

(a) Offense Defined. A person commits an offense if:

(1) with the purpose of preventing the apprehension of an offender,

(2) he harbors, aids, or conceals the offender,

(3) unless he stands in the relation of husband, wife, parent, child, brother, or sister to the offender.

(b) Grading.

(1) Concealing or Aiding a Felon. The offense is a Class 5 felony if the offender is charged with a felony.

(2) Concealing or Aiding a Fugitive. Otherwise the offense is a Class 1 misdemeanor.

### **Section 537 – Escape; Failure to Report to a Correctional Institution or to Report for Periodic Imprisonment**

(a) Offense Defined. A person commits an offense if:

(1) he is:

(A) in penal custody pursuant to a conviction or charge for an offense, or

(B) in the lawful penal custody of a law enforcement officer, or

(C) civilly committed or detained awaiting civil commitment, and

(2) he knowingly:

(A) escapes from the place of detention or from the penal custody of an employee of that institution, or

(B) fails to report to the place of detention or to report for periodic detention at the time required, or

(C) fails to return from furlough or from work or day release, or

(D) fails to abide by the terms of home confinement or probation.

(b) Definition.

(1) “Penal custody” means lawful custody of the State, including:

(A) pretrial incarceration or detention following arrest, or

(B) incarceration or detention under a sentence or commitment to a State correctional institution, or

(C) parole or mandatory supervised release, or

(D) home detention, or

(E) probation.

(2) “Correctional institution” means an institution or place for the incarceration or custody of persons

(A) serving a sentence for a criminal offense, or

- (B) awaiting trial or sentence for an offense, or
  - (C) under arrest for
    - (aa) an offense, or
    - (bb) a violation of probation, or
    - (cc) a violation of parole, or
    - (dd) a violation of mandatory supervised release, or
  - (D) awaiting a bail setting hearing or preliminary hearing.
- (c) Grading.
- (1) Escape. The offense in Subsection (a)(2)(B) is a Class 4 felony.
  - (2) Failure to Report: First Degree. The offenses in Subsections (a)(2)(A) through (D) are a Class 5 felonies if the underlying offense is a felony.
  - (3) Failure to Report: Second Degree. Otherwise the offense is a Class 1 misdemeanor.

### **Section 538 – Permitting Escape**

- (a) Offense Defined. A person commits an offense if:
- (1) he causes or facilitates a prisoner to escape, or
  - (2) being a correctional employee, he permits a prisoner in his custody to escape.
- (b) Definition. “Correctional employee” means
- (1) an elected or appointed officer, trustee, or employee of a correctional institution or of the governing authority of the correctional institution, or
  - (2) a person who performs services for the correctional institution pursuant to contract with the correctional institution or its governing authority, including a person employed to supervise and control inmates incarcerated in, or in the custody of, a correctional institution.
- (c) Grading.
- (1) Permitting Escape by a Felon. If the offense upon which detention is based is a felony, the offense is a Class 1 misdemeanor.
  - (2) Permitting Escape. Otherwise the offense is a Class 2 misdemeanor.

### **Section 539 – Bringing or Allowing Contraband into a Correctional Institution; Possessing Contraband in a Correctional Institution**

- (a) Offense Defined. A person commits an offense if, without authority, he knowingly:
- (1) brings an item of contraband into a correctional institution, or
  - (2) places an item of contraband in such proximity to a correctional institution as to give an inmate access to, or
  - (3) possesses an item of contraband in a correctional institution.
- (b) Definition. “Item of contraband” is an item in or being brought into a correctional institution that is:
- (1) a firearm, stun gun, or taser; or
  - (2) firearm ammunition, meaning any self-contained cartridge or

shotgun shell that is designed to be used or adaptable to use in a firearm;  
or

- (3) a catastrophic agent; or
- (4) a drug controlled by law; , or
- (5) any instrument adapted such as to allow a person to use controlled substances; or
- (6) a dangerous weapon, or any other instrument that could be adapted to be used as a dangerous weapon; or
- (7) a tool to defeat security mechanisms, including a handcuff or security restraint key, tool designed to pick locks, or a device or instrument capable of unlocking handcuff or security restraints, doors to cells, rooms, gates, or other areas of the correctional institution; or
- (8) a cutting tool, including a hacksaw blade, wire cutter, or device, instrument or file capable of cutting through metal; or
- (9) electronic equipment defined by correctional authorities as contraband, including any electronic, video recording device, computer, or cellular communications equipment, including cellular telephones, cellular telephone batteries, videotape recorders, pagers, computers, and computer peripheral equipment; or
- (10) alcoholic beverages; or
- (11) any other item expressly prohibited from a correctional institution by law or by order of correctional authorities.

(c) Grading.

- (1) (A) Dangerous Contraband. The offense is a Class 4 felony for contraband in Subsections (b)(1)-(3).
- (B) Aggravated Contraband. The offense is a Class 5 felony for contraband in Subsections (b)(4)-(10).
- (C) Contraband. Otherwise the offense is a Class 1 misdemeanor.
- (2) Aggravation by a Correctional Employee. The offense is one grade higher than it otherwise would be if the offense is committed by a correctional employee.

### **Section 540 – Intimidating, Improperly Influencing, or Retaliating Against a Witness, Voter, or Other Person Performing a Public Duty**

- (a) Offense Defined. A person commits an offense if:
  - (1) with the purpose of:
    - (A) deterring a party or witness from testifying freely, fully, or truthfully in a legal proceeding; or
    - (B) annoying, harassing, influencing, intimidating, or victimizing a witness, voter, or other person because of that person’s past, present, or potential future testimony, vote, or other act or omission related to his performance of a public duty;
  - (2) he:
    - (A) commits, or threatens to commit, an offense likely to cause serious bodily injury, unlawful restraint, or substantial property damage to another; or

- (B) commits or threatens any other offense; or
- (C) offers or gives a benefit not authorized by law; or
- (D) communicates, directly or indirectly, with such other person in a manner prohibited by law.

(b) Grading.

(1) Felonious Interference. The offenses in Subsections (a)(2)(A) through (2)(C) are Class 5 felonies.

(2) Interference. Otherwise the offense is a Class 1 misdemeanor.

**Section 541 – Failure to Appear**

(a) Offense Defined. A person commits an offense if he:

(1) having been admitted to bail for appearance before a court or released on personal recognizance,

(A) fails to appear on the date directed, or

(B) violates a condition of release; or

(2) having been required by a court to appear or to produce a document or other materials as a defendant or witness in a criminal case, he fails to comply with the order.

(b) Grading. The offense is one grade lower than the grade of the underlying offense, but not higher than a Class 2 misdemeanor.

**Section 542 – Definitions**

(a) “Bodily injury” has the meaning given in Section 17 (7).

(b) “Catastrophic agent” has the meaning given in Section 121(c)(1).

(c) “Correctional employee” has the meaning given in Section 538(b).

(d) “Correctional institution” has the meaning given in Section 537(b)(2).

(e) “Custodial officer” has the meaning given in Section 532(b).

(f) “Dangerous weapon” has the meaning given in Section 120(d)(1).

(g) “Firearm” has the meaning given in Section 710(d)(4).

(h) “Public Official” has the meaning given in Section 533 (b)

(i) “Item of contraband” has the meaning given in Section 539(b).

(j) “Law enforcement officer” has the meaning given in Section 521(d).

(k) “Penal custody” has the meaning given in Section 537(b)(1).

(l) “Property” has the meaning given in Section 17 (82).



## **OFFENSES AGAINST PUBLIC ORDER, SAFETY, AND DECENCY**

### **CHAPTER 610. PUBLIC ORDER AND SAFETY OFFENSES**

- Section 610 – Rioting; Forceful Overthrow of the Government
- Section 611 – Recruiting Mercenaries
- Section 612 – False Accusation of Unlawful Sexual Intercourse
- Section 613 – Operating a Regulated Business or Importing Without License
- Section 614 – Entering the Exclusive Economic Zone
- Section 615 – Disorderly Conduct
- Section 616 – Failing to Fast During Ramadan; Consuming Pork or Alcohol
- Section 617 – Criticizing Islam
- Section 618 – Duty to Aid
- Section 619 – Definitions

#### **Section 610 – Rioting; Forceful Overthrow of the Government**

- (a) **Offense Defined.** A person commits an offense if he incites, aides, or engages in rioting or a violent attempt to overthrow the government.
- (b) **Exception.** A person does not commit an offense by participating in a peaceful assembly.
- (c) **Grading.**
  - (1) **Inciting Insurrection.** The offense is a Class 2 felony if the person incites or gives commands, instructions, or directions to five or more people in furtherance of a violent attempt to overthrow the government.
  - (2) **Inciting a Riot.** The offense is a Class 3 felony if the person incites or gives commands, instructions, or directions to:
    - (A) five or more people in furtherance of a riot, or
    - (B) military personnel of the armed forces of the Maldives.
  - (3) **Participating in an Insurrection.** The offense is a Class 4 felony if the person engages in a violent attempt to overthrow the government.
  - (4) **Participating in a Riot.** Otherwise the offense is a Class 5 felony.
- (d) **Sentencing Factors.**
  - (1) If a person commits the conduct defined in Subsections (c)(1) and (c)(2), and the person is a primary leader in the incitement of a riot or an insurrection, then the baseline sentence for the offense shall be aggravated by one level.
  - (2) If a person commits an offense under this Section in furtherance of a riot or insurrection that, prior to arriving at the scene of the riot or insurrection, a person knew or believed would occur, then the baseline sentence for the offense shall be aggravated by one level.

#### **Section 611 – Recruitment of Mercenaries**

- (a) **Offense Defined.** A person commits an offense if he recruits, uses,

finances, or trains mercenaries.

(b) Definition. A “mercenary” means a person who:

(1) is specially recruited to fight in an armed conflict or attempted overthrow of a government, or to otherwise undermine the constitutional order of a government, and

(2) is motivated by private gain to take part in hostilities and is promised material compensation in excess of that promised to organized military combatants of similar rank and functions, and

(3) is neither a national of a party to the conflict nor a resident of the territory controlled by a party to the conflict, and

(4) (A) is not a member of the armed forces of a party to the conflict, or

(B) has been sent by a State that is not a party to the conflict.

(c) Grading. The offense is a Class 3 felony.

### **Section 612 – [False Accusation of Unlawful Sexual Intercourse**

(a) Offense Defined. A person commits an offense if he:

(1) makes a false statement about another person, accusing that the person is committing or has committed the offense in Section 411 (Unlawful Sexual Intercourse).

(b) Grading.

(1) The offense is a Class 4 felony.

(2) Additional Punishment Authorized. In addition to the punishment authorized under Chapter 90, an additional punishment of 80 lashes, as defined in Section 411(f)(3), is authorized for the offense.

### **Section 613 – Operating a Regulated Business or Importing Without License**

(a) Offense Defined. A person commits an offense if:

(1) without a license or other required permission from the relevant authorities,

(2) he operates a business, or imports items, regulated by law.

(b) It is an offence to carry out any activity that requires a license or other required permission from an authority, without obtaining the license the relevant authority

(c) Grading.

(1) Importing Dangerous Materials. The offense is a Class 5 felony if the person in committing the offense under subsection (a) of this Section imports a firearm, catastrophic agent, or controlled drug into Maldives.

(2) Dealing in Alcohol and/or Pork. The offense is a Class 1 misdemeanor if the business or importation involves the manufacture, sale, or distribution of alcohol or pork as prescribed in subsection (a) of this section.

(3) Unlicensed Business. Otherwise, the conduct of unlicensed business is a Class 2 misdemeanor.

(4) Carrying out any activity that requires a license or permission without obtaining the said license and/or permission. The offence defined in subsection (b) of this section is a Class 2 misdemeanor

### **Section 614 – Entering the Exclusive Economic Zone**

(a) Offense Defined. A person commits an offense if he enters the Exclusive Economic Zone of the Maldives without license or authority.

(b) Grading.

(1) Unlicensed Fishing in the EEZ. The offense is a Class 1 misdemeanor if the person commits the offense for the purpose of fishing without license or authority.

(2) Unlicensed Presence in the EEZ. Otherwise the offense is a Class 2 misdemeanor.

(c) Definition. The “Exclusive Economic Zone of the Maldives” is the maritime zone beyond and adjacent to the territorial sea up to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, within which the Maldives may regulate nonliving, living, and economic resources, as well as maritime scientific research and pollution control.

### **Section 615 – Disorderly Conduct**

(a) Offense Defined. A person commits an offense if, knowing his conduct will harass, annoy, or alarm another person in public, he:

(1) engages in fighting, or in violent or threatening behavior, or

(2) makes unreasonable noise, or

(3) uses abusive or obscene language, or makes an obscene gesture, or

(4) persistently follows a person in or about a public place or places, or

(5) solicits sexual contact, or

(6) creates a hazardous, physically offensive, or seriously alarming condition by an act that serves no legitimate purpose.

(b) Grading. The offense is a Class 3 misdemeanor.

### **Section 616 – Failing to Fast During Ramadan; Consuming Pork or Alcohol**

(a) Offense Defined. A Maldivian citizens commits an offense if,

(1) the does not fast or gives up fasting during the month of Ramadan without an acceptable medical or health-related reason, or

(2) he consumers :

(i) pork or pork products, or

(ii) alcohol.

(b) Grading.

(1) The offense is a Class 3 misdemeanor.

(2) Additional Punishment Authorized. In addition to the

punishment authorized under Chapter 90, an additional punishment of 40 lashes, as defined in Section 411(d)(2) is authorized for the offense in Subsection (a)(2)(B).\*

### **Section 617 – Criticizing Islam**

- (a) Offense Defined. A person commits an offense if
- (1) engages in religious oration and criticism of Islam in public or in a public medium with the intention to cause disregard for Islam; or
  - (2) produces, sells, distributes, or offers material criticizing Islam with the intention to cause disregard to Islam;
  - (3) The production, possession, sale, distribution, dissemination of pornography in the Maldives or importation thereof.
  - (4) The production, possession, sale, distribution dissemination and importation of idols of worship in the Maldives or importation thereof.
  - (5) Attempting to disrupt the religious unity of the citizens of Maldives, and conversing and acting in a manner likely to cause religious segregation amongst people.
- (c) Grading. The offense is a Class 1 misdemeanor.

### **Section 618 – Duty to Aid**

- (a) Offense Defined. A person commits an offense if:
- (1) he unreasonably fails to:
    - (A) give warning of a known risk to a person in danger, or
    - (B) render assistance to a person in need; and
  - (2) he could give warning or render assistance
    - (A) with no more than minimal risk of physical harm to himself or any other person, and
    - (B) without forgoing a superior duty imposed on him by law or contract.
- (b) A Person in Danger; A Person in Need.
- (1) For the purposes of this statute, a person in danger is any person imminently threatened with:
    - (A) bodily harm from illness or injury, or
    - (B) a violent offense.
  - (2) For the purposes of this statute, a person in need is any person in danger or any person who:
    - (A) is currently suffering bodily harm from illness or injury, or
    - (B) is, or recently has been, a victim of a violent offense.
- (c) Immunity From Civil Damages. A person rendering aid or giving warning under this Section shall be entitled to immunity from damages arising out of his actions, provided that the person acts in good faith and not in a manner inconsistent with any professional duties of care or standards of competence.
-

(d) Rebuttable Presumption. The trier of fact shall presume, subject to rebuttal, that the person has unreasonably failed to render assistance to a person in need if he:

(1) knows of a working telephone or radio within his access or control, and

(2) has no reason to believe that medical or law enforcement agencies have already been called to the aid of a person in need, and

(3) fails to alert medical or law enforcement agencies of the emergency.

(e) Grading. The offense is a Class 3 misdemeanor.

### **Section 619 – Definitions**

(a) “Exclusive Economic Zone of the Maldives” has the meaning given in Section 614(c).

(b) “Mercenary” has the meaning given in Section 611(b).

(c) “Sexual contact” has the meaning given in Section 131 (b).

## **CHAPTER 620. PUBLIC INDECENCY OFFENSES**

Section 620 – Prostitution

Section 621 – Promoting or Supporting Prostitution

Section 622 – Producing or Distributing Obscene Material

Section 623 – Abuse of Corpse

Section 624 – Sale of Human Body Parts

Section 625 – Cruelty to Animals

Section 626 – Definitions

### **Section 620 – Prostitution**

(a) Offense Defined. A person commits an offense if he performs an act of sexual intercourse or sexual contact with a person not his spouse in exchange for anything of value.

(b) Grading. The offense is a Class 1 misdemeanor.

### **Section 621 – Promoting or Supporting Prostitution**

(a) Offense Defined. A person commits an offense if, to obtain anything of value, he:

(1) compels a person to engage in an act or acts of prostitution; or  
(2) encourages, arranges, or otherwise facilitates an act or acts of prostitution; or

(3) allows the use of a place, over which he exercises control, for an act or acts of prostitution.

(b) Grading.

(1) Promoting Child Prostitution. The offense is a Class 3 felony if the prostitution being promoted or supported is that of a minor.

(2) Promoting Prostitution. Otherwise the offense is a Class 4 felony.

### **Section 622 – Producing or Distributing Obscene Material**

(a) Offense Defined. A person commits an offense if, with knowledge of its obscene nature or content, he:

(1) sells, delivers, or provides one or more obscene writings, pictures, records, or other representations or embodiments of the obscene; or

(2) presents or directs an obscene play, dance, or other performance; or

(3) publishes, exhibits, or otherwise makes available anything obscene; or

(4) performs an obscene act or otherwise presents an obscene exhibition of his body for gain; or

(5) advertises or otherwise promotes the sale of material represented or held out by him to be obscene; or

(6) creates, buys, procures, or possesses obscene matter or material with the purpose of distributing it in violation of this Section;  
or

(b) Exception. A person does not commit an offense under Subsections (a)(1) through (a)(6) if the distribution is only to an institution or an individual having scientific or other special justification for possession of such material.

(c) Rebuttable Presumption. The trier of fact shall presume, subject to rebuttal, a purpose to distribute from the creation, purchase, procurement, or possession of a mold, engraved plate, or other embodiment of obscenity specially adapted for reproducing multiple copies.

(d) Definition. Material or a performance is “obscene” if the average person, applying the contemporary adult community standards of the Maldives, would find that:

(1) taken as a whole, the material or performance appeals to a prurient interest, and

(2) depicts or describes sexual acts in a patently offensive way.

(e) Grading.

(1) Promoting Obscenity. The offenses in Subsections (a)(1) through (a)(6) are Class 1 misdemeanors.

(2) Consuming Obscenity. Otherwise the offense is a Class 3 misdemeanor.

(3) Aggravation for Child Pornography. The offense is one grade higher than it otherwise would be if the obscene material or performance is of a person who:

(A) is a minor, or

(B) cannot comprehend the nature of his acts because he is incompetent.

### **Section 623 – Abuse of Corpse**

(a) Offense Defined. A person commits an offense if, except as authorized by law, he treats a corpse in a way that he knows would outrage ordinary family sensibilities.

(b) Grading. The offense is a Class 2 misdemeanor.

### **Section 624 – Sale of Human Body Parts**

(a) Offense Defined. A person commits an offense if he knowingly buys or sells a part of a human body.

(b) Exceptions. A person does not commit the offense if he gives or receives compensation for a human body part that is only:

(1) reimbursement of actual expenses incurred in donating a body part or fluid for medical or scientific use; or

(2) a payment provided under a plan of insurance or other health care coverage; or

(3) reimbursement of reasonable costs associated with the removal, storage, or transportation of a human body part or fluid for scientific purposes; or

(4) purchase or sale of drugs, reagents, or other substances made from human body parts, for use in medical or scientific research, treatment, or diagnosis.

(c) Grading. The offense is a Class 1 misdemeanor.

**Section 625 – Cruelty to Animals**

(a) Offense Defined. A person commits an offense if he negligently:

- (1) cruelly mistreats an animal, or
- (2) neglects an animal in his custody.

(b) Exception. A person does not commit an offense if he is acting in accordance with accepted veterinary practices or with accepted procedures for carrying on scientific research.

(c) Grading. The offense is a Class 3 misdemeanor.

**Section 626 – Definitions**

(a) “Obscene” has the meaning given in Section 622(d).

(b) “Sexual contact” has the meaning given in Section 131 (b).

(c) “Sexual intercourse” has the meaning given in Section 411 (f)

- (1).



## CRIME CONTROL OFFENSES

### CHAPTER 710. WEAPONS OFFENSES

Section 710 – Use of a Dangerous Weapon During an Offense

Section 711 – Trafficking, Manufacture, Sale, or Possession of Firearms or Catastrophic Agents

Section 712 – Definitions

#### **Section 710 – Use of a Dangerous Weapon During an Offense**

(a) **Offense Defined.** A person commits an offense if he uses or displays a dangerous weapon in the course of committing an offense.

(b) **Grading.**

(1) If the person discharges a firearm, the offense is a Class 3 felony.

(2) Otherwise the offense is a Class 4 felony.

(c) **Aggravation for Semiautomatic and Automatic Firearms.** The offense is one grade higher than it otherwise would be if the person uses a semiautomatic or an automatic firearm.

(d) **Definitions.**

(1) “Automatic firearm” means a firearm that has an automatic loading action that will fire continuously while the trigger is depressed.

(2) “Automatic loading action” means a mechanism by which ammunition is automatically entered into the firing chamber of a firearm without human assistance.

(3) “Dangerous weapon”

(A) has the meaning given in Section 120(c)(1), and

(B) includes any firearm; any device that expels a projectile, including any pneumatic gun, spring gun, paint ball gun, or BB gun; any stun gun or taser; any sharp-edged or sharply pointed knife or razor blade; any axe or hatchet; and any billy, blackjack, bludgeon, or metal knuckles.

(4) “Firearm” means a device that is designed to expel a projectile by the action of an explosion, expansion of gas, or escape of gas that produces a muzzle velocity in excess of 250 meters per second or produces at least 60 foot-pounds of energy.

(5) “Semiautomatic firearm” means a firearm with automatic loading action but which only fires once per trigger pull.

(e) **Sentencing Factor.** The baseline sentence provided in the Guideline Sentence Table of Section 1002 for any offense under this Section is aggravated one level if a person commits the offense after dusk and before dawn.

#### **Section 711 – Trafficking, Manufacture, Sale, or Possession of Catastrophic Agents or Firearms**

(a) **Offense Defined.** A person commits an offense if, without license or express approval of the government, he knowingly:

- (1) traffics, manufactures, possesses, sells, or transfers a catastrophic agent to another; or
- (2) traffics or manufactures a firearm; or
- (3) sells or transfers a firearm to another; or
- (4) possesses a firearm.

(b) Rebuttable Presumptions. The trier of fact shall presume, subject to rebuttal, that:

(1) if a person possesses more than 5 firearms the requirements of Subsection (a)(2) is satisfied.

(2) if a person who possesses more than 3 firearms the requirements of Subsection (a)(3) is satisfied.

(c) Grading. In addition to the offense in Section 613 (Operating a Regulated Business or Importing Without a License), if applicable,

(1) the offenses in Subsection (a)(1) and Subsection (a)(2) are Class 4 felonies.

(2) the offense in Subsection (a)(3) is a Class 5 felony.

(3) otherwise the offense is a Class 1 misdemeanor.

(d) Aggravating Factors. If the offense involves a semiautomatic or automatic firearm, the offense is one grade higher than it otherwise would be.

### **Section 712 – Definitions**

(1) “Automatic firearm” has the meaning given in Section 710(d)(1).

(2) “Automatic loading action” has the meaning given in Section 710(d)(2).

(3) “Catastrophic agent” has the meaning given in Section 121(c)(1).

(4) “Dangerous weapon” has the meaning given in Section 120(d)(1).

(5) “Firearm” has the meaning given in Section 710(d)(4).

(6) “Semiautomatic firearm” has the meaning given in Section 710(d)(5).



## **CHAPTER 720. TERRORISM AND ORGANIZED CRIME**

Section 720 – Participating in a Criminal Organization

Section 721 – Laundering of Monetary Instruments

Section 722 – Definitions

### **Section 720 – Participating in a Criminal Organization**

(a) Offense Defined. A person commits an offense if he:

- (1) participates in the operation of a criminal organization, or
- (2) recruits a person to participate in the operation of a criminal organization, or
- (3) provides financial or material support to a criminal organization, or
- (4) uses or invests the proceeds from the activities of a criminal organization, or
- (5) directs or controls the activity of a criminal organization in any way.

(b) Definitions.

(1) A “criminal organization” means a:

(A) body that has a membership acting or united for a common purpose and has:

(aa) through its members or other associates, committed two or more acts involving violence, catastrophe, or a threat of either as part of an ongoing plan or purpose, or

(bb) through its members or other associates, committed two or more acts constituting drug trafficking and trade.

(cc) publicly announced or acknowledged that its plan or purpose includes the commission or threat of such offenses; or

(B) group designated as a criminal or terrorist organization by the United Nations.

(2) “Material support” means financial services, lodging, training, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, transportation, or any other physical assets, except medicine or religious materials.

(c) Grading.

(1) If the person knows that the organization is a criminal organization, then:

(A) the offense in Subsection (a)(5) is a Class 2 felony, and

(B) the offenses in Subsections (a)(1) through (a)(4) are Class 3 felonies.

(2) If the person is reckless as to the criminal nature of the organization, then the offense in Subsection (a)(5) is a Class 3 felony.

(3) Otherwise the offense is a Class 4 felony.

### **Section 721 – Laundering of Monetary Instruments**

- (a) Offense Defined. A person commits an offense if:
  - (1) he conducts a financial transaction involving what he knows to be the proceeds of unlawful activity, and
  - (2) the transaction is designed in whole or in part to:
    - (A) promote the commission of unlawful activity;
    - (B) conceal the nature, location, source, ownership, or control of the proceeds of unlawful activity; or
    - (C) avoid a statutory transaction reporting requirement.
- (b) Definitions.
  - (1) “Financial transaction” means a transaction that involves:
    - (A) the movement of funds by wire or other means, or
    - (B) the creation or transfer of a monetary instrument, or
    - (C) the transfer of title to any property.
  - (2) “Monetary instrument” means:
    - (A) coin or currency of the Maldives or of any other country, travelers’ checks, personal checks, bank checks, and money orders; or
    - (B) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery.
- (c) Grading. The offense is a Class 4 felony.

### **Section 722 – Definitions**

- (a) “Criminal organization” has the meaning given in Section 720(b)(1).
- (b) “Financial transaction” has the meaning given in Section 721(b)(1).
- (c) “Material support” has the meaning given in Section 720(b)(2).
- (d) “Monetary instrument” has the meaning given in Section 721(b)(2).

## **PART III: SENTENCING GUIDELINES**

### **CHAPTER 1000. APPLICATION OF THE SENTENCING GUIDELINES**

Section 1000 – Determination and Announcement of Guideline Sentence Required

Section 1001 – Guideline Sentence

Section 1002 – Guideline Sentence Table

Section 1003 – Guideline Sentence Need Not Be Imposed, But Departure Must Be Explained

Section 1004 – Amount of Punishment Called for in Guideline Sentence Table May Be Imposed Through Any Authorized Punishment Method

Section 1005 – Punishment Method Equivalency Table

Section 1006 – Sentencing for Multiple Offenses

Section 1007 – Equitable Powers of the Sentencing Court

#### **Section 1000 – Determination and Announcement of Guideline Sentence Required**

- (a) Before imposing sentence, the court shall determine the guideline sentence as provided in this Part and all other relevant provisions of this Code, and shall include the guideline sentence in the public record of the case along with an explanation of how it determined the guideline sentence.
- (b) Sentencing court calculations in determining the guideline sentence shall regularly be reviewed for accuracy by the Supreme Court in Maldives.

#### **Section 1001 – Guideline Sentence**

Using the Guideline Sentence Table in Section 1002, the court shall determine the guideline sentence as follows:

(a) **Offense Grade Determines Table Column.** From Parts I and II of this Code, the sentencing court shall determine the grade of the offense of conviction and shall refer to the column (top to bottom) of the “Guideline Sentence Table” set out in Section 1002 that matches that grade.

(b) **Sentencing Factors Determine Table Row.** The sentencing court then shall determine the sentencing factors that are applicable to the case by:

- (1) consulting any existing Sentencing Factors subsection of the offense of conviction in Parts I and II of this Code, and
- (2) then consulting any relevant General Adjustment to Sentence in Chapter 1100, (provided that those general sentencing factors are not already comprehensively addressed by the more specific Sentencing Factors subsection consulted in subsection (1) above), and
- (3) then determining which of these sentencing factors, if any, have been established by clear and convincing evidence by the party seeking to benefit from the factor, and
- (4) for all factors so established, adding the aggravation "plus" values together and subtracting the mitigation "minus" values to

determine the total sentencing factors adjustment for the offence.

(5) The resulting net sentencing factors adjustment determines the row of the Guideline Sentence Table that is applicable.

(c) Intersection of Column and Row Determines Guideline Cell.

Referring to that column of the Table that matches the offense grade and to the row of the Table that matches the total sentencing factor adjustment, the sentence given in this resulting Table cell is the guideline sentence for the offense.

**Section 1002 – Guideline Sentence Table**

(a) The court shall determine the guideline sentence according to the instructions in Section 1003 and this Table.

	<b>Class 1 Felony</b>	<b>Class 2 Felony</b>	<b>Class 3 Felony</b>	<b>Class 4 Felony</b>	<b>Class 5 Felony</b>	<b>Class 1 Misde meanor</b>	<b>Class 2 Misde meanor</b>	<b>Class 3 Misdemea nor</b>
<b>Statutory Maximu m</b>	25 Years	15 Years	8 Years	4 Years	2 Years	1 Year	6 Months	3 Months
<b>+5</b>	22y, 6m	13y, 6m	7y, 2m, 12d	3y, 7m, 6d	1y, 7m, 6d	9m, 18d	5m, 12d	2 m, 21d
<b>+4</b>	20y	12y	6y, 4m, 24d	3y, 2m, 12d	1y, 7m, 6d	9m, 18d	4m, 24d	2m, 12d
<b>+3</b>	17y, 6m	10y, 6m	5y, 7m, 6d	2y, 9m, 18d	1y, 4m, 24d	8m, 12d	4m, 6d	2m, 3d
<b>+2</b>	15y	9y	4y, 9m, 18d	2y, 4m, 24d	1y, 2m, 12d	7m, 6d	3m, 18d	1m, 24d
<b>+1</b>	12y, 6m	7y, 6m	4y	2y	1y	6m	3m	1m, 15d
<b>Baseline Sentence</b>	<b>10y</b>	<b>6y</b>	<b>3y, 2m, 12d</b>	<b>1y, 7m, 6d</b>	<b>9m, 18d</b>	<b>4m, 24d</b>	<b>2m, 12d</b>	<b>1m, 6d</b>
<b>-1</b>	7y, 6m	4y, 6m	2y, 4m, 24d	1y, 12d	7m, 6d	3m, 18d	1m, 24d	27d
<b>-2</b>	5y	3y	1y, 7m, 6d	9m, 18d	4m, 24d	2m, 12d	1m, 6d	18d
<b>-3</b>	2y, 6m	1y, 6m	9m, 18d	4m, 24d	2m, 12d	1m, 6d	18d	9d

(b) Time Increments. For the purposes of this Code, all time intervals should be calculated from the first day of punishment relating to the present offense, counting all periods of continuous punishment since that time.

(1) Years (y). A year is a period of 365 days.

(2) Months (m). A month is a period of 30 days.

(3) Days (d). A day is a period of 24 hours.

**Section 1003 – Guideline Sentence Need Not Be Imposed, But Departure Must Be Explained**

(a) The court is not required to impose the guideline sentence on the offender. The court may impose any sentence that is authorized by law and that serves the purposes of the Code that are set out in Section 11 (Principle of Construction; General Purposes).

(b) However, if the court imposes a sentence that is more than two aggravation or mitigation levels away from the guideline sentence, as provided in the Guideline Sentence Table in Section 1002, the court must provide on the record a written explanation for his departure from the guideline sentence.

(c) If a sentencing court deviates from the sentence provided by the guidelines, actions maybe taken as prescribed below:

(1) For more than two aggravation levels of the penalty prescribed, the offender shall have the right of appeal to the Maldivian High Court to challenge the sentence; or

(2) for more than two mitigation levels of the penalty prescribed, the government shall have the right of appeal to the a superior court of Maldives.

(d) Either the offender or the government may appeal to the High Court if the sentencing court errs in its legal interpretation or legal application of the sentencing guidelines.

#### **Section 1004 – Amount of Punishment Called for in Guideline Sentence Table May Be Imposed Through Any Authorized Punishment Method**

The Guideline Sentence Table under Section 1002 expresses the amount of punishment to be imposed in terms of the length of an incarceration term, but this designated amount of punishment may be imposed by any method of punishment as long as the total amount of punishment is equivalent to that amount of punishment designated in the Guideline Sentence Table according to the Punishment Method Equivalency Table provided in Section 1005.

#### **Section 1005 – Punishment Method Equivalency Table**

(a) In fashioning a sentence, the court may use any authorized punishment method or combination of methods whose total punishment effect equal the guideline sentence according to the punishment method equivalencies provided in this Table.



<b>Incarceration</b>	<b>House Arrest</b>	<b>Community Service</b>	<b>Fine – the greater of:</b>	<b>Intensive Supervision</b>	<b>Probation</b>
<b>1 year =</b>	2 years	1920 hours	72,000 Rufiyaa or 1 year's income	4 years	6 years
<b>6 months =</b>	1 year	960 hours	36,000 Rufiyaa or 6 months' income	2 years	3 years
<b>3 months =</b>	6 months	480 hours	18,000 Rufiyaa or 3 months' income	1 year	1.5 years
<b>1 month =</b>	2 months	160 hours	6,000 Rufiyaa or 1 month's income	4 months	6 months
<b>7 days =</b>	15 days	40 hours	1,400 Rufiyaa or 7 days' income	1 month	1.5 months

(b) House Arrest; Treatment Programs. A house arrest program is one of detention at the offender's home, or at another facility that is not a correctional facility. During that time the offender is typically not permitted to leave the premises and can be subject to other punishment if he leaves the facility.

(c) Fine. An offender may also be compelled to pay a monetary fine to the state. Wherever possible, subject to the limitations on fines available, a fine should be imposed proportionate to the offender's income or to the offender's total assets.

(d) Community Service. An offender may be sentenced to perform labor or provide services in the interest of the general community. While performance of these tasks need not be particularly onerous or humiliating, performing the labor or providing the service should constitute a punishment in the eyes of the offender and the community.

(e) Intensive Supervision. Intensive supervision is a program of supervision of the offender by an officer of the state. The court may impose on the offender any appropriate condition including, but are not limited to: requiring the offender to avoid certain people, barring the offender from certain locations or restricting him to a few locations (such as his home and his place of employment), imposing a curfew on the offender, requiring that an offender submit to frequent drug or alcohol tests, compelling the offender to submit to

unannounced searches of his person and home, requiring the offender to attend certain educational or other programs, to maintain active employment of a certain sort, or any other requirement or restriction that will promote the safety of others, advance the offender's rehabilitation, or give the offender the punishment he deserves. Intensive probation may include the requirement that an offender attend a treatment program. A treatment program is one in which an offender is compelled to attend a facility that will treat him for his addiction or other condition contributing to the commission of his offense. An offender in such a program is legally obliged to comply with the terms of the program.

(f) Probation. Probation is a period of release subject to restrictions, including requiring periodic meetings with a supervisory officer, regular drug or alcohol tests, regular psychological counseling, or any other minimally invasive requirement or restrictions that will promote the safety of others, advance the offender's rehabilitation, or give the offender the punishment he deserves.

### **Section 1006 – Sentencing for Multiple Offenses**

When an offender is convicted of more than one offense, the sentence for all of the offenses for which he has been convicted should be determined in the following manner:

(a) the appropriate sentence for each individual offense should be determined in light of the grading and sentencing provisions applicable to that offense as if the offender were being sentenced for that offense only;

(b) taking into consideration the sentences determined under Subsection (a), the offender should be sentenced to punishment equivalent to

(1) the full sentence of the greatest duration or severity,

(2) plus one-half of the sentence of the second greatest duration or severity,

(3) plus one-quarter of the sentence of the third greatest duration

or

severity,

(4) plus one-eighth of the sentence of the fourth greatest duration

or

severity,

(5) Determining sentences for offences as prescribed above.

continuing in like manner for all sentences for each offense for which the offender has been convicted, thereby causing each additional offence to increase the total authorized maximum cumulative sentence, but by a decreasing increment. Notwithstanding the above, the sentence for each additional offence, shall decrease as prescribed from number (1) to number (4) in subsection (b) of this Section.

(c) Concurrent Terms of Imprisonment Barred. When terms of imprisonment are imposed for more than one offense, those terms are to be served consecutively.

(d) Equivalent Duration or Severity. If a offender is convicted of more than one offense for which a sentencing court would otherwise impose punishment of precisely equivalent duration or severity, then a sentencing court

may consider any of the those sentences as if it were of greater severity than other offenses punished with equivalent severity.

**Section 1007. Equitable Powers of the Sentencing Court**

(a) Sentencing Powers. In addition to sentencing an offender to periods of incarcerative or non incarcerative punishment, the sentencing court retains the authority to impose orders on an offender as to certain actions that the offender must or must not perform. These orders may last longer than the period of other punishment.

(b) Punitive Equivalency of Orders. The court should take into account the punitive effect of such orders and limit the offender's other punishment in proportion to the punitive effect of the order.

**Section 1008. Expiation (Kaffārah)**

Expiation (Kaffārah). The punishment for the offences for which expiation (Kaffārah) are prescribed by Islamic sharia shall be enforced.

## **CHAPTER 1100. GENERAL ADJUSTMENTS TO BASELINE SENTENCE**

- Section 1100 – Application of General Adjustments to Baseline Sentence
- Section 1101 – Aggravation for Greater Culpability Level Than Required by Offense Definition
- Section 1102 – Aggravation for Special Harms
- Section 1103 – Aggravation for Cruelty
- Section 1104 – Aggravations and Mitigations for Prior Criminal History
- Section 1105 – Aggravation for Refusal to Compensate Victim
- Section 1106 – Mitigation for Public Expression of Genuine Remorse
- Section 1107 – Mitigation for Substantial Cooperation with Authorities
- Section 1108 – Mitigation for Imperfect Justification
- Section 1109 – Mitigation for Partial Excuse
- Section 1110 – Mitigation for Extreme Emotional Distress

### **Section 1100 – Application of General Adjustments to Baseline Sentence**

(a) General Application. In addition to any adjustments to the baseline sentence provided in the Sentencing Factor subsections of offense definitions in Parts I and II of the Code, the baseline sentence also shall be adjusted according to all applicable provisions of this Chapter.

(b) Non-Overlapping Application. If a particular offense definition, grading provision, or sentencing factor provision already takes into account the matters addressed by a general sentencing factor, then the general factor should be applied only in so far as the factors present in the case exceed those already taken into account.

### **Section 1101 – Aggravation for Greater Culpability Level Than Required by Offense Definition**

If the offender satisfies a higher level of culpability than the level required by the offense for which he is convicted, the baseline sentence shall be aggravated one level for each higher level of culpability he satisfies, as defined by Section 24 (Culpability Requirements).

### **Section 1102 – Aggravation for Special Harms**

(a) If an offender commits an offense:

(1) that injures the public interest because it:

(A) causes substantial harm to or impedes the ordinary function of a public facility, public institution, or public service,  
or

(B) substantially diminishes the public trust in or perceived honesty and transparency of a public facility, public institution, or public service, or

(C) injures an agent of the government, deprives the government of property, or damages property of the government;  
or

(2) against a person who is particularly vulnerable to the harm contemplated by the offense definition:

(A) because that person is a child, a person over the age of 65, or a person with a mental or physical disability or illness, or a person to whom the offender owed a special fiduciary duty that he breached, or

(B) because of any combination of such factors; or

(3) that causes harm to a place, artifact, property or other interest of historical, religious, environmental, or cultural significance; or

(4) that otherwise causes harm substantially exceeding in degree or amount the minimum harm required by the offense definition;

(b) then the baseline sentence shall be aggravated one level if one factor is met and two levels if two factors are met. The baseline sentence shall be aggravated three levels only in extraordinary cases where the harm exceptionally exceeds the minimum harm required by the offense definition.

(c) Historical, Religious, Environmental, or Cultural Significance. A place, artifact, property, or interest is of historical, religious, environmental, or cultural significance if:

(1) it has particular historical, religious, environmental, or cultural importance

(A) of which an ordinary person would be aware, or

(B) of which the offender actually knows; or

(2) such particular importance has been publicly recognized by the government or an international organization.

### **Section 1103 – Aggravation for Cruelty**

If an offender commits an offense in a manner displaying great cruelty or gross disregard for human dignity, then the baseline sentence shall be aggravated one level.

### **Section 1104 – Aggravation and Mitigation for Prior Criminal History**

(a) Aggravation for Prior Criminal Record. If an offender commits an offense,

(1) having previously been convicted of a felony within the past 6 years, or a misdemeanor within the past 2 years, then the baseline sentence for the most serious offense shall be aggravated one level; or

(2) having previously been convicted of multiple felonies within the past 6 years or a violent felony within the past 10 years, then the baseline sentence for the most serious offense shall be aggravated two levels; or having previously been convicted of three violent felonies within the past 5 years, then the baseline sentence for the most serious offense shall be aggravated three levels.

(b) Aggravation for Similar Offense. If an offender commits an offense, having previously been convicted of an offense of a nature substantially similar to the present offense, within the past 2 years, then the baseline sentence for any and all offenses substantially similar to a prior offense shall be aggravated one level.

(c) Calculation of Time Intervals. In calculating time intervals for this

Section, the sentencing court shall exclude any period of time during which the offender was under punishment for another offense.

(d) Mitigation for Aberrant Behavior. If an offender commits an offense that:

(1) was committed without significant planning and was of limited

duration, and

(2) represents a dramatic deviation from the normal behavior of the

offender; and

(3) the offender has otherwise led a law-abiding life;

then the baseline sentence for all offenses with which the offender has been charged shall be mitigated one or two levels, as the court finds to be just.

(e) Offenses as a Minor. In determining an offender's criminal record, a sentencing court shall consider felonies committed by the offender as a minor of less than 18 years of age, but shall not consider misdemeanors committed while a minor of less than 18 years of age.

(f) Offenses under the Prior Law. For the purposes of this Section, an offense committed prior to the enactment of this code should be considered as a "felony" or a "misdemeanor" according to Section 91 (Unclassified Offenses).

### **Section 1105 – Aggravation for Refusal to Compensate Victim**

(a) Refusal to Compensate. An offender who commits an offense causing harm to a person or legal entity must compensate the victim for the harm he has caused. If the offender refuses to compensate the victim in this fashion or to enter into a legally binding agreement to make such compensation over time, then the baseline sentence shall be aggravated one or two levels, as the court determines to be just.

(b) Compensation. Compensation under subsection (a) requires that the offender make all reasonable efforts within his capacity, financial and otherwise, to make good any injury he has caused to the victim and to restore to the victim any benefits of which he has deprived the victim. An offender unable to make complete compensation must still make reasonable efforts within his capacity to make as much partial compensation to the victim as he is capable, either at present or in the future.

(c) Rights of the Victim. The victim may play a role in the establishment of the terms of compensation, though the victim may not demand compensation in excess of the harm suffered. If a competent victim accepts an offer of compensation, the court shall be bound by that agreement. If the victim and the offender are unable to agree on compensation, the court may impose terms for compensation.

(d) Compensation Not Punishment. Funds paid in compensation are not fines for the purpose of Section 93 (Authorized Fines), nor should the compensation be considered as an alternative punishment under Sections 1005 and 1202.

### **Section 1106 – Mitigation for Public Expression of Genuine Remorse**

(a) Genuine Remorse. If an offender credibly and publicly acknowledges guilt and expresses genuine remorse before trial, his baseline sentence shall be mitigated two levels. An offender cannot receive a mitigation under this subsection unless he has pled guilty before trial.

(b) Guilty Plea. If an offender pleads guilty before trial but does not otherwise satisfy the requirements of subsection (a), his baseline sentence shall be mitigated one level.

### **Section 1107 – Mitigation for Substantial Cooperation with Authorities**

(a) Cooperation. If an offender commits an offense and then provides substantial cooperation as to the capture or prosecution of other offenders with law enforcement authorities, the government may move for the mitigation of the offender's sentence by one level, two levels, or three levels.

(b) Governmental Discretion. The sentencing court must grant the motion for mitigation sought by the government. The sentencing court may not, in the absence of a motion by the government, seek to mitigate a sentence on the grounds of substantial cooperation.

### **Section 1108 – Mitigation for Imperfect Justification**

If at the time of the offense the offender believes that his conduct is justified by a justification defense defined in Chapter 40, the baseline sentence shall be mitigated:

(a) one level, or

(b) two levels if the offense and offender's conditions and circumstances came close to providing a complete justification defense.

### **Section 1109 – Mitigation for Partial Excuse**

Mitigation of sentence due to a Partial Excuse. If at the time of the offense the offender satisfied a substantial portion of the requirements of an excuse defense under Chapter 50, the baseline sentence shall be mitigated:

(a) one level, or

(b) two levels if the offense and offender's conditions and circumstances came close to providing a complete excuse defense.

### **Section 1110 – Mitigation for Extreme Emotional Distress**

(a) Mitigation of sentence due to extreme emotional and mental distress. If at the time of the offense the offender acted under the following ways, then the baseline sentence shall be mitigated as per subsection (b) of this clause.

(1) under the influence of extreme mental or emotional disturbance,

(2) for which there is a reasonable explanation, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believes them to be,

(b)

(1) one level, or

(2) two levels, if the extreme mental or emotional disturbance

severely impaired the capacity of the offender to control his actions or to comprehend the meaning of his actions.



## **CHAPTER 1200. LIMITATIONS ON APPLICATION OF SENTENCING GUIDELINES**

Section 1200 – Limitations on Aggravation or Mitigation

Section 1201 – Incarceration as Punishment

Section 1202 – Application of Alternative Punishments

Section 1203 – Failure to Comply with the Terms of an Alternative Punishment

Section 1204 – Death Penalty

Section 1205 – Hudud Offenses

### **Section 1200 – Limitations on Aggravation or Mitigation**

(a) No matter the total number of aggravation levels applicable, a court is not authorized to impose a sentence that exceeds the statutory maximum punishment authorized by Section 92 (Authorized Terms of Imprisonment) and Section 93 (Authorized Fines).

(b) No matter the total number of mitigation levels applicable, the court may not impose a sentence of no punishment or meaningless punishment.

### **Section 1201 – Incarceration as Punishment**

(a) Incarceration. Incarceration should be the primary, though not necessarily exclusive, form of punishment in cases where:

- (1) secluding the offender from the rest of society is necessary for the protection of the public,
- (2) imposing incarceration is necessary to indicate the seriousness with which society condemns the offender's offense, or
- (3) no other punishment is appropriate to the circumstances of the offense and offender.

(b) Minimum Incarcerative Sentence for Serious Offenses. If an offender is convicted of a Class 1 felony, a Class 2 felony, or a felony under Chapter 110 of this Code, at least one-fourth of the punishment to which the offender is to be sentenced under the Sentencing Guidelines Table must be an incarcerative sentence.

### **Section 1202 – Application of Alternative Punishments**

(a) Generally. In determining whether a particular form of alternative punishment should be applied to an offender and what portion of the offender's punishment should be satisfied through that alternative punishment, a sentencing court should take into account the circumstances of the offense, the characteristics of the offender, the needs of the community, and other factors relevant to the punishment method.

(b) House Arrest. A portion of an offender's sentence may appropriately be served as a period of house arrest if:

- (1) the offender does not present a danger to the community; and
- (2) (A) the offender can provide useful service in his home to his family, or  
(B) the offender has particular needs that can best be met in the home.

(3) Duration. A period of house arrest may be appropriate as the sole means of punishment for certain minor offenses. Otherwise, house arrest may be appropriate as part of a sentence including other forms of punishment, particularly as a period of restraint subsequent to imprisonment to ease the offender's reentry into society.

(c) Community Service. Imposing a sentence of community service may be appropriate if:

(1) the offender has particular skills that may be of service to the community, or

(2) the community has a particular need for service that the offender can provide, or

(3) the kind of community service performed tends to correct or to avoid the kind of harm brought about by the offense committed.

(4) Duration. Community service can be appropriate as a part of the punishment for most offenses. Generally, it should not be the sole punishment except in the cases of the most minor offenses.

(d) Fines.

(1) Fines are only appropriate as punishment for those who have the means to pay them.

(2) Determination of Fines. Fines typically should be imposed as a supplement to another form of punishment. A fine should never be imposed in a manner that allows or appears to allow a wealthy offender to "buy" his way out of meaningful punishment.

(e) Intensive Supervision.

(1) An offender, in order to qualify for intensive supervision, must demonstrate that he is responsible and capable of complying with the numerous rules relating to the period of supervision.

(2) Duration. A period of intensive supervision can be of whatever duration is appropriate. It is especially appropriate following a period of treatment, so that the effectiveness of the treatment can be monitored.

(f) Treatment Program.

(1) Imposing a period of mandated treatment may be appropriate if an offender's likelihood of committing further crimes can be reduced through the treatment.

(2) Duration. A sentence to a treatment program is only appropriate if the period is sufficient to accomplish the purposes of the treatment. The sentencing court should consult with the appropriate experts in the field as to what period of time is necessary for treatment. Treatment programs generally should be imposed during or after a sentence of incarceration, if any, rather than before incarceration. House arrest or supervised release may be appropriate as a follow-up to treatment, particularly if testing is required to ascertain whether the treatment has been effective.

(g) Probation.

(1) A period of probation would be appropriate punishment as a

follow-up to a period of intensive supervision and may be made conditional on excellent cooperation with and rehabilitation under intensive supervision. Probation would be appropriate if the offender needs only modest imposition on his freedom to prevent further criminal acts.

(2) Duration. A sentencing court should generally not use a period of probation as the primary punishment for an offender.

### **Section 1203 – Failure to Comply with the Terms of an Alternative Punishment**

(a) Consequences for Failure to Comply. If an offender violates the terms of an alternative punishment imposed on him by a sentencing court, the court may order that the offender serve the full incarcerative sentence that he would have served had that alternative punishment not been imposed.

(b) Determining a Violation of Alternative Punishment Terms. At a hearing before the court, if the government presents clear evidence that the offender has violated the terms of his alternative punishment, the burden shall be upon the offender to show that he has not. If the offender fails to do so, the court may resentence the offender as provided in Subsection (a).

### **Section 1204 – Death Penalty**

(a) Proof Required. In order to impose the penalty of death on any person, the government must prove the elements of the offense and prove that the offense committed is worse and represents more culpable behavior than any other offense imaginable to a practical certainty.

(b) Confessions. The government may not use the confession of the defendant to convict him of an offense for which it seeks the penalty of death, unless the defendant freely testifies in open court and under the advice of counsel, confessing every element of the crime.

(c) Evidentiary Requirements.

(1) Capacity. All witnesses that provide the testimony establishing the proof required in Subsection (a) must undergo evaluation to establish their capacity and competence to tell the truth on the matters at issue.

(2) Uncontradicted Evidence. If the testimony of any witness, or any portion of the testimony of any witness, including the defendant, is contradicted by the testimony of another witness, that witness's testimony may not be considered as meeting the requirements of proof in Subsection (a).

(d) Automatic Appeal. In the event that a sentencing court imposes the penalty of death, the decision shall be appealed to the High Court for complete review of all findings of fact and law.

### **SECTION 1205 – HUDUD OFFENSES**

Offences for which punishments are prescribed in the Holy Quran. If an

offender is found guilty of committing an offence for which punishments are predetermined in the Holy Quran, that person shall be punished according to Islamic Sharia and as prescribed by this Act and the Holy Quran.