TITLE 31 – CRIMES AND PUNISHMENTS
CHAPTER 1 - CRIMINAL CODE

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

CRIMINAL CODE 2011

Arrangement of Sections

Section **Page**

PART I - GENERAL PROVISIONS **9**

ARTICLE 1. PRELIMINARY 9

§1.01. Short title. 9
§1.02. Purposes; Principles of Construction. 9
§1.03. Territorial Applicability....10
§1.04. Classes of Crimes; Violations....12
§1.05. All Offenses Defined by Statute; Application of General Provisions. 13
§1.06. Time Limitations....13
§1.07. Method of Prosecution When Conduct Constitutes More than One Offense. 14
§1.08. When Prosecution Barred by Former Prosecution for the Same Offense. 15
§1.09. When Prosecution Barred by Former Prosecution for Different Offense....16
§1.10. When Former Prosecution Not a Bar....17
§1.11. When Prosecution Barred Due to Age. 18
§1.12. Proof Beyond a Reasonable Doubt; Defenses; Burden of Proving Fact When Not an Element of an Offense; Presumptions. 18
§1.13. General Definitions. 19

ARTICLE 2. GENERAL PRINCIPLES OF LIABILITY 21

§2.01. Requirement of Voluntary Act; Omission as Basis of Liability; Possession as an Act. 21
§2.02. General Requirements of Culpability. 21
§2.03. Casual Relationship Between Conduct and Result; Divergence Between Result Designed or Contemplated and Actual Result or Between Probable and Actual Result. 24
§2.04. Ignorance or Mistake. 25

§2.05. When Culpability Requirements Are Inapplicable to Violations and to Offenses Defined by Other Statutes. 26
§2.06. Liability for Conduct of Another; Complicity. 26
§2.07. Liability of Corporation, Unincorporated Associations and Persons Acting, or Under a Duty to Act, in Their Behalf. 28
§2.08. Intoxication. 30
§2.09. Duress. 31
§2.10. Reserved. 32
§2.11. Consent. 32
§2.12. De Minimis Infractions. 32
§2.13. Entrapment. 33
ARTICLE 3. GENERAL PRINCIPLES OF JUSTIFICATION 34
§3.01. Justification an Affirmative Defense; Civil Remedies Unaffected; Use of Confinement. 34
§3.02. Justification Generally: Choice of Evils. 34
§3.03. Execution of Public Duty. 34
§3.04. Use of Force in Self-Protection. 35
§3.05. Use of Force for the Protection of Other Persons. 37
§3.06. Use of Force for Protection of Property. 38
§3.07. Use of Force in Law Enforcement. 40
§3.08. Reserved. 42
§3.09. Mistake of Law as to Unlawfulness of Force or Legality Reckless or Negligent Use of Otherwise Justifiable Force; Reckless or Negligent Injury or Risk of Injury to Innocent Persons. 42
§3.10. Justification in Property Crimes. 43
§3.11. Definitions. 43
ARTICLE 4. RESPONSIBILITY 44
§4.01. Mental Disease or Defect Excluding Responsibility. 44
§4.02. Evidence of Mental Disease or Defect Admissible When Relevant to Element of the Offense. 44
§4.03. Mental Disease or Defect Excluding Responsibility is Affirmative Defense; Requirement of Notice; Form of Judgment When Finding of Irresponsibility is Made. 44
§4.04. Mental Disease or Defect Excluding Fitness to Proceed. 45
§4.05. Examination of Defendant. 45
§4.06. Determination of Fitness to Proceed. 45
§4.07 Reserved. 45
§4.08 Legal Effect of Acquittal on the Ground of Mental Disease or Defect Excluding Responsibility; Commitment; Release or Discharge. 45
ARTICLE 5. INCHOATE CRIMES 46
§5.01 Criminal Attempt. 46

§5.02. Criminal Solicitation. 47
§5.03. Criminal Conspiracy. 48
§5.04. Incapacity, Irresponsibility or Immunity or Party to Solicitation or Conspiracy 49
§5.05. Grading of Criminal Attempt, Solicitation and Conspiracy; Multiple Convictions Barred. 49
ARTICLE 6. AUTHORIZED DISPOSITION OF OFFENDERS 50
§6.01. Degrees of Felonies. 50
§6.02. Sentence in Accordance with Code. 50
§6.03. Fines. 51
§6.04 Penalties Against Corporations and Unincorporated Associations. 52
§6.05 Reserved. 52
§6.06 Sentence of Imprisonment for Felony. 52
§6.07. Termination of Public Employment for Felony Conviction. 52
§6.08. Sentence of Imprisonment from Misdemeanors and Petty Misdemeanors. 53
§6.09. Reserved. 53
§6.10. Reserved. 53
§6.11. Place of Imprisonment. 53
§6.12. Reduction of Conviction by Court to Lesser Degree of Felony or to Misdemeanor. 54
§6.13 Pardons and Paroles. 54
ARTICLE 7. AUTHORITY OF COURT IN SENTENCING. 54
§7.01. Criteria for Suspending the Imposition or the Execution of a Sentence of Imprisonment and for Placing Defendant on Probation. 54
§7.02. Criteria for Imposing Fines. 57
§7.03. Reserved. 58
§7.04. Reserved. 58
§7.05. Reserved. 58
§7.06. Multiple Sentences; Concurrent and Consecutive Terms. 58
§7.07. Reserved. 59
§7.08. Reserved. 59
§7.09. Credit for Time of Detention Prior to Sentence; Credit for Imprisonment Under Earlier Sentence for Same Crime. 59

PART II. DEFINITION OF SPECIFIC CRIMESOFFENSES INVOLVING DANGER TO THE PERSON 60

ARTICLE 210. CRIMINAL HOMICIDE 60
§210.0. Definitions. 60
§210.1. Criminal Homicide. 60
§210.2 Murder. 60
§210.3. Manslaughter. 61

§210.4 Negligent Homicide in the First Degree. 61
§210.5 Negligent Homicide in the Second Degree. 61
ARTICLE 211. ASSAULT; RECKLESS ENDANGERMENT 62
§211.1. Assault. 62
§211.2. Assault with a Deadly Weapon. 62
§211.3. Aggravated Assault. 62
§211.4 Reckless Endangerment. 62
ARTICLE 212. KIDNAPPING AND RELATED OFFENSES; COERCION 63
§212.1 Kidnapping. 63
§212.2. Felonious Restraint. 63
§212.3. False Imprisonment. 63
§212.4. Interfere with Custody. 64
§212.5 Criminal Coercion. 64
ARTICLE 213. SEXUAL OFFENSES 65
§213.0 Definitions. 65
§213.1. Sexual Assault in the First Degree. 66
§213.2 Sexual Assault in the Second Degree. 67
§213.3. Sexual Assault in the Third Degree. 68
§213.4. Sexual Assault in the Fourth Degree. 69
§213.5. Continuous Sexual Assault of a Minor Under the Age of Fourteen Years. 69
§213.6. Indecent Exposure. 70
§213.7. Bestiality and Necrophilia. 70
§213.8. Provisions Generally Applicable to this Article. 70
OFFENSES AGAINST PROPERTY 71
ARTICLE 220. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTYDESTRUCTION 71
§220.0. Definitions. 71
§220.1 Arson. 71
§220.2. Aggravated Arson. 71
§220.3. Reckless Burning or Exploding. 72
§220.4. Failure to Control or Report Dangerous Fire. 72
§220.5. Causing Catastrophe. 72
§220.6. Criminal Mischief. 73
ARTICLE 221. BURGLARY AND OTHER CRIMINAL INTRUSION 73
§221.0. Definition. 73
§221.1. Burglary. 73
§221.2. Criminal Trespass. 74
ARTICLE 222. ROBBERY 75

§222.1. Robbery. 75
ARTICLE 223. THEFT AND RELATED OFFENSES 75
§223.0. Definitions. 75
§223.1. Consolidation of Theft Offenses; Grading; Provisions Applicable to Theft Generally. 77
§223.2. Theft by Unlawful Taking or Disposition. 78
§223.3. Theft by Deception. 78
§223.4. Theft by Extortion. 79
§223.5. Theft of Property Lost, Mislaid, or Delivered by Mistake. 79
§223.6. Receiving Stole Property. 79
§223.7. Theft of Services. 80
§223.8. Reserved. 80
§223.9. Unauthorized Use of Automobiles and Other Vehicles. 80
ARTICLE 224. FORGERY AND FRAUDULENT PRACTICES 81
§224.0. Definitions. 81
§224.1. Forgery. 81
§224.2. Possession of Counterfeit Material. 82
§224.3. Criminal Simulation. 82
§224.4. Fraudulent Destruction, Removal or Concealment of Recordable Instruments. 82
§224.5. Tampering with Records. 82
§224.6. Bad Checks. 83
§224.7. Credit Cards. 83
§224.8. Deceptive Business Practices. 83
§224.9. Commercial Bribery and Breach of Duty of Act Disinterestedly. 84
§224.10. Reserved. 85
§224.11. Defrauding Secured Creditors. 85
§224.12. Fraud in Insolvency. 85
§224.13. Reserved. 85
§224.14. Misapplication of Entrusted Property and Property of Government or Financial Institution. 85
§224.15. Securing Execution of Documents by Deception. 86
OFFENSES AGAINST THE FAMILY 86
ARTICLE 230. OFFENSES AGAINST THE FAMILY 86
§230.1. Bigamy. 86
§230.2. Incest. 86
§230.3. Child Abuse and Neglect. 86
§230.4. Endangering the Welfare of Children. 87
OFFENSES AGAINST PUBLIC ADMINISTRATION 87
ARTICLE 240. BRIBERY AND CORRUPT INFLUENCE 87

§240.0. Definitions. 87
§240.1. Bribery in Official Matters. 88
§240.2. Influencing Official Matters By Threat. 91
§240.3. Unlawful Compensation for Past Official Action. 91
§240.4. Reserved 92
§240.5. Gifts to Public Servants by Persons Subject to Their Jurisdiction. 92
§240.6. Misconduct in Public Office. 93
§240.7. Embezzlement, Misappropriation and Diversion By Public Servants. 93
§240.8. Illicit Enrichment. 93
§240.9. Burden of Proof. 94
§240.10. Prohibition of employment. 94
ARTICLE 241. PERJURY AND OTHER FALSIFICATION IN OFFICIAL MATTERS 94
§241.0. Definition. 94
§241.1. Perjury. 95
§241.2. False Swearing. 96
§241.3. Unsworn Falsification to Authorities. 96
§241.4. False Alarms to Agencies of Public Safety. 97
§241.5. False Reports to Law Enforcement Authorities. 97
§241.6. Tampering with Witnesses and Informants. 97
§241.7. Tampering with or Fabricating Physical Evidence. 98
§241.8. Tampering with Public Records or Information. 98
§241.9. Impersonating a Public Servant. 99
ARTICLE 242. OBSTRUCTING GOVERNMENTAL OPERATIONS; ESCAPES 99
§242.1. Obstructing Administration of Law or Other Governmental Function. 99
§242.2. Resisting Arrest or Other Law Enforcement. 99
§242.3. Hindering Apprehension or Prosecution. 100
§242.4. Aiding Consummation of Crime. 100
§242.5. Compounding. 100
§242.6. Escape. 101
§242.7. Implements for Escape. 102
§242.8. Bail Jumping; Default in Required Appearance. 102
ARTICLE 243. ABUSE OF OFFICE 102
§243.1. Official Oppression. 102
ARTICLE 250. RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES 103
§250.0. Definitions. 103
§250.1. Riot; Failure to Disperse. 103
§250.2. Disorderly Conduct. 104
§250.3. False Public Alarms. 104
§250.4. Harassment. 105
§250.5. Stalking. 105
§250.6. Security to Keep the Peace. 105

§250.7. Public Drunkenness; Drug Incapacitation. 107
§250.8. Reserved. 107
§250.9. Desecration of Public Structures. 107
§250.10. Abuse of Corpse. 107
§250.11. Reserved. 107
§250.12. Violation of Privacy 107
ARTICLE 251. PROSTITUTION AND TRAFFICKING IN PERSON 108
§251.0. Definitions. 108
§251.1. Engaging in Prostitution. 110
§251.2. Patronizing Prostitution. 110
§251.3. Promoting Prostitution in the First Degree. 110
§251.4. Promoting Prostitution in the Second Degree. 111
§251.5. Other Penalties. 111
§251.6. Prostitution Houses Deemed Public Nuisances. 111
§251.7. Trafficking in Person. 111
§251.8. Trafficking in Children. 112
§251.9. Exploitation of people not legally entitled to work. 112
§251.10. Consent of trafficked person. 113
§251.11. Protection for trafficked persons. 113
ARTICLE 252. MISCELLANEOUS CRIMES 113
§252.1. Tampering with Mail. 113
§252.2. Unauthorized Disposition of Certain Foods. 113
§252.3. Duty to Report Wounds or Deaths. 114
§252.4. Possession or Removal of Government Property. 114
§252.5. Injuring or Altering Electric Meter. 114
§252.6. Altering, Damaging, or Contaminating a Water or Sewer Line or Other Facility or Appliance. 115
§252.7. Altering, Tampering with, Damaging, or Destroying a Telephone, Cable Television, Other Communication Line, or Related Facility or Appliance. 115
PART III. TRANSITION AND COMMENCEMENT 116
§310.1. Transition Provisions. 116
§310.2. Amendments. 116
§310.3. Effective Date. 116

TITLE 31 – CRIMES AND PUNISHMENTS
CHAPTER 1 - CRIMINAL CODE

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

CRIMINAL CODE 2011

AN ACT to repeal the Criminal Code, 31 MIRC Chapter 1, and to provide for a more integrated system of criminal offenses, defenses and penalties; to repeal sections 156 and 157 of the Criminal Procedures Act, 32 MIRC Chapter 1, to provide for the defense of insanity in the Criminal Code; to repeal section 512 of the Child Abuse and Neglect Act, to provide for the criminal offense of child abuse in the Criminal Code; to repeal the Prostitution Prohibition Act, 31 MIRC Chapter 5, to provide for criminal offenses for prostitution and trafficking in person in the Criminal Code.

Commencement:	*October 17, 2011*
Source:	*P.L. 2011-59*
Amended By:	*P.L. 2013-28*
P.L. 2020-16	

PART I - GENERAL PROVISIONS

ARTICLE 1. PRELIMINARY

§1.01. Short title.

This Chapter may be cited as the Criminal Code, 2011.

§1.02. Purposes; Principles of Construction.

(1) The general principles of this code is to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiable and inexcusably causes or threatens harm to those individual or public interest for which government

protection is appropriate. To this end, the provisions of this code that govern the definition of offenses are intended and shall be construed to achieve the following objectives:

(a) to establish an integrated body of law that defines sanctions and correctional measures regarding conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;

(b) to insure the public safety by confining those convicted when required in the interest of public protection;

(c) to limit the condemnation of conduct as criminal when it is without fault;

(d) to give fair warning of the nature of the conduct declared to constitute an offense;

(e) to differentiate on reasonable grounds between serious and minor offenses;

(2) The general purposes of this provisions governing the sentencing and treatment of offenders are:

(a) to prevent, deter, and condemn the commission of offenses;

(b) to promote the correction and rehabilitation of offenders;

(c) to safeguard offenders from excessive, disproportionate, or arbitrary punishment;

(d) to give fair warning of the nature of the sentences that may be imposes on conviction of an offense;

(e) to differentiate among offenders to allow for just individualization in their treatment;

(f) to define powers, duties and functions of the Court in sentencing.

§1.03. Territorial Applicability.

(1) A person may be convicted under the law of the Republic of the Marshall Islands ("Republic") for an offense committed by the person's own conduct or the conduct of another for which that person is legally accountable if:

(a) either the conduct that is an element of the offense or the result is that is such an element occurs within the Republic; or

(b) conduct occurring outside the Republic is sufficient under the law of the Republic to constitute an attempt to commit an offense within the Republic; or

(c) conduct occurring outside the Republic is sufficient under the law of the Republic to constitute a conspiracy to commit an offense within the Republic and an overt to act in furtherance of such conspiracy occurs within the Republic; or

(d) conduct occurring within the Republic establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit, an offense in another jurisdiction that also is an offense under the law of the Republic; or

(e) the offense consists of the omission to perform a legal duty imposed by the law of the Republic; or

(f) the offense is based on a statute of the Republic that expressly prohibits conduct outside the Republic, when the conduct bears a reasonable relation to a legitimate interest of the Republic and the actor knows or should know that his or her conduct is likely to affect that interest; or

(g) conduct occurring outside the Republic is intended to cause or recklessly threaten a result within the Republic, and the conduct is sufficient under the law of the Republic to constitute an offense; or

(h) either the conduct is an element of the offense or the result that such an element occurs on any vessel belonging in whole or in part to the Republic or any citizen thereof, or any corporation created by or under the laws of the Republic, when such vessel is within the admiralty and maritime jurisdiction of the Republic.

(2) Subsection (1)(a) does not apply when either causing a specified result, or the intention to cause such a result is an element of an offense, and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

(3) Subsection (1)(a) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside the Republic that would not constitute and offense

if the result had occurred outside the Republic, unless the actor intentionally or knowing caused the result within the Republic.

(4) When the offense is homicide, either the death or the victim, or the cause of death constitute a "result" within the meaning of Subsection (1)(a), and if the body of a homicide victim is found within the Republic, it is presumed that such result occurred within the Republic.

(5) Territorial applicability of this Code includes the land and water and the air space above such land and water with respect to which the Republic has legislative jurisdiction.

§1.04. Classes of Crimes; Violations.

(1) An offense defined by this code or by any other statue of the Republic, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, misdemeanors, or petty misdemeanors.

(2) A crime is a felony if it is so designated in this code, or if persons convicted of that crime may be sentenced to imprisonment for a term that is in excess of one year.

(3) A crime is a misdemeanor if it is so designated in this code, or if persons convicted of that crime may be sentenced to imprisonment for a term of which the maximum is one year.

(4) A crime is a petty misdemeanor if it is so designated in this code, or if persons convicted of that crime may be sentenced to imprisonment for a term of which the maximum is less than one year.

(5) An offence defined by this code or by any other statute of the Republic constitutes a violation if is so designated in this code, or in the law defining the offense, or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction, or if it is defined y a statue other than this code that provides that the offense shall not constitute a crime. 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.

(6) Any offense declared by law to constitute a crime, without specification of the grade of that crime, or the sentence authorized upon conviction, is a misdemeanor.

(7) An offense defined by any statute of the Republic other than this code shall be classified as provided in this Section.

§1.05. All Offenses Defined by Statute; Application of General Provisions.

(1) No conduct constitutes an offense unless it is a crime or violation under this code or another statute of the Republic.

(2) The provision of Part I of this code are applicable to offenses defined by other statutes, unless this code otherwise provides. This Subsection shall not, however, be construed as precluding the court from recognizing other defenses not inconsistent with this code.

(3) 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 a civil judgment or decree.

§1.06. Time Limitations.

(1) A prosecution for murder may be commenced at any time.

(2) Prosecution for other offenses are subject to the following periods of limitation:

(a) a prosecution for a felony or a misdemeanor must be commenced within six years after it is committed;

(b) a prosecution for a petty misdemeanor or a violation must be commenced within one year after it is committed.

(3) An offense is committed either when every element occurs, or if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the person's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(4) A prosecution is commenced when a complaint, information, or citation is filed or when a warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.

(5) The period of limitation does not run:

(a) during any time when the accused is continuously absent from the Republic or has no reasonably ascertainable place of abode or work within the Republic, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; or

(b) during any time when a prosecution against the accused for the same conduct is pending in the Republic. **[Amended by P.L.2013-28]**

§1.07. Method of Prosecution When Conduct Constitutes More than One Offense.

(1) Prosecution for multiple offense; limitation on convictions. When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. The defendant may not, however, be convicted of that one offense if:

(a) one offense is included in the other, as defined in Subsection (4) of this Section; or

(b) one offense consists only of a conspiracy or other form of preparation to commit the other; or

(c) inconsistent findings of fact are required to establish the commission of the offenses; or

(d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(e) the offense is 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 constitutes separate offenses.

(2) Limitation on separate trials for multiple offenses. Except as provided in Subsection (3) of this Section, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial.

(3) Authority of court to order separate trial. When a defendant is charged with two or more offenses based on the same conduct or arising from the same criminal episode, the court may order any such charge to be tried separately, if it is satisfied that justice so requires.

(4) Conviction of lesser included offense permitted. A defendant may be convicted of an offense included in an offense charged in the information, complaint, or citation. An offense is so included when:

(a) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(b) it consists of an attempt or solicitation to commit the offense charged, or to commit an offense otherwise included therein; or

(c) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

(5) Submission of included offense to jury. The court shall not be obligated to charge the jury with respect to an included offense unless there is rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.

§1.08. When Prosecution Barred by Former Prosecution for the Same Offense.

When a prosecution is for a violation of the same provision of the statutes and is based upon the same facts as a former prosecution, it is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction.

(2) The former prosecution was terminated, after the complaint, information, or citation had been filed, by a final order or judgment for the defendant that has not been set aside, reversed, or vacated and that necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the same offense.

(3) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction that has not been reversed or vacated, or a verdict of guilt that has not been set aside and that is capable of supporting a judgment, or a plea of guilty accepted by the court. In the latter two cases, failure to enter judgment must be for a reason other than a motion of the defendant.

(4) The former prosecution was improperly terminated. Except as provided in this Subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and, if it is a bench trial, it takes place after the first witness is sworn, or, if it is a jury trial, after the jury is sworn in, but before a decision, final order or judgment. Termination under any of the following circumstances is not improper:

(a) The defendant consents to the termination or waives his or her right to object to the termination;

(b) The trial court finds that the termination is necessary because:

(i) it is physically impossible to proceed with the trial in conformity with law; or

(ii) there is a legal defect in the proceedings that would make any judgment entered reversible as a matter of law; or

(iii) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without the injustice to either the defendant or the Republic; or

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial.

§1.09. When Prosecution Barred by Former Prosecution for Different Offense.

Although a prosecution is for a violation of a different provision of the statutes than a former prosecution or is based on different facts, it is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal or in a conviction as defined in Section 1.08 and the subsequent prosecution is for:

(a) any offense of which the defendant could have been convicted on the first prosecution; or

(b) any offense for which the defendant should have been tried on the first prosecution under Section 1.07, unless the court ordered a separate trial of the charge of such offense; or

(c) the same conduct, unless:

(i) the offense of which the defendant was formerly convicted or acquitted and the offense for which the defendant is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil, or

(ii) the second offense was not consummated when the former trial began.

(2) The former prosecution was terminated, after the information, complaint, or citation was filed, by an acquittal or by a final order or judgment for the defendant that has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact that must be established for conviction of the second offense.

(3) The former prosecution was improperly terminated, as improper termination is defined in Section 1.08, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

§1.10. When Former Prosecution Not a Bar.

A prosecution is not a bar within the meaning of Sections 1.08 and 1.09 under any of the following circumstances:

(1) The former prosecution was procured by the defendant without the knowledge of the appropriate prosecuting officer and with the purpose of avoiding the sentence that might otherwise be imposed; or

(2) The former prosecution resulted in a judgment of conviction that was set aside, reversed, or vacated upon appeal or in any other

subsequent judicial proceeding, provided that the basis for invalidating the judgment is not insufficiency of the evidence.

§1.11. When Prosecution Barred Due to Age.

Children under the age of ten are conclusively presumed to be incapable of committing any crime. Children between the ages of ten and fourteen are conclusively presumed to be incapable of committing any crime, except the crimes of homicide and sexual assault, in which case the presumption is rebuttable. The provisions of this Section, however, shall not prevent proceedings against and the disciplining of any person under eighteen years of age as a delinquent child.

§1.12. Proof Beyond a Reasonable Doubt; Defenses; Burden of Proving Fact When Not an Element of an Offense; Presumptions.

(1) No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed.

(2) A defense is a fact or set of facts which tend to negative penal liability.

(3) No defense may be considered by the trier of fact unless evidence of the specified fact has been presented. If such evidence is presented, then:

(a) if the defense is not an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in light of any contrary prosecution evidence, raises a reasonable doubt as to the defendant's guilt; or

(b) if the defense is an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in light of any contrary prosecution evidence, proves by a preponderance of the evidence the specified fact or facts which negative penal liability.

(4) A defense is affirmative when:

(a) it arises under a Section of this code that so provides; or

(b) it relates to an offense defined by a statute other than this code and such statute so provides; or

(c) this code or a statute other than this code plainly requires the defendant to prove the defense by a preponderance of the evidence.

(5) When the application of this code depends upon the finding of a fact that is not an element of an offense, unless this code otherwise provides:

(a) the burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made; and

(b) the fact must be proved by a preponderance of the evidence.

(6) When this code establishes a presumption with respect to any fact that is an element of an offense, it has the following consequences:

(a) when there is evidence of the facts that give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly negatives the presumed fact, and

(b) when the issue of the existence of the presumed fact is submitted to the jury, the court shall charge that while the presumed fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the jury may regard the facts giving rise to the presumption as sufficient evidence of the presumed fact.

(7) A presumption not established by this code or inconsistent with it has the consequences otherwise accorded it by law.

§1.13. General Definitions.

In this code, unless a different meaning plainly is required:

(1) "**statute**" includes the Constitution and laws of the Republic, and any local law or ordinance of a municipality or other political subdivision of the Republic;

(2) "**act**" or "**action**" means a bodily movement whether voluntary or involuntary;

(3) "**voluntary**" has the meaning specified in Section 2.01;

(4) "**omission**" means a failure to act;

(5) "**conduct**" means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;

(6) "**actor**" includes, where relevant, a person guilty of an omission;

(7) "**acted**" includes, where relevant, "**omitted to act**";

(8) "**Person**", "**he**", "**she**" and "**actor**" include any natural person and, where relevant, a corporation or an unincorporated association;

(9) "**element of an offense**" means (i) such conduct or (ii) such attendant circumstances or (iii) such a result of conduct as:

(a) is included in the description of the forbidden conduct in the definition of the offense: or

(b) establishes the required kind of culpability; or

(c) negatives an excuse or justification for such conduct.

(10) "**material element of an offense**" means an element that does not relate exclusively to any matter unconnected with (i) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or (ii) the existence of a justification or excuse for such conduct;

(11) "**purposely**" means "**intentionally,**" and equivalent terms such as "**with purpose,**" "**designed**" or "**with design**" have the same meaning;

(12) "**intentionally**" has the meaning specified in Section 2.02 and equivalent terms such as "**intentional**" and "**with intent**" have the same meaning;

(13) "**knowingly**" has the meaning specified in Section 2.02 and equivalent terms such as "**knowing**" or "**with knowledge**" have the same meaning;

(14) "**recklessly**" has the meaning specified in Section 2.02 and equivalent terms such as "**recklessness**" and "**with recklessness**" have the same meaning;

(15) "**negligently**" has the meaning specified in Section 2.02 and equivalent terms such as "**negligence**" and "**with negligence**" have the same meaning;

(16) "**reasonably believes**" or "**reasonable belief**" designates a belief that the actor is not reckless or negligent in holding.

ARTICLE 2. GENERAL PRINCIPLES OF LIABILITY

§2.01. Requirement of Voluntary Act; Omission as Basis of Liability; Possession as an Act.

(1) A person is not guilty of an offense unless the person's liability is based on conduct that includes a voluntary act or the omission to perform an act of which the person is physically capable.

(2) The following are not voluntary acts within the meaning of this Section:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion;

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(3) Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:

(a) the omission is expressly made sufficient by the law defining the offense; or

(b) a duty to perform the omitted act is otherwise imposed by law.

(4) Possession is an act, within the meaning of this Section, if the possessor knowingly procured or received the thing possessed or was aware of his or her control of the thing possessed for a sufficient period to have been able to terminate possession.

§2.02. General Requirements of Culpability.

(1) Minimum requirements of culpability. Except as provided in Section 2.05, a person is not guilty of an offense unless the person acted intentionally, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.

(2) Kinds of culpability defined.

(a) Intentionally. A person acts intentionally with respect to a material element of an offense when:

(i) if the element involves the nature of the person's conduct or a result of the conduct, it is the person's conscious object to engage in conduct of that nature or to cause such a result; and

(ii) if the element involves the attendant circumstances, the person is aware of the existence of such circumstances or believes or hopes that they exist.

(b) Knowingly. A person acts knowingly with respect to a material element of an offense when:

(i) if the element involves the nature of the person's conduct or the attendant circumstances, the person is aware that his or her conduct is of that nature or that such circumstances exist; and

(ii) if the element involves a result of the person's conduct, the person is aware that it is practically certain that his or her conduct will cause such a result.

(c) Recklessly. A person acts recklessly with respect to a material element of an offense when the person consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(d) Negligently. A person acts negligently with respect to a material element of an offense when the person should be aware of a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his or her conduct and the circumstances known to the actor, involves a gross deviation from the standard or care that a reasonable person would observe in the actor's situation.

(3) Culpability required unless otherwise provided. When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts intentionally, knowingly, or recklessly with respect thereto.

(4) Prescribed culpability requirement applies to all material elements. When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements of the offense, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(5) Substitutes for negligence, recklessness and knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

(6) Requirement of intent or purpose satisfied even if conditional. When a particular intent or purpose is an element of an offense, the element is established although such intent or purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.

(7) Requirement of knowledge satisfied by knowledge of high probability. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he or she actually believes that it does not exist.

(8) Requirement of willfulness satisfied by acting knowingly. A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

(9) Culpability as to illegality of conduct. Neither knowledge, nor recklessness, or negligence, as to whether conduct constitutes an offense, or as to the existence, meaning, or application of the law determining the elements of an offense, is an element of such offense, unless the definition of the offense or this code so provides.

(10) Culpability as determinant of grade of offense. When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly or negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

§2.03. Casual Relationship Between Conduct and Result; Divergence Between Result Designed or Contemplated and Actual Result or Between Probable and Actual Result.

(1) Conduct is the cause of a result when:

(a) it is an antecedent but for which the result in question would not have occurred, or which is a substantial factor in producing the result; and

(b) the relationship between the conduct an result satisfies any additional casual requirements imposed by this code or by the law defining the offense.

When intentionally or knowingly causing a particular result is an element of an offense, the element is not established if the actual result is not within the purpose or the contemplation of the actor or unless:

(a) the actual result differs from that designed or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm designed or contemplated would have been more serious or more extensive than that caused; or

(b) the actual result involves the same kind of injury or harm as that designed or contemplated and is not too remote or accidental, or too dependant on another's volitional conduct in its occurrence to have a just bearing on the actor's liability or on the gravity of the offense.

(2) When recklessly or negligently causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of negligence, of which the actor should be aware unless:

(a) the actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

(b) the actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental, or too dependant on another's volitional conduct in its occurrence to have a just bearing on the actor's liability or on the gravity of the offense.

(3) When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

§2.04. Ignorance or Mistake.

(1) Ignorance or mistake as to a matter of fact or law is a defense if:

(a) the ignorance or mistake negatives the intent, purpose, knowledge, belief, recklessness or negligence required to establish a material element of the offense; or

(b) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.

(2) Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as the defendant supposed. In such case, however, the ignorance or mistake of the defendant shall reduce the grade and degree of the offense of which the defendant may be convicted to those of the offense of which he or she would be guilty had the situation been as he or she supposed.

(3) A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon conduct when:

(a) the offense is a violation of an administrative regulation or order, and the regulation or order is not known to the actor and was not reasonably available prior to the conduct alleged; or

(b) the person acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in:

(i) a statute or other enactment;

(ii) a judicial decision, opinion or judgment;

(iii) an administrative order or grant of permission; or

(iv) an official interpretation of the public officer or body charged by law with responsibility for interpretation, administration or enforcement of the law defining the offense.

§2.05. When Culpability Requirements Are Inapplicable to Violations and to Offenses Defined by Other Statutes.

The requirements of culpability prescribed by Section 2.01 and 2.02 do not apply to:

(1) offenses that constitute violations, unless the requirement involved is included in the definition of the offense; or

(2) offenses defined by statutes other than this code, insofar as a legislative purpose to impose absolute liability for such offenses or with respect to any material element thereof plainly appears.

§2.06. Liability for Conduct of Another; Complicity.

(1) A person is guilty of an offense if it is committed by the person's own conduct or by the conduct of another person for which the first person is legally accountable, or both.

(2) A person is legally accountable for the conduct of another person when:

(a) acting with the kind of culpability that is sufficient for the commission of the offense, the person causes an innocent or irresponsible person to engage in such conduct; or

(b) the person is made accountable for the conduct of such other person by this code or by the law defining the offense; or

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

(3) A person is an accomplice of another person in the commission of an offense if:

(a) with the purpose of promoting or facilitating the commission of the offense, the person:

(i) solicits such other person to commit it; or

(ii) aids or agrees to aid such other person in planning or committing it; or

(iii) having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; or

(b) the person acts with the knowledge that such other person is committing or has the purpose of committing the offense, and the person knowingly, substantially facilitates its commission; or

(c) the person's conduct is expressly declared by law to establish his or her complicity.

(4) When causing a particular result is an element of an offense, an accomplice in the conduct causing such result, is an accomplice in the commission of that offense, if the person acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(5) A person who is legally incapable of committing a particular offense himself or herself, may be guilty of the offense if it is committed by the conduct of another person for which the first person is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing the person's incapacity.

(6) Unless otherwise provided by this code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

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

(b) the offense is so defined that the person's conduct is inevitably incident to its commission; or

(c) the person terminates his or her complicity prior to the commission of the offense; and, (i) wholly deprives it of effectiveness in the commission of the offense, or

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

(7) An accomplice may be convicted on proof of the commission of the offense and of his or her complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

§2.07. Liability of Corporation, Unincorporated Associations and Persons Acting, or Under a Duty to Act, in Their Behalf.

(1) A corporation may be convicted of the commission of an offense if:

(a) the offense is a violation or misdemeanor, or the offense is defined by a statute other than this code in which a legislative purpose to impose liability on corporations plainly appears and the conduct is performed by an agent of the corporation acting in behalf of the corporation within the scope of the agent's office or employment, except that if the law defining the offense designates the agents for whose conduct the corporation is accountable or the circumstances under which it is accountable, such provisions shall apply; or

(b) the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

(c) the commission of the offense was authorized, requested, commanded, performed or recklessly tolerated by the board of directors of by a high managerial agent acting in behalf of the corporation within the scope of the agent's office or employment.

(2) When absolute liability is imposed for the commission of an offense, a legislative purpose to impose liability on a corporation or unincorporated association shall be assumed, unless the contrary plainly appears.

(3) An unincorporated association may be convicted of the commission of an offense if:

(a) the offense is defined by a statute other than this code that expressly provides for the liability of such an association and the conduct is performed by an agent of the association acting in behalf of the association within the scope of the agent's office or employment, except that if the law defining the offense designates the agents for whose conduct the association is accountable or the circumstances under which it is accountable, such provisions shall apply;

(b) the offense consists of an omission to discharge a specific duty of affirmative performance imposed on association by law; or

(c) the commission of the offense was authorized, requested, commanded, performed or recklessly tolerated by the executive board of the association or by a high managerial agent acting in behalf of the association within the scope of the agent's office or employment.

(4) As used in this Section:

(a) "corporation" does not include an entity organized as or by a governmental agency for the execution of a governmental program;

(b) "agent" means any director, officer, servant, employee or other person authorized to act in behalf of the corporation or association and, in the case of an unincorporated association, a member of such association;

(c) "high managerial agent" means an officer of a corporation or an unincorporated association, or, in the case of a partnership, a partner, or any other agent of a corporation or association having duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the corporation or association.

(5) In any prosecution of a corporation or an unincorporated association for the commission of an offense included within the terms of Subsection (1)(a) or (3)(a) of this Section, other than an offense for which absolute liability has been imposed, it shall be a defense if the defendant proves by a preponderance of evidence that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission. This paragraph shall not apply if it is plainly

inconsistent with the legislative purpose in defining the particular offense.

(6) Individual Liability.

(a) A person is legally accountable for any conduct the person performs or causes to be performed in the name of the corporation or an unincorporated association or in its behalf to the same extent as if it were performed in his or her own name or behalf.

(b) Whenever a duty to act is imposed by law upon a corporation or an unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon the agent.

(c) When a person is convicted of an offense by reason of the person's legal accountability for the conduct of a corporation or an unincorporated association, the person is subject to the sentence authorized by law when a natural person is convicted of an offense of the grade and the degree involved, although only a lesser or different punishment is authorized for the corporation or unincorporated association.

§2.08. Intoxication.

(1) Except as provided in Subsection (4) of this Section, intoxication of the actor is not a defense to any offense.

(2) Evidence of the nonself-induced intoxication of the defendant shall be admissible to prove or negative the conduct alleged or the state of mind sufficient to establish an element of the offense. Evidence of self-induced intoxication of the defendant is admissible to prove or negative the conduct alleged. It is also admissible to prove state of mind sufficient to establish an element of an offense. However, evidence of self-induced intoxication of the defendant is not admissible to negative the state of mind sufficient to establish an element of the offense.

(3) Intoxication does not, in itself, constitute mental disease within the meaning of Section 4.01.

(4) Intoxication that is not self-induced is a defense if by reason of such intoxication the actor at the time of his or her conduct was unable to appreciate the nature and quality of his or her conduct or the wrongfulness of his or her conduct.

(5) Interpretations. In this Section unless a different meaning plainly is required:

(a) "intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body;

(b) "self-induced intoxication" means intoxication caused by substances that the actor knowingly introduces into his or her body, the tendency of which to cause intoxication the actor knows or ought to know, unless the actor introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of crime.

§2.09. Duress.

(1) It is a defense that the actor engaged in the conduct charged to constitute an offense because the actor was coerced to do so by the use of, or threatened imminent use of, unlawful force against his or her person or the person of another, which a person of reasonable firmness in the actor's situation would have been unable to resist.

(2) The defense that is provided by Subsection (1) is unavailable:

(a) as to the crime of murder;

(b) if the actor recklessly placed himself or herself in a situation in which it was probable that the actor would be subjected to duress.

(3) It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under this Section. Any presumption that a woman acting in the presence of her husband is coerced is abolished.

(4) When the conduct of the actor would otherwise be justifiable under Section 3.02, this Section does not preclude such defense.

§2.10. Reserved.

§2.11. Consent.

(1) In general. The consent of the victim to conduct charged to constitute an offense, or to the result thereof, is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

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

(a) the conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport or other concerted activity not forbidden by law; or

(b) the consent establishes a justification for the conduct under Article 3.

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

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or

(b) it is given by a person who by reason of youth, mental illness, disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) It is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or

(d) it is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

§2.12. De Minimis Infractions.

(1) The court shall dismiss a prosecution 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 defendant's conduct:

(a) was within a customary license or tolerance, neither expressly negatived by the person whose interest was infringed nor

inconsistent with the purpose of the law defining the offense; or

(b) did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

(c) presents such other extenuating circumstances that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

(2) The court shall not dismiss a prosecution under Subsection (1) of this Section without filing a written statement of its reasons.

§2.13. Entrapment.

(1) A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, the person induces or encourages another person to engage in conduct constituting such offense by either:

(a) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

(b) employing methods of persuasion or inducement that create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

(2) A person prosecuted for an offense shall be acquitted if the person proves by a preponderance of evidence that his or her conduct occurred in response to an entrapment. The issue of entrapment shall tried by the court in the absence of the jury.

(3) The defense afforded by this Section is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

ARTICLE 3. GENERAL PRINCIPLES OF JUSTIFICATION

§3.01. Justification an Affirmative Defense; Civil Remedies Unaffected; Use of Confinement.

(1) In any prosecution based on conduct that is justifiable under this Article, justification is an affirmative defense.

(2) The fact that conduct is justifiable under this Article does not abolish or impair any civil remedy for such conduct.

(3) Use of Confinement as Protective Force. The justifications afforded by this Article extend to the use of confinement as soon as the actor knows that he or she safely can, unless the person confined has been arrested on a charge of crime.

§3.02. Justification Generally: Choice of Evils.

(1) Conduct that the actor believes to be necessary to avoid harm or evil to himself or herself or to another is justifiable, provided that:

(a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and

(b) neither this code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

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

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his or her conduct, the justification afforded by this Section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

§3.03. Execution of Public Duty.

(1) Except as provided in Subsection (2) of this Section, conduct is justifiable when it is required or authorized by:

(a) the law defining the duties or functions of a pubic officer or the assistance to be rendered to such officer in the performance of the officer's duties; or

(b) the law governing the execution of legal process; or

(c) the judgment or order of a competent court or tribunal; or

(d) any other provision of law imposing a public duty.

(2) The other sections of this Article apply to:

(a) the use of force upon or toward the person of another for any of the purposes dealt with in such sections; and

(b) the use of deadly force for any purpose, unless the use of such force is otherwise expressly authorized by law.

(3) The justification afforded by Subsection (1) of this Section applies:

(a) when the actor believes his or her conduct to be required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; and

(b) when the actor believes his or her conduct to be required or authorized to assist a public officer in the performance of the officer's duties, notwithstanding that the officer exceeded the officer's legal authority.

§3.04. Use of Force in Self-Protection.

(1) Use of force justifiable for protection of the person. Subject to the provisions of this Section and of Section 3.09, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself or herself against the use of unlawful force by such other person on the present occasion.

(2) Limitations on justifying necessity for use of force.

(a) The use of force is not justifiable under this Section:

(i) to resist an arrest that the actor knows is being made by a public officer, although the arrest is unlawful; or

(ii) to resist force used by the occupier or possessor of property or by another person on his or her behalf,

where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:

(A) the actor is a public officer acting in the performance of his or her duties, or a person lawfully assisting the actor therein, or a person making or assisting in a lawful arrest; or

(B) the actor believes that such force is necessary to protect himself or herself against death or serious bodily injury; or

(iii) to resist force provoked by the actor himself or herself with intent to cause physical injury to another person, except that if the actor initially uses non-deadly force and the other person responds with deadly force, the actor may be justified in resisting such deadly force, subject to the provisions of this Section and of Section 3.09. This provision does not, however, exempt the actor from liability for the initial use of force.

(b) The use of deadly force is not justifiable under this Section unless the actor believes that such force is necessary to protect himself or herself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat; nor is it justifiable if:

(i) the actor, with the purpose of causing death or serious bodily injury, provoked the use of force against himself or herself in the same encounter, unless the actor completely withdraws from the conflict and successfully communicates that to the victim; or

(ii) the actor knows that he or she can avoid the necessity of using such force with reasonable safety by retreating or by surrendering possession of a thing to a person asserting a claim or right thereto or by complying with a demand that the actor abstain from any action that he or she has no duty to take, except that:

(A) the actor is not obliged to retreat from the actor's dwelling or place of work, unless he or she was the initial aggressor or is assailed in his or her

place of work by another person whose place of work the actor knows it to be; and

(B) a public officer justified in using force in the performance of the officer's duties, or a person justified in using force in the officer's duties, or a person justified in using force in the officer's assistance, or a person justified in using force in making an arrest, or preventing an escape, is not obliged to desist from efforts to perform such duty, effect such arrest, or prevent such escape, because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.

(c) Except as required by paragraphs (a) and (b) of this Subsection, a person employing protective force may estimate the necessity of such force under the circumstances as the person believes them to be when the force is used, without retreating, surrendering possession, doing any other act that the person has no legal duty to do, or abstaining from any lawful action.

§3.05. Use of Force for the Protection of Other Persons.

(1) Subject to the provisions of this Section and of Section 3.09, the use of force upon or toward the person of another is justifiable to protect a third person when:

(a) the actor would be justified under Section 3.04 in using such force to protect himself or herself against the injury the actor believes to be threatened to the person whom the actor seeks to protect; and

(b) under the circumstances as the actor believes them to be, the person whom the actor seeks to protect would be justified in using such protective force; and

(c) the actor believes that his or her intervention is necessary for the protection of such other person.

(2) Notwithstanding Subsection (1) of this Section:

(a) when the actor would be obliged under Section 3.04 to retreat, to surrender the possession of a thing, or to comply with a

demand before using force in self-protection, the actor is not obliged to do so before using force for the protection of another person, unless the actor knows that he or she can thereby secure the reasonable safety of such other person; and

(b) when the person whom the actor seeks to protect would be obliged under Section 3.04 to retreat, to surrender the possession of a thing, or to comply with a demand if the person knew that he or she could obtain reasonable safety by so doing, the actor is obliged to try to cause the person to do so before using force in the person's protection if the actor knows that he or she can obtain reasonable safety in that way; and

(c) neither the actor nor the person whom the actor seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than his or her own.

§3.06. Use of Force for Protection of Property.

(1) Use of force justifiable for protection of property. Subject to the provisions of this Section and of Section 3.09, the use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:

(a) to prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible, movable property, provided that such land or movable property is, or is believed by the actor to be, in the actor's possession or in the possession of another person whose protection the actor acts; or

(b) to effect an entry or re-entry upon land or to retake tangible movable property, provided that the actor believes that he or she, or the person by whose authority the actor acts, or a person from whom the actor or such other person derives title, was unlawfully dispossessed of such land or movable property and is entitled to possession, and provided, further, that:

(i) the force is used immediately or on fresh pursuit after such dispossession; or

(ii) the actor believes that the person against whom he or she uses force has no claim of right to the possession of

the property and, in the case of land, the circumstances, as the actor believes them to be, are of such urgency that it would be an exceptional hardship to postpone the entry or re-entry until a court order is obtained.

(2) Meaning of possession. For the purposes of Subsection (1) of this Section:

(a) a person who has parted with the custody of property to another who refuses to restore it to him or her is no longer in possession, unless the property is movable and was and still is located on land in his or her possession;

(b) a person who has been dispossessed of land does not regain possession thereof merely by setting foot on the land;

(c) a person who has a license to use or occupy real property is deemed to be in possession of the property except against the licensor acting under claim of right.

(3) Limitations on justifiable use of force.

(a) Request to desist. The use of force is justifiable under this Section only if the actor first requests the person against whom such force is used to desist from such person's interference with the property, unless the actor believes that:

(i) the request would be useless; or

(ii) it would be dangerous to the actor or another person to make the request; or

(iii) substantial harm will be done to the property that is sought to be protected before the request can effectively be made.

(b) Exclusion of trespasser. The use of force to prevent or terminate a trespass is not justifiable under this Section if the actor knows that the exclusion fo the trespasser will expose the trespasser to substantial danger of serious bodily injury.

(c) Resistance of lawful re-entry or recaption. The use of force to prevent an entry or re-entry upon land or the recaption of movable property is not justifiable under this Section, although the actor believes that such re-entry or recaption is unlawful, if:

(i) the re-entry or recaption is made by or on behalf of a person who was actually dispossessed of the property; and

(ii) it is otherwise justifiable under Subsection (1)(b) of this Section.

(d) Use of deadly force. The use of deadly force is not justifiable under this Section unless the actor believes that the person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other felonious theft or property destruction and the use of force other than deadly force to prevent the commission or the consummation of the crime would expose the actor or another in the actor's presence to substantial danger of serious bodily injury.

(4) Use of device to protect property. The justification afforded by this Section extends to the use of a device for the purpose of protecting property only if:

(a) the device is not designed to cause or known to create a substantial risk of causing death or serious bodily injury; and

(b) the use of the particular device to protect the property from entry or trespass is reasonable under the circumstances, as the actor believes them to be; and

(c) the device is one customarily used for such a purpose or reasonable care is taken to make known to probable intruders the fact that it is used.

§3.07. Use of Force in Law Enforcement.

(1) Use of force justifiable to effect an arrest. Subject to the provisions of this Section and of Section 3.09, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

(2) Limitations on the use of force.

(a) The use of force is not justifiable under this Section unless:

(i) the actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot

reasonably be made known to the person to be arrested; and

(ii) when the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.

(b) The use of deadly force is not justifiable under this Section unless:

(i) the arrest is for a felony; and

(ii) the person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he or she believes to be authorized to act as a peace officer; and

(iii) the actor believes that the force employed creates no substantial risk of injury to innocent persons; and

(iv) the actor believes that there is a substantial risk that the person to be arrested will cause death or serious bodily injury if his or her apprehension is delayed.

(3) Use of force to prevent escape from custody or from prison. The use of force to prevent the escape of an arrested person from custody or from prison is justifiable when the force could justifiably have been employed to effect the arrest.

(4) Use of force by private person assisting an unlawful arrest.

(a) A private person who is summoned by a peace officer to assist in effecting an unlawful arrest, is justified in using any force that the person would be justified in using if the arrest were lawful, provided that the person does not believe the arrest is unlawful.

(b) A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force that the person would be justified in using if the arrest were lawful, provided that (i) the person believes the arrest is lawful, and (ii) the arrest would be lawful if the facts were as the person believes them to be.

(5) Use of force to prevent suicide or the commission of a crime. The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious bodily

injury upon himself or herself, committing or consummating the commission of a crime involving or threatening bodily injury, damage to or loss of property or a breach of the peace, except that:

(a) any limitations imposed by the other provisions of this Article on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody, shall apply notwithstanding the criminality of the conduct against which such force is used; and

(b) the use of deadly force is not in any event justifiable under this Subsection unless the actor believes that there is a substantial risk that the person whom the actor seeks to prevent from committing a crime will cause death or serious bodily injury to another unless the commission or the consummation of the crime is prevented, and that the use of such force presents no substantial risk of injury to innocent persons.

§3.08. Reserved.

[Section 1.08 is hereby repealed by P.L.2020-16].

§3.09. Mistake of Law as to Unlawfulness of Force or Legality Reckless or Negligent Use of Otherwise Justifiable Force; Reckless or Negligent Injury or Risk of Injury to Innocent Persons.

(1) The justification afforded by Section 3.04 to 3.07, inclusive, is unavailable when:

(a) the actor's belief in the unlawfulness of the force or conduct against which the actor employs protective force, or the actor's belief in the unlawfulness of an arrest that he or she endeavors to effect by force is erroneous; and

(b) the actor's error is due to ignorance or mistake of aw.

(2) When the actor believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under Sections 3.03 to 3.08, but the actor is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief that is material to the justifiability of the actor's use of force, the justification afforded by those Sections is unavailable in a prosecution for an offense for which

recklessness or negligence, as the case may be, suffices to establish culpability.

(3) When the actor is justified under Sections 3.03 to 3.08 in using force upon or toward the person of another but the actor recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those Sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.

§3.10. Justification in Property Crimes.

Conduct involving the appropriation, seizure or destruction of, damage to, intrusion on or interference with property is justifiable under circumstances that would establish a defense of privilege in a civil action based thereon, unless:

(1) this code or the law defining the offense deals with the specific situation involved; or

(2) a legislative purpose to exclude the justification claimed otherwise plainly appears.

§3.11. Definitions.

In this Article, unless a different meaning plainly is required:

(1) "unlawful force" means force, including confinement, that is employed without the consent of the person against whom it is directed, and the employment of which constitutes an offense or actionable tort, or would constitute such offense or tort except for a defense (such as the absence of intent, negligence, or mental capacity; duress; youth; or diplomatic status) not amounting to a privilege to use the force. Assent constitutes consent, within the meaning of this Section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily injury.

(2) "deadly force" means force that the actor uses with the purpose of causing or that he or she knows to create a substantial risk of causing death or serious bodily injury. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to use deadly force, by the production of a weapon or otherwise, so long as the actor's

purpose is limited to creating an apprehension that he or she will use deadly force if necessary, does not constitute deadly force.

(3) "dwelling" means any building or structure, though movable or temporary, or a portion thereof, that is for the time being the actor's home or place of lodging.

ARTICLE 4. RESPONSIBILITY

§4.01. Mental Disease or Defect Excluding Responsibility.

(1) A person is not responsible for criminal conduct if at the time of such conduct, the person, as a result of mental disease or defect, was unable to appreciate the nature and quality of his or her acts or the wrongfulness of his or her acts.

(2) As used in this Article, the terms "mental disease or defect" include any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavioral controls, but do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(3) Irresistible impulse. The inability of the person to control his or her actions is a defense under the Article only to the extent that such inability renders the person unable to appreciate the nature or quality of his or her actions or the wrongfulness of his or her actions.

§4.02. Evidence of Mental Disease or Defect Admissible When Relevant to Element of the Offense.

Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind that is an element of the offense.

§4.03. Mental Disease or Defect Excluding Responsibility is Affirmative Defense; Requirement of Notice; Form of Judgment When Finding of Irresponsibility is Made.

(1) Mental disease or defect excluding responsibility is an affirmative defense.

(2) Evidence of mental disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his or her

plea of not guilty, or within ten days thereafter, or at such later time as the court may for good cause permit, files a written notice of the defendant's intention to rely on such defense.

(3) When the defendant is acquitted on the ground of mental disease of defect excluding responsibility, the decision and the judgment shall so state.

§4.04. Mental Disease or Defect Excluding Fitness to Proceed.

No person who as a result of mental disease or defect lacks capacity to understand the proceedings against such person, or to assist in his or her own defense, shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

§4.05. Examination of Defendant.

Whenever the defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt the defendant's fitness to proceed, or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court may order an examination and a report upon the mental condition of the defendant.

§4.06. Determination of Fitness to Proceed.

When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court.

§4.07 Reserved.

§4.08 Legal Effect of Acquittal on the Ground of Mental Disease or Defect Excluding Responsibility; Commitment; Release or Discharge.

(1) When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the court may order the defendant to be committed.

(2) If the court is satisfied that the person may be discharged or released on condition without danger to himself or herself or others, and the interests of justice so require, the court may order his or her discharge or his or her release on such conditions as the court determines to be

necessary. If the court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged or released. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the person to prove that he or she may safely be discharged or released. According to the determination of the court upon the hearing, the person shall thereupon be discharged or released on such conditions as the court determines to be necessary, or shall be committed.

ARTICLE 5. INCHOATE CRIMES

§5.01 Criminal Attempt.

(1) Definition of Attempt. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, the person:

(a) intentionally engages in conduct that would constitute the crime if the attendant circumstances were as the person believes them to be; or

(b) when causing a particular result is an element of the crime, the person, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result; or

(c) intentionally engages in conduct which, under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.

(2) Conduct That May Be Held Substantial Step. Conduct shall not be held to constitute a substantial step unless it is strongly corroborative of the actor's criminal intent.

(3) Conduct Designed to Aid Another in Commission of a Crime. A person who engages in conduct designed to aid another to commit a crime that would establish his or her complicity under Section 2.06 if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

(4) Renunciation of Criminal Purpose. When the actor's conduct would otherwise constitute an attempt under Subsection (1)(b) or (1)(c) of this Section, it is an affirmative defense that the person gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the attempt, under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

(a) Within the meaning of this Article, renunciation of criminal intent is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, that increases the probability of detection or apprehension or that make more difficult the accomplishment of the criminal purpose.

(b) Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

§5.02. Criminal Solicitation.

(1) Definition of Solicitation. A person is guilty of solicitation to commit a crime if with the intent to promote or facilitate its commission the person commands, encourages or requests another person to engage in specific conduct that would constitute such crime or an attempt to commit such crime or would establish his or her complicity in its commission or attempted commission.

(2) Uncommunicated Solicitation. It is immaterial under Subsection (1) of this Section that the actor fails to communicate with the person that the actor solicits to commit a crime if the actor's conduct was designed to effect such communication.

(3) Renunciation of Criminal Purpose. It is an affirmative defense that the actor, after soliciting another person to commit a crime, persuaded the other person not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose.

§5.03. Criminal Conspiracy.

(1) Definition of Conspiracy. A person is guilty of conspiracy with another person or persons to commit a crime if with the intent to promote or facilitate its commission:

(a) he or she agrees with such other person or persons that they or one or more of them will engage in conduct that constitutes such crime or an attempt or solicitation to commit such crime; and

(b) he or she or another person with whom he or she conspired commits an overt act in pursuance of the conspiracy.

(2) Scope of Conspiratorial Relationship. If a person guilty of conspiracy, as defined by Subsection (1) of this Section, knows that a person with whom he or she conspires to commit a crime has conspired with another person or persons to commit the same crime, he or she is guilty of conspiring with such other person or persons, whether or not he or she knows their identity, to commit such crime.

(3) Conspiracy with Multiple Criminal Objectives. If a person conspires to commit a number of crimes, he or she is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(4) Renunciation of Criminal Purpose. It is an affirmative defense that the actor, after conspiring to commit a crime, gave timely warning to law enforcement authorities or otherwise made reasonable efforts to thwart the success of the conspiracy, under the circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose.

(5) Duration of Conspiracy. For purposes of Section 1.06(4):

(a) conspiracy is a continuing course of conduct that terminates when the crime or crimes that are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he or she conspired; and

(b) such abandonment is presumed if neither the defendant nor anyone with whom he or she conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and

(c) if an individual abandons the agreement, the conspiracy is terminated as to that person only if and when the person advises those with whom he or she conspired of his or her abandonment or he or she informs the law enforcement authorities of the existence of the conspiracy and of his or her participation therein.

§5.04. Incapacity, Irresponsibility or Immunity or Party to Solicitation or Conspiracy.

(1) It is immaterial to the liability of a person who solicits or conspires with another to commit a crime that:

(a) he or she, or the person whom he or she solicits or with whom he or she conspires, does not occupy a particular position or have particular characteristic that is an element of such crime, if he or she believes that one of them does; or

(b) the person whom he or she solicits or with whom he or she conspires is irresponsible or has legal immunity.

(2) It is a defense to a charge of solicitation or conspiracy to commit a crime that if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or as an accomplice under Section 2.06(5) or 2.06(6) (a) or (6) (b).

§5.05. Grading of Criminal Attempt, Solicitation and Conspiracy; Multiple Convictions Barred.

(1) Grading.

(a) Criminal Attempt. Except as provided in Subsection (d) of this Section, an attempt to commit a crime is an offense of the same grade or degree as the most serious offense that is attempted.

(b) Criminal Solicitation. Criminal solicitation is an offense one grade or degree, as the case may be, less than the offense solicited.

(c) Criminal Conspiracy. Except as provided in Subsection (d) of this Section, criminal conspiracy is a crime of the same grade and degree as the most serious offense that is an object of the conspiracy.

(d) An attempt or conspiracy to commit a felony of the first degree is a felony of the second degree.

(2) Multiple Convictions. A person may not be convicted of more than one offense defined by this Article for conduct designed to commit or to culminate in the commission of the same crime.

ARTICLE 6. AUTHORIZED DISPOSITION OF OFFENDERS

§6.01. Degrees of Felonies.

(1) Felonies defined by this code are classified, for the purpose of sentence, into three degrees, as follows:

(a) felonies of the first degree;

(b) felonies of the second degree;

(c) felonies of the third degree.

(2) A felony is of the first or second degree when it is so designated by this code. A crime declared to be a felony, without specification of degree, is of the third degree.

(3) Notwithstanding any other provision of law, the sentence for any felony defined by any statute of the Republic other than this code shall be in accordance with the sentence specified in that statute. If no sentence is provided in such statute, the felony shall be a felony of the third degree.

§6.02. Sentence in Accordance with Code.

(1) Unless the sentence is specifically provided for in a statute other than this code, any person convicted of an offense shall be sentenced in accordance with this Article.

(2) The court may suspend the imposition or the execution of sentence on a person who has been convicted of a crime, may order the person to be committed in accordance with the Public Health and Sanitation Act, 7 MIRC chapter 1, or may sentence the person in any combination of the following sanctions:

(a) to pay a fine authorized by Section 6.03; or

(b) to be placed on probation; or

(c) to imprisonment for a term authorized by Section 6.05, 6.06, 6.08, or 7.06; or

(d) to public labor or community service; or

(e) to pay restitution or compensation to the victim.

(3) The court may suspend the imposition of sentence on a person who has been convicted of a violation or may sentence the person to pay a fine authorized by Section 6.03.

(4) This Article does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

§6.03. Fines.

(1) A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

(a) $20,000, when the conviction is of a felony of the first or second degree; or

(b) $5,000, when the conviction is of a felony of the third degree; or

(c) $1,000, when the conviction is of a misdemeanor; or

(d) $400, when the conviction is of a petty misdemeanor or a violation; or

(e) any higher amount equal to double the pecuniary gain derived from the offense by the offender, or equal to double the pecuniary loss suffered by the victim from the offense; or

(f) any higher amount specifically authorized by statute.

(2) A corporation or an unincorporated association that has been convicted of an offense may be sentence to pay a fine not exceeding:

(a) $100,000, when the conviction is of a felony of the first or second degree; or

(b) $25,000, when the conviction is of a felony of the third degree; or

(c) $10,000, when the conviction is of a misdemeanor; or

(d) $5,000, when the conviction is of a petty misdemeanor; or

(e) any higher amount equal to three times the pecuniary gain derived from the offense by the offender, or equal to three times the pecuniary loss suffered by the victim from the offense; or

(f) any higher amount specifically authorized by statute.

§6.04 Penalties Against Corporations and Unincorporated Associations.

The court may suspend the sentence of a corporation or an unincorporated association that has been convicted of an offense or may sentence it to pay a fine authorized by Section 6.03(2).

§6.05 Reserved.

§6.06 Sentence of Imprisonment for Felony.

(1) A person who has been convicted of murder in the first degree shall be sentenced to a term of life imprisonment.

(2) A person who has been convicted of all other felonies may be sentenced to imprisonment, as follows:

(a) in the case of a felony of the first degree, for a term the maximum of which shall not be more than twenty-five years;

(b) in the case of a felony of the second degree, for a term the maximum of which shall not be more than ten years;

(c) in the case of a felony of the third degree, for a term the maximum of which shall not be more than thirty-five months.

(3) In imposing a sentence of imprisonment, the court may consider as aggravating or mitigating circumstances any factor which the court deems appropriate to the ends of justice, including the custom of the Republic of the Marshall Islands.

§6.07. Termination of Public Employment for Felony Conviction.

(1) Any person adjudged guilty of a felony is prohibited from being a government employee for a period of two years from the date of judgment, except for persons adjudged guilty of a felony in relation to Section 240: Offenses Against Public Administration, in which case the person is prohibited from being a government employee for a

period of 10 years from the date of judgment, unless this Section is specifically waived by the Cabinet by resolution.

(2) Any elected public official who is adjudged guilty of a felony shall thereupon be disqualified from being a public official and shall immediately resign from office. In addition, such public official shall be prohibited from being a government employee for a period of two years from the date of judgment, except for elected public officials adjudged guilty of a felony in relation to Section 240: Offenses Against Public Administration, in which case the elected public official is prohibited from being a government employee for a period of 10 years from the date of judgment, unless this Section is specifically waived by the Cabinet by resolution.

§6.08. Sentence of Imprisonment from Misdemeanors and Petty Misdemeanors.

A person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed one year in the case of a misdemeanor or six months in the case of a petty misdemeanor.

§6.09. Reserved.

§6.10. Reserved.

§6.11. Place of Imprisonment.

When a person is sentenced to imprisonment, the court may designate in the commitment order a place of confinement within the Republic. The place of confinement may be changed or otherwise designated as follows at any time while the sentence is still in force:

(1) the Chief Secretary, subject to instruction, if any, from higher authority, may transfer the person to or designate any place of confinement within the Republic; or

(2) the Cabinet may transfer the person or designate any place of confinement.

§6.12. Reduction of Conviction by Court to Lesser Degree of Felony or to Misdemeanor.

If, when a person has been convicted of a felony, the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the view that it would be unduly harsh to sentence the offender in accordance with this code, the court may enter judgment of conviction for a lesser degree of felony or for a misdemeanor and impose sentence accordingly.

§6.13 Pardons and Paroles.

(1) Any person convicted of a crime in the Republic may be pardoned by the Cabinet acting on the recommendation of the Parole Board.

(2) Any person convicted of a crime in the Republic may be paroled by the Parole Board, upon such terms and conditions as may be prescribed in any other law or applicable Regulations.

(3) Any Regulations for the time being in force, regulating the granting of pardon and parole shall, to the extent that they are not inconsistent with this code or any other law, remain applicable and have the force and effect of law.

(4) As used in this Section, the term "Parole Board' means the Parole Board established under the Parole of Prisoners Board Act, 32 MIRC chapter 3.

ARTICLE 7. AUTHORITY OF COURT IN SENTENCING.

§7.01. Criteria for Suspending the Imposition or the Execution of a Sentence of Imprisonment and for Placing Defendant on Probation.

(1) The court may suspend the imposition of a sentence or the execution of the whole or part of a sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that the defendant's imprisonment is necessary for protection of the public because of such reasons as:

(a) there is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or

(b) the defendant is in need of correctional treatment that can be provided most effectively by his or her commitment to an institution; or

(c) a lesser sentence will depreciate the seriousness of the defendant's crime.

(2) The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of withholding sentence of imprisonment:

(a) the defendant's criminal conduct neither caused nor threatened serious harm;

(b) the defendant did not contemplate that his or her criminal conduct would cause or threaten serious harm;

(c) the defendant acted under a strong provocation;

(d) there were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

(e) the victim of the defendant's criminal conduct induced or facilitated its commission;

(f) the defendant has compensated or will compensate the victim of his or her criminal conduct for the damage or injury that he or she sustained;

(g) the defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(h) the defendant's criminal conduct was the result of circumstances unlikely to recur;

(i) the character and attitudes of the defendant indicate that he or she is unlikely to commit another crime;

(j) the defendant is particularly likely to respond affirmatively to probationary treatment;

(k) the imprisonment of the defendant would entail excessive hardship to himself or herself or the defendant's dependents.

(3) When the court has suspended the execution of a sentence, a subsequent conviction by a court for any offense shall have the effect

of revoking the suspension of execution of the previous sentence unless the court otherwise directs.

(4) Suspension of Imposition of Sentence.

(a) Upon entering a judgment of conviction of any offense not punishable by life imprisonment, the court, when satisfied that the ends of justice and the best interests of the public as well as the defendant will be served, may suspend the imposition of sentence and may direct that the suspension continue for a period of time, not exceeding the maximum term of sentence which may be imposed, and upon the terms and conditions which the court determines, and shall place the defendant on probation during the suspension.

(b) Upon violation of any terms and conditions of probation at any time during the probationary period, the court may issue a warrant for the arrest of the defendant and, after giving the defendant an opportunity to be heard and to rebut any evidence presented against him or her, may revoke and terminate the probation.

(c) Upon revocation of probation, the court may then impose any sentence which may have initially been imposed had the court not suspended imposition of sentence in the first place.

(d) the court may at any time during the period of probation modify its order of suspension of imposition of sentence. The court may at any time, when the ends of justice and the best interests of the public as well as the defendant will served, and when the good conduct and reform of the defendant warrants it, terminate the period of probation and discharge the defendant. If the court has not revoked the order of probation and pronounced sentence, the defendant shall, at the end of the term of probation, be discharged by the court.

(e) Upon discharge of the person without imposition of sentence, the court shall vacate the judgment of conviction and the person shall not be deemed to have been convicted of the crime for any purpose.

§7.02. Criteria for Imposing Fines.

(1) Except where the offense is a violation or the defendant is a corporation, the court shall not sentence a defendant only to pay a fine, when any other disposition is authorized by law, unless having regard to the nature and circumstances of the crime and to the history and character of the defendant, it is of the opinion that the fine alone suffices for protection of the public.

(2) The court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment or probation unless:

(a) the defendant has derived a pecuniary gain from the crime, or the victim has suffered a pecuniary loss from the crime; or

(b) the court is of the opinion that a fine is specially adapted to deterrence of the crime involved or to the correction of the offender.

(3) The court shall not sentence a defendant to pay a fine unless:

(a) the defendant is or will be able to pay the fine; and

(b) the fine will not prevent the defendant from making restitution or reparation to the victim of crime.

(4) In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

(5) Procedure for Nonpayment of Fines. Where the defendant defaults in the payment of a fine or any part thereof, the court may order the defendant to be imprisoned for such period of time as it may direct if it finds that the defendant has been afforded a reasonable time to make payment and has the means to do so. These directions may be given and orders for imprisonment made at any time, and may be modified if the court deems justice so requires, until the fine is paid in full or the imprisonment served which has been ordered in default of payment, provided, that the accused shall be given an opportunity to be heard before any such direction or order is given, made, or modified, except when that is done at the time sentence is imposed; and provided further, that no defendant shall be imprisoned for a longer period than that fixed by law for the original offense.

§7.03. Reserved.

§7.04. Reserved.

§7.05. Reserved.

§7.06. Multiple Sentences; Concurrent and Consecutive Terms.

(1) Sentence of Imprisonment Imposed at Same Time. When multiple sentence of imprisonment are imposed on a defendant at the same time, including a crime for which a previous suspended sentence or sentence of probation has been revoked, such multiple sentences shall run concurrently or consecutively as the court determines at the time of sentence.

(2) Sentences of Imprisonment Imposed at Different Times. When a defendant who has previously been sentenced to imprisonment is subsequently sentenced to another term for a crime committed prior to the former sentence, other than a crime committed while in custody:

(a) the multiple sentences imposed shall so far as possible conform to Subsection (1) of this Section; and

(b) whether the court determines that the terms shall run concurrently or consecutively, the defendant shall be credited with time served in imprisonment on the prior sentence in determining the permissible aggregate length of the term or terms remaining to be served; and

(c) when a new sentence is imposed on a prisoner who is on parole, the balance of the parole term on the former sentence shall be deemed to run during the period of the new imprisonment.

(3) Sentence of Imprisonment for Crime Committed While on Parole. When a defendant is sentenced to imprisonment for a crime committed while on parole in the Republic, such term of imprisonment and any period of reimprisonment that the Parole Board may require the defendant to serve upon the revocation of his or her parole shall run concurrently, unless the court orders them to run consecutively.

(4) Multiple Sentences of Imprisonment in Other Cases. Except as otherwise provided in this Section, multiple terms of imprisonment shall run concurrently or consecutively as the court determines when the second or subsequent sentence is imposed.

(5) Suspension of Sentence or Probation and Imprisonment; Multiple Terms of Suspension and Probation. When a defendant is sentenced for more than one offense or a defendant already under sentence is sentenced for another offense committed prior to the former sentence, multiple periods of suspension or probation shall run concurrently from the date of the first such disposition.

(6) Offense Committed While Under Suspension of Sentence or Probation. When a defendant is convicted of an offense committed while under suspension of sentence or on probation and such suspension or probation is not revoked, if sentence is suspended or the defendant is sentence to probation, the period of such suspension or probation shall run concurrently with or consecutively to the remainder of the prior periods, as the court determines at the time of sentence.

§7.07. Reserved.

§7.08. Reserved.

§7.09. Credit for Time of Detention Prior to Sentence; Credit for Imprisonment Under Earlier Sentence for Same Crime.

(1) When a defendant who is sentenced to imprisonment has previously been detained in any correctional or other institution following the defendant's arrest for the conduct for which such sentence is imposed, such period of detention following the arrest shall be deducted from the sentence imposed.

(2) When a judgment of conviction or sentence is vacated and a new sentence is thereafter imposed upon the defendant for the same conduct, the period of detention and imprisonment theretofore served shall be deducted from the new sentence.

PART II. DEFINITION OF SPECIFIC CRIMESOFFENSES INVOLVING DANGER TO THE PERSON

ARTICLE 210. CRIMINAL HOMICIDE

§210.0. Definitions.

In this Article, unless a different meaning plainly is required:

(1) "bodily injury" means physical pain, illness or any impairment of physical condition;

(2) "person" means a human being who has been born and is alive;

(3) "serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ;

(4) "deadly weapon" means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

§210.1. Criminal Homicide.

(1) A person is guilty of criminal homicide if the person intentionally, knowingly, recklessly or negligently causes the death of another human being.

(2) Criminal homicide is murder, manslaughter or negligent homicide.

§210.2 Murder.

(1) Except as provided in Section 210.3(1)(b), criminal homicide constitutes murder, when:

(a) it is committed intentionally or knowingly; or

(b) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life. Such recklessness and indifference are presumed if the actor is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to

commit robbery, rape or sexual intercourse by force or threat of force, arson, burglary, or Kidnapping.

(2) Murder is a felony of the first degree.

§210.3. Manslaughter.

(1) Criminal homicide constitutes manslaughter when:

(a) it is committed recklessly; or

(b) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as the actor believes them to be. An emotional disturbance may be excusable if it is occasioned by any provocation, event, or situation for which the offender was not culpably responsible.

(2) Manslaughter is a felony of the second degree.

§210.4 Negligent Homicide in the First Degree.

(1) Criminal homicide constitutes negligent homicide in the first degree when the person causes the death of another person by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol.

(2) Negligent homicide in the first degree is a felony of the second degree.

§210.5 Negligent Homicide in the Second Degree.

(1) Criminal homicide constitutes negligent homicide in the second degree when the person causes the death of another person by the operation of a vehicle in a negligent manner.

(2) Negligent homicide in the second degree is a felony of the third degree.

ARTICLE 211. ASSAULT; RECKLESS ENDANGERMENT

§211.1. Assault.

A person is guilty of assault if the person

(a) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another; or

(b) negligently causes bodily injury to another with a deadly weapon.

Assault is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

§211.2. Assault with a Deadly Weapon.

A person is guilty of assault with a deadly weapon if the person attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon. Assault with a deadly weapon is a felony of the third degree.

§211.3. Aggravated Assault.

A person is guilty of aggravated assault if the person attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life. Aggravated assault is a felony of the second degree.

§211.4 Reckless Endangerment.

A person commits a misdemeanor if he or she recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. Recklessness and danger shall be presumed where a person knowingly points a firearm at or in the direction of another, whether or not the actor believed the firearm to be loaded.

ARTICLE 212. KIDNAPPING AND RELATED OFFENSES; COERCION

§212.1 Kidnapping.

(1) A person is guilty of kidnapping if the person unlawfully removes another from his or her place of residence or business, or a substantial distance from the vicinity where he or she is found, or if the person unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:

(a) to hold for ransom or reward, or as a shield or hostage; or

(b) to facilitate commission of any felony or flight thereafter; or

(c) to inflict bodily injury on or to subject that person to a sexual offense; or

(d) to terrorize the victim or another; or

(e) to interfere with the performance of any governmental or political function.

(2) Kidnapping is felony of the first degree unless the actor voluntarily releases the victim, alive and not suffering from serious or substantial injury, in a safe place prior to trial, in which case it is a felony of the second degree. A removable or confinement is unlawful within the meaning of this Section if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of fourteen or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his or her welfare.

§212.2. Felonious Restraint.

A person commits a felony of the third degree if the person knowingly:

(1) restrains another unlawfully in circumstances exposing such other person to risk of serious bodily injury; or

(2) holds another in a condition of involuntary servitude.

§212.3. False Imprisonment.

(1) A person commits a misdemeanor if the person knowingly restrains another unlawfully so as to substantially interfere with such other person's liberty.

(2) This Section does not apply to shopkeepers, merchants, or police officers who detain suspected shoplifters for a reasonable amount of time.

§212.4. Interfere with Custody.

(1) Custody of Children. A person commits an offense if the person knowingly or recklessly takes or entices any child under the age of sixteen from the custody of the child's parent, guardian or other lawful custodian, when the person has no privilege to do so. Proof that the child was below the critical age, gives rise to a presumption that the actor knew the child's age or acted in reckless disregard thereof. The offense is a misdemeanor unless the actor, not being a parent or person in equivalent relation to the child, acted with knowledge that his or her conduct would cause serious alarm for the child's safety, or in reckless disregard of a likelihood of causing such alarm, in which case the offense is a felony of the third degree.

(2) Custody of Committed Persons. A person is guilty of a misdemeanor if the person knowingly or recklessly takes or entices any committed person away from lawful custody when the person is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally impaired or insane person, or other dependent or incompetent person entrusted to anther's custody by authority of law.

§212.5 Criminal Coercion.

(1) Offense Defined. A person is guilty of criminal coercion if, with intent unlawfully to restrict another's freedom of action to his or her detriment, the person threatens to:

(a) commit any criminal offense; or

(b) take or withhold action as an official, or cause an official to take or withhold action; or

(c) inflict any other harm which would not benefit the actor, but which is calculated to materially harm another person.

It is an affirmative defense to prosecution based on (b) that the actor believed the proposed official action justified and that the actor's

purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the proposed official action, as by desisting from further misbehavior, making good a wrong done, refraining from taking any action or responsibility for which the actor believes the other disqualified.

(2) Grading. Criminal coercion is a misdemeanor unless the threat is to commit a felony or the actor's purpose is felonious, in which cases the offense is a felony of the third degree.

ARTICLE 213. SEXUAL OFFENSES

§213.0 Definitions.

In this Article, the definitions given in Section 210.0 apply unless a different meaning plainly is required, and:

(1) "Compulsion" means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.

(2) "Dangerous instrument" means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

(3) "Married" includes: persons legally married; a male and female living together as husband and wife recognized by Marshallese custom; a male and female living together as husband and wife regardless of their legal status. This does not include spouses living apart.

(4) "Mentally defective" means a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person's conduct.

(5) "Mentally incapacitated" means a person rendered temporarily incapable of appraising or controlling the person's conduct owing to the influence of a substance administered to the person without the person's consent.

(6) "Physically helpless" means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act.

(7) "Relative" means parent, ancestor, brother, sister, uncle, aunt, or legal guardian, and includes relatives through adoption;

(8) "Restrain" means to restrict a person's movement in such a manner as to interfere substantially with the person's liberty:

(a) by means of force, threat, or deception; or

(b) if the person is under the age of eighteen or incompetent, without the consent of the relative, person, or institution having lawful custody of the person.

(9) "Sexual contact" means any touching of the sexual or other intimate parts of a person, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

(10) "Sexual penetration" means vaginal intercourse, anal intercourse, fellatio, cunnilingus, analingus, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight. Emission is not required. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.

(11) "Strong compulsion" means the use of or attempt to use one or more of the following to overcome a person:

(a) a threat, express or implied, that places a person in fear of bodily injury to the individual or another person, or in fear that the person or another person will be kidnapped;

(b) a dangerous instrument; or

(c) physical force.

§213.1. Sexual Assault in the First Degree.

(1) A person is guilty of a felony of the first degree if:

(a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion; or

(b) The person knowingly engages in sexual penetration with another person who is younger than fourteen years of age; or

(c) The person knowingly engages in sexual penetration with a person who is at least fourteen years of age but less than sixteen years of age; provided that:

(i) The person is not less than three years older than the minor; and

(ii) The person is not legally married to the minor; or

(d) The person knowingly subjects to sexual penetration another person who is mentally defective; or

(e) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent.

(2) Subsection (1) (b) and (c) shall not be construed to prohibit medical practitioners duly licensed under the laws of the Republic, from performing any lawful act within their respective practices.

§213.2 Sexual Assault in the Second Degree.

(1) A person is guilty of a felony of the second degree if:

(a) The person knowingly subjects another person to an act of sexual penetration by compulsion; or

(b) The person knowingly subjects to sexual penetration another person who is mentally defective, mentally incapacitated, or physically helpless; or

(c) The person, while employed:

(i) in a correctional facility in the Republic, or

(ii) by a private company providing services at a correctional facility, or

(iii) by a private company providing community-based residential services to persons committed to the Ministry of Justice and having received notice of this statute, or

(iv) as a law enforcement officer, knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, or a person in custody.

(2) Paragraphs (b) and (c) above shall not be construed to prohibit medical practitioners duly licensed under the laws of the Republic from performing any lawful act within their respective practices.

(3) Paragraph (c) above shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.

§213.3. Sexual Assault in the Third Degree.

(1) A person is guilty of a felony of the third degree if:

(a) The person recklessly subjects another person to an act of sexual penetration by compulsion; or

(b) The person recklessly subjects to sexual contact another person who is younger than fourteen years of age, or causes such a person to have sexual contact with the person; or

(c) The person recklessly engage in sexual contact with a person who is at least fourteen years of age but less than sixteen years of age or causes the minor to have sexual contact with the person; provided that:

(i) The person is not less than three years older than the minor; and

(ii) The person is not legally married to the minor; or

(d) The person recklessly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor; or

(e) The person, while employed:

(i) in a correctional facility in the Republic; or

(ii) by a private company providing services at a correctional facility, or

(iii) by a private company providing community-based residential services to persons committed to the Ministry of Justice and having received notice of this statute, or

(iv) as a law enforcement officer, recklessly subjects to sexual contact an imprisoned person, a person confined

to a detention facility, or a person in custody, or causes the person to have sexual contact with the actor; or

(f) The person recklessly, by strong compulsion, engages in sexual contact with another person or causes another person to have sexual contact with the actor.

(2) Paragraphs (b), (c), (d), and (e) shall not be construed to prohibit medical practitioners duly licensed under the laws of the Republic from performing any lawful act within their respective practices.

(3) Paragraph (e) shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or an exception to the warrant clause.

§213.4. Sexual Assault in the Fourth Degree.

A person is guilty of a misdemeanor if:

(a) The person recklessly subjects another person to sexual contact by compulsion or causes another person to have sexual contact with the actor by compulsion; or

(b) The person knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the actor.

§213.5. Continuous Sexual Assault of a Minor Under the Age of Fourteen Years.

(1) A person is guilty of a felony of the first degree if the person:

(a) either, resides in the same home with a minor under the age of fourteen years, or has recurring access to the minor; and

(b) engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of fourteen years.

(2) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this Section, unless the other charged offense occurred outside the time frame of the offense charged under this Section or the other offense is charged in the alternative. A defendant may be charged with only one count

under this Section unless more than one victim is involved, in which case a separate count may be charged for each victim.

§213.6. Indecent Exposure.

A person is guilty of a petty misdemeanor if the person knowingly exposes the person's genitals to a person to whom the person is not married under circumstances in which the actor's conduct is likely to cause affront or alarm.

§213.7. Bestiality and Necrophilia.

A person is guilty of felony of the third degree if the person knowingly engages in any act of sexual gratification with an animal or a corpse, involving the sex organs of one and the mouth, anus, or sex organs of the other.

§213.8. Provisions Generally Applicable to this Article.

(1) Mistake as to Age. In this Article, whenever the criminality of conduct depends on a child's being younger than fourteen years of age, it is no defense that the defendant reasonably believed the child to be fourteen years of age, or older. Whenever in this Article, the criminality of the conduct depends on a child's being younger than a specified age older than fourteen years, it is an affirmative defense that the defendant reasonably believed the child to be of that age or older.

(2) Victim's Testimony Need Not be Corroborated. For prosecutions under this Article, there is no requirement that the testimony of the victim be corroborated.

(3) Resistance Not Required. A victim need not resist the actor for a proper prosecution under this Article.

OFFENSES AGAINST PROPERTY

ARTICLE 220. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTYDESTRUCTION

§220.0. Definitions.

In this Article, unless a different meaning is plainly required:

(1) "Occupied structure" means any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present. Property is that of another, for the purposes of this Article, if anyone other than the actor has a possessory or proprietary interest therein. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another.

(2) "Catastrophe" means death or serious physical injury to ten or more people or substantial damage to five or more structures or substantial damage to a vital public facility which seriously impairs its usefulness or operation.

§220.1 Arson.

A person is guilty of arson, a felony of the second degree, if the person starts a fire or causes an explosion with the intention of:

(a) destroying a building or occupied structure of another; or

(b) destroying or damaging any property, whether the person's own or another's, to collect insurance for such loss. If the actor's conduct did not recklessly endanger any building or occupied structure of another or place any other person in danger of death or bodily injury, the person is guilty of a misdemeanor.

§220.2. Aggravated Arson.

A person is guilty of aggravated arson, a felony of the first degree, if the person starts a fire or causes an explosion with the intention of destroying a building or occupied structure and knows that another person is in the building or occupied structure or knows of circumstances making such presence a likely probability.

§220.3. Reckless Burning or Exploding.

A person commits a felony of the third degree if the person intentionally starts a fire or causes an explosion, whether on the person's own property or another's, and thereby recklessly:

(a) places another person in danger of death or bodily injury; or

(b) places a building or occupied structure of another in danger of damage or destruction.

§220.4. Failure to Control or Report Dangerous Fire.

A person who knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, when the person can do so without substantial risk to himself, or to give a prompt fire alarm, commits a misdemeanor if:

(a) the person knows that he or she is under an official, contractual, or other legal duty to prevent or combat fire; or

(b) the fire was started, albeit lawfully, by the person or with the person's assent, or on property in the person's custody or control.

§220.5. Causing Catastrophe.

(1) Causing Catastrophe. A person who causes a catastrophe by explosion, fire, flood, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage, commits a felony of the second degree if the person does so intentionally or knowingly, or a felony of the third degree if the person does so recklessly.

(2) Failure to Prevent Catastrophe. A person who knowingly or recklessly fails to take reasonable measures to prevent or mitigate a catastrophe commits a misdemeanor if:

(a) the person knows that he or she is under an official, contractual or other legal duty to take such measures; or

(b) the person did or assented to the act causing or threatening the catastrophe.

§220.6. Criminal Mischief.

(1) Offense defined. A person is guilty of criminal mischief if the person:

(a) intentionally vandalizes or damages tangible property of another, or negligently damages the tangible property of another in the employment of fire, explosives, or other dangerous means listed in Section 220.5(1); or

(b) intentionally tampers with tangible property of another so as to endanger property; or

(c) recklessly tampers with tangible property of another so as to endanger life of another; or

(d) intentionally causes another to suffer pecuniary loss by deception or threat.

(2) Grading.

Criminal mischief is a felony of the third degree if the actor intentionally causes pecuniary loss in excess of $5,000, or a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service. It is a misdemeanor if the actor intentionally causes pecuniary loss in excess of $250, or a petty misdemeanor if the actor intentionally or recklessly causes pecuniary loss in excess of $50. Otherwise, criminal mischief is violation.

ARTICLE 221. BURGLARY AND OTHER CRIMINAL INTRUSION

§221.0. Definition.

In this Article, unless a different meaning plainly is required, "night" means the period of between 7:30 p.m. and 5:30 a.m.

§221.1. Burglary.

(1) Burglary Defined. A person is guilty of burglary if the person enters or surreptitiously remains in a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein, unless the premises are at the time open to the public or the person is licensed or privileged to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

(2) Grading. Burglary is a felony of the second degree if it is perpetrated in the dwelling of another at night, or if, in the course of committing the offense, the actor:

(a) intentionally, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone; or

(b) is armed with a deadly weapon.

Otherwise, burglary is a felony of the third degree. An act shall be deemed "in the course of committing" an offense if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

§221.2. Criminal Trespass.

(1) Building and Occupied Structures. A person commits an offense if, knowing that he or she is not licensed or privileged to do so, the person enters or surreptitiously remains in any building or occupied structure, or separately secured or occupied portion thereof. An offense under this Subsection is a misdemeanor if it is committed in dwelling at night. Otherwise it is a petty misdemeanor.

(2) Defiant Trespasser. A person commits an offense if, knowingly that he or she is not licensed or privileged to do so, the person enters or remains in any place as to which notice against trespass is given by:

(a) actual communication to the actor; or

(b) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(c) fencing or other enclosure manifestly designed to exclude intruders.

An offense under this Subsection constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person. Otherwise it is a violation.

(3) Defenses. It is an affirmative defense to prosecution under this Section that:

(a) a building or occupied structure involved in an offense under Subsection (1) was abandoned; or

(b) the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

(c) the actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed the actor to enter or remain.

ARTICLE 222. ROBBERY

§222.1. Robbery.

(1) Robbery Defined. A person commits the offense of robbery if, in the course of committing a theft, the person:

(a) inflicts bodily injury upon another; or

(b) threatens another with or intentionally puts such other person in fear of immediate bodily injury.

An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft or in immediate flight after the attempt or commission.

(2) Grading. Robbery is a felony of the third degree, except that it is a felony of the second degree if in the course of committing the theft, the actor attempts to kill anyone, or inflicts or attempts to inflict serious bodily injury.

ARTICLE 223. THEFT AND RELATED OFFENSES

§223.0. Definitions.

(1) "**Dealer**" means a person in the business of buying or selling goods including a pawnbroker.

(2) "**Deprive**" means:

(a) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or

(b) to dispose of the property so as to make it unlikely that the owner will recover it.

(3) "**Financial institution**" means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(4) "**Government**" means the Republic of the Marshall Islands, any municipality, or other political unit, or any department, agency or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government.

(5) "**Movable property**" means property the location of which can be changed, including things growing on, affixed to, or found in land, and documents although the rights represented thereby have no physical location; "**immovable property**" is all other property.

(6) "**Obtain**" means:

(a) in relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or

(b) in relation to labor or service, to secure performance thereof.

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

(8) "**Property of another**" includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(9) "**Receiving**" in relation to property, means acquiring possession, control or title, or lending on the security of the property.

(10) "**Stolen**" property means that the property has been the subject of any theft as defined in this Article.

§223.1. Consolidation of Theft Offenses; Grading; Provisions Applicable to Theft Generally.

(1) Consolidation of Theft Offenses. Conduct denominated theft in this Article constitutes a single offense. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this Article, notwithstanding the specification of a different manner in the information, complaint, or citation, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lace of fair notice or by surprise.

(2) Grading of Theft Offenses.

(a) Theft constitutes a felony of the third degree if the amount involved exceeds $500, or if the property stolen is a firearm, automobile, or other motor-propelled vehicle, or if the actor is a public servant acting in the course of his or her duties, or in the case of theft by receiving stole property, if the receiver is in the business of buying or selling stolen property.

(b) Theft not within the preceding paragraph constitutes a misdemeanor, except that if the property was not taken from the person or by threat, or in breach of a fiduciary obligation, and the actor proves by a preponderance of the evidence that the amount involved was less than $50, the offense constitutes a petty misdemeanor.

(c) The amount involved in a theft shall be deemed to be the highest value, by any reasonable standard, of the property or services which the actor stole or attempted to steal. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

(3) Claim of Right. It is an affirmative defense to prosecution for theft that the actor:

(a) was unaware that the property or services was that of another; or

(b) acted under an honest claim of right to the property or service involved or that the actor had a right to acquire or dispose of it as he did.

(4) Theft from Spouse. It is no defense that theft was from the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

§223.2. Theft by Unlawful Taking or Disposition.

(1) Movable Property. A person commits the offense of theft if the person unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive the person of the property.

(2) Immovable Property. A person commits the offense of theft if the person unlawfully transfers immovable property of another or any interest therein with intent to deprive the person of the property, and with intent to benefit himself or herself, or another not entitled to the property.

§223.3. Theft by Deception.

A person is guilty of theft if the person intentionally obtains or exercises control over property of another by deception, with the intent to deprive the person of the property. A person deceives if the person intentionally:

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that the person did not subsequently perform the promise; or

(2) prevents another from acquiring information which is pertinent to the disposition of the property; or

(3) fails to correct false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship; or

(4) fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which the person transfers or encumbers in consideration for the property obtained, whether

such impediment is or is not valid, or is or is not a matter of official record.

The term "deceive" does not include falsity as to matters having no pecuniary significance, or exaggerated commendation of wares or services unlikely to deceive ordinary persons in the group addressed.

§223.4. Theft by Extortion.

A person is guilty of theft if the person intentionally obtains property of another with the intent to deprive the person of the property, by threatening, directly or indirectly, to:

(1) inflict bodily injury on anyone or commit any other criminal offense; or

(2) take or withhold action as an official, or cause an official to take or withhold action; or

(3) inflict any other harm which would not benefit the actor, but which is calculated to materially harm another person.

§223.5. Theft of Property Lost, Mislaid, or Delivered by Mistake.

A person who comes into control of property of another that the person knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with intent to deprive the owner of the property, the person fails to take reasonable measures to restore the property to a person entitled to have it.

§223.6. Receiving Stole Property.

(1) Receiving. A person is guilty of theft if the person intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.

(2) Presumption of Knowledge. The requisite knowledge or belief is presumed in the case of a dealer who:

(a) is found in possession or control of property stolen from two or more persons on separate occasions; or

(b) has received stolen property in another transaction within the year preceding the transaction charged; or

(c) being a dealer in property of the sort received, acquires it without reasonable inquiry or for a consideration which the dealer knows is far below its reasonable value.

§223.7. Theft of Services.

(1) A person is guilty of theft if the person intentionally obtains services that the person knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. "Services" includes labor; professional service; transportation; telephone, cable television, electricity, water or sewer line, or other public service; accommodation in hotels, restaurants or elsewhere; admission to exhibitions; and use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

(2) A person commits theft if, having control over the disposition of services of others, to which the person is not entitled, the person knowingly diverts such services to his or her own benefit or to the benefit of another not entitled to the services.

§223.8. Reserved.

§223.9. Unauthorized Use of Automobiles and Other Vehicles.

A person commits a misdemeanor if the person intentionally operates another's automobile, airplane, motorcycle, motorboat, or other motor propelled vehicle without consent of the owner or other authorized person. It is an affirmative defense to prosecution under this Section that the actor reasonably believed that the owner or other authorized person would have consented to the operation had he or she known about it.

ARTICLE 224. FORGERY AND FRAUDULENT PRACTICES

§224.0. Definitions.

In this Article, the definitions given in Section 223.0 apply unless a different meaning plainly is required, and:

(1) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

(2) "Utter" means to issue, authenticate, transfer, publish, pass, deliver, transmit, circulate, disseminate, tender, sell, use, display or otherwise give currency to a forged writing or object.

(3) "Credit card" means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

§224.1. Forgery.

(1) Offense defined. A person is guilty of forgery if, with intent to defraud, deceive or injure anyone, or with knowledge that he or she is facilitating a fraud or injury to be perpetrated by anyone, the person:

(a) alters any writing of another without that persons' authority; or

(b) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or

(c) utters any writing which the actor knows to be forged in a manner specified in paragraphs (a) or (b).

(2) Grading. Forgery is a felony of the second degree if the writing is or purports to be part of an issue of money, coins, securities, postage or revenue stamps, or other instruments issued by the government, or part of an issue of stock, bonds or other instruments representing interests in or claims against any property or enterprise. Forgery is a

felony of the third degree if the writing is or purports to be a drug prescription, will, deed, contract, release, commercial instrument, or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations. Otherwise forgery is a misdemeanor.

§224.2. Possession of Counterfeit Material.

(1) A person is guilty of a misdemeanor if the person knowingly and unlawfully has control, custody, or possession of any forged money, coins, securities, postage or revenue stamps, or other instruments issued by the government.

(2) A person is guilty of a felony of the third degree if the person knowingly and unlawfully has control, custody, or possession of any plate, stone, or thing, or any part thereof, from which has been printed or may be printed, any forged money, coins, securities, postage or revenue stamps, or other instruments issued by the government.

§224.3. Criminal Simulation.

A person commits a misdemeanor if, with intent to defraud anyone or with knowledge that he or she is facilitating a fraud to be perpetrated by anyone, the person makes, alters or utters any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

§224.4. Fraudulent Destruction, Removal or Concealment of Recordable Instruments.

A person commits a felony of the third degree if, with intent to defraud, deceive or injure anyone, the person destroys, removes or conceals any deed, mortgage, security instrument or other writing for which the law provides public recording.

§224.5. Tampering with Records.

A person commits a misdemeanor if, knowing that he or she has no privilege to do so, the person falsifies, destroys, removes or conceals any writing or record, with intent to defraud, deceive or injure anyone or to conceal any wrongdoing.

§224.6. Bad Checks.

A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a misdemeanor. For the purposes of this Section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or order (other than a post-dated check or order) would not be paid if the issuer had no account with the drawee at the time the check or order was issued. It is an affirmative defense under this Section that the issuer made full payment within 15 days after notice of refusal of payment by the drawee for lack of funds.

§224.7. Credit Cards.

(1) A person commits an offense if the person uses a credit card for the purpose of obtaining property or services with knowledge that:

(a) the card is stolen or forged: or

(b) the card has been revoked or cancelled; or

(c) the card, or a number or description of it, is falsified or nonexistent; or

(d) for any other reason the person's use of the card is unauthorized by the issuer.

(2) An offense under this Section is a felony of the third degree if the value of the property or services secured or sought to be secured by means of the credit card exceeds $500; otherwise it is a misdemeanor. The total value of property or services obtained by the fraudulent use of a single credit card within a six-month period shall be the value used in distinguishing between felony and misdemeanor.

§224.8. Deceptive Business Practices.

A person commits a misdemeanor if in the course of business the person:

(1) uses or possess for use a false or altered weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(2) sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

(3) takes or attempts to take more than the represented quantity of any commodity or service when as buyer the person furnishes the weight or measure; or

(4) sells, offers or exposes for sale adulterated or mislabeled commodities, "Adulterated" means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage. "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage; or

(5) makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services.

It is an affirmative defense to prosecution under this Section if the defendant proves by a preponderance of the evidence that his or her conduct was not knowingly deceptive.

§224.9. Commercial Bribery and Breach of Duty of Act Disinterestedly.

(1) A person commits a misdemeanor if the person solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which the person is subject as:

(a) partner, agent, or employee of another;

(b) trustee, guardian, or other fiduciary;

(c) lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(d) officer, director, manager or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(e) arbitrator or other purportedly disinterested adjudicator or referee.

(2) A person commits a misdemeanor if the person confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this Section.

§224.10. Reserved.

§224.11. Defrauding Secured Creditors.

A person commits a misdemeanor if the person destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to hinder enforcement of that interest.

§224.12. Fraud in Insolvency.

A person commits a misdemeanor if, knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other 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, the person:

(1) destroys, removes, conceals, encumbers, transfers, or otherwise deals with any property with intent to defeat or obstruct the claim of any creditor, or otherwise to obstruct the operation of any law relating to administration of property for the benefit of creditors; or

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

(3) knowingly misrepresents or refuses to disclose to a receiver or other person entitled to administer property for the benefit of creditors, the existence, amount of location of the property, or any other information which the actor could be legally required to furnish in relation to such administration.

§224.13. Reserved.

§224.14. Misapplication of Entrusted Property and Property of Government or Financial Institution.

(1) A person commits an offense if that person applies or disposes of property that has been entrusted to such person as a fiduciary, or property of the government or of a financial institution, in a manner which the person knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted.

(2) The offense established by this Section is a misdemeanor.

(3) "Fiduciary" includes trustee, guardian, executor, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

§224.15. Securing Execution of Documents by Deception.

A person commits a misdemeanor if by deception the person causes another to execute any instrument affecting, purporting to affect, or likely to affect the pecuniary interest of any person.

OFFENSES AGAINST THE FAMILY

ARTICLE 230. OFFENSES AGAINST THE FAMILY

§230.1. Bigamy.

(1) Bigamy. A married person is guilty of bigamy, a felony of the third degree, if the person contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

(a) the actor reasonably believes that the prior marriage is void or has been dissolved by death, divorce, or annulment; or

(b) the actor and the prior spouse have been living apart for five consecutive years throughout which the prior spouse was not known to the actor to be alive.

(2) Other parties to bigamous marriage. A person is guilty of bigamy if the person contracts or purports to contract marriage with another knowing that the other is thereby committing bigamy.

§230.2. Incest.

A person is guilty of incest, a felony of the third degree, if the person knowingly marries, cohabits or has sexual intercourse with another of such a close blood relationship or affinity that marriage between the two who so engage is prohibited by custom.

§230.3. Child Abuse and Neglect.

A parent, guardian, or other person supervising the welfare of a child under the age of eighteen years commits a felony of the third degree if he or she

commits child abuse or neglect. As used in this Section, "child abuse or neglect" has the definition specified in the Child Abuse and Neglect Act, 26 MIRC chapter 5.

§230.4. Endangering the Welfare of Children.

A parent, guardian, or other person supervising the welfare of a child under eighteen years of age commits a misdemeanor if he or she knowingly endangers the child's welfare by violating a duty of care, protection or support.

OFFENSES AGAINST PUBLIC ADMINISTRATION

ARTICLE 240. BRIBERY AND CORRUPT INFLUENCE

§240.0. Definitions.

In this Article, unless a different meaning plainly is required.

(1) "**administrative proceeding**" means any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals.

(2) "**benefit**" means gain, advantage or pecuniary benefit, or anything regarded by the beneficiary as a gain or advantage, including a benefit to any other person or entity in whose welfare the beneficiary is interested, but not an advantage promised generally to a group or class of people as a consequence of public policies, laws or measures;

(3) "**harm**" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare the person is interested.

(4) "**official proceeding**" means a proceeding heard 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 deposition in connection with any such proceeding;

(5) "**pecuniary benefit**" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain, but excluding economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally;

(6) "**public body**" includes Ministries, including the Office of the President, departments, agencies, state owned enterprises, the Nitijela, all courts of Marshall Islands and local councils;

(7) "**public servant**" means any officer or employee of government, including members of the Nitijela, local councilors and judges, and any advisor or consultant during the period that they are performing a governmental function or providing services to the government;

§240.1. Bribery in Official Matters.

(1) A public servant is guilty of bribery, a felony of the second degree, if the public servant, whether in Marshall Islands or elsewhere, without lawful authority or reasonable excuse, directly or indirectly solicits, accepts or agrees to accept from another person any benefit as an inducement to, or a reward for, or on account of that public servant's:

(a) decision, opinion, recommendation, vote or other exercise of discretion in his/her position as a public servant;

(b) performing or abstaining from performing, or having performed or abstained from performing, any act in his/her capacity as a public servant;

(c) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his/her or that other public servant's capacity as a public servant;

(d) assisting, favoring, hindering or delaying, or having assisted, favored, hindered or delayed, any person in the transaction of any business with a public body;

(e) using his/her real or supposed influence to obtain or attempt to obtain an undue advantage or benefit for that person or a third person from a public body;

(f) giving assistance or using influence in, or having given assistance or used influence in the promotion, execution, or procuring of any contract with a public body and/or any sub-contract for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance; or

(g) giving assistance or using influence in, or having given assistance or used influence in the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as described in subsection (f) above;

(h) refraining or having refrained from bidding at any action conduct by or on behalf of any public body;

(2) A person is guilty of bribery, a felony of the second degree, if the person, whether in Marshall Islands or elsewhere, directly or indirectly promises, offers, confers or agrees to confer upon a public servant any benefit as an inducement to, or a reward for, or on account of that public servant's:

(a) decision, opinion, recommendation, vote or other exercise of discretion in his/her position as a public servant;

(b) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;

(c) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or

(d) assisting, favoring, hindering or delaying, or having assisted, favored, hindered or delayed, any person in the transaction of any business with a public body.

(e) using his/her real or supposed influence to obtain or attempt to obtain an undue advantage or benefit for that person or a third person from a public body;

(f) giving assistance or using influence in, or having given assistance or used influence in the payment of the price, consideration or other moneys stipulated or otherwise

provided for in any such contract or subcontract as described in subsection (f) above;

(h) refraining or having refrained from bidding at any action conducted by or on behalf of any public body;

(3) A person, including a public servant is guilty of bribery, a felony of the second degree, if the person, whether in Marshall Islands or elsewhere, directly or indirectly promises, offers, confers or agrees to confer a benefit upon a foreign public official or an official of an international organization as an inducement to, or a reward for, or on account of:

(a) Obtaining or retaining business or other undue benefit in international business;

(b) Taking action or refraining from acting in a manner that breaches an official duty;

(4) If a public servant other than a prescribed officer solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (5), neither he/she nor the person who offered the advantage shall be guilty of an offense under this section.

(5) For the purposes of subsection (4) permission shall be in writing and-

(a) be given before the advantage is offered, solicited or accepted; or

(b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance, and for such permission to be effective for the purposes of subsection (4), the public body shall, before giving such permission, have regard to the circumstances in which it is sought.

(6) It is no defense to prosecution under this Section that:

(a) a public servant was not qualified to act in the desired way, whether because the public service had not yet assumed office, or lacked jurisdiction, or for any other reason;

(b) his/her doing or forbearing to do, or having done or forborne to do, any act referred to in that section, and he/she:

(i) did not actually have the power, right or opportunity so to do or forbear;

(ii) accepted the advantage without intending so to do or forbear; or

(iii) did not in fact so do or forbear.

§240.2. Influencing Official Matters By Threat.

(1) A person commits a felony of the second degree if the person:

(a) threatens unlawful harm to any other person with intent to influence a public servant's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant; or

(b) threatens harm to any public servant with intent to influence the public servant's decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(c) threatens harm to any public servant with intent to influence the public servant to violate his or her known legal duty.

(2) It is no defense to prosecution under this Section that the public servant whom the person sought to influence was not qualified to act in the desired way, whether because the public servant had not yet assumed office, or lacked jurisdiction, or for any other reason.

§240.3. Unlawful Compensation for Past Official Action.

(1) A person commits a felony of the second degree if the person solicits, accepts or agrees to accept any benefit, without lawful authority or reasonable excuse, as compensation for having, as a public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in the other's favor, or for having violated his or her duty.

(2) A person commits a felony of the second degree if the person offers, confers or agrees to confer compensation, acceptance of which is prohibited by this Section.

§240.4. Reserved

§240.5. Gifts to Public Servants by Persons Subject to Their Jurisdiction.

(1) Regulatory and Law Enforcement Officials. No public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the government, or having custody of prisoners, shall solicit, accept or agree to accept any benefit, without lawful authority or reasonable excuse, from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated.

(2) Official Concerned with Government Contracts and Pecuniary Transactions. No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any benefit, without lawful authority or reasonable excuse, from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction.

(3) Judicial and Administrative Officials. No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority, or participating in the enforcement of its decisions, shall solicit, accept or agree to accept any benefit, without lawful authority or reasonable excuse, from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which the public servant is associated.

(4) Legislative Officials. No public servant shall solicit, accept or agree to accept any benefit, without lawful authority or reasonable excuse, from any person known to be interested in a bill, transaction or proceeding, pending or contemplated, before the Nitijela or any committee or agency thereof.

(5) Exceptions. This Section shall not apply to:

(a) fees prescribed by law to be received by public servant, or any other benefit for which the public servant gives legitimate

consideration or to which he or she is otherwise legally entitled; or

(b) gifts or other benefits conferred on account of kinship or other personal relationship, independent of the official status of the public servant; or

(c) trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(6) Offering Benefits Prohibited. No person shall knowingly confer, or offer, or agree to confer, any benefit prohibited by the foregoing Subsections.

§240.6. Misconduct in Public Office.

(1) A public servant commits a felony of the second degree if he/she knowingly does an unlawful act under the color of office.

(2) A public servant commits a felony of the third degree if he/she recklessly neglects to perform the duties of the office as provided by law.

§240.7. Embezzlement, Misappropriation and Diversion By Public Servants.

A public servant commits a felony of the second degree if that public servant commits an act of embezzlement, misappropriation or other diversion of property, funds, securities or any other item of value entrusted to the public servant in his or her official capacity, for the public servant's benefit or the benefit of any other person.

§240.8. Illicit Enrichment.

(1) Any current or former public servant or elected public official who-

(a) maintains a standard of living above that which is commensurate with his/her present or past official salary and entitlements; or

(b) is in control of pecuniary resources or property disproportionate to his/her present or past official salary and entitlements, shall, unless he/she gives a satisfactory explanation to the court as to how he/she was able to maintain such a standard of living or how such pecuniary resources or

property came under his/her control, be guilty of a felony in the second degree.

(2) Where a court is satisfied in proceedings for an offense under subsection (1)(b) that, having regard to the closeness of his/her relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused.

(3) In this section, "entitlements" includes any pension or gratuity payable under any statutory law.

§240.9. Burden of Proof.

In any proceedings against a person for an offense under this Article, the burden of proving a defense of lawful authority or reasonable excuse shall lie upon the accused.

§240.10. Prohibition of employment.

Where a public servant or person is convicted of an offense under any section of this Article, the court may, on the application of the prosecution or on its own motion, where it considers to be in the public interest so to do, order that the convicted person be prohibited from taking or continuing employment, whether temporary or permanent and whether paid or unpaid in any public body for a period of up to 10 years.

ARTICLE 241. PERJURY AND OTHER FALSIFICATION IN OFFICIAL MATTERS

§241.0. Definition.

In this Article, unless a different meaning plainly is required, the team "statement" means any representation, but includes a representation of opinion, belief or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

§241.1. Perjury.

(1) Offense Defined. A person is guilty of perjury, a felony of the third degree, if in any official proceeding the person makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and the person does not believe it to be true.

(2) Materiality. Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether is falsification is material in a given factual situation is a question of law.

(3) 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 competent 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.

(4) Retraction. No person shall be guilty of an offense under this Section if the person retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(5) Inconsistent Statements. Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(6) Corroboration. No person shall be convicted of an offense under this Section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

§241.2. False Swearing.

(1) False Swearing in Official Matters. A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when the person does not believe the statement to be true, is guilty of a misdemeanor if:

(a) the falsification occurs in an official proceeding; or

(b) the falsification is intended to mislead a public servant in performing the public servant's official function.

(2) Other False Swearing. A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when the person does not believe the statement to be true, is guilty of a petty misdemeanor, if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(3) Perjury Provisions Applicable. Subsections (3) to (6) of Section 241.1 apply to the present Section.

§241.3. Unsworn Falsification to Authorities.

(1) In General. A person commits a misdemeanor if, with intent to mislead a public servant in performing the public servant's official function, the person:

(a) makes any written false statement which the person does not believe to be true, provided, however, that this Subsection does not apply in the case of a written false statement made to a law enforcement officer by a person then in official custody and suspected of having committed a crime; or

(b) intentionally creates a false impression in a written application for any pecuniary or other benefit, by omitting information necessary to prevent statements therein from being misleading; or

(c) submits or invites reliance on any writing which the person knows to be forged, altered or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary-mark, or other object which the person knows to be false.

(2) Statements "Under Penalty." A person commits a petty misdemeanor if the person makes a written false statement which the person does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

(3) Perjury Provisions Applicable. Subsections (3) to (6) of Section 241.1 apply to the present Section.

§241.4. False Alarms to Agencies of Public Safety.

A person who knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization for dealing with emergencies involving danger to life or property commits a misdemeanor.

§241.5. False Reports to Law Enforcement Authorities.

(1) Falsely Incriminating Another. A person who knowingly gives false information to any law enforcement officer with intent to implicate another commits a felony of the second degree.

(2) Fictitious Reports. A person commits a felony of the third degree if the person reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur.

§241.6. Tampering with Witnesses and Informants.

(1) Tampering. A person commits a felony of the second degree if, believing that an official proceeding or investigation is pending or about to be instituted, the person attempts to promise, offer or give an undue benefit, induce, threaten, intimidate, use physical force, or otherwise act or refrain to act so as to cause a witness or informant to:

(a) testify or inform falsely; or

(b) withhold any testimony, information, document or thing; or

(c) elude legal process summoning the witness or informant to testify or supply evidence; or

(d) absent himself or herself from any official proceeding or investigation to which the person has been summoned.

(2) It is no defense that the witness or informant has not been subpoenaed or does not intend to testify.

(3) Witness or Informant Taking Bribe. A person commits a felony of the second degree if the person solicits, accepts or agrees to accept any benefit or thing of value in consideration of the person's doing any of the things specified in clauses (a) to (d) of Subsection (1).

§241.7. Tampering with or Fabricating Physical Evidence.

A person is guilty of a felony of the second degree if, believing that an official proceeding or investigation is pending or about to be instituted, the person:

(1) alters, destroys, conceals or removes any record, document or thing with intent to impair its verity or availability in such proceeding or investigation; or

(2) makes, presents or uses any record, document or thing knowing it to be false and with intent to mislead a public servant who is or may be engaged in such proceeding or investigation.

§241.8. Tampering with Public Records or Information.

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

(a) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government; or

(b) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (a); or

(c) intentionally and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(2) An offense under this Section is a misdemeanor unless the actor's intent is to defraud or injure anyone, in which case the offense is a felony of the second degree.

§241.9. Impersonating a Public Servant.

(1) A person is guilty of impersonating a public servant if the person falsely pretends to hold a position in the public service with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his or her prejudice. It is no defense that the purported position in the public service does not exist.

(2) Impersonating a public servant is a felony of the third degree if the person falsely pretends to be a law enforcement official. Otherwise, it is a misdemeanor.

ARTICLE 242. OBSTRUCTING GOVERNMENTAL OPERATIONS; ESCAPES

§242.1. Obstructing Administration of Law or Other Governmental Function.

(1) A person commits a felony of the second degree if the person intentionally obstructs, impairs or perverts the administration of law or other governmental function by:

(a) force, violence, physical interference or obstacle, or

(b) breach of official duty, or

(c) any other unlawful act.

(2) This Section does no apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

§242.2. Resisting Arrest or Other Law Enforcement.

(1) A person commits a misdemeanor if, with the intention of preventing a public servant from effecting an arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

(2) It is no defense to a prosecution under this Section that the public servant was attempting to make an arrest which in fact was unlawful, if the public servant was acting in good faith under color of law and, in attempting to make the arrest, the public servant was not resorting

to unreasonable or excessive force giving rise to the right of self-defense.

§242.3. Hindering Apprehension or Prosecution.

(1) A person commits an offense if, with intent to hinder the apprehension, prosecution, conviction or punishment of another for crime, the person:

(a) harbors or conceals the other; or

(b) provides or aids in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape; or

(c) conceals or destroys evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence; or

(d) warns the other of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law.

(2) The offense is a felony of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a felony of the first or second degree. Otherwise it is a misdemeanor.

§242.4. Aiding Consummation of Crime.

(1) A person commits an offense if the person intentionally aids another to accomplish an unlawful object of a crime, as, for example, by safeguarding the proceeds of the crime or converting the proceeds into negotiable funds.

(2) The offense is a felony of the third degree if the principal offense was a felony of the first or second degree. Otherwise it is a misdemeanor.

§242.5. Compounding.

(1) A person commits a misdemeanor if the person accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or

suspected commission of any offense or information relating to an offense.

(2) It is an affirmative defense to prosecution under this Section that the pecuniary benefit did not exceed an amount which the actor reasonably believed to be due as restitution or indemnification for harm caused by the offense.

§242.6. Escape.

(1) Escape. A person commits an offense if the person unlawfully removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. "Official detention" means arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; but "official detention" does not include supervision of probation or parole, or constraint incidental to release on bail.

(2) Permitting or Facilitating Escape. A public servant concerned in detention commits an offense if the public servant knowingly or recklessly permits an escape. Any other person who knowingly causes or facilitates an escape commits an offense.

(3) Effect of Legal Irregularity in Detention. Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, shall not be a defense to prosecution under this Section if the escape is from a prison or other custodial facility or from detention pursuant to commitment by official proceedings. In the case of other detentions, such as arrest, irregularity or lack of jurisdiction shall be a defense only if:

(a) the escape involved no substantial risk of harm to the person or property of anyone other than the detainee; or

(b) the detaining authority did not act in good faith under color of law.

(4) Grading of Offenses. An offense under this Section is a felony of the third degree where:

(a) the actor was under arrest for or detained on a charge of felony, or following conviction of any crime; or

(b) the actor employs force, threat, deadly weapon or other dangerous instrumentality to effect the escape; or

(c) a public servant concerned in detention of persons convicted of crime intentionally facilitates or permits an escape from a detention facility.

Otherwise an offense under this Section is a misdemeanor.

§242.7. Implements for Escape.

A person commits a misdemeanor if the person unlawfully introduces within a detention facility, or unlawfully provides an inmate with, any weapon, tool or other thing that may be useful for escape.

An inmate commits a misdemeanor if the inmate unlawfully procures, makes, or otherwise obtains, or has in the inmate's possession, any such implement of escape.

"**Unlawfully**" means surreptitiously or contrary to law, regulation or order of the detaining authority.

§242.8. Bail Jumping; Default in Required Appearance.

(1) A person set at liberty by court order, with or without bail, upon condition that the person will subsequently appear at a specified time and place, commits a misdemeanor if, without lawful excuse, the person fails to appear at that time and place.

(2) The offense constitutes a felony of the third degree where the required appearance was to answer to a charge of felony, or for disposition of any such charge, and the actor took flight or went into hiding to avoid apprehension, trial or punishment.

(3) This Section does not apply to obligations to appear incident to release under suspended sentence or on probation or parole.

ARTICLE 243. ABUSE OF OFFICE

§243.1. Official Oppression.

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a felony of the second degree if, knowing that such conduct is illegal, the person:

(1) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(2) denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

ARTICLE 250. RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES

§250.0. Definitions.

In this Article, unless a different meaning plainly is required:

(1) "**obscene**" language, utterance, gesture, or display would, taken as a whole, be found by the average person as appealing to the prurient interest, depicts or describes sexual conduct in a patently offensive way, and lacks serious academic, literary, artistic, political, or scientific value.

(2) "**Public place**" means a place to which the public or a substantial group has access; among the places included are roads and streets, transport facilities, community centers or facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

(3) "**Public**" means affecting or likely to affect persons in public places.

§250.1. Riot; Failure to Disperse.

(1) Riot. A person is guilty of riot, a felony of the third degree, if the person participates with two or more others in a course of disorderly conduct:

(a) with intent to commit or facilitate the commission of a felony or misdemeanor; or

(b) when the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon; or

(c) while in a penal or correctional facility.

(2) Failure of Disorderly Persons to disperse upon Official Order. Where three or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience,

annoyance or alarm, a peace officer or other public servant engaged in executing or enforcing the law may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a misdemeanor.

§250.2. Disorderly Conduct.

(1) A person is guilty of disorderly conduct, if:

(a) with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

(i) engages in fighting or threatening, or in violent or tumultuous behavior; or

(ii) makes an obscene utterance, gesture or display to any person present; or

(iii) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor; or

(iv) obstructs vehicular or pedestrian traffic, after warning by a law enforcement officer; or

(b) the person intentionally breaches the public peace by making unreasonable noise; or

(c) the person knowingly addresses a particular group of people with abusive language which is inherently likely to provoke an immediate violent response.

(2) Disorderly conduct is a petty misdemeanor if the actor's purpose is to cause substantial harm or serious inconvenience, or if the actor persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

§250.3. False Public Alarms.

A person is guilty of a misdemeanor if the person initiates or circulates a report or warning of an impending bombing or other crime or catastrophe, knowing that the report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly, or facility or vehicle of public transport, or to cause public inconvenience or alarm.

§250.4. Harassment.

A person commits a petty misdemeanor if, with intent to harass, annoy, or alarm another, the person:

(1) repeatedly makes a telephone call, facsimile, or electronic mail transmission without purpose of legitimate communication; or

(2) insults, taunts or challenges another in a manner likely to provoke immediate violent or disorderly response; or

(3) makes repeated communications anonymously or at extremely inconvenient hours; or

(4) subjects another to an offensive and unwanted touching; or

(5) repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or

(6) makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.

§250.5. Stalking.

A person is guilty of stalking, a misdemeanor, if the person intentionally engages in a course of conduct that places another person in reasonable fear of the death of, or serious bodily injury to, or causes substantial emotional distress to that person or an immediate family member of that person.

"**Course of conduct**" means repeatedly establishing and maintaining visual or physical proximity to another person or repeatedly conveying verbal or written threats or threats implied by conduct directed at or toward another person.

"**Immediate family**" means a spouse, parent, child, sibling, or any other person who regularly resides in the household.

§250.6. Security to Keep the Peace.

(1) A complaint may be made to any court that a person has threatened to commit an offense against the person or property of another. When such complaint is made, the court shall examine under oath the complainant and any witnesses he or she may produce, reduce the

complaint to writing and cause it to be signed and sworn to by the complainant. If the court is satisfied that there is probable cause to believe that such offense will be committed, the court shall issue a warrant to any law enforcement officer setting out the substance of the complaint and commanding the officer to apprehend the person complained of and brings that person before the court at a certain time.

(2) When the person complained of is brought before the court, the testimony produced on both sides shall be heard if the charge is denied. If it appears that there is no just reason to fear the commission of the offense, the defendant shall be discharged; and if the judge is of the opinion that the prosecution was commenced maliciously without proper cause, the judge may give judgment against the complainant for the costs of prosecution. If, however, the court finds there is just reason to fear the commission of such offense, the person complained of may be required to enter into an undertaking in a sum fixed by the court to keep the peace toward the Republic and particularly toward the complainant. The defendant shall deposit the sum fixed in cash with the Clerk of the Courts or the court may grant him or her permission to give bond in the same amount with one or more sufficient sureties. The undertaking to keep the peace shall be valid and binding for six months, and may upon the renewal of the complaint be extended for a longer period.

(3) If the undertaking required in Subsection (2) is given, the defendant shall be discharged. If the defendant does not give such security, the court may find the defendant in contempt of court and commit him or her to jail for a period not to exceed six months, if it finds that the defendant has been afforded a reasonable time to make payment and has the means to do so. Any person committed to jail as above provided shall be discharged upon giving the required undertaking.

(4) If the court finds, after hearing, that the defendant has violated the undertaking to keep the peace, the court may direct a forfeiture of the whole or such part of the deposit as it appears that justice requires, and may enforce such forfeiture in the same manner as a forfeiture of bail in any other criminal case.

(5) If the defendant fulfills his or her undertaking to keep the peace, he or she may claim the deposit from the Clerk of Courts upon presentation of receipt.

§250.7. Public Drunkenness; Drug Incapacitation.

A person is guilty of an offense if the person appears in any public place manifestly under the influence of alcohol, narcotics or other drug, not therapeutically administered, to the degree that the person may endanger himself or herself or other persons or property, or annoy persons in his or her vicinity.

An offense under this Section constitutes a petty misdemeanor if the actor has been convicted hereunder twice before within a period of one year. Otherwise the offense constitutes a violation.

§250.8. Reserved.

§250.9. Desecration of Public Structures.

(1) A person commits a misdemeanor if the person intentionally desecrates any public monument or structure, or place of worship or burial.

(2) "Desecrate" means defacing, damaging, polluting or otherwise physically mistreating in a way that the actor knows or should know will outrage the sensibilities of persons likely to observe or discover such action.

§250.10. Abuse of Corpse.

Except as authorized by law, a person who treats a corpse in a way that the person knows or should know would be offensive or outrage ordinary sensibilities commits a misdemeanor.

§250.11. Reserved.

§250.12. Violation of Privacy.

(1) Unlawful Eavesdropping or Surveillance. A person commits a misdemeanor if, except as authorized by law, the person:

(a) trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place; or

(b) installs in any private place, without the consent of the person or person entitled to privacy there, any device for observing,

photographing, recording, amplifying or broadcasting sounds or events in such place, or uses any such unauthorized installation; or

(c) installs or uses outside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there.

"**Private place**" means a place one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.

(2) Breach of Privacy of Messages. A person commits a misdemeanor if, except as authorized by law, the person:

(a) knowingly intercepts without the consent of the sender or receiver a message by telephone, telegraph, facsimile, electronic mail, letter or other means of communicating privately; but this paragraph does not extend to (i) overhearing of messages through a regularly installed instrument on a telephone party line or on an extension, or (ii) interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or incident to other normal operation and use; or

(b) divulges without the consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was illegally intercepted, or if the person learned of the message in the course of employment with an agency engaged in transmitting it.

ARTICLE 251. PROSTITUTION AND TRAFFICKING IN PERSON

§251.0. Definitions.

In this Article, the definitions given in Section 213.0 apply unless a different meaning plainly is required, and:

(1) A person "**advances prostitution' if, acting other than as a prostitute or a patron of a prostitute, the person knowingly:**

(a) causes or aids a person to commit or engage in prostitution; or

(b) procures or solicits patrons for prostitution; or

(c) provides persons for prostitution purposes; or

(d) permits premises to be used for prostitution purposes; or

(e) operates or is involved in the operation, management, supervision, or ownership of a house of prostitution or a prostitution enterprise; or

(f) engages in any other conduct designed to institute, aid, or facilitate an act or enterprises of prostitution.

(2) **A person "profits from prostitution**" if, acting other than as a prostitute receiving compensation for personally-rendered prostitution services, the person accepts or receives money or other property pursuant to an agreement or understanding with any other person whereby the person participates or is to participate in the proceeds of prostitution activity.

(3) "**Sexual conduct**" occurs when there is sexual intercourse or sexual contact.

(4) "**Something of value**" means any money or property, or any token, object or article exchangeable for money or property.

(5) The term "**compelling**" includes:

(a) the use of forcible compulsion;

(b) the use of a drug or intoxicating substance to render a person incapable of controlling his or her conduct or appreciating its nature; or

(c) withholding or threatening to withhold a narcotic drug from a drug dependent person.

(6) "**Trafficking in person**" means the recruitment, transportation, transfer, harboring or receipt of person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. "**Exploitation**" shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual

exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removable of organs.

(7) "**Premises**" includes any house, room, building, vehicles, ships, boats, water-crafts, vessels or other structures.

(8) "**Proceeds of prostitution**" means something of value as defined in this Article.

§251.1. Engaging in Prostitution.

(1) A person is guilty of engaging in prostitution if the person engages or offers or agrees to engage in sexual conduct with another person in return for something of value to be received by the person or by a third person.

(2) Engaging in prostitution is a felony of the third degree.

§251.2. Patronizing Prostitution.

(1) A person is guilty of patronizing prostitution if the person gives or agrees to give something of value to another person on an understanding that in return therefore that person or a third person will engage in sexual conduct with the person or with another.

(2) Patronizing prostitution is a felony of the third degree.

§251.3. Promoting Prostitution in the First Degree.

(1) A person is guilty of promoting prostitution in the first degree if the person knowingly:

(a) advances prostitution by compelling a person by criminal coercion to engage in prostitution, or profits from such coercive conduct by another; or

(b) advances or profits from prostitution by managing, supervising, controlling, or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprises involving prostitution activity by two or more prostitutes; or

(c) advances or profits from prostitution of a person less than eighteen years of age.

(2) Promoting prostitution in the first degree is a felony of the second degree.

§251.4. Promoting Prostitution in the Second Degree.

(1) A person is guilty of promoting prostitution in the second degree if the person knowingly advances or profits from prostitution.

(2) Promoting prostitution in the second degree is a felony of the third degree.

§251.5. Other Penalties.

(1) In addition to all criminal penalties provided under this Act, the Foreign Investment Business License of a person convicted of any crime under this Article shall, where applicable, be revoked by the Registrar of Corporations.

(2) A person convicted of a crime under this Article shall forfeit to the Republic any proceeds of prostitution derived by such person in connection with the unlawful act for which the conviction was made.

§251.6. Prostitution Houses Deemed Public Nuisances.

(1) Any room, building or other structure regularly used for prostitution activity is prohibited by this Article as a public nuisance.

(2) The Attorney-General may, in addition to all criminal penalties, prosecute a suit to enjoin the nuisance. If the court finds that the owner of the room, building or structure know or had reason to believe that the premises were being used regularly for such prostitution activity, the court may order that the premises shall not be occupied or used for such period as the court may determine, not to exceed one year.

(3) All persons, including owners, lessees, officers, agents, inmates or employees, aiding or facilitating such a nuisance may be made defendants in any suit to enjoin the nuisance.

§251.7. Trafficking in Person.

(1) No person shall engage in trafficking in a person or be involved in the arranging of trafficking in a person, knowing that the person's

entry into the Republic or any other state is or was arranged by specified means.

(2) Trafficking in person is felony of the third degree.

§251.8. Trafficking in Children.

(1) No person shall intentionally engage in trafficking in a person who is a child or be involved in the arranging of trafficking in a person who is a child, regardless of whether the child's entry into the Republic or any other state is or was arranged by specified means.

(2) Trafficking in children is a felony of the second degree.

§251.9. Exploitation of people not legally entitled to work.

(1) An employer who allows an unlawful employee to undertake employment in the employer's service must not take an action with the intention of preventing or hindering the employee from:

(a) leaving the Republic; or

(b) ascertaining or seeking that person's entitlement under the law of the Republic; or

(c) disclosing to any person the circumstances of that person's employment by the employer.

(2) Without limiting the generality of subsection (1), the following are examples of actions of the kind mentioned in that subsection:

(a) taking or retaining possession or control of a person's passport, any other travel or identity document, or travel tickets;

(b) preventing or hindering a person from:

(i) having access to telephone; or

(ii) using a telephone; or

(iii) using a telephone privately; or

(iv) leaving premises; or

(v) leaving premises unaccompanied.

(3) Preventing or hindering an immigration officer from entering or having access to any place or premises to which the person is entitled to have access under any law.

(4) Exploiting of people not legally entitled to work is a felony of the fourth degree.

§251.10. Consent of trafficked person.

For the purposes of sections 251.7 and 251.8 it is not a defense:

(a) that the trafficked person consented to the intended exploitation; or

(b) that the intended exploitation did not occur.

§251.11. Protection for trafficked persons.

(1) A trafficked person is not liable to criminal prosecution for:

(a) the act of trafficking in persons or being a party to an offense of trafficking in persons; or

(b) the person's illegal entry into the Republic, in connection with the act of trafficking in person if the Republic is the receiving country; or

(c) the person's period of unlawful residence in the Republic after being trafficked, if the Republic is the receiving country; or

(d) the person 's procurement or possession of any fraudulent travel or identity documents that the person obtained, or with which the person was supplied, for the purpose of entering the receiving country in connection with the act of trafficking in persons.

ARTICLE 252. MISCELLANEOUS CRIMES

§252.1. Tampering with Mail.

A person commits a petty misdemeanor if the person, without authority, opens or destroys any mail not directed to him or her.

§252.2. Unauthorized Disposition of Certain Foods.

A person commits a petty misdemeanor if the person, while having any responsibility for disposition of any food commodity donated under any program of foreign government or of the Republic, knowingly makes any unauthorized disposition of such food commodity, or if any person, not

being an authorized recipient thereof, knowingly converts to his or her own use or benefit any such good commodity.

§252.3. Duty to Report Wounds or Deaths.

(1) A person commits a misdemeanor if the person gains knowledge of a death or injury resulting from a knife wound, bullet wound, powder burn, or sustained in a suspicious or unusual manner or under conditions suggesting poisoning or violence, and fails to make a report thereof immediately, or at least within three days of obtaining such knowledge, to the nearest law enforcement official or to any police officer or to the Chief of Police.

(2) A report under this Section shall state the following, if known:

(a) the name and location of the injured or deceased person;

(b) the date of injury or death, or date of gaining knowledge thereof by informant;

(c) the cause and manner of injury or death; and

(d) the name of the person causing injury or death.

(3) No person making a report in compliance with this Section shall be deemed to have violated the confidential relationship existing between doctor and patient.

§252.4. Possession or Removal of Government Property.

A person commits a petty misdemeanor if the person, without proper authority, has in his or her possession or removes from its location any property of any kind, wherever situated, of the Government of the Republic, the Local Government or of the Government of the United States.

§252.5. Injuring or Altering Electric Meter.

A person commits a petty misdemeanor if the person knowingly, and with intent to injure or defraud, injures, alters, or procures to be injured or altered any electric meter, or obstructs its working, or procures the same to be tampered with or injured, or uses or causes to be used any electric meter or appliance so tampered with or injured.

§252.6. Altering, Damaging, or Contaminating a Water or Sewer Line or Other Facility or Appliance.

(1) In this Section, unless a different meaning plainly is required:

(a) "water line" means any pipe, pump, or any other conduit or appliance used to transport water or salt water;

(b) "contamination of sewer line" means the discharge into a sewer line of any matter that is not authorized in writing by the agency or corporation authorized to transport discharge sewage through the line.

(2) A person commits an offense if the person knowingly alters, damages, or contaminates a water line or a sewer line or any other facility or appliance of any agency or corporation authorized to transport or sell water or to transport or discharge sewage.

(3) An offense under this Section is a petty misdemeanor. Upon a second or subsequent conviction, an offense under this Section is a misdemeanor.

§252.7. Altering, Tampering with, Damaging, or Destroying a Telephone, Cable Television, Other Communication Line, or Related Facility or Appliance.

(1) In this Section, "telephone and cable television transmission line" includes any wire, line, or conduit either above ground or underground, or any other appliance or facility used either to receive or transmit telephone or television signals or other related communications.

(2) A person commits an offense if the person intentionally, by any means whatsoever, alters, tampers with, damages, or destroys a television or cable television transmission line or any related facility or appliance or any agency or corporation transmitting, selling, receiving, or broadcasting telephone or television signals or related communications, without the written authorization or consent of such agency or corporation.

(3) An offense under this Section is a petty misdemeanor. Upon a second or subsequent conviction, an offense under this Section is a misdemeanor.

PART III. TRANSITION AND COMMENCEMENT

§310.1. Transition Provisions.

(1) Except as provided in Subsection (2) of this Section, this code does not apply to offenses committed prior to its effective date and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this code were not in force. For the purposes of this Section, an offense was committed prior to the effective date of this code if any of the elements of the offense occurred prior to that date.

(2) In any case pending on or after the effective date of this code, involving an offense committed prior to such date:

(a) procedural provisions of this code shall govern, insofar as they are justly applicable and their application does not introduce confusion or delay;

(b) provisions of this code according a defense or mitigation shall apply, with the consent of the defendant;

(c) the court, with the consent of the defendant, may impose sentence under the provisions of this code applicable to the offense and the offender.

§310.2. Amendments.

(1) The Criminal Code, 31 MIRC chapter 1, is hereby repealed in its entirety.

(2) Part VI, Sections 156 and 157, of the Criminal Procedure Act, 32 MIRC chapter 1, are hereby repealed.

(3) Section 512(3) of the Child Abuse and Neglect Act, 26 MIRC chapter 5, is hereby repealed.

(4) The Prostitution Prohibition Act, 31 MIRC Chapter 5, is hereby repealed in its entirety.

§310.3. Effective Date.

This Chapter shall take effect on the date of certification in accordance with Article IV, Section 21 of the Constitution and the Rules of Procedures of the Nitijela.