

FINAL REPORT

OF THE

MALDIVIAN PENAL LAW & SENTENCING

CODIFICATION PROJECT

Volume 1
Text of Draft Code
(including Sentencing Guidelines)

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PREFACE

It is with great pleasure that we submit this *Final Report of the Maldivian Penal Law & Sentencing Codification Project*, which was begun in the Summer of 2004 and is now complete.

This Project is part of a larger program of criminal justice reform spearheaded by the Office of the Attorney General and underwritten by the United Nations Development Programme. The first step to improvement is necessarily a recognition of current weaknesses. But human nature being what it is, such admissions are not easy to make. That is why I have been so pleased and impressed that the Maldives has so aggressively pursued criminal justice reform. Pressing ahead with the reform work, even though such work may tend to highlight shortcomings in the current system, has shown a courageousness that is to be admired. It has been a great honor for me to have been allowed to be a part of that reform work.

Of course, talking about and planning criminal justice reform is only the starting point. It means little without a sustained effort to put the reform plans into effect. And it is not just legislative enactment that must be the goal, but rather transformation of the real world practice of criminal justice as it affects the everyday lives of Maldivians.

No doubt there will always be some disagreement over the reforms needed. Criminal justice presents complex issues upon which reasonable people can disagree. But there ought to be no doubt that there is only a single criterion that ought to guide the decisions in criminal justice reform: What will produce greater justice for Maldivians?

There will be many people and governments in many parts of the world who will follow with interest the progress of the Maldives as it tries to move toward greater justice for all. I am only one of many who will hope that the future Maldivian criminal justice system is something that can be held up as a model to others.

Paul H. Robinson
January 2006

OVERVIEW OF THE PENAL LAW & SENTENCING CODIFICATION PROJECT

The Penal Law & Sentencing Codification Project began at the request of the Maldivian government and the United Nations Development Programme in the summer of 2004. It is part of a larger set of criminal justice reforms that includes rules of criminal procedure, prosecution guidelines, and other projects. The fruits of the Penal Law & Sentencing Codification Project are contained in this two-volume Final Report. Among the many people who have contributed their time and energy to this project are lawyers in the Attorney General's Office, members of the Majlis, judges, government officials and cabinet ministers, members of the University of Pennsylvania Criminal Law Research Group, and several professors of Islamic law.

The primary goal of the project has been to produce a comprehensive penal code, a document that sets out all the rules that a court would need to adjudicate any criminal case. Such a comprehensive penal code offers several advantages. First, a comprehensive code gives citizens clear and fair notice of exactly what conduct is prohibited. Perhaps even more importantly, it assures greater uniformity in the application of penal law. Because a comprehensive code articulates all the rules clearly and concisely, every person charged with an offense is judged by the same rules. Liability and punishment are less likely to depend on which particular judge, prosecutor, or police official happens to be involved in the case. Instead, each defendant's liability and punishment depend upon what he or she did, the conditions under which it was done, and his or her own state of mind and capacities at the time. A comprehensive penal code also makes it clear that it is the People's Majlis, the most democratic branch of government, that has primary authority to make criminalization decisions. It is the People's Majlis, not the judiciary or the executive, that defines exactly what a crime is and the rules by which liability and punishment are to be determined.

In drafting the Code contained herein, a high priority has been given to ensuring that it reflects Maldivian values (not European, American, or any other values). The drafters have relied primarily on three sources. Of first importance is current Maldivian statutes. Where there is no applicable Maldivian statute, principles of Shari'a have been relied upon, especially those of the Shafi'i school. Lastly, shared community values have been given deference, as reflected in the views expressed by the many Maldivian judges, prosecutors, private defense lawyers, government officials, and ordinary Maldivians we have met during our many discussions.

The drafting process has been delicate at times because these three sources of authority – statutes, Shari'a, and shared Maldivian community values – sometimes conflict, forcing a decision as to which to follow. It is not uncommon that current Maldivian statutes deviate from strict interpretations of Islamic

Shari'a. For example, current Maldivian law does not punish theft with amputation of the offender's hand or apostasy with the death penalty. Where current Maldivian law deviates from a strict interpretation of Shari'a, the draft Code follows current Maldivian law.

A similar complication is the existence of disagreements between Islamic legal scholars, even within the Shafi'i school, over how to interpret passages of the Qur'an and over which authorities (e.g., *hadith*, analogies, etc.) to follow. The drafters have most often resolved these conflicts by reference to prevailing Maldivian norms, adopting that interpretation that seems to best reflect the views of current Maldivian society.

A final complication has been the existence of disagreements among Maldivians on numerous issues. Such disagreements exist in all societies. Our role as drafters is not to resolve them but rather to produce a draft Code that identifies these contentious issues and thereby assists the Majlis – and through it, the Maldivian people – in making these difficult decisions. In each instance, our resolution of an issue in the draft Code is simply a starting point for the discussions that must take place in the society at large and in the People's Majlis.

To give a few examples, regarding Section 131, there is disagreement over the age below which consensual intercourse should constitute a crime – that is, how young a person's partner can be before intercourse becomes criminal. Another point of disagreement, relating to Section 612, is whether the Code should include an offense making it a crime to defame another person, rather than leaving defamation to the realm of civil liability. A final example, found in Section 412, concerns how to treat the situation in which persons of the opposite sex are found alone behind closed doors.

The draft Code signals such controversial issues by bracketing the relevant code language and adding a footnote to it that explains the nature of the disagreement. Each such footnote gives a one-sentence statement of the issue, followed by a summary of the most important arguments in support of each side of it. Our hope is that these footnotes will draw attention to these contentious issues and thereby promote a more informed and sophisticated debate of them.

In addition to such "pro-con footnotes," this Final Report seeks to facilitate the Majlis' debate in several ways. In addition to the text of the draft Code, Volume 1 of this Final Report contains two Conversion Tables and a Summary Grading Table. The first Conversion Table lists each draft Code provision and identifies the current law provision(s) that it replaces; the second Conversion Table lists each current law provision and identifies the draft Code provision(s) that address its content. These tables ease the comparison between current law and the draft Code.

The Summary Grading Table, which groups all offenses according to their grade, will help the Majlis evaluate the draft Code's grading judgments. A just and fair penal code authorizes more serious punishment for more serious offenses. Thus the grade of each offense ought to be compared to the grade of each other

offense in the draft Code and, all other things being equal, more serious offenses ought to be graded more seriously than less serious offenses. Because the draft Code attempts to be comprehensive, it contains a large number of offenses, making it a challenge to assure proportionality among all offenses. The Summary Grading Table will assist the Majlis in undertaking this difficult but essential task.

Volume 2 of this Final Report contains the official commentary, which describes how each section of the draft Code works. Where the draft Code proposes a change in current law, the commentary notes this fact and identifies the proposed change and the reasoning behind it. The official commentary also discusses and cites relevant Shari'a authorities.

Our hope is that this two-volume Final Report will offer not only a thoughtful and well researched draft Code and official commentary but also will provide the People's Majlis and the Maldivian people with the information they need to debate the important issues involved in penal law and sentencing codification.

OVERVIEW OF THE NEED FOR CODIFICATION

A variety of reasons support the comprehensive codification of penal law. The most important include the following:

FAIR NOTICE

It is difficult for people to know what current penal law is. The statutes are scattered and incomplete. Most of the relevant rules are not even codified. Fair notice to citizens of the penal law rules requires at least a written statement of those rules.

FAIR ADJUDICATION

An offender's liability and punishment ought to depend upon what he has done and his capacity to have avoided the violation, not upon who the judge, prosecutor, or police officer happen to be. Because current penal law is for the most part uncoded, it not only fails to provide needed guidance but also invites disparity in the treatment of similar cases.

DEMOCRATIC PRINCIPLES

Criminal law governs the most intrusive measures that government can exercise against the individual. Thus, criminalization rules are properly set by the most democratic branch of government -- the parliament. Current penal law fails to define a host of rules governing the assignment of liability and punishment and regularly defines rules in ambiguous terms. Every undefined or ambiguous rule has the practical effect of delegating criminalization authority to the judicial branch, where it does not belong. A commitment to democratic principles requires that penal law be comprehensive in its coverage and unambiguous in its expression.

DOING JUSTICE

The primary objective of the criminal justice system must be to do justice – to impose the liability and punishment deserved, no more, no less. Ensuring that offenders get what they deserve provides the threat needed for deterrence and the opportunity needed for rehabilitation or, failing that, for incapacitation, while maintaining the system's moral credibility with the community. Current penal

law regularly fails to do justice and results in injustice.

COHERENT GRADING

A fair and effective sentencing system can be built only upon the sound foundation of a penal code whose grading scheme distinguishes importantly different cases according to the seriousness of the violation and the blameworthiness of the offender. Current penal law has no coherent grading system, only an ad hoc collection of grading provisions that produce hopelessly incoherent grading outcomes. Because a responsible grading system requires that an offense's grade bear a reasonable relationship to the grades of all other offenses, a coherent grading scheme cannot be produced through piecemeal legislation but only through comprehensive code reform.

EFFICIENT PROSECUTION

The complexities, ambiguities, and incoherencies of current penal law impose real costs, both by hindering effective prosecution (because prosecutors cannot be sure what rules will be applied) and by forcing courts to waste time and resources trying to make sense of current penal law.

PROVIDING A MODEL CODE

There is no existing Islamic penal code that takes advantage of the modern penal code drafting forms that have been developed in the past several decades. A codification of Maldivian Penal Law therefore could serve as a model for other Muslim countries that sought to adhere to both Shari'a and international norms.

OVERVIEW OF THE DRAFT CRIMES & SENTENCING CODE

The Draft Crimes & Sentencing Code is made up of three parts. Part I, the General Part, contains all of the general provisions affecting liability and punishment. Part II, the Special Part, defines all offenses. Each provision in the General Part applies to each offense defined in the Special Part. Part III contains the rules governing sentencing.

Although there are limits to how readable a comprehensive code can be, the drafters' goal has been to write a criminal code that the average person can read and understand. Therefore, the drafters have tried to use as much plain language as possible, avoiding legalistic terms that are not commonly known except by people that have a legal education. The organizational scheme of the draft Code is designed to make it as accessible as possible. Offenses in the Special Part are grouped by subject matter. For example, all of the offenses relating to homicide are collected in Chapter 110 (Homicide Offenses), while the following chapters contain other offenses relating to the person. Chapter 120 contains assault, threat, and endangerment offenses, Chapter 130 contains sexual assault offenses, and Chapter 140 contains restraint and coercion offenses. In a similar fashion, all of the property and privacy offenses are collected in the next few chapters. Chapter 210 contains theft offenses, Chapter 220 contains property offenses, and Chapter 230 contains criminal intrusion offenses. Organizing the offenses by subject matter also reduces the likelihood that overlapping offenses will be inadvertently created by later amendments. Even if the Majlis members are not all experts on the penal code, they can easily determine what conduct is already criminalized and what is not. (Additionally, the system for numbering provisions is designed so one can quickly know the location and function of a Code section. All provisions in the General Part have two-digit numbers, the provisions in the Special Part have three-digit numbers, and the provisions in the Sentencing Guidelines, Part III, have four-digit numbers.)

To illustrate how the code works, consider a few simple offenses. Section 623 (Abuse of Corpse), for example, contains only two subsections. Subsection (a) defines the offense; subsection (b) sets forth the grade of the offense, which signifies how serious the offense is and, therefore, the general range of punishment available at sentencing. The Code uses nine classes of offenses to reflect an offense's relative seriousness. Section 90 (Classified Offenses), a General Part provision, provides five categories of felonies, Class A through Class E, with Class A being the most serious; three categories of misdemeanors, Class 1 through Class 3, with Class 1 being the most serious; and a separate category of violations, which are only quasi-criminal and are not serious enough to warrant imprisonment. Every offense in the draft Code is categorized as being in one of those nine categories. Such a categorization system simplifies the draft Code because instead of having to include special punishment provisions for each offense, the Code can provide a relatively complete set of punishment rules

applicable to each class of offense. Thus, when Section 623(b) provides that Abuse of Corpse is a Class 2 misdemeanor, all of the punishment possibilities for Class 2 misdemeanors are applicable. For example, Section 92 (Authorized Terms of Imprisonment) provides that six months imprisonment is the statutory maximum punishment that can be imposed for a Class 2 misdemeanor. Section 93 provides that 12,000 Rufiyaa is the highest fine that can be imposed for a Class 2 misdemeanor.

Notice that the draft Code uses a similar template in each offenses section. Consider another simple offense, Section 313 (Deceptive Practices). Subsection (a) defines the offense; subsection (b) sets forth the grade of the offense, a Class 1 misdemeanor. Subsection (a) illustrates another drafting technique that improves the readability of the draft Code. Instead of drafting subsection (a) as one paragraph, the subsection is broken into three separate subparagraphs, creating a checklist of the elements, the three things that the prosecution must prove to convict a person for that offense. Another useful drafting technique is to give each subsection a title. The subsection titles signal to readers what a subsection is about without them having to read that entire subsection.

To understand some of the other features of the draft Code, consider a somewhat more complex offense, such as Section 120 (Assault). Section 120(a) is the standard offense-defining subsection specifying the minimum requirements for the offense. Section 120(b) grades the offense, signaling how serious this offense is in relation to other offenses. However, in this case, the grading provision is a little more complicated. Not all assaults are of the same seriousness. A serious assault, in which the offender causes serious bodily injury, is a Class D felony. An injurious assault, in which the offender causes some bodily injury but not serious bodily injury, is somewhat less serious and therefore is classified as a Class 2 misdemeanor. Simple assault, in which the offender has not caused bodily injury, is the least serious form of assault and therefore only a Class 3 misdemeanor. Once the minimum requirements for liability in subsection (a) are satisfied, the details of the case determine the grade of the offense under subsection (b), which distinguishes the different kinds of assaults by their seriousness.

Grading provisions reflect quite important distinctions and therefore have a dramatic effect on punishment. Under Section 92 (Authorized Terms of Imprisonment) and Section 93 (Authorized Fines), each increase in grade essentially doubles the maximum authorized penalty. For example, Section 92 authorizes a maximum term of imprisonment of six months for a Class 2 misdemeanor, one year for a Class 1 misdemeanor, and two years for a Class E felony. Therefore, a one grade increase in a grading subsection such as Section 120(b), which increases the grade of the offense because of the important distinctions of whether an assault results in injury and how serious the injury is, has the effect of doubling punishment.

Section 120(c) also defines a sentencing factor that further distinguishes between assaults according to their severity. Like grading provisions, sentencing

factors increase or decrease the amount of punishment based on distinctions between different ways in which the offense can be committed. However, sentencing factors reflect less important distinctions and therefore have a less significant impact on punishment. Under Section 1002 (Guideline Sentence Table), the effect of each level increase in the baseline sentence is essentially a ten percent increase in the penalty. Thus, the one level aggravation for assaulting a person in his or her own home, in Section 120(c), increases the punishment by ten percent, rather than doubling the punishment as a one grade aggravation would.

Subsection (d) of Section 120 contains definitions of terms used earlier in the section. Providing a definition of the terms used in the draft Code increases its comprehensiveness and ensures that all judges will use the same definitions in adjudicating individual cases. Although these definitions will not be needed in every case, a code that is designed to be comprehensive should anticipate potential ambiguities and try to resolve them ahead of time so that everyone – not only judges, but also lawyers, police officers, and citizens – will know exactly what the terms mean and thus what the rules are.

Another somewhat more complex offense is Section 610 (Rioting; Forceful Overthrow of the Government). It begins, as every offense does, with an “Offense Defined” subsection setting out the minimum requirements for the offense. This offense, however, also includes an exception in subsection (b). An exception identifies conduct that might satisfy the requirements of subsection (a) but that is intended to be excluded from criminal liability. Subsection (c) contains an elaborate grading provision that makes quite a few grading distinctions based on the different ways in which someone might commit this offense. For example, participation in a riot is a class E felony. Being a participant in an attempt to overthrow the government is more serious and therefore is a Class D felony. There are also still more serious Class C felony and Class B felony forms of the offense, each of which increases the maximum authorized penalty.

Consider also Section 711 (Trafficking, Manufacture, Sale, or Possession of Catastrophic Agent or Firearm). Again, subsection (a) defines the offense by setting forth the minimum requirements for liability. Subsection (b) includes a rebuttable presumption, which does not change the elements of the offense laid out in subsection (a), but rather establishes a rule of proof. The offense defined in subsection (a)(2) requires the prosecution to prove that the person knowingly trafficked or manufactured a firearm. Subsection (b) then provides that if a person is in possession of 25 firearms, that number of firearms in itself is enough to establish a presumption that the person was knowingly trafficking in the firearm. The presumption is rebuttable, meaning that the defendant has the right to try to show that he really did not knowingly traffic in the firearm. The presumption does not change the requirements of the offense but simply provides the prosecution with some evidentiary help in proving the “knowing” element in subsection (a)(2). To determine the proper grade of an offense under Section 623, subsections (c) and (d) must be read together. Subsection (c) sets out the basic grading

distinctions; subsection (d) contains an aggravating factor, a grading factor that operates in addition to those listed in subsection (c). If the offense involves particularly dangerous firearms, subsection (d) increases by one grade the offense grade specified in subsection (c).

For each of these offenses, and for all other provisions of the draft Code, the official commentary contains a narrative that describes how the section works, describes how it is similar or different from current law, and cites relevant authorities.

Every provision in the General Part of the draft Code applies to every offense in the Special Part. This organizational scheme is used by modern penal codes to increase comprehensiveness without reducing clarity and readability. Instead of having to define a special rule addressing complicity, general defenses, inchoate offenses, or any other general liability issue in relation to each offense, the Code includes a single provision addressing those issues in the General Part, and that single statement of the liability rule applies to every offense. Since those rules can be stated just once instead of repeated in every provision of the Special Part, the General Part rule can be as long and sophisticated as is needed.

Chapter 10 (Preliminary Provisions) of the General Part contains very general provisions relating to the application of the Code. Although a comprehensive code attempts to provide all the necessary rules to adjudicate any case, it is inevitable that no written document can conceive of every possible factual situation. There will be times when courts will have to interpret the Code's provisions. Section 11 (Principle of Construction; General Purposes) is a direction from the People's Majlis to the judges about how they are to interpret the provisions of the Code. To further the goal of vesting lawmaking authority in the legislature rather than the judges, Section 12 (Non-Statutory Crimes Abolished) makes it clear that the offenses defined in the Code are the only available offenses. Therefore, under the draft Code, judges do not have the authority to create new crimes, although they continue to play the important role of applying the facts of each case to the rules set out in the Code.

Chapter 20 (Basic Requirements of Offense Liability and Defenses Related to the Offense Harm or Wrong) collects some very basic and important rules about liability requirements. For example, Section 24 (Culpability Requirements) defines the culpability terms that are used to define offenses. Only four culpability terms – purposeful, knowing, reckless, and negligent – are used throughout the Code. Section 24 provides a detailed definition for each of those terms. Chapter 30 (Imputation of Offense Elements) contains special rules for establishing liability, including the complicity rules in Section 30 (Accountability for the Conduct of Another).

Chapters 40, 50, and 60 address general defenses. Chapter 40 defines justification defenses, such as law enforcement authority and use of defensive force to protect people or property. Justification defenses exculpate even though a person's conduct might otherwise constitute an offense but special justifying

circumstances mean that the conduct is to be tolerated, even encouraged, by the law. For example, using force necessary to make an arrest or using force against an attacker in self-defense might normally be assault, but because the conduct is done under justifying circumstances, the draft Code provides a complete defense to liability.

Chapter 50 defines excuse defenses, which are conceptually distinct from justification defenses. Excuse defenses exculpate even if a person's conduct is wrong but, because of the person's special conditions, the person is blameless for the offending conduct. For example, a person who is seriously mentally ill would receive an insanity defense under Section 52 if, because of his mental illness, he did not perceive the nature or consequences of his conduct, did not appreciate the wrongfulness of his conduct, or could not control himself enough to be justly punished. Similarly, a person who is coerced to engage in conduct – coerced to an extent that a person of a reasonable firmness would be unable to resist the coercion – would receive a duress defense under Section 55. These people may have done the wrong thing but, because of the special excusing conditions, they are not sufficiently blameworthy to deserve punishment for the offenses they have committed.

Chapter 60 defines nonexculpatory defenses, a third and final category of general defenses. These defenses are different from both justifications and excuses; they apply in cases in which the person has done the wrong thing and may well be blameworthy, but nevertheless receives a defense because of some other important interest. For example, the draft Code provides a defense for diplomatic immunity in Section 63 because, even though an offender may deserve punishment, exempting him from punishment because of his diplomatic status allows a more open system of exchange of diplomatic officers between countries. Similarly, the statute of limitations in Section 61 (Prosecution Barred If Not Commenced Within Time Limitation Period) provides a nonexculpatory defense for some felonies committed more than ten years before the commencement of prosecution and for most misdemeanors committed more than four years before the commencement of prosecution, not because the person does not deserve punishment, but rather upon a judgment that society ought not dwell upon the past and should instead spend its limited resources on the prosecution of more recent offenses. These nonexculpatory defenses apply regardless of an offender's blameworthiness; they promote societal values unrelated to the determination of whether an offender deserves punishment.

Chapter 70 sets out the rules for liability of corporations and other business associations. Chapter 80 (Inchoate Offenses) defines the general offenses of attempt, solicitation, and conspiracy, which provide for liability when a defendant engages in conduct towards committing an offense but the offense is not completed.

Part III contains the draft Code's sentencing guidelines. These take up where the grading judgments contained in the General Part and Special Part leave

off and give direction to judges in making the specific sentencing decision. The center of the guidelines system is the guideline grid in Section 1002 (Guideline Sentence Table). The columns of the table represent the possible grades of an offense – five grades of felonies, and three grades of misdemeanors. The rows represent ten sentencing levels – the baseline sentence, six levels above the baseline, and three below the baseline. For each grade, the baseline sentence is two-fifths of the statutory maximum penalty. For example, a Class D felony has a statutory maximum penalty of four years and a baseline sentence of one year, seven months, and six days. The baseline sentence is the default sentence for any offense of that grade, but that baseline sentence can be adjusted either up or down in individual cases based on applicable sentencing factors.

The draft Code contains sentencing factors within the definitions of specific offenses as well as a number of general sentencing factors that may apply to any number of offenses. An example of a specific sentencing factor is found in Section 120(c), which provides a one level aggravation for assaults committed in the victim's own home. If a serious assault, which is a D felony, takes place in the victim's home, the baseline sentence would be increased by one level. The sentence recommended by the guidelines would no longer be the baseline sentence for a Class D felony. Instead, it would be the +1 sentence for a Class D felony, located in the cell directly above the cell for the baseline sentence for a Class D felony (two years). The punishment prescribed in each cell is ten percent higher than the punishment prescribed in the cell below it.

In addition to the sentencing factors found in specific offense definitions, Chapter 1100 (General Adjustments to Baseline Sentence) lists general ways in which a sentence may be aggravated or mitigated. For example, Section 1102 provides an aggravation for causing a special harm beyond that taken into account by the definition of the offense. Similarly, Section 1103 provides an aggravation for using special cruelty. Examples of mitigating factors include Section 1110, which provides a mitigation for committing an offense in a state of extreme emotional distress, and Section 1106, which provides a mitigation for genuinely and publicly expressing remorse.

In many cases, there may be no mitigators or aggravators that apply. The draft Code states the most obvious factors relevant to sentencing but over time, as the system is used, judges and legislators are likely discover other sentencing factors that should be added to the Code.

As noted, the guideline sentence is determined by starting with the baseline sentence for the grade of the offense and then adjusting that sentence by adding levels for any applicable aggravators and subtracting levels for any applicable mitigators. Once the guideline sentence is determined from the grid in Section 1002, a judge may impose a sentence of either a term of imprisonment or may convert the guidelines sentence term of imprisonment into a non-incarcerative form of punishment of equal amount, using the punishment method equivalency table in Section 1005. More on this in a moment.

At this stage in their development, the sentencing guidelines are meant to be just that – guidelines; they are not binding. A sentencing judge must calculate what the sentence would be under these guidelines, but then is free to give a different sentence than the guidelines provide, any sentence the judge deems appropriate as long as it is less than the statutorily authorized maximum penalty. However, if the judge gives a sentence that deviates from the guideline sentence by more than two levels in either direction, then the judge is required to explain in writing the reasons for the deviation. By generating a guideline sentence, but allowing the judge to impose a different sentence if justified in writing, the guidelines system attempts to strike an appropriate balance between uniformity in application and flexibility. On the one hand, the sentence should depend on what the offender has done and what kind of a person he is; it should not depend on which particular judge happens to be doing the sentencing. On the other hand, every case is a little different, and it is impossible for any system to take account of every possibility. Some degree of flexibility must be maintained.

Additionally, the judges' explanations of their deviations from guideline sentences may be quite useful to the long-term health of the system. A pattern of regular deviations of a given sort may signal to the People's Majlis that some adjustment or refinement of the guidelines is needed. For example, the pattern might suggest a new aggravating or mitigating sentencing factor that ought to be added to the guideline system to reflect the wisdom of the sentencing judges expressed in the pattern of deviations.

In addition to providing guidance in determining the appropriate amount of punishment, the Sentencing Guidelines also address another important aspect of the sentencing decision: the method by which punishment should be imposed. While imprisonment is often an appropriate method of punishment, there are many cases in which some other form of punishment, such as house arrest, community service, a fine, probation, intensive supervision, or perhaps even banishment, might be appropriate. A common criticism of such alternative punishment methods, especially probation or community service, is that they allow offenders to avoid the punishment they deserve. The draft Code attempts to overcome resistance to nonincarcerative forms of punishment by assuring that every offender receives the full amount of punishment that he deserves even though it may not be in the form of imprisonment.

Under Section 1004 (Amount of Punishment Called for in Guideline Sentence Table May Be Imposed Through Any Authorized Punishment Method), a sentencing judge may translate some or all of a guideline sentence of imprisonment into an alternative, nonincarcerative form of punishment in lengths or amounts that are the punitive equivalent of the prison term. The table in Section 1005 (Punishment Method Equivalency Table) identifies what length or amount of each non-incarcerative method of punishment is equivalent to a given term of imprisonment. A sentencing judge converting a two-year term of imprisonment may decide to impose six months of the sentence as a fine of the

greater of 12,500 Rufiyaa or an amount equal to six months income, six months of the sentence as house arrest for a period of one year, three months of the sentence as 480 hours of community service, and only three months of the sentence as an actual prison term. The draft Code's goal is to encourage the use of nonincarcerative punishment forms while still assuring the public and victims that offenders are in fact getting the full amount of punishment that they deserve for their offenses.

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Section 10 – Short Title and Effective Date

(a) Short Title. This Act shall be known and may be cited as the “Crimes & Sentencing Code of the Maldives.”

(b) Effective Date. This Code shall take effect on [DATE].

(c) Prior Offenses. This Code does not apply to offenses committed prior to its effective date.

Section 11 – Principle of Construction; General Purposes

(a) Principle of Construction. The provisions of the Code shall be construed according to the fair import of their terms, but when the language is susceptible to differing constructions it shall be interpreted to further the general purposes stated in this Section and the special purposes of the particular provision involved. The discretionary powers conferred by the Code shall be exercised in accordance with the criteria stated in the Code and, insofar as such criteria are not decisive, to further the general purposes stated in this Section.

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

(1) to prescribe penalties that are proportionate to the blameworthiness of the offender and the seriousness of the offense,

(2) to safeguard guiltless conduct from condemnation as criminal

and to condemn guilty conduct as criminal,

(3) to prevent arbitrary or oppressive treatment of persons accused or convicted of offenses, and

(4) by the definition and grading of offenses, to define the limits of punishment and to give fair warning of what is prohibited and the consequences of violation.

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

(1) vindication of public norms by the imposition of merited punishment,

(2) the deterrent influence of the penalties provided subsequently, and

(3) such confinement as may be necessary to prevent likely recurrence of criminal behavior.

(4) Public Norms. Public norms, as referred to in Subsection (c)(1) include widely-held moral values.

Section 12 – Non-Statutory Crimes Abolished

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

Section 13 – Jurisdiction

(a) Statement of Jurisdiction. The State has jurisdiction to prosecute:

(1) (A) any offense for which any conduct, described as an element of that offense, is committed in the Maldives; or

(B) any offense in which the results cause substantial harm, described as an element of that offense, in the Maldives; or

(C) any inchoate offense that, if completed, would include the conduct or result described above in the Maldives; or

(D) any inchoate offense for which:

(aa) an element of such an offense is committed in the Maldives, and

(bb) the intended place for the completion or the effect of the offense is outside the Maldives, and

(cc) the offense would be illegal both in the intended place of completion or effect, if completed, and in the Maldives, if it were performed there; and

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

(3) any offense committed by or in cooperation with a citizen of the

Maldives or a person domiciled in the Maldives regardless of the location of the offense; and

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

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

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

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

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

(e) Definitions.

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

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

(f) Exclusive Economic Zone. The State has jurisdiction under international law to enforce criminal law in order to explore, exploit, conserve, and manage the natural resources within the Exclusive Economic Zone. For any offense committed in the Exclusive Economic Zone over which the State may seize jurisdiction under international law, the term the “Maldives” as used in this

¹ **Issue:** Should the Maldives attempt to seize jurisdiction over gross violations of international law such as piracy, genocide, and aircraft hijacking?

Yes: The few, special crimes that constitute gross violations of international law have widespread effects and threaten the rule of law in every country. No country can hope to insulate itself from the effects of such offenses as air piracy. Because of conditions in the country in which the offenses take place, the state that might usually seize jurisdiction over the offense may not be able to prosecute the offenses. Finally, the Maldives should not be known as a place where violators of human rights can retire in comfort; the Maldives should instead show that it stands with the international community in condemning these offenses.

No: These offenses have little to do with the Maldives and invite a victor’s justice for the losing party in a war. Allowing criminal prosecutions for any and all gross violations of international law may invite the usage of the Maldives penal system as a means to redress international grudges. The rule may deter high figures from other countries from visiting the country for fear of being seized and brought before a court.

Section shall also include the Exclusive Economic Zone, as defined by law and treaty. The range of penalties available in such a case may also be defined by international law.

Section 14 – Civil Right to Recovery Preserved

The Code does not bar, suspend, or otherwise affect any right or liability to damages, civil penalty, forfeiture, or other right to recovery, and the civil injury is not merged in the offense.

Section 15 – Burdens of Proof; Rebuttable Presumptions

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

(b) Burden of Persuasion.

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

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

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

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

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

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

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

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

Section 16 – Mandatory Legislative Review of Monetary Amounts

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

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

Section 17 – Definitions

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

- “Accomplice” has the meaning given in Section 30(b).
- “Acquittal” means a trial judgment of “no offense” or “not guilty,” or a final judicial determination that there was insufficient evidence to warrant a conviction.
- “Alcohol-based product” has the meaning given in Section 724(d)(1).
- “Attempt” has the meaning given in Section 80(a).
- “Automatic firearm” has the meaning given in Section 710(d)(1).
- “Automatic loading action” has the meaning given in Section 710(d)(2).
- “Benefit” has the meaning given in Section 315(b).
- “Bodily injury” means substantial physical pain, illness, or any impairment of physical condition.
- “Catastrophe” has the meaning given in Section 222(b).
- “Catastrophic agent” has the meaning given in Section 121(c)(1).
- “Circumstance element” has the meaning given in Section 21(b)(3).
- “Clear and convincing evidence” means a higher standard of proof than a “preponderance of the evidence” but not as high as a “practical certainty.”
- “Close relative” has the meaning given in Section 410(d)(2).
- “Communication” has the meaning given in Section 231(d).
- “Conduct element” has the meaning given in Section 21(b)(1).
- “Consent” has the meaning given in Section 27.
- “Consequence” has the meaning given in Section 32(b).
- “Controlled drug” has the meaning given in Section 720(d)(1).
- “Conviction” means a trial judgment of guilty that has not been reversed or vacated, or a plea of guilty accepted by the court.
- “Corporate agent” has the meaning given in Section 70(c)(4).
- “Corporation” has the meaning given in Section 70(c)(1).
- “Correctional employee” has the meaning given in Section 538(b).
- “Correctional institution” has the meaning given in Section 537(b)(2).
- “Criminal organization” has the meaning given in Section 730(b)(1).
- “Custodial officer” has the meaning given in Section 532(b).
- “Dangerous drug” has the meaning given in Section 725(e).
- “Dangerous weapon” has the meaning given in Section 120(c)(1).
- “Deceive” has the meaning given in Section 212(b)(1).
- “Disproportionate” has the meaning given in Section 45(c)(2).
- “Duress” has the meaning given in Section 55.
- “Dwelling” has the meaning given in Section 230(d)(1).
- “Elements” of an offense has the meaning given in Section 21(a).
- “Exclusive Economic Zone of the Maldives” has the meaning given in Section 614(c).
- “Excuse defense” and “excuse” have the meaning given in Section 50(a).
- “Explosive” has the meaning given in Section 121(c)(2).
- “Fiduciary” has the meaning given in Section 215(c)(3).

- “Financial institution” has the meaning given in Section 215(c)(1).
“Financial instrument” has the meaning given in Section 212(b)(2).
“Financial professional” has the meaning given in Section 215(c)(2).
“Financial transaction” has the meaning given in Section 731(b)(1).
“Firearm” has the meaning given in Section 710(d)(4).
“Force” means the use or threat of physical force or violence or the creation of a risk of bodily injury, including physical restraint or confinement.
“Freedom of movement” has the meaning given in Section 140(b)(2).
“General defense” has the meaning given in Section 15(d).
“High managerial agent” has the meaning given in Section 70(c)(3).
“Highly secured information” has the meaning given in Section 232(c)(1).
“Highly secured premises” has the meaning given in Section 230(d)(2).
“Home” has the meaning given in Section 120(c)(2).
“Improperly prescribes” has the meaning given in Section 720(d)(2).
“Inchoate offense” means the offenses defined in Sections 80, 81, and 82.
“Incompetent” has the meaning given in Section 27(d).
“Inhabited structure” has the meaning given in Section 221(b).
“Instrument of crime” has the meaning given in Section 87(b).
“Intoxication” has the meaning given in Section 31(d).
“Involuntary intoxication” has the meaning given in Section 54(b).
“Item of contraband” has the meaning given in Section 539(b).
“Justification defense” and “justification” have the meaning given in Section 40(a).
“Knowledge” or “knowingly” has the meaning given in Section 24(d).
“Lashes” has the meaning given in Section 411(d)(2).
“Law enforcement officer” has the meaning given in Section 521(d).
“Legal guardian” has the meaning given in Section 44(e)(1).
“Licensed medical professional” has the meaning given in Section 44(e)(2).
The “Maldives” has the meaning given in Section 13(e)(1).
“Material support” has the meaning given in Section 730(b)(2).
“Mental disease or defect” has the meaning given in Section 26(b).
“Mercenary” has the meaning given in Section 611(b).
“Minor” means a person who is less than 18 years old.
“Minor participant” has the meaning given in Section 30(d)(4)(B).
“Monetary instrument” has the meaning given in Section 731(b)(2).
“Necessary” has the meaning given in 41(b).
“Negligence” or “negligently” has the meaning given in Section 24(f).
“Nonexculpatory defense” has the meaning given in Section 60(a).
“Objective elements” has the meaning given in Section 21(b)(4).
“Obscene” has the meaning given in Section 622(d).
“Offender” means a person who has been convicted of the offense.
“Official authority” has the meaning given in Section 510(c).

“Official proceeding” has the meaning given in Section 520(f).

“Oral intercourse” has the meaning given in Section 411(d)(1).

“Organizer” and “leader” have the meaning given in Section 30(d)(4)(A).

“Owner” has the meaning given in Section 216(b).

“Participant” has the meaning given in Section 30(d)(4)(C).

“Penal custody” has the meaning given in Section 537(b)(1).

“Person”^{*} means a human being born alive, a public or private corporation, the government, a partnership, or an unincorporated association.

“Post-marital waiting period” has the meaning given in Section 410(d)(1).

“Practical certainty” means the highest standard of proof, which requires that the court be virtually certain of the proposition’s truth.

“Preponderance of the evidence” means a standard of proof lower than “clear and convincing evidence” that requires sufficient evidence to show that the proposition is true more likely than not.

“Private information” has the meaning given in Section 232(c)(2).

“Property” means anything of value, movable or immovable, tangible or intangible, and includes but is not limited to goods; services; interests in property; control of property; rights in contract; access to utilities, communications, or information; captured or domesticated animals; and official documents representing interests in property, such as tickets, deeds, and licenses.

“Property of another” has the meaning given in Section 211(b).

“Public official” means a person, including a law enforcement officer, who is authorized to perform an official function or discharge an official duty on behalf of, and in the employ of, the State.

“Purpose” or “purposely” has the meaning given in Section 24(c).

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

“Reasonable” means not negligent, as negligence is defined under Section 24(f).

“Recklessness” or “recklessly” has the meaning given in Section 24(e).

“Restrain” has the meaning given in Section 140(b)(1).

“Result element” has the meaning given in Section 21(b)(2).

“Semiautomatic firearm” has the meaning given in Section 710(d)(5).

“Serious bodily injury” means “bodily injury” that creates a substantial risk of death or causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

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

“Sexual contact” has the meaning given in Section 132(b).

“Sexual intercourse” has the meaning given in Section 131(c).

“Solvent” has the meaning given in Section 724(d)(2).

* Throughout the English language version of the Code, the terms “he” and “him” are used. The intent is that “he” or “him” should generally be understood to mean any person, regardless of sex. In Dhivehi, the pronoun is generally translated in a neuter form.

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“State” has the meaning given in Section 13(e)(2).

“Storage structure” has the meaning given in Section 230(d)(3).

“Strict liability” has the meaning given in 24(i).

“Substantial step” has the meaning given in 80(b).

“Substantive offense” means any offense that is not an “inchoate offense,” as defined in this Section.

“Suicide” has the meaning given in Section 113(c).

“Tamper” has the meaning given in Section 220(e).

“Temporary use” has the meaning given in Section 217(b).

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

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

“Unlawful possession” has the meaning given in Section 23(b).

“Value” has the meaning given in Section 210(d).

“Violent offense” has the meaning given in Section 110(e).

“Vital public facility” has the meaning given in Section 221(d).

“Voluntary intoxication” has the meaning given in Section 31(c).

“Writing” has the meaning given in Section 310(b).

REQUIREMENTS OF OFFENSE LIABILITY

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

Section 20 – Basis of Liability

Section 21 – Offense Elements Defined

Section 22 – Causal Relationship Between Conduct and Result

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

Section 24 – Culpability Requirements

Section 25 – Ignorance or Mistake Negating Required Culpability

Section 26 – Mental Disease or Defect Negating Required Culpability

Section 27 – Consent

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

Section 29 – Definitions

Section 20 – Basis of Liability

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

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

Section 21 – Offense Elements Defined

- (a) Offense Elements. The “elements” of an offense refer to the:
 - (1) objective elements, namely:
 - (A) conduct, or
 - (B) circumstances, or
 - (C) result of conduct; and
 - (2) culpability requirements, as defined in Section 24 (Culpability Requirements Defined), established by the offense definition or the provisions establishing the offense grade.
- (b) Definitions.
 - (1) A “conduct element” is that part of an offense definition that requires a person’s act or failure to act.
 - (2) A “result element” is that part of an offense definition that requires any change of circumstances caused by the person’s conduct.

(3) A “circumstance element” is that part of an offense definition that requires an objective element other than a conduct or result element.

(4) The “objective elements” of an offense definition include the conduct, circumstance, and result elements, but not culpability requirements.

Section 22 – Causal Relationship Between Conduct and Result

(a) Causal Relationship Requirement. A person’s conduct is the cause of a result if:

(1) the result would not have occurred but for the person’s conduct, and

(2) the result is not too remote or accidental in its occurrence, and not too dependent upon another’s volitional act, to have a just bearing on the person’s liability or on the gravity of his offense.

(b) Concurrent Sufficient Causes. Where the conduct of two or more persons each causally contributes to a result and each alone would have been sufficient to cause the result, the requirement of Subsection (a)(1) is satisfied as to each person.

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

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

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

(1) procures or receives the thing possessed, or

(2) controls the thing possessed for a sufficient period of time to have been able to terminate possession.

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

(1) his failure to act causes the result, as required by Section 22 (Causal Relationship Between Conduct and Result), and

(2) his failure to act is a breach of a legal duty to act, and

(3) he satisfies all other elements of the offense definition.

Section 24 – Culpability Requirements

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

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

(c) Purpose. A person acts purposely:

(1) with respect to a conduct or result element if it is the person's conscious object to engage in such conduct or bring about such result;

(2) with respect to a circumstance element if the person is aware of the existence of such circumstances or hopes or believes that such circumstances exist.

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

(d) Knowledge. A person acts knowingly:

(1) with respect to a conduct element if the person is aware that the person's conduct is of that nature,

(2) with respect to a circumstance element if the person is aware that it is probable that such circumstance exists,

(3) with respect to a result element if the person is aware that it is practically certain that his conduct will cause such a result.

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

(1) the person consciously disregards a substantial and unjustifiable risk that the objective element exists or will result from the person's conduct, and

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

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

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

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

(g) Proof of Higher Culpability Satisfies Lower Culpability Requirement.

The culpability requirement of:

(1) knowledge is satisfied by proof of purpose;

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

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

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

recklessness.

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

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

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

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

Section 25 – Ignorance or Mistake Negating Required Culpability

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

Section 26 – Mental Disease or Defect Negating Required Culpability

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

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

Section 27 – Consent

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

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

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

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

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

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

(2) it is given by a person who is incompetent, or known by the person committing the offense to be unable to make a reasonable judgment, as to the nature or harmfulness of the conduct charged to constitute the offense; or

(3) it is given by a person whose improvident consent is sought to be prohibited by the law defining the offense; or

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

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

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

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

(a) was within a customary license or tolerance that:

(1) was not expressly negated by the person whose interest was infringed, and

(2) is not inconsistent with the purpose of the law defining the offense; or

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

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

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

Section 29 – Definitions

“Bodily injury” has the meaning given in Section 17.

“Circumstance element” has the meaning given in Section 21(b)(3).

“Conduct element” has the meaning given in Section 21(b)(1).

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

“Knowledge” has the meaning given in Section 24(d).

“Negligence” has the meaning given in Section 24(f).

“Objective elements” has the meaning given in Section 21(b)(4).

“Purpose” has the meaning given in Section 24(c).

“Recklessness” has the meaning given in Section 24(e).

“Result element” has the meaning given in Section 21(b)(2).

“Serious bodily injury” has the meaning given in Section 17.

CHAPTER 30. IMPUTATION OF OFFENSE ELEMENTS

Section 30 – Accountability for the Conduct of Another

Section 31 – Voluntary Intoxication

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

Section 33 – Mistaken Belief Consistent with a Different Offense

Section 34 – Definitions

Section 30 – Accountability for the Conduct of Another

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) has not been prosecuted or convicted, or

(2) has been convicted of a different offense or degree of offense, or

(3) has an immunity to prosecution or conviction, or

(4) has been acquitted.

Section 31 – Voluntary Intoxication

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

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

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

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

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

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

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

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

(1) a different person or different property is injured or affected, or

(2) the consequence intended, contemplated, or risked was at least as serious or extensive an injury or harm than the actual consequence.

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

Section 33 – Mistaken Belief Consistent with a Different Offense

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

Section 34 – Definitions

“Consequence” has the meaning given in Section 32(b).

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

“Minor participant” has the meaning given in Section 30(d)(4)(B).

“Organizer” or “leader” has the meaning given in Section 30(d)(4)(A).

“Participant” has the meaning given in Section 30(d)(4)(C).

GENERAL DEFENSES

CHAPTER 40. JUSTIFICATION DEFENSES

Section 40 – General Provisions Governing Justification Defenses

Section 41 – Lesser Evils

Section 42 – Execution of Public Duty

Section 43 – Law Enforcement Authority

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

Section 45 – Defense of Person

Section 46 – Defense of Property

Section 47 – Definitions

Section 40 – General Provisions Governing Justification Defenses

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

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

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

(d) Liability for Culpably Causing Justifying Circumstances.

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

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

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

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

Section 41 – Lesser Evils

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

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

(2) the harm or wrong avoided by such conduct is greater than that sought to be prevented by the statute defining the offense charged, and
(3) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

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

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

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

Section 42 – Execution of Public Duty

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

- (a) a statute defining the duties or functions of a public official or the assistance to be rendered to such an official in the performance of his duties, or
- (b) a statute governing the execution of legal process, or
- (c) a judgment or order of a competent court or tribunal, or
- (d) a statute governing the armed services or the lawful conduct of war, or
- (e) any other statute imposing a public duty.

Section 43 – Law Enforcement Authority

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

- (1) to make, or assist in, a lawful arrest, or
- (2) to prevent the escape of an arrested person from custody, or
- (3) to prevent a suicide.

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

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

A person’s use of force is justified if:

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

- (1) is applied to that minor, and
 - (2) is necessary to safeguard or promote the welfare of that minor, including the prevention or punishment of his misconduct, and
 - (3) does not create a substantial risk of causing death, serious bodily injury, extreme or unnecessary pain or mental distress, or humiliation; or
- (b) he is a physician or other licensed medical professional, or a person

assisting him at his direction, and:

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

Section 45 – Defense of Person

- (a) Subject to Subsection (b), a person’s use of force is justified if:
 - (1) it is necessary to defend against an unjustified use or threat of force by an aggressor against:
 - (A) his own person, or
 - (B) the person of another; and
 - (2) the amount of force used is not disproportionate to the harm

threatened.

(b) Use of Force Risking Death or Serious Bodily Injury. A person's use of force that creates a substantial risk of causing death or serious bodily injury is justified under Subsection (a) only if such force is necessary to defend against a threat of death, serious bodily injury, or forcible intercourse.

(c) Definitions.

(1) Force is "unjustified" if it:

(A) satisfies the objective elements of an offense in Part II of this Code, and

(B) is not justified by a defense in this Chapter.

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

Section 46 – Defense of Property

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

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

(A) his property, or

(B) the property of another; and

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

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

Section 47 – Definitions

"Custodial officer" has the meaning given in Section 532(b).

"Disproportionate" has the meaning given in Section 45(c)(2).

"Incompetent" has the meaning given in Section 27(d).

"Justification defense" and "justification" have the meaning given in Section 40(a).

"Necessary" has the meaning given in Section 41(b).

"Public official" has the meaning given in Section 17.

"Serious bodily injury" has the meaning given in Section 17.

"Unjustified" has the meaning given in Section 45(c)(1).

CHAPTER 50. EXCUSE DEFENSES

Section 50 – General Provisions Governing Excuse Defenses

Section 51 – Involuntary Act; Involuntary Omission

Section 52 – Insanity

Section 53 – Immaturity

Section 54 – Involuntary Intoxication

Section 55 – Duress

Section 56 – Impaired Consciousness

Section 57 – Ignorance or Mistake

Section 58 – Mistake as to a Justification

Section 59 – Definitions

Section 50 – General Provisions Governing Excuse Defenses

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

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

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

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

(e) Liability for Culpably Causing Excusing Conditions.

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

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

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

Section 51 – Involuntary Act; Involuntary Omission

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

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

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

Section 52 – Insanity

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

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

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

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

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

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

Section 53 – Immaturity

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

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

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

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

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

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

(b) Immaturity Presumed. A person:

(1) less than 14 years old at the time of the offense shall be conclusively presumed to have satisfied the requirements of this excuse defense.

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

(3) less than 21 years old but at least 18 years old, shall be presumed, subject to rebuttal by the offender, to possess the maturity of an adult.

(c) Transfer to Juvenile Court. A person who is less than 21 years old at

the time of the offense and who is excused for his offense under Subsections (a) and (b) shall be referred to the Juvenile Court, which shall have exclusive jurisdiction over all further proceedings in the matter.

Section 54 – Involuntary Intoxication

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

- (1) to accurately perceive the physical nature or physical consequences of his conduct constituting the offense, or
- (2) to appreciate the wrongfulness of his conduct constituting the offense, or
- (3) to control his conduct constituting the offense so as to be justly held accountable for it.

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

- (1) caused by substances that the person did not knowingly introduce into his body, or
- (2) grossly excessive in degree, given the amount of intoxicant, to which he does not know and could not reasonably be expected to know he is susceptible.

Section 55 – Duress

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

- (1) he is compelled to perform the offense conduct
- (2) by a threat that a person of reasonable firmness in the person's situation would have been unable to resist.

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

Section 56 – Impaired Consciousness

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

- (1) he suffers a physiologically confirmable disease or defect not specifically recognized or rejected as a basis for exculpation by another excuse provision in this Chapter, and
- (2) as a result, he lacks substantial capacity:
 - (A) to accurately perceive the physical nature or physical consequences of his conduct constituting the offense, or
 - (B) to appreciate the wrongfulness of his conduct constituting the offense, or
 - (C) to control his conduct constituting the offense so as to be justly held accountable for it.

(b) Antisocial Personality Excluded. For the purposes of Subsection (a), a physiologically confirmable disease or defect does not include an abnormality

manifested only by repeated criminal or otherwise antisocial conduct.

Section 57 – Ignorance or Mistake

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

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

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

(b) Reliance Upon Official Misstatement of Law. A person is excused for his offense if:

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

(A) a statute,

(B) a judicial decision, opinion, judgment, or rule,

(C) an administrative order or grant of permission, or

(D) an official interpretation of the law by the public official or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the offense; and

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

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

(1) he:

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

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

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

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

Section 58 – Mistake as to a Justification

A person is excused for his offense if:

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

(b) his mistake is:

(1) non-negligent, or

- (2) less culpable than the culpability required by:
- (A) the result element of the offense charged, or
 - (B) if no result element exists, the circumstance element most central to the offense charged.

Section 59 – Definitions

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

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

“Public official” has the meaning given in Section 17.

CHAPTER 60. NONEXCULPATORY DEFENSES

Section 60 – General Provisions Governing Nonexculpatory Defenses

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

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

Section 63 – Diplomatic Immunity

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

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

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

Section 67 – Definitions

Section 60 – General Provisions Governing Nonexculpatory Defenses

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

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

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

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

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

(a) Time Limitation. A prosecution is barred unless commenced within:
[(1) 10 years from the time the offense is committed for a felony, or
(2) 4 years from the time the offense is committed for a misdemeanor.]²

² **Issue:** Should this Code include the listed ten-year statute of limitations for felonies other than violent or special religious offenses?

Yes: A ten-year time limitation will encourage prompt investigation of crimes and prevent stale prosecutions. Evidence, particularly witness testimony, may become less reliable over time. If offenders have reformed themselves over time, it would be counterproductive to disrupt their progress by prosecuting them when they no longer pose a threat to society and have become contributing members of society. Time limitations encourage moving on from the past. Ten years provides ample time to fully investigate a situation and determine whether prosecution is worthwhile. After ten years, the conventional definition of

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

(c) Start of the Limitation Period. The period of limitation starts to run on the day after the offense is committed. An offense is committed either:

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

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

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

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

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

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

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

Section 63 – Diplomatic Immunity

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

what behavior is “reckless” or “negligent” may have shifted, leaving a defendant held to a unfair and unforeseeable standard. Providing an exception to the statute of limitations for violent and specified felonies strikes a proper balance between conflicting interests.

No: The government should be able to prosecute blameworthy offenders at any time. The value of being able to prosecute, at any time, offenders charged with offenses that have been deemed serious enough to be graded as felonies outweighs the value of moving on from the past. The increasing availability and reliability of physical evidence makes prosecuting old cases more feasible. If the passage of time has made evidence unreliable, the defense can point out this weakness and argue that the evidence should be afforded little or no weight. Prosecutorial discretion to decide which cases are worth the investment of resources will prevent old cases with insufficient evidence from being prosecuted.

Under this Code, many promptly prosecuted felony defendants might still be incarcerated or otherwise under punishment ten years after an offense. It is contradictory for this code to require onerous punishment for periods of ten years for some defendants but then declare that the mere apprehension of prosecution for ten years requires that the state allow the criminal to “move on.”

the State:

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

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

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

- (a) resulted in an acquittal, or
- (b) resulted in a conviction, or
- (c) (1) was terminated by a final order or judgment for the defendant that has not been set aside, reversed, or vacated, and
(2) would have necessarily required a determination inconsistent with a fact or a legal proposition to result in conviction; or
- (d) was improperly terminated as provided in Subsection (e) of this Section.
- (e) Improper Termination. For purposes of Subsection (d) of this Section and Section 65(d):

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

- (2) termination is not improper if:

- (A) the defendant consents to the termination or waives his right to object to the termination, or

- (B) the court finds that the termination is necessary because:

- (aa) it is impossible to proceed with the trial in conformity with law, or

- (bb) there is a legal defect in the proceedings that would make any judgment entered upon a verdict reversible as a matter of law, or

- (cc) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Government.

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

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

- (a) resulted in an acquittal or in a conviction and the subsequent prosecution is for any offense for which the defendant could have been convicted in the first prosecution, either based on the same conduct or arising from the same criminal episode, unless the court ordered a separate trial of the charge of such

offense, or

(b) resulted in an acquittal or in a conviction based on the same conduct, unless:

(1) the offense for which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each require proof of a fact not required by the other and the statutes defining these offenses are intended to prevent a substantially different harm or wrong, or

(2) the second offense was not consummated when the former trial began; or

(c) (1) was terminated by a final order or judgment for the defendant that has not been set aside, reversed, or vacated, and

(2) would have necessarily required a determination inconsistent with a fact or a legal proposition to result in conviction; or

(d) was improperly terminated as provided in Subsection 64(e) and the subsequent prosecution is for an offense for which the defendant could have been convicted had the former prosecution not been improperly terminated.

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

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

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

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

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

Section 67 – Definitions

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

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

LIABILITY OF CORPORATIONS AND OTHER NON-HUMAN ENTITIES

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

Section 70 – Liability of Corporation or Unincorporated Association

Section 71 – Relationship to Corporation or Unincorporated Association No

Limitation on Individual Liability or Punishment

Section 72 – Definitions

Section 70 – Liability of Corporation or Unincorporated Association

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

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

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

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

[(C) the offense is either graded as a misdemeanor or the statute manifests a legislative purpose to hold corporations responsible for the actions of subordinate employees]³; or

³ **Issue:** Should the Code include this provision limiting corporate liability for actions by any corporate agent to misdemeanors or offenses which indicate a legislative purpose of holding corporations liable for the actions of any party?

Yes: While it is appropriate to hold corporate entities liable for offenses committed by its high officers, holding corporations liable for felonies, performed by any employee or other agent would lead to excessive corporate liability, discouraging corporations from investing and operating in the Maldives. Actions of a corporate agent not approved by the board of directors or other high managerial agents cannot fairly be attributed to the corporation as an entity. If there is a need to hold a corporation criminally liable for a specific offense, the offense can be drafted in a way to indicate so.

The due diligence defense is not sufficient to protect a corporation from the bad acts of its employees. No corporation can possibly anticipate every bad act and develop a program to counter it. A mere failure to take all the steps required by the due diligence defense does not necessarily manifest the appropriate criminal culpability on the part of the high agents of the corporation.

No: Such a limitation would prevent corporations from being held responsible for crimes committed on their behalf, particularly environmental crimes, which are a major concern in the Maldives. There is no reason to limit corporate liability based on severity of the offense. If there is sufficient reason to hold a corporation liable when a corporate agent commits a misdemeanor, there is also sufficient reason

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

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

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

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

(c) Definitions.

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

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

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

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

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

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

(b) Authorized Punishment for Individuals. A person who has been convicted of an offense by reason of his legal accountability for the conduct of a

for holding the corporation liable for a felony. Criminal liability for corporations should not be unduly limited because it provides an incentive for corporations to prevent their employees from committing crimes.

The due diligence defense in Section 70(b) protects a corporation who actively tries to prevent employees from committing crimes. If an employee commits a felony because of failure from the corporation to train him or to guide his actions properly, then culpability should be assigned to the corporation as a whole. The corporation profits by the actions of its employees and agents and thus bears an affirmative duty to see that they carry out their duties in keeping with the law.

corporation or unincorporated association is subject to the punishment authorized by statute for an individual upon conviction for such offense, although a different punishment is authorized for the corporation or association.

Section 72 – Definitions

“Corporate agent” has the meaning given in Section 70(c)(4).

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

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

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

INCHOATE OFFENSES

CHAPTER 80. INCHOATE OFFENSES

Section 80 – Criminal Attempt

Section 81 – Criminal Solicitation

Section 82 – Criminal Conspiracy

Section 83 – Unconvictable Confederate No Defense

Section 84 – Defense for Victims and for Conduct Inevitably Incident

Section 85 – Defense for Renunciation Preventing Commission of the Offense

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

Section 87 – Possession of Instruments of Crime

Section 88 – Definition

Section 80 – Criminal Attempt

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

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

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

(b) Conduct Constituting a Substantial Step.

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

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

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

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

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

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

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

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

Section 81 – Criminal Solicitation

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

(1) acting with:

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

and

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

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

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

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

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

Section 82 – Criminal Conspiracy

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

(1) acting with:

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

and

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

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

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

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

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

(2) escape from the scene of the offense,

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

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

(c) Parties to Conspiracy. If a person could reasonably expect that one with

whom he conspires has agreed or will agree with another person to affect the same objective, he is deemed to have agreed with such other person, regardless of whether he knows the other person's identity.

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

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

- (1) those persons with whom he conspired of his abandonment, or
- (2) law enforcement authorities of the existence of the conspiracy and of his participation therein.

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

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

Section 83 – Unconvictable Confederate No Defense

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

- (a) is immune from prosecution or has not been prosecuted or convicted for the offense,
- (b) has been acquitted,
- (c) has been convicted of a different offense or a different grade of the same offense, or
- (d) is otherwise not subject to justice.

Section 84 – Defense for Victims and for Conduct Inevitably Incident

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

- (a) the defendant is the victim of the offense, or
- (b) the offense is so defined that the defendant's conduct is inevitably incident to its commission.

Section 85 – Defense for Renunciation Preventing Commission of the Offense

(a) In a prosecution under Section 80 (Criminal Attempt), Section 81 (Criminal Solicitation), or Section 82 (Criminal Conspiracy), it is a defense that,

under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, the defendant prevented the commission of the offense.

(b) Voluntary and Complete Renunciation. A renunciation is not voluntary and complete if it is motivated, in whole or in part, by:

(1) a belief that the circumstances exist that:

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

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

(2) a decision:

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

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

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

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

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

(b) Sentencing Factors.

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

(2) If an offender completed:

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

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

then the baseline offense level shall be aggravated two levels.

Section 87 – Possession of Instruments of Crime

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

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

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

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

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

Section 88 – Definition

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

OFFENSE GRADES AND THEIR IMPLICATIONS

CHAPTER 90. OFFENSE GRADES AND THEIR IMPLICATIONS

Section 90 – Classified Offenses

Section 91 – Unclassified Offenses

Section 92 – Authorized Terms of Imprisonment

Section 93 – Authorized Fines

Section 94 – Prosecution for Multiple Offenses

Section 90 – Classified Offenses

Each offense in this Code is classified as:

- (a) a Class A felony, or
- (b) a Class B felony, or
- (c) a Class C felony, or
- (d) a Class D felony, or
- (e) a Class E felony, or
- (f) a Class 1 misdemeanor, or
- (g) a Class 2 misdemeanor, or
- (h) a Class 3 misdemeanor, or
- (i) a violation.

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

Section 91 – Unclassified Offenses

An offense outside of the Code:

- (a) that provides a term of imprisonment of:
 - (1) more than 1 year is a Class E felony;
 - (2) 1 year or less but more than 6 months is a Class 1 misdemeanor;
 - (3) 6 months or less but more than 30 days is a Class 2 misdemeanor;

- (4) 30 days or less is a Class 3 misdemeanor;

- (b) that otherwise declares itself to be:

- (1) a felony is a class E felony;
 - (2) a misdemeanor is a class 2 misdemeanor;

- (c) is a violation if it:

- (1) does not declare itself to be a felony or misdemeanor, and does not provide a sentence of imprisonment; or

- (2) is an offense of strict liability.

- (3) Higher Grade Than Violation If Proof of Negligence. An offense of strict liability may be subject to a grade higher than a violation, if the

prosecution proves at least negligence as to all elements, in which case the grade of the offense is the grade provided in Subsection (a).

Section 92 – Authorized Terms of Imprisonment

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

- (a) Class A felony is [death or]⁴ imprisonment for not more than 25 years;
- (b) Class B felony is imprisonment for not more than 15 years;
- (c) Class C felony is imprisonment for not more than 8 years;
- (d) Class D felony is imprisonment for not more than 4 years;
- (e) Class E felony is imprisonment for not more than 2 years;
- (f) Class 1 misdemeanor is imprisonment for not more than 1 year;
- (g) Class 2 misdemeanor is imprisonment for not more than 6 months;
- (h) Class 3 misdemeanor is imprisonment for not more than 3 months;
- (i) No term of imprisonment or [banishment]^{*} is authorized for a violation.
- (j) Maximum Term Reserved for Most Egregious Form of Offense. The

maximum authorized term of imprisonment is an appropriate sentence only for the most egregious imaginable form of the offense.

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

⁴ **Issue:** Should the death penalty be removed from Section 92(a)?

Yes: The death penalty is cruel and irreversible punishment. The ordinary, if minimal, risk of convicting an innocent person makes the death penalty a poor choice of punishment, since the punishment cannot be corrected after the fact. Many nations have abolished the death penalty. Even the Maldives has not executed any person for fifty years. Victims and their families can make use of civil laws to seek compensation. If victims are allowed to decide punishment, it will cause inconsistencies in the criminal justice system. The abolition of the death penalty will not undermine the Islamic nature of the Code, as the Code will still impose its harshest penalty for murder.

Even if abolition is not a possibility, accommodation of the new Code may require a temporary, open-ended moratorium on the death penalty as the Code is implemented. Since judges and attorneys will be learning a somewhat different body of law, the justice system will need a period of time to adjust to the new circumstances. During this time, the likelihood that a person might be unjustly sentenced to death may be even higher than usual. Though Islam generally recommends the death penalty, it would be un-Islamic to impose the death penalty in a context where errors are more likely to be made. When the Majlis decides that the Code has been implemented successfully and smoothly, without likelihood of error, then the Majlis may pass a bill ending the moratorium.

No: The death penalty is a mandatory punishment under Islamic law and should not be removed from the Code. Including the death penalty provides comfort to the victims of violent crimes and their families and parallels Islamic law, which awards the death penalty if the victim's family decides against compensation. In addition, including the death penalty may be the only way to address the harm to victims and their families as few Maldivians will make use of civil courts.

* See footnote 18.

* See footnote 4.

Section 93 – Authorized Fines

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

- (a) twice the harm caused or the gain derived, or
- (b) (1) MVR [1,000,000]⁵ for a Class A felony,
 (2) MVR [500,000] for a Class B felony,
 (3) MVR [200,000] for a Class C felony,
 (4) MVR [100,000] for a Class D felony,
 (5) MVR [50,000] for a Class E felony,
 (6) MVR [25,000] for a Class 1 misdemeanor,
 (7) MVR [12,500] for a Class 2 misdemeanor,
 (8) MVR [6,000] for a Class 3 misdemeanor,
 (9) MVR [2,000] for a violation.*

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

Section 94 – Prosecution for Multiple Offenses

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

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

⁵ **Issue:** Should the amounts of the proposed maximum authorized fines be increased?

Yes: Increasing the proposed maximum fines would make them more punitive and therefore more attractive as alternatives to imprisonment. This allows for greater flexibility in crafting appropriate sentences and provides an option for reducing imprisonment rates. The severity of the fines should match the severity of sentences of imprisonment authorized for each grade.

No: The proposed maximum fines will punish offenses sufficiently, considering the income of the average Maldivian. Allowing greater maximum fines will simply allow excessive punishment. The proposed fines already exceed the fines typically available under the prior laws.

* Maximum authorized fines in USD and in work time for an average Maldivian:

Grade	MVR	USD (approx.)	Time Worked (approx.)
Class A	1,000,000	85,000	40 years
Class B	500,000	42,480	20 years
Class C	200,000	17,000	8 years
Class D	100,000	8,500	4 years
Class E	50,000	4,250	2 years
M1	25,000	2,120	1 year
M2	12,250	1,060	6 months
M3	6,000	510	3 months
Violations	2,000	170	1 month

- (1) the two offenses are based on the same conduct, and:
 - (A) the harm or wrong of one offense is:
 - (aa) entirely accounted for by the other offense, or
 - (bb) of the same kind, but lesser degree, than that of the other offense; or
 - (B) the two offenses differ only in that:
 - (aa) one is defined to prohibit a designated kind of conduct generally and another to prohibit a specific instance of such conduct, or
 - (bb) one requires a lesser kind of culpability than the other; or
 - (C) the offenses are defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate offenses; or
 - (2) one offense consists only of an inchoate offense toward commission of:
 - (A) the other offense, or
 - (B) a substantive offense that is related to the other offense in the manner described in Subsection (b)(1); or
 - (3) each offense is an inchoate offense toward commission of a single substantive offense; or
 - (4) the two offenses differ only in that one is based on the defendant's own conduct and another is based on the defendant's accountability for another person's conduct, under Section 30 (Accountability for the Conduct of Another); or
 - (5) inconsistent findings of fact are required to establish the commission of the offenses.
- (c) Entry of Judgment. Where Subsection (b) prohibits multiple judgments of conviction, the court shall enter a judgment of conviction for the most serious offense among the offenses in question, including different grades of an offense, of which the defendant has been found guilty.

PART II: THE SPECIAL PART

OFFENSES AGAINST THE PERSON

CHAPTER 110. HOMICIDE OFFENSES

Section 110 – Murder

Section 111 – Manslaughter

Section 112 – Negligent Homicide

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

Section 114 – Concealing a Homicide

Section 115 – Definitions

Section 110 – Murder

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

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

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

(1) the person is engaged in or is an accomplice in the commission, attempt to commit, or flight after commission of

(2) any violent offense.

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

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

Section 111 – Manslaughter

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

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

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

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

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

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

Section 112 – Negligent Homicide

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

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

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

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

(b) Aiding, Soliciting, or Attempting Suicide.

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

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

(B) attempts to commit suicide.

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

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

(B) without purpose to kill, administers, prescribes, or dispenses medications or procedures to relieve another person's pain or discomfort, even if he knows that doing so may hasten or increase the risk of death.]⁶

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

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

(B) causes serious bodily injury to himself.

⁶ **Issue:** Should the Code include this medical exception for physicians who withhold a life-sustaining procedure in compliance with the wishes of the patient or administer medications or procedures to relieve another person's pain or discomfort, even if doing so may hasten or increase the risk of death?

Yes: A patient should have the right to determine his own medical treatment and to receive medical care that complies with his decisions. The absence of this exception would discourage health care professionals from providing needed care out of fear of criminal liability. Providing medical treatment that relieves pain or discomfort comports with notions of human dignity. The patient also usually retains the authority to seek medical treatment initially or to avoid it. A patient might avoid seeking treatment at all because of his fear that he will be denied the opportunity to accept or to decline certain treatments. Patients already afraid of hospitals may avoid medical care entirely, leading to a quicker and more gruesome death for many outside of hospitals entirely.

No: Human life should be protected. A patient will likely be unable to give consent at the time that life-sustaining procedures are necessary, and the patient may never have considered the situation at all or may have changed his mind from a decision made prior to the situation. A patient's family may not be adequately informed of a patient's wishes or may not be truly acting in the patient's best interests. A terminally ill patient or a patient in extreme pain may not be in the proper state of mind to make appropriate choices.

(c) Definition. “Suicide” means knowingly causing one’s own death.

(d) Grading.

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

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

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

Section 114 – Concealing a Homicide

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

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

Section 115 – Definitions

“Bodily injury” has the meaning given in Section 17.

“Controlled drug” has the meaning given in Section 720(d)(1).

Causing by “deception” means to cause by “deceiving,” as defined in Section 212(b)(1).

“Duress” has the meaning given in Section 55.

“Serious bodily injury” has the meaning given in Section 17.

“Suicide” has the meaning given in Section 113(c)

“Violent offense” has the meaning given in Section 110(e).

CHAPTER 120. ASSAULT, ENDANGERMENT, AND THREAT OFFENSES

Section 120 – Assault

Section 121 – Reckless Endangerment

Section 122 – Threats; False Alarms

Section 123 – Definitions

Section 120 – Assault

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

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

(b) Grading.

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

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

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

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

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

(d) Definitions.

(1) “Dangerous weapon” means:

- (A) anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for any lawful use it may have, or
- (B) any implement for the infliction of great bodily injury that serves no common lawful purpose.

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

Section 121 – Reckless Endangerment

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

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

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

(c) Definitions.

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

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

(d) Grading.

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

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

Section 122 – Threats; False Alarms

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

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

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

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

Section 123 – Definitions

“Bodily injury” has the meaning given in Section 17.

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

“Dangerous weapon” has the meaning given in Section 120(d)(1).

“Explosive” has the meaning given in Section 121(c)(2).

“Home” has the meaning given in Section 120(d)(2).

“Serious bodily injury” has the meaning given in Section 17.

“Violent offense” has the meaning given in Section 110(e).

CHAPTER 130. SEXUAL ASSAULT OFFENSES

Section 130 – General Provisions Relating to Sexual Assault Offenses

Section 131 – Sexual Assault

Section 132 – Criminal Sexual Contact

Section 133 – Indecent Exposure

Section 134 – Sexual Exploitation

Section 135 – Definitions

Section 130 – General Provisions Relating to Sexual Assault Offenses

(a) Consent by Minor Invalid; Exception for Marriage. Assent or acquiescence to sexual intercourse or sexual contact by a minor is invalid, except where such minor is legally married to the defendant and is more than [14]^{*} years old.

(b) Culpability as to Age. Unless expressly provided otherwise, if an offense in this Chapter requires that the victim be under the age of [14]^{*}, the defendant need only be negligent as to such victim's age.

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

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

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

Section 131 – Sexual Assault

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

[(b) Rebuttable Presumption. If the person engages in the sexual intercourse with his spouse, the trier of fact shall presume, subject to rebuttal, that consent existed.]⁷

* See footnote 8.

* See footnote 8.

⁷ **Issue:** Should the Code create a rebuttable presumption that a married woman has consented to intercourse, absolutely presume her consent, or make no presumption?

Rebuttable Presumption: Providing an exception or rebuttable presumption reflects the view that sexual assault is unlikely to occur within the marital relationship. In the case of the presumption, it is rebuttable so that if the victim can still prove that he or she was sexually assaulted by violent means or by other means, he or she can still press charges against his or her spouse. This rebuttable presumption

(c) Definition. “Sexual intercourse” means any penetration, however slight, of the sex organ or anus of one person by an object, appendage, or penis of another person; emission is not required.

(d) Grading.

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

(A) the victim is less than [14]⁸ years old, or

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

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

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

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

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

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

Section 132 – Criminal Sexual Contact

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

properly balances the state interests in the marital relationship against the concern with the illegal use of force or other coercion against any person.

Absolute Presumption: The following language would be inserted: “(b) Exception for Marriage. If the person engages in the sexual intercourse with his spouse, he does not commit the offense in Subsection (a) unless he is legally separated from his spouse.” The spousal relationship is undermined by a refusal to consent to intercourse. Allowing the conviction of a spouse on criminal charges stemming from a marital dispute destabilizes the relationship. Only a complete bar against prosecution for rape will preserve the marital relationship.

No Presumption: Women are human beings with equal dignity under Islamic law. They do not sacrifice their dignity nor their capacity to control their bodies by marrying. No difficulties in proving or disproving consent to intercourse will arise within a marital relationship that will not arise in a similar claim among non-married parties. Forced sexual intercourse, is a terrible crime, regardless of the victim’s marital status. When a marriage has descended to the point of one spouse brutalizing the other, the law should not refuse to interfere.

⁸ **Issue:** Should the Code raise or lower the statutory age for sexual assault?

14 Years: 14 years of age is an appropriate approximation of the age of puberty for most young people. Since intercourse with a minor (a person under 18) constitutes sexual assault, the age defined here determines the grade of the offense, not whether or not a person will be punished at all. The age of 14 is currently recognized by current Maldivian law and by most Muslim jurists as the appropriate age of puberty. Having an open standard would defeat the purpose of codification: to clarify the duties owed by citizens. A person should not have to guess about a factor that will result in serious punishment.

Younger Age: A class B felony is a very harsh punishment and should not be imposed except in the most extreme cases. A younger age such as 12 years would be more appropriate and create greater certainty that the victim was not yet physically mature.

Older Age: A person who is physically mature is not necessarily emotionally mature enough to make sexual decisions. An older age, such as 16 years of age, would provide a better standard.

contact with another person without consent for the purpose of producing sexual arousal or gratification.

(b) Definition. “Sexual contact” means:

- (1) touching another person’s sex organs, anus or breast; or
- (2) causing another person to touch the sex organs, anus or breast of any person, including himself; or
- (3) causing any transfer or emission of semen upon any part of the body of the victim.

(c) Grading.

- (1) Aggravated Sexual Contact. The offense is a Class D felony if:
 - (A) the victim is less than [14]^{*} years old; or
 - (B) the person uses force or threat of force to compel the victim to submit to sexual contact.
- (2) Criminal Sexual Contact. The offense is a Class E felony if:
 - (A) the victim is a minor and the defendant is 4 or more years older; or
 - (B) the defendant knows the victim cannot comprehend the nature of the act or validly consent to it; or
 - (C) the defendant holds a position of custodial authority in relation to the victim.
- (3) Misdemeanor Sexual Contact. Otherwise the offense is a Class 1 misdemeanor.

Section 133 – Indecent Exposure

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

- (1) exposes his genitals,
- (2) under circumstances likely to cause affront or alarm,
- (3) for the purpose of producing sexual arousal or gratification.

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

Section 134 – Sexual Exploitation

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

- (1) he causes another person to disrobe or to otherwise act,
- (2) for the purpose of producing sexual arousal or gratification, and
- (3) such other person does not know of his purpose.

(b) Grading.

(1) Aggravated Sexual Exploitation. The offense is a Class 1 misdemeanor if the victim is a person less than [14]^{*} years old or a legally incompetent person.

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

* See footnote 8.

* See footnote 8.

Section 135 – Definitions

“Consent” has the meaning given in Section 27.

“Legal guardian” has the meaning given in Section 44(e)(1).

“Licensed medical professional” has the meaning given in Section 44(e)(2).

“Sexual contact” has the meaning given in Section 132(b).

“Sexual intercourse” has the meaning given in Section 131(c).

CHAPTER 140. RESTRAINT AND COERCION OFFENSES

Section 140 – Unlawful Restraint

Section 141 – Criminal Coercion

Section 142 – Definitions

Section 140 – Unlawful Restraint

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

- (1) without consent,
- (2) restrains another,
- (3) for a substantial period of time.

(b) Definitions.

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

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

(c) Grading.

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

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

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

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

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

and

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

Section 141 – Criminal Coercion

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

- (1) commit any criminal offense; or
- (2) accuse anyone of a criminal offense; or
- (3) expose any secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business reputation; or
- (4) take or withhold action as a public official, or cause a public official to take or withhold action.

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

(1) he believes:

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

(B) the proposed official action justified, and

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

(c) Grading.

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

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

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

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

Section 142 – Definitions

“Freedom of movement” has the meaning given in Section 140(b)(2).

“Legal guardian” has the meaning given in Section 44(e)(1).

“Public official” has the meaning given in Section 17.

“Restrain” has the meaning given in Section 140(b)(1).

PROPERTY OFFENSES

CHAPTER 210. THEFT OFFENSES

- Section 210 – Consolidation of Theft Offenses
- Section 211 – Theft by Taking or Disposition
- Section 212 – Theft by Deception
- Section 213 – Theft by Extortion
- Section 214 – Theft of Services
- Section 215 – Theft by Failure to Deliver Funds Entrusted
- Section 216 – Theft of Property Lost, Mislaid, or Delivered by Mistake
- Section 217 – Unauthorized Use of Property
- Section 218 – Receiving Stolen Property
- Section 219 – Definitions

Section 210 – Consolidation of Theft Offenses

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

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

- (1) Class C felony if the value of the property exceeds [500,000 MVR].*
- (2) Class D felony if the value of the property exceeds [50,000 MVR] or if the property is a firearm or an automobile, motorboat, or other motor vehicle.
- (3) Class E felony if the value of the property exceeds [5,000 MVR].
- (4) Class 1 misdemeanor if the value of the property exceeds [500 MVR].
- (5) Otherwise the offense is a Class 2 misdemeanor.

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

- (1) reasonably believes that the other person would consent to his possession or use of the property, or
- (2) reasonably believes that he holds a claim of right to use or possess the property.

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

* The figures used in this grading scheme correspond roughly to the income of the average Maldivian. In ascending order, the figures represent approximately four days’ wages (500 MVR or 44 USD), two months’ wages (5,000 MVR or 430 USD), two years’ wages (50,000 MVR or 4300 USD), and twenty years’ wages (500,000 MVR or 43,000 USD).

Section 211 – Theft by Taking or Disposition

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

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

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

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

Section 212 – Theft by Deception

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

(1) knowingly deprives another of property

(2) by deceiving such other person or another person.

(b) Definitions.

(1) “Deceive” means:

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

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

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

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

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

(2) “Financial instrument” means anything representing a legally enforceable:

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

(B) promise to pay, or

(C) promise to tender property, or

(D) right in contract.

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

(1) regarding matters of no pecuniary significance; or

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

(d) Presumption Not Permitted. The trier of fact shall not presume

deception of another person from the defendant's mere failure to fulfill a prior promise.

(e) Rebuttable Presumptions. The trier of fact shall presume, subject to rebuttal, the deception required in Subsection (a)(2) if:

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

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

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

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

knowing that:

(A) the card was stolen; or

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

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

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

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

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

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

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

Section 213 – Theft by Extortion

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

(1) he purposely obtains property of another

(2) by threatening substantial harm.

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

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

or

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

Section 214 – Theft of Services

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

(1) he:

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

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

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

(A) knowingly uses or appropriates such services

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

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

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

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

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

Section 215 – Theft by Failure to Deliver Funds Entrusted

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

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

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

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

(b) Rebuttable Presumptions.

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

binding judicial precedent.

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

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

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

(c) Definitions.

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

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

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

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

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

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

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

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

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

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

Section 217 – Unauthorized Use of Property

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

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

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

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

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

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

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

Section 218 – Receiving Stolen Property

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

- (1) he receives, retains, or disposes of property of another,
- (2) being reckless as to whether such property has been stolen,
- (3) unless such property is received or retained for the purpose of returning it to its owner.

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

Section 219 – Definitions

“Deceive” has the meaning given in Section 212(b)(1).

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

“Financial institution” has the meaning given in Section 215(c)(1).

“Financial instrument” has the meaning given in Section 212(b)(2).

“Financial professional” has the meaning given in Section 215(c)(2).

“Owner” has the meaning given in Section 216(b).

“Property of another” has the meaning given in Section 211(b).

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

“Temporary use” has the meaning given in Section 217(b).

“Value” has the meaning given in Section 210(d).

CHAPTER 220. PROPERTY DAMAGE AND DESTRUCTION OFFENSES

Section 220 – Criminal Property Damage

Section 221 – Endangering Property

Section 222 – Threatening Catastrophe

Section 223 – Definitions

Section 220 – Criminal Property Damage

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

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

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

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

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

(d) Grading. The offense is:

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

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

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

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

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

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

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

- (A) it has particular environmental importance of which an

* See the star footnote in Section 210 for discussion of these monetary amounts.

ordinary person would be aware or of which the person actually knows; or

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

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

Section 221 – Endangering Property

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

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

(1) where any person lives or conducts business or other affairs,

(2) where people assemble for purposes of business, government, worship, education, entertainment, or public or commercial transportation, or

(3) that is used for overnight accommodations of persons.

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

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

Section 222 – Threatening Catastrophe

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

(1) knowingly possesses a catastrophic agent:

(A) with the purpose of using it to commit a felony, or

(B) knowing that another will use it to commit a felony; or

(2) knowingly threatens to cause a catastrophe.

(b) Definition. “Catastrophe” means causing:

(1) serious bodily injury to five or more people, or

(2) substantial damage to five or more inhabited structures, or

(3) substantial interruption or impairment of a vital public facility, or

(4) property damage in excess of [500,000 MVR].

(c) Grading.

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

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

Section 223 – Definitions

- “Catastrophe” has the meaning given in Section 222(b).
- “Catastrophic agent” has the meaning given in Section 121(c)(1).
- “Inhabited structure” has the meaning given in Section 221(b).
- “Property of another” has the meaning given in Section 211(b).
- “Serious bodily injury” has the meaning given in Section 17.
- “Tamper” has the meaning given in Section 220(e).
- “Vital public facility” has the meaning given in Section 221(d).

CHAPTER 230. CRIMINAL INTRUSION OFFENSES

- Section 230 – Criminal Trespass
- Section 231 – Unlawful Eavesdropping or Surveillance
- Section 232 – Unlawful Acquisition of Information
- Section 233 – Unlawful Disclosure of Information
- Section 234 – Definitions

Section 230 – Criminal Trespass

- (a) Offense Defined. A person commits an offense if he:
 - (1) enters or remains in a place,
 - (2) knowing that he has no consent or license to do so.
- (b) Exceptions.
 - (1) A person does not commit an offense if:
 - (A) the premises are open to members of the public at the time of his entry, and
 - (B) he complies with all lawful conditions imposed on access to the premises.
 - (2) A person does not commit an offense if he reasonably believes that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.
- [(c) Grading.
 - (1) Felony Trespass. The offense is a Class E felony if it is committed in a dwelling, highly secured premises, or dangerous premises so marked or signed.
 - (2) Misdemeanor Trespass. The offense is a Class 1 misdemeanor if it is committed in any separately secured building, inhabited structure, storage structure, or any other place enclosed in a way as to manifestly exclude intruders.
 - (3) Simple Trespass. Otherwise the offense is a Class 3 misdemeanor.]⁹

⁹ **Issue:** Should the grading of the trespass offense be reduced or changed from three grades to two grades?

Current Scheme: The current set of three grades best represents the significant moral distinctions in the act of trespass. Invading a home or a highly secured area, such as a sensitive government facility, creates a privacy invasion that cannot be compared to someone entering a store's back room. Nor should the grades be reduced, since much of the harm brought about in a burglary or home invasion is the violation of the sense of privacy or security normally enjoyed in the home.

Reduced Grading: The grade for trespass in a dwelling or other premises should be reduced to a Class 1 Misdemeanor since a person could commit a very minor invasion of privacy and still receive a relatively heavy sentence. The grade for trespass in a building would then need to be reduced to a Class 2 Misdemeanor to preserve the distinction between the two grades. This would avoid overpunishing a relatively minor offense.

Combining Grades: The grades for trespass in a dwelling and trespass in any structure should be conflated to create one grade for trespass in a building and a second grade for trespass on open land. The

(d) Definitions.

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

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

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

Section 231 – Unlawful Eavesdropping or Surveillance

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

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

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

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

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

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

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

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

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

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

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

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

Section 232 – Unlawful Acquisition of Information

distinction between a dwelling and another building is not sufficiently strong to justify a third category of trespass. The greater invasion of privacy in a dwelling could be handled by the sentencing guidelines.

- (a) Offense Defined. A person commits an offense if he:
 - (1) acquires any highly secured or private information,
 - (2) knowing that he has no license or authority to do so.
- (b) Exception. A person does not commit an offense if he:
 - (1) acquires private information,
 - (2) in good faith for the purpose of exposing wrongdoing.
- (c) Definitions.
 - (1) “Highly secured information” means information that is secured against unauthorized access.
 - (2) “Private information” means information that a reasonable person would not disclose to the general public.
- (d) Grading.
 - (1) Unlawful Acquisition of Highly Secured Information. The offense is a Class E felony if the information is highly secured.
 - (2) Unlawful Acquisition of Private Information. The offense is a Class 1 misdemeanor if the information is private.

Section 233 – Unlawful Disclosure of Information

- (a) Offense Defined. A person commits an offense if he discloses to another any communication or information that he knows:
 - (1) was acquired in a manner prohibited by Section 231 (Unlawful Eavesdropping or Surveillance) or 232 (Unlawful Acquisition of Information); or
 - (2) the other person has no license or authority to acquire.
- (b) Grading. The offense is a Class 1 misdemeanor.

Section 234 – Definitions

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

FORGERY AND FRAUDULENT PRACTICES

CHAPTER 310. FORGERY AND FRAUDULENT PRACTICES

- Section 310 – Forgery and Counterfeiting; Simulating Objects of Special Value
- Section 311 – Tampering with Writing, Record, or Device
- Section 312 – Identity Fraud
- Section 313 – Deceptive Practices
- Section 314 – Commercial Bribery and Breach of Duty to Act Disinterestedly
- Section 315 – Rigging Publicly Exhibited Contest or Public Bid
- Section 316 – Defrauding Secured Creditors
- Section 317 – Fraud in Insolvency
- Section 318 – Receiving Deposits in a Failing Financial Institution
- Section 319 – Selling Participation in a Pyramid Sales Scheme
- Section 320 – Definitions

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

- (a) Offense Defined. A person commits an offense if, with the purpose of deceiving another or concealing any wrongdoing, he knowingly:
 - (1) makes, completes, executes, authenticates, issues, or transfers a writing so that it falsely purports:
 - (A) to be the act of another, or
 - (B) to have been executed at a particular time or place, or in a particular manner or numbered sequence, or
 - (C) to be a copy of an original; or
 - (2) creates or alters any object or writing so that it falsely purports to have a particular antiquity, rarity, value, origin, or authorship; or
 - (3) utters, reiterates, or refers to any writing or object known to be a forgery under Subsection (a)(1) or (a)(2).
- (b) Definition. “Writing” means any symbol of value, right, privilege, or identification, regardless of medium.
- (c) Grading.
 - (1) Counterfeiting. The offense in Subsection (a)(1) is a Class D felony if the writing described in Subsection (a)(1) purports to be:
 - (A) any instrument that does or may create, show, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status; or
 - (B) any writing issued or received by the government.
 - (2) Forgery. Otherwise the offense in Subsection (a) is a Class E felony.

Section 311 – Tampering with Writing, Record, or Device

- (a) Offense Defined. A person commits an offense if:
- (1) with the purpose of deceiving anyone or concealing any wrongdoing,
 - (2) he alters, destroys, removes, or conceals any record, writing, or object,
 - (3) knowing that he has no authority to do so.
- (b) Grading. The offense is a Class E felony.

Section 312 – Identity Fraud

- (a) Offense Defined. A person commits an offense if:
- (1) he:
 - (A) represents himself to be another person, or
 - (B) manufactures, transfers, or sells the identification of another person, or
 - (C) purchases the identification of another person,
 - (2) with reckless disregard for whether such conduct will:
 - (A) cause harm to any other person, or
 - (B) give himself a benefit to which he is not entitled, or
 - (C) cause any other person to believe that the defendant is lawfully exercising official or legislative authority when in fact he is not.
- (b) Information Constituting Identification. For the purposes of Subsections (a)(1)(B) and (a)(1)(C), information constituting identification includes a person's name, birth date, personal identification number or code, financial information, and any other information that could be used to identify the person.
- (c) Grading.
- (1) Trafficking in Stolen Identities. The offenses in Subsections (a)(1)(B) and (a)(1)(C) are Class E felonies.
 - (2) Identity Fraud. Otherwise the offense is a Class 1 misdemeanor.

Section 313 – Deceptive Practices

- (a) Offense Defined. A person commits an offense if, in connection with any proposed or completed transaction in goods or services, he:
- (1) recklessly supplies materially false or misleading information; or
 - (2) knowingly deceives by acting contrary to established commercial practice.
- (b) Grading. The offense is a Class 1 misdemeanor.

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

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

- (1) knowingly solicits or accepts any benefit;
- (2) as consideration for violating a duty of fidelity to which he is subject as:
 - (A) a partner, agent, or employee of another; or
 - (B) a trustee, guardian, or other fiduciary; or
 - (C) a lawyer, physician, accountant, appraiser, or other professional adviser or informant; or
 - (D) an officer, director, manager, or other participant in the direction of the affairs of a corporation or an unincorporated association; or
 - (E) an arbitrator or other purportedly disinterested adjudicator or referee.

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

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

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

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

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

Section 315 – Rigging Publicly Exhibited Contest or Public Bid

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

- (1) with the purpose of preventing a publicly exhibited contest or exhibition from being conducted in accordance with the rules and usages purporting to govern it, he:
 - (A) offers, confers, or pays any benefit to a participant, official, or other person associated with such contest or exhibition, or
 - (B) threatens bodily injury to any such participant, official, or other person, or
 - (C) tampers with any person, animal, or other thing associated with the contest or exhibition; or
- (2) he knowingly solicits or accepts any benefit the giving of which would be criminal under Subsection (a)(1); or
- (3) he knowingly engages in conduct that violates the laws

governing the bidding process for a public contract; or

(4) he:

(A) knowingly sponsors, produces, judges, or otherwise participates in a publicly exhibited contest or exhibition,

(B) knowing that the contest or exhibition is not being conducted in accordance with the rules and usages purporting to govern it.

(b) Definition. “Benefit” means any compensation, gift, present, or material or non-material advantage, regardless of monetary value.

(c) Grading.

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

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

Section 316 – Defrauding Secured Creditors

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

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

Section 317 – Fraud in Insolvency

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

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

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

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

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

Section 318 – Receiving Deposits in a Failing Financial Institution

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

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

institution,

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

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

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

Section 319 – Selling Participation in a Pyramid Sales Scheme

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

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

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

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

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

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

Section 320 – Definitions

"Benefit" has the meaning given in Section 315(b).

"Bodily injury" has the meaning given in Section 17.

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

"Deceive" has the meaning given in Section 212(b)(1).

"Fiduciary" has the meaning given in Section 215(c)(3).

"Pyramid sales scheme" has the meaning given in Section 319(b).

"Services" has the meaning given in Section 214(b).

"Unincorporated association" has the meaning given in Section 70(c)(4).

"Writing" has the meaning given in Section 310(b).

OFFENSES AGAINST THE FAMILY

CHAPTER 410. OFFENSES AGAINST THE FAMILY

- Section 410 – Unlawful Marriage
- Section 411 – Unlawful Sexual Intercourse
- Section 412 – Unlawful Sexual Contact
- Section 413 – Incest
- Section 414 – Child Abandonment and Parental Duty of Care
- Section 415 – Non-Support
- Section 416 – Abortion
- Section 417 – Definitions

Section 410 – Unlawful Marriage

- (a) Unlawful Marriage by a Man. A man commits an offense if:
 - (1) being already married, he marries again without the consent of each of his current wives or without the consent of a Maldivian court, or
 - (2) being already married to four women, he marries again, or
 - (3) he marries a sister of one of his current wives.
- (b) Unlawful Marriage by a Woman. A woman commits an offense if, being already married or within the post-marital waiting period, she marries again.
- (c) Unlawful Marriage to Close Relatives. A person commits an offense if he marries a close relative.
- (d) Definitions.
 - (1) “Post-marital waiting period” means:
 - (A) the period of 4 months and 10 days following the death of or divorce with a woman’s husband; or
 - (B) if the woman is pregnant, the period until the pregnancy ends by birth or lawful termination; or
 - (C) if the woman’s husband disappears, a period of 1 year unless the husband returns.
 - (2) “Close relative” means another to whom a person is related as:
 - (A) parent, grandparent, great-grandparent; or
 - (B) child, grandchild, great-grandchild; or
 - (C) sibling; or
 - (D) aunt, great-aunt, uncle, great-uncle, nephew, niece; or
 - (E) father-in-law, mother-in-law, daughter-in-law, son-in-law;or
 - (F) a person who was nursed by the same woman; or
 - (G) a person who by virtue of marriage has become a relation specified in Subsections (d)(2)(A) through (d)(2)(E).
- (e) Grading. The offenses in this Section are Class 1 misdemeanors.

Section 411 – Unlawful Sexual Intercourse

(a) Unlawful Intercourse. A person commits an offense if:

(1) he engages in sexual intercourse with a person of the opposite sex other than with a person to whom he is married, and

(2) [the sexual intercourse is witnessed by at least four persons.]*

(b) Same-sex Intercourse. A person commits an offense if he engages in sexual intercourse with a person of the same sex.

(c) Grading.

(1) Adultery and Fornication. The offense in Subsection (a) is:

(A) a Class E felony if the person is married and has intercourse with a person not his spouse.

(B) a Class 1 misdemeanor if the person is unmarried and has intercourse with a person married to another.

(C) a Class 2 misdemeanor if the person is unmarried and has intercourse with an unmarried person.

[(2) Homosexual Intercourse. The offense in Subsection (b) is a Class 1 misdemeanor.]¹⁰

(3) Oral Intercourse. If the person has only oral intercourse with another person, the offense is one grade lower than it would otherwise be.

[(4) Four Witnesses Rule. If the offense in Subsection (a) is proven with comparably persuasive evidence other than the testimony of four witnesses, such as DNA evidence or evidence of pregnancy, the offense is one grade lower than it would otherwise be.]¹¹

* See footnote 11.

¹⁰ **Issue:** Should the code mandate the same punishment for homosexual sex and sexual contact between parties of the same sex as for heterosexual sex and sexual contact between parties of different sexes?

Yes: Those who commit illegitimate same-sex and opposite-sex acts are equally guilty of committing intercourse or sexual contact outside of a proper marriage, and cause equal detriment to the community. The guidance given by Islamic law is conflicting, but some commentators suggest that homosexual intercourse should be punished less than heterosexual intercourse. Providing the same degree of punishment cannot then be too lenient.

This Code is concerned with punishing immoral acts in proportion to the culpability of the offender. The homosexual offender and the heterosexual offender both seek to appease the same appetites, with adult partners equally capable of consent. Homosexual offenders cause no more harm than heterosexual offenders, with no greater culpability. They should not be punished any more than their heterosexual counterparts.

No: Homosexuality is particularly detrimental to the community. The offense of unlawful intercourse penalizes sexual contact when it is outside of a proper marriage, but the identical conduct, if heterosexual, would not be considered a crime were it to be performed by a married couple. The homosexual nature of the conduct makes it particularly egregious, above and beyond its flaw of occurring outside of marriage.

[(5) Additional Punishment Authorized. In addition to the punishment authorized under Chapter 90, an additional punishment of 100 lashes is authorized for the offense.]*

(d) Definitions.

(1) “Oral intercourse” means direct contact between the mouth of one person and the genitals of another.

(2) [“Lashes” means the symbolic punishment of striking an offender’s back with a short length of rope in a manner not designed to cause bodily injury. A single person must inflict all of the lashes prescribed as punishment, and he may only drive the rope using his wrists; he may not use any other part of his arm or movement in his shoulders, hips, back, legs or torso for that purpose.]¹²

[Section 412 – Unlawful Sexual Contact

(a) Unlawful Intercourse. A person commits an offense if:

- (1) he engages in sexual contact,
- (2) with a person of the opposite sex other than with a person to whom he is married, and
- (3) the sexual contact is or becomes publicly known prior to his

¹¹ **Issue:** Should the Code maintain this exception to the four witnesses requirement where unlawful intercourse can be proven without the testimony of four witnesses, such as DNA evidence, with such conduct resulting in a punishment one grade lower than an offense committed before four witnesses?

Yes: Society desires to punish the unlawful intercourse itself, and therefore it is sensible to punish in all cases where firm evidence supports conviction. By retaining the four witness requirement when imposing the harshest penalty, the code acts in the Islamic law tradition. The four witness requirement was meant to prevent undeserved punishment, at a time when there was no other means of ensuring a fair result after an accusation of unlawful intercourse. DNA testing is at least as accurate as the eyewitness account of four observers. As stated above, in cases where the intercourse creates a child, strict use of the four witness rule would lead to punishment for the woman but not the man. This is unfair, and the use of DNA testing could rectify the disparity.

No: There should not be an exception because the four witness rule is required by Islamic law. It would be unreasonable to depart from Islamic law to enforce it, especially in this circumstance when the state has only a slight secular interest in enforcing the law. Allowing someone to be punished for unlawful intercourse on the basis of DNA without satisfying the four witness requirement cannot be considered Islamic justice.

If the four witnesses requirement were not an integral part of the rule, it would make no sense to punish the offense at a lesser grading. An offense proved by other means is no less culpable nor any less deserving of punishment. No similar difference in grading exists anywhere in the Code, where a person is subject to more or less punishment depending on the means of proof. The four witnesses rule is an essential part of the statute.

* See footnote 12.

¹² This definition of lashes seeks to capture the practice of punishing huddud offenses by lashes as currently performed in the Maldives in accordance with Islamic law. The high level of detail indicates the vital importance of the practice remaining in this form in order to comply with international norms regarding the humane punishment of offenders.

arrest.

(b) Same-sex Sexual Contact. A person commits an offense if he engages in sexual contact with a person of the same sex.

[(c) Rebuttable Presumption. If a person is alone with another person of the opposite sex behind closed doors, the trier of fact shall presume, subject to rebuttal, that he is engaging in sexual contact with the other.]¹³

(d) Grading.

(1) Adulterous Sexual Contact and Unlawful Sexual Contact. The offense in Subsection (a) is:

(A) a Class 1 misdemeanor if the person is married and has sexual contact with a person not his spouse.

(B) a Class 2 misdemeanor if the person is unmarried and has sexual contact with a person married to another.

(C) a Class 3 misdemeanor if the person is unmarried and has sexual contact with an unmarried person.

[(2) Homosexual Sexual Contact. The offense in Subsection (b) is a Class 2 misdemeanor.]*

Section 413 – Incest

(a) Offense Defined. A person commits an offense if he willingly engages in sexual intercourse or sexual contact with a close relative.

(b) Grading.

(1) Aggravated Incest. The offense is a Class D felony if the person is a parent, grandparent, or great-grandparent of the close relative.

(2) Incest. Otherwise the offense is a Class E felony.

[(3) Additional Punishment Authorized. In addition to the punishment authorized under Chapter 90, an additional punishment of 19 lashes, as defined in Section 411(d)(2), is authorized for the offense.]*

(c) Sentencing Factor. If a person holds a position of special importance within a family, yet is not one of the persons mentioned in Section (b)(1), and abuses that position in order to commit an offense under this Section, then the baseline sentence shall be aggravated one level.

¹³ **Issue:** Should the rebuttable presumption that if a person is alone with another person of the opposite sex behind closed doors he is engaging in sexual contact with the other be changed to a separate offense of remaining behind closed doors with another person of the opposite sex?

Yes: A rebuttable presumption is insufficient; a separate but minor punishment should be retained in order to deter couples from being alone in a closed room in order to reflect the standard set by Islamic law.

No: The real harm the law is focused on is sexual contact. The rebuttable presumption uses the state of being alone with another as a mechanism of proof, rather than defining it as a state that is harmful in itself. Additionally, it would be illogical to retain a separate but lesser punishment just for being in a closed room with another, because it would be easy to punish this conduct but remain difficult to punish the much more serious conduct of unlawful sexual contact or intercourse.

Section 414 – Child Abandonment and Parental Duty of Care

- (a) Offense Defined. A person commits an offense if being a parent, guardian, or other person having physical custody or control of a child:
- (1) (A) he leaves the child under the age of 14 without supervision by a responsible person over the age of 14 for a period of 24 hours or more,
 - (B) under circumstances that unreasonably endanger the child’s physical health, safety, or welfare; or
 - (2) (A) he fails to take reasonable measures to prevent the commission of [any offense in Chapters 110, 120, or 130]¹⁴ against the child,
 - (B) knowing that such an offense is reasonably likely to occur; or
 - (3) he fails to register the child at the time of birth.

(b) Determination of Circumstances Unreasonably Endangering the Child’s Physical Health, Safety, or Welfare. For the purposes of determining whether circumstances endangering the child’s physical health, safety, or welfare, the trier of fact shall consider, among other factors:

- (1) the child’s age and development, and
- (2) whether the abandonment is attributable to economic hardship or illness, and
- (3) whether the actor made a good faith effort to provide for the child’s physical health, safety, and welfare.

¹⁴ **Issue:** Should the Code be altered so that the crimes from which a parent must prevent his child becoming a victim would include prostitution in addition to the offenses in Chapters 110 through 130, or altered to include all crimes?

Only Offenses Under Chapters 110 to 130: The Code should remain as it is, since parents should only be held responsible for failing to protect their children from killing, assault, and sexual assault because they are in charge of their children’s physical health and welfare. To extend liability any further would be placing too heavy a burden upon parents. Imposing a duty to prevent prostitution would be redundant in any case, since any person having intercourse with a child 14 years old or younger would be committing rape under Section 130, whether as a prostitute or not.

Imposing a duty to prevent a child from becoming a victim of any crime might expose parents to unending liability for failure to take measures to prevent such minor and hard-to-control crimes against their children as identity theft. It would be particularly inappropriate, for instance, to impose liability on parents for failing to prevent property crimes against their children, since most children have property, if at all, only by the grant of their parents. Imposing liability on parents only for allowing their children to be victimized in offenses under Chapters 110, 120, and 130 appropriately balances the duties of the parent with the possibility of opening them to unending criminal liability.

Prostitution Also: Parents should also be liable when their children are used as prostitutes, as prostitution is physically and morally damaging to the child and to the community. Adding prostitution to the list of offenses would allow for multiple charges relating to both Section 130 and Section 620 in the case of child exploitation and might further deter a parent from allowing a child to be prostituted.

All Crimes: All crimes against children should have the potential to lead to parental liability, because parents are responsible for protecting the health, safety, morals, and intellect of their children. Allowing the exploitation of one’s child in any manner is a serious lapse of parental duty.

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

Section 415 – Non-Support

(a) Offense Defined. A person commits an offense if, having the ability to provide support, he:

(1) fails to provide for the support of:

(A) his child who is less than 18 years old, or

(B) his parents who are:

(aa) over the age of 50, or

(bb) incapacitated, or

(C) his spouse who is incapacitated; and

(2) knows that:

(A) the family member is in need of such support; or

(B) (aa) a support payment is required under a court or administrative order of support, and

(bb) the required support payment:

(1) has been unpaid longer than 6 months, and

(2) is more than [1500 MVR] in arrears.

(b) Incapacitation. For the purpose of this Section, incapacitation means physically or mentally unable to support oneself by working.

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

Section 416 – Abortion

(a) Offense Defined. A person commits an offense if, after the first 120 days of the pregnancy:

(1) he purposely terminates the pregnancy of another person by means other than live birth, or

(2) she purposely terminates her own pregnancy by:

(A) using, or

(B) causing another person to use,

instruments, drugs or violence upon her for the purpose of terminating her pregnancy by means other than live birth.

(b) Exception for Mother at Risk. A person does not commit the offense in Subsection (a) if

(1) such person is:

(A) the mother, or

(B) a licensed medical professional; and

(2) a licensed medical professional has determined that the pregnancy is putting the mother's life at risk.

[(c) Exception for Pregnancy Resulting from Sexual Assault or Incest. It is not an offense under Subsection (a) to terminate a pregnancy if the pregnancy is the result of:

- (1) sexual assault, as defined by Section 131, or
(2) incest, as defined by Section 413.]¹⁵
(d) Grading. The offense is a Class 1 misdemeanor.

Section 417 – Definitions

- “Close relative” has the meaning given in Section 410(d)(2).
“Incompetent” has the meaning given in Section 27(d).
“Licensed medical professional” has the meaning given in Section 44(e)(2).
“Oral intercourse” has the meaning given in Section 411(d).
“Post-marital waiting period” has the meaning given in Section 410(d)(1).
“Sexual contact” has the meaning given in Section 132(b).
“Sexual intercourse” has the meaning given in Section 131(c).

¹⁵ **Issue:** Should Subsection (c), as the current text states, decriminalize abortion in the case of incest or sexual assault?

Yes: A fetus resulting from incest is more likely to suffer from congenital disorders. In the case of sexual assault, a woman should not be forced to undergo a pregnancy without her consent when she bears no responsibility for the pregnancy. Refusing to grant an exemption from criminal liability to a woman who has been raped will impose heavier burdens on her beyond the initial rape or incest. She will then be made responsible for caring for a child, who may or may not be genetically deformed. Society as a whole has a strong interest in promoting healthy births and healthy families.

The abortion law of Malaysia contains an exception for a medical practitioner who terminates a pregnancy if he “is of the opinion, formed in good faith, that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or injury to the mental or physical health of the pregnant woman, greater than if the pregnancy were terminated.” CRIMINAL LAWS OF MALAYSIA (2002), 118. The mental health exception in particular could cover the case of the woman whose pregnancy resulted from a traumatic rape.

No: Abortion should not be decriminalized in the case of incest or sexual assault because the abortion prohibition is designed to protect the fetus’ right to life, not the mother’s freedom of choice. In the case of sexual assault, the mother’s desire to terminate the pregnancy does not negate the fetus’ rights. In the case of incest, it would be cruel to abort the fetus on the basis of the supposition that it might suffer congenital disorders.

OFFENSES AGAINST PUBLIC ADMINISTRATION

CHAPTER 510. BRIBERY AND OFFICIAL MISCONDUCT OFFENSES

Section 510 – Bribery

Section 511 – Influencing Official Conduct

Section 512 – Official Misconduct

Section 513 – Misuse of Government Information or Authority to Obtain a Benefit

Section 514 – Unauthorized Disclosure of Confidential Information

Section 515 – Definitions

Section 510 – Bribery

(a) Accepting Bribe. A person commits an offense if:

- (1) being a public official or a candidate for public office;
- (2) he knowingly solicits, accepts, or agrees to accept for himself or another person;
- (3) a benefit not authorized by law in exchange for:
 - (A) influencing or agreeing to influence official authority, or
 - (B) exercising or omitting to exercise official authority.

(b) Offering Bribe. A person commits an offense if he:

- (1) knowingly offers or gives to a public official or a candidate for public office;
- (2) a benefit not lawfully authorized by law in exchange for:
 - (A) influencing or agreeing to influence official authority, or
 - (B) exercising or omitting to exercise official authority.

(c) Definition. “Official authority” means the performance or non-performance by a public official of a public duty or the use or non-use of state power by a public official to grant or deny a benefit to a person or group.

(d) Rebuttable Presumption. The trier of fact shall presume, subject to rebuttal, that any gift valued at more than 10,000 Rufiyaa given to a public official by a person with business under the influence of that official, or any person related to a person with such business, constitutes a benefit not authorized by law given in exchange for influencing or agreeing to influence, or exercising or omitting to exercise, official authority.

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

Section 511 – Influencing Official Conduct

(a) Offense Defined. A person commits an offense if, with the purpose of influencing the exercise of official authority by a person who is or will be a public official, he commits, or threatens to commit, an offense.

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

Section 512 – Official Misconduct

(a) Offense Defined. A person commits an offense if, being a public official acting in his official capacity, he knowingly:

- (1) fails to perform a mandatory duty as required by law, or
- (2) performs an act that is not lawfully authorized.

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

(c) Sentencing Factor. The baseline sentence provided in the Guideline Sentence Table of Section 1002 for any offense under this Section is aggravated one level if the official commits the offense in exchange for a benefit to himself or to a close relative or friend.

Section 513 – Misuse of Government Information or Authority to Obtain a Benefit

(a) Misuse of Confidential Information. A person commits an offense if he uses:

(1) confidential information to which he had access by virtue of his status as a public official,

(2) for the purpose of obtaining a benefit for himself or for another person to which he is not entitled.

(b) Misuse of Official Authority. A person commits an offense if he:

(1) uses or influences official authority in his capacity as a public official,

(2) for the purpose of obtaining a benefit for himself or for another person to which he is not entitled.

(c) Grading. The offenses are Class D felonies.

Section 514 – Unauthorized Disclosure of Confidential Information

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

(1) knowing that he is in violation of a duty imposed on him as a public official,

(2) he discloses confidential information that he has acquired as a public official.

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

Section 515 – Definitions

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

“Official authority” has the meaning specified in Section 510(c).

“Public official” has the meaning specified in Section 17.

CHAPTER 520. PERJURY AND OTHER OFFICIAL FALSIFICATION OFFENSES

Section 520 – Perjury

Section 521 – Unsworn Falsification to Authorities

Section 522 – False Reports to Law Enforcement

Section 523 – False Alarms to Agencies of Public Safety

Section 524 – Definitions

Section 520 – Perjury

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

(1) he makes a false statement;

(2) that he does not believe to be true:

(A) under oath or equivalent affirmation, or

(B) in swearing or affirming the truth of a statement

previously made; and

(3) the statement is made in an official proceeding.

(b) Defense for Retraction. A person does not commit an offense if:

(1) he retracts the falsification in the course of the proceeding in which it was made,

(2) before it became manifest that the falsification was or would be exposed, and

(3) before the falsification substantially affected the proceeding.

(c) Irregularities No Defense. It is not a defense to prosecution under this Section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not qualified to make the statement. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(d) Corroboration. A person does not commit an offense if proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

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

(f) Definitions. An “official proceeding” means a proceeding heard by or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or a deposition in connection with any such proceeding.

Section 521 – Unsworn Falsification to Authorities

(a) Written Falsification. A person commits an offense if:

(1) with the purpose of misleading a public official or law enforcement officer in performing his official function, or

(2) in an official proceeding,

(3) he:

(A) makes a written false statement that he does not believe to be true, or

(B) knowingly omits information necessary to prevent a written statement from being misleading.

(b) False Statements. A person commits an offense if:

(1) he makes a false statement,

(2) that he does not believe to be true, and

(3) that statement is intended to mislead a public official or law enforcement officer in performing his official function.

(c) Exception. A person does not commit an offense under Subsection (a) or (b) if the written falsification or false statement is not material.

(d) Definition. “Law enforcement officer” means a person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.

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

Section 522 – False Reports to Law Enforcement

(a) Falsely Incriminating Another. A person commits an offense if:

(1) he gives what he knows is false information to any law enforcement officer,

(2) with the purpose to implicate another in criminal activity.

(b) Fictitious Reports. A person commits on offense if he:

(1) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur, or

(2) pretends to furnish law enforcement authorities with such information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(c) Grading.

(1) Aggravated False Incrimination and False Incrimination. The offense in Subsection (a) is:

(A) a Class C felony if it causes a person to be convicted of a felony that is a grade of Class C or higher.

(B) Otherwise the offense in Subsection (a) is a Class E felony.

(2) The offense in Subsection (b) is a Class 1 misdemeanor.

Section 523 – False Alarms to Agencies of Public Safety

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

(1) knowingly causes a false alarm of fire or other emergency,

(2) to be transmitted to an organization dealing with emergencies involving danger to life or property.

(b) Grading. The offense is a Class 2 misdemeanor

Section 524 – Definitions

“Law enforcement officer” has the meaning given in Section 521(d).

“Official proceeding” has the meaning given in Section 520(f).

**CHAPTER 530. INTERFERENCE WITH GOVERNMENTAL OPERATIONS AND
ESCAPE**

Section 530 – Obstructing Justice

Section 531 – Failure to Report Vehicular Accident

Section 532 – Resisting or Obstructing a Law Enforcement Officer or Custodial Officer

Section 533 – Obstructing Administration of Law or Other Government Function

Section 534 – Obstructing Service of Process

Section 535 – Refusing to Aid an Officer

Section 536 – Concealing or Aiding a Fugitive

Section 537 – Escape; Failure to Report to a Correctional Institution or to Report for Periodic Imprisonment

Section 538 – Permitting Escape

Section 539 – Bringing or Allowing Contraband into a Correctional Institution; Possessing Contraband in a Correctional Institution

Section 540 – Intimidating, Improperly Influencing, or Retaliating Against a Public Official, Witness, or Voter

Section 541 – Failure to Appear

Section 542 – Definitions

Section 530 – Obstructing Justice

(a) Offense Defined. A person commits an offense if, with the purpose of preventing the apprehension of or to obstruct the prosecution or defense of a person, he knowingly:

(1) warns that person of impending discovery or apprehension, except that this Subsection does not prohibit giving a warning to bring another into compliance with law; or

(2) destroys, alters, conceals, or disguises physical evidence, plants false evidence, furnishes false information, regardless of its admissibility in evidence; or

(3) induces a witness having knowledge material to the subject at issue to leave the State or to conceal himself; or

(4) deters a witness from testifying freely, fully, or truthfully; or

(5) possessing knowledge material to the subject at issue, he leaves the State or conceals himself.

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

Section 531 – Failure to Report Vehicular Accident

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

(1) having been involved in a vehicular accident on land or sea,

(2) he fails to report the accident to the appropriate authorities.

(b) Grading.

(1) Aggravated Failure to Report. The offense is a Class 1 misdemeanor if someone sustained serious bodily injury in the accident.

(2) Failure to Report. Otherwise the offense is a Class 2 misdemeanor.

Section 532 – Resisting or Obstructing a Law Enforcement Officer or Custodial Officer

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

(1) he knowingly resists, obstructs, or interferes with the performance of an authorized act within the official capacity of a person,
(2) whom he knows to be a law enforcement officer or custodial officer.

(b) Definition. “Custodial officer” means:

(1) a person employed to supervise and control inmates incarcerated in, or in the custody of, a correctional institution, or

(2) a person employed to supervise and control persons who have been civilly committed or are being detained awaiting civil commitment.

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

Section 533 – Obstructing Administration of Law or Other Government Function

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

(1) knowingly obstructs, impairs, or perverts the administration of law or other governmental function by

(2) (A) physical interference or obstacle, breach of official duty, or any unlawful act; or

(B) failing to report income, revenue, or other information for which reporting is required by law to revenue officers or other public officials who collect taxes; or

(C) failing to pay taxes or duties owed.

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

Section 534 – Obstructing Service of Process

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

(1) he knowingly resists or obstructs

(2) the authorized service or execution of a civil or criminal process or order of a court.

(b) Grading. The offense is a Class 2 misdemeanor.

Section 535 – Refusing to Aid an Officer

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

- (1) when requested to provide aid by a person known by him to be a law enforcement officer,
- (2) he knowingly fails to provide reasonable aid to the officer in:
 - (A) apprehending a person whom the officer is authorized to apprehend, or
 - (B) preventing the commission of an offense by another.
- (b) Grading. The offense is a Class 3 misdemeanor.

Section 536 – Concealing or Aiding a Fugitive

- (a) Offense Defined. A person commits an offense if:
 - (1) with the purpose of preventing the apprehension of an offender,
 - (2) he harbors, aids, or conceals the offender,
 - (3) unless he stands in the relation of husband, wife, parent, child, brother, or sister to the offender.
- (b) Grading.
 - (1) Concealing or Aiding a Felon. The offense is a Class E felony if the offender is charged with a felony.
 - (2) Concealing or Aiding a Fugitive. Otherwise the offense is a Class 1 misdemeanor.

Section 537 – Escape; Failure to Report to a Correctional Institution or to Report for Periodic Imprisonment

- (a) Offense Defined. A person commits an offense if:
 - (1) he is:
 - (A) in penal custody pursuant to a conviction or charge for an offense, or
 - (B) in the lawful penal custody of a law enforcement officer,or
 - (C) civilly committed or detained awaiting civil commitment,and
 - (2) he knowingly:
 - (A) escapes from the place of detention or from the penal custody of an employee of that institution, or
 - (B) fails to report to the place of detention or to report for periodic detention at the time required, or
 - (C) fails to return from furlough or from work or day release,or
 - (D) fails to abide by the terms of home confinement or probation.
- (b) Definition.
 - (1) “Penal custody” means lawful custody of the State, including:
 - (A) pretrial incarceration or detention following arrest, or

- (B) incarceration or detention under a sentence or commitment to a State correctional institution, or
- (C) parole or mandatory supervised release, or
- (D) home detention, or
- (E) probation.

(2) “Correctional institution” means an institution or place for the incarceration or custody of persons

- (A) serving a sentence for a criminal offense, or
- (B) awaiting trial or sentence for an offense, or
- (C) under arrest for
 - (aa) an offense, or
 - (bb) a violation of probation, or
 - (cc) a violation of parole, or
 - (dd) a violation of mandatory supervised release, or
- (D) awaiting a bail setting hearing or preliminary hearing.

(c) Grading.

(1) Escape. The offense in Subsection (a)(2)(A) is a Class D felony.

(2) Failure to Report: First Degree. The offenses in Subsections (a)(2)(B) through (D) are a Class E felonies if the underlying offense is a felony.

(3) Failure to Report: Second Degree. Otherwise the offense is a Class 1 misdemeanor.

Section 538 – Permitting Escape

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

- (1) he causes or facilitates a prisoner to escape, or
- (2) being a correctional employee, he permits a prisoner in his custody to escape.

(b) Definition. “Correctional employee” means

(1) an elected or appointed officer, trustee, or employee of a correctional institution or of the governing authority of the correctional institution, or

(2) a person who performs services for the correctional institution pursuant to contract with the correctional institution or its governing authority, including a person employed to supervise and control inmates incarcerated in, or in the custody of, a correctional institution.

(c) Grading.

(1) Permitting Escape by a Felon. If the offense upon which detention is based is a felony, the offense is a Class 1 misdemeanor.

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

Section 539 – Bringing or Allowing Contraband into a Correctional Institution; Possessing Contraband in a Correctional Institution

(a) Offense Defined. A person commits an offense if, without authority, he knowingly:

- (1) brings an item of contraband into a correctional institution, or
- (2) places an item of contraband in such proximity to a correctional institution as to give an inmate access to, or
- (3) possesses an item of contraband in a correctional institution.

(b) Definition. “Item of contraband” is an item in or being brought into a correctional institution that is:

- (1) a firearm, stun gun, or taser; or
- (2) firearm ammunition, meaning any self-contained cartridge or shotgun shell that is designed to be used or adaptable to use in a firearm; or
- (3) a catastrophic agent; or
- (4) a controlled drug, having the meaning given in Section 720(c)(1);

or

- (5) any instrument adapted such as to allow a person to use controlled substances; or
- (6) a dangerous weapon, or any other instrument that could be adapted to be used as a dangerous weapon; or
- (7) a tool to defeat security mechanisms, including a handcuff or security restraint key, tool designed to pick locks, or a device or instrument capable of unlocking handcuff or security restraints, doors to cells, rooms, gates, or other areas of the correctional institution; or
- (8) a cutting tool, including a hacksaw blade, wire cutter, or device, instrument or file capable of cutting through metal; or
- (9) electronic equipment defined by correctional authorities as contraband, including any electronic, video recording device, computer, or cellular communications equipment, including cellular telephones, cellular telephone batteries, videotape recorders, pagers, computers, and computer peripheral equipment; or
- (10) alcoholic beverages; or
- (11) any other item expressly prohibited from a correctional institution by law or by order of correctional authorities.

(c) Grading.

- (1) (A) Dangerous Contraband. The offense is a Class D felony for contraband in Subsections (b)(1)-(3).
(B) Aggravated Contraband. The offense is a Class E felony for contraband in Subsections (b)(4)-(10).
(C) Contraband. Otherwise the offense is a Class 1 misdemeanor.
- (2) Aggravation by a Correctional Employee. The offense is one

grade higher than it otherwise would be if the offense is committed by a correctional employee.

Section 540 – Intimidating, Improperly Influencing, or Retaliating Against a Witness, Voter, or Other Person Performing a Public Duty

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

(1) with the purpose of:

(A) deterring a party or witness from testifying freely, fully, or truthfully in a legal proceeding; or

(B) annoying, harassing, influencing, intimidating, or victimizing a witness, voter, or other person because of that person's past, present, or potential future testimony, vote, or other act or omission related to his performance of a public duty;

(2) he:

(A) commits, or threatens to commit, an offense likely to cause serious bodily injury, unlawful restraint, or substantial property damage to another; or

(B) commits or threatens any other offense; or

(C) offers or gives a benefit not authorized by law; or

(D) communicates, directly or indirectly, with such other person in a manner prohibited by law.

(b) Grading.

(1) Felonious Interference. The offenses in Subsections (a)(2)(A) through (2)(C) are Class E felonies.

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

Section 541 – Failure to Appear

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

(1) having been admitted to bail for appearance before a court or released on personal recognizance,

(A) fails to appear on the date directed, or

(B) violates a condition of release; or

(2) having been required by a court to appear or to produce a document or other materials as a defendant or witness in a criminal case, he fails to comply with the order.

(b) Grading. The offense is one grade lower than the grade of the underlying offense, but not higher than a Class 2 misdemeanor.

Section 542 – Definitions

“Bodily injury” has the meaning given in Section 17.

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

“Correctional employee” has the meaning given in Section 538(b).

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- “Correctional institution” has the meaning given in Section 537(b)(2).
- “Custodial officer” has the meaning given in Section 532(b).
- “Dangerous weapon” has the meaning given in Section 120(d)(1).
- “Firearm” has the meaning given in Section 710(d)(4).
- “Item of contraband” has the meaning given in Section 539(b).
- “Law enforcement officer” has the meaning given in Section 521(d).
- “Penal custody” has the meaning given in Section 537(b)(1).
- “Property” has the meaning given in Section 17.

OFFENSES AGAINST PUBLIC ORDER, SAFETY, AND DECENCY

CHAPTER 610. PUBLIC ORDER AND SAFETY OFFENSES

Section 610 – Rioting; Forceful Overthrow of the Government

Section 611 – Recruiting Mercenaries

Section 612 – False Accusation of Unlawful Sexual Intercourse

Section 613 – Operating a Regulated Business or Importing Without License

Section 614 – Entering the Exclusive Economic Zone

Section 615 – Disorderly Conduct

Section 616 – Failing to Fast During Ramadan; Consuming Pork or Alcohol

Section 617 – Criticizing Islam

Section 618 – Duty to Aid

Section 619 – Definitions

Section 610 – Rioting; Forceful Overthrow of the Government

(a) Offense Defined. A person commits an offense if he incites, aides, or engages in rioting or a violent attempt to overthrow the government.

(b) Exception. A person does not commit an offense by participating in a peaceful assembly.

(c) Grading.

(1) Inciting Insurrection. The offense is a Class B felony if the person incites or gives commands, instructions, or directions to five or more people in furtherance of a violent attempt to overthrow the government.

(2) Inciting a Riot. The offense is a Class C felony if the person incites or gives commands, instructions, or directions to:

(A) five or more people in furtherance of a riot, or

(B) military personnel of the armed forces of the Maldives.

(3) Participating in an Insurrection. The offense is a Class D felony if the person engages in a violent attempt to overthrow the government.

(4) Participating in a Riot. Otherwise the offense is a Class E felony.

(d) Sentencing Factors.

(1) If a person commits the conduct defined in Subsections (c)(1) and (c)(2), and the person is a primary leader in the incitement of a riot or an insurrection, then the baseline sentence for the offense shall be aggravated by one level.

(2) If a person commits an offense under this Section in furtherance of a riot or insurrection that, prior to arriving at the scene of the riot or insurrection, a person knew or believed would occur, then the baseline sentence for the offense shall be aggravated by one level.

Section 611 – Recruitment of Mercenaries

(a) Offense Defined. A person commits an offense if he recruits, uses, finances, or trains mercenaries.

(b) Definition. A “mercenary” means a person who:

(1) is specially recruited to fight in an armed conflict or attempted overthrow of a government, or to otherwise undermine the constitutional order of a government, and

(2) is motivated by private gain to take part in hostilities and is promised material compensation in excess of that promised to organized military combatants of similar rank and functions, and

(3) is neither a national of a party to the conflict nor a resident of the territory controlled by a party to the conflict, and

(4) (A) is not a member of the armed forces of a party to the conflict, or

(B) has been sent by a State that is not a party to the conflict.

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

Section 612 – [False Accusation of Unlawful Sexual Intercourse

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

(1) makes or repeats what he knows is a false statement about another person representing it to be true, and

(2) the statement makes an accusation that the person is committing or has committed the offense in Section 411 (Unlawful Sexual Intercourse).

(b) Grading.

(1) The offense is a Class D felony.

[(2) Additional Punishment Authorized. In addition to the punishment authorized under Chapter 90, an additional punishment of 80 lashes, as defined in Section 411(d)(2), is authorized for the offense.]*¹⁶

* See footnote 12.

¹⁶ **Issue:** Should the Code be changed to impose criminal liability for all forms of defamation, not just false accusation of unlawful sexual intercourse?

Yes: Criminalizing defamation is a better way of addressing the societal harm caused by the offense because it will allow the state to initiate prosecutions. Defamation is a publicly performed offense. The offender’s lies often reach a whole society. The offense poisons the national discourse and obscures the truth, in a way that makes victims of all people. Only by allowing the state to pursue defamation charges can we ensure that the offense will be vigorously punished, not simply by those with the resources and knowledge to pursue their claims in civil court.

No: Allowing individuals to pursue compensation for defamation through civil law adequately redresses the social harms caused by the crime. In addition, abolishing the crime of defamation will result in greater consistency in that all offenders will have to pay fines, whereas allowing for both criminal prosecution and civil claims will result in some offenders receiving punishment, some offenders receive fines, and some receive both. Moreover, a civil remedy places fewer limits on free speech, which is also of societal interest. Placing the discretion to bring criminal charges in the government often has allowed governments in other nations to punish only unpopular defamatory speech or defamatory speech opposing

Section 613 – Operating a Regulated Business or Importing Without License

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

(1) without a license or other required permission from the relevant authorities,

(2) he operates a business, or imports items, regulated by law.

(b) Grading.

(1) Importing Dangerous Materials. The offense is a Class E felony if the person imports a firearm, catastrophic agent, or controlled drug.

(2) Dealing in Alcohol. The offense is a Class 1 misdemeanor if the business or importation involves the manufacture, sale, or distribution of alcohol.

(3) Unlicensed Business. Otherwise, the offense is a Class 2 misdemeanor.

Section 614 – Entering the Exclusive Economic Zone

(a) Offense Defined. A person commits an offense if he enters the Exclusive Economic Zone of the Maldives without license or authority.

(b) Grading.

(1) Unlicensed Fishing in the EEZ. The offense is a Class 1 misdemeanor if the person commits the offense for the purpose of fishing without license or authority.

(2) Unlicensed Presence in the EEZ. Otherwise the offense is a Class 2 misdemeanor.

(c) Definition. The “Exclusive Economic Zone of the Maldives” is the maritime zone beyond and adjacent to the territorial sea up to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, within which the Maldives may regulate nonliving, living, and economic resources, as well as maritime scientific research and pollution control.

Section 615 – Disorderly Conduct

(a) Offense Defined. A person commits an offense if, knowing his conduct will harass, annoy, or alarm another person in public, he:

(1) engages in fighting, or in violent or threatening behavior, or

(2) makes unreasonable noise, or

(3) uses abusive or obscene language, or makes an obscene gesture,

or

(4) persistently follows a person in or about a public place or places,

or

(5) solicits sexual contact, or

the government. Last, police and prosecutorial resources should not be stretched in prosecuting what a harmed individual might better pursue on his own in civil court.

- (6) creates a hazardous, physically offensive, or seriously alarming condition by an act that serves no legitimate purpose.
- (b) Grading. The offense is a Class 3 misdemeanor.

Section 616 – Failing to Fast During Ramadan; Consuming Pork or Alcohol

- (a) Offense Defined. A person commits an offense if,
 - (1) being a Muslim:
 - (A) he publicly does not fast or gives up fasting during the month of Ramadan without an acceptable medical or health-related reason, or
 - (B) he consumes:
 - (aa) pork or pork products, or
 - (bb) alcohol; or
 - (2) he otherwise publicly consumes away from a place licensed to sell the restricted materials:
 - (A) pork or pork products, or
 - (B) alcohol.
- (b) Grading.
 - (1) The offense is a Class 3 misdemeanor.
 - [(2) Additional Punishment Authorized. In addition to the punishment authorized under Chapter 90, an additional punishment of 40 lashes, as defined in Section 411(d)(2) is authorized for the offense in Subsection (a)(2)(B).]*

Section 617 – Criticizing Islam

- (a) Offense Defined. A person commits an offense if, with the purpose to insult Islam, he:
 - (1) engages in religious oration in public or in a public medium; or
 - (2) produces, sells, distributes, or offers material;that is critical of the fundamentals of Islam as set out in the Constitution.
- (b) Exception. A person does not commit the offense if the conduct is performed on behalf of the government or a scholarly institution, or by an individual, for scientific or religious study.
- (c) Grading. The offense is a violation.

Section 618 – Duty to Aid

- (a) Offense Defined. A person commits an offense if:
 - (1) he unreasonably fails to:
 - (A) give warning of a known risk to a person in danger, or
 - (B) render assistance to a person in need; and
 - (2) he could give warning or render assistance

* See footnote 12.

(A) with no more than minimal risk of physical harm to himself or any other person, and

(B) without forgoing a superior duty imposed on him by law or contract.

(b) A Person in Danger; A Person in Need.

(1) For the purposes of this statute, a person in danger is any person imminently threatened with:

(A) bodily harm from illness or injury, or

(B) a violent offense.

(2) For the purposes of this statute, a person in need is any person in danger or any person who:

(A) is currently suffering bodily harm from illness or injury,
or

(B) is, or recently has been, a victim of a violent offense.

(c) Immunity From Civil Damages. A person rendering aid or giving warning under this Section shall be entitled to immunity from damages arising out of his actions, provided that the person acts in good faith and not in a manner inconsistent with any professional duties of care or standards of competence.

(d) Rebuttable Presumption. The trier of fact shall presume, subject to rebuttal, that the person has unreasonably failed to render assistance to a person in need if he:

(1) knows of a working telephone or radio within his access or control, and

(2) has no reason to believe that medical or law enforcement agencies have already been called to the aid of a person in need, and

(3) fails to alert medical or law enforcement agencies of the emergency.

(e) Grading. The offense is a Class 3 misdemeanor.

Section 619 – Definitions

“Controlled drug” has the meaning given in Section 720(d)(1).

“Exclusive Economic Zone of the Maldives” has the meaning given in Section 614(c).

“Mercenary” has the meaning given in Section 611(b).

“Sexual contact” has the meaning given in Section 132(b).

CHAPTER 620. PUBLIC INDECENCY OFFENSES

Section 620 – Prostitution

Section 621 – Promoting or Supporting Prostitution

Section 622 – Producing or Distributing Obscene Material

Section 623 – Abuse of Corpse

Section 624 – Sale of Human Body Parts

Section 625 – Cruelty to Animals

Section 626 – Definitions

Section 620 – Prostitution

(a) Offense Defined. A person commits an offense if he performs an act of sexual intercourse or sexual contact with a person not his spouse in exchange for anything of value.

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

Section 621 – Promoting or Supporting Prostitution

(a) Offense Defined. A person commits an offense if, to obtain anything of value, he:

(1) compels a person to engage in an act or acts of prostitution; or

(2) encourages, arranges, or otherwise facilitates an act or acts of prostitution; or

(3) allows the use of a place, over which he exercises control, for an act or acts of prostitution.

(b) Grading.

(1) Promoting Child Prostitution. The offense is a Class C felony if the prostitution being promoted or supported is that of a minor.

(2) Promoting Prostitution. Otherwise the offense is a Class D felony.

Section 622 – Producing or Distributing Obscene Material

(a) Offense Defined. A person commits an offense if, with knowledge of its obscene nature or content, he:

(1) sells, delivers, or provides one or more obscene writings, pictures, records, or other representations or embodiments of the obscene; or

(2) presents or directs an obscene play, dance, or other performance; or

(3) publishes, exhibits, or otherwise makes available anything obscene; or

(4) performs an obscene act or otherwise presents an obscene exhibition of his body for gain; or

(5) advertises or otherwise promotes the sale of material represented or held out by him to be obscene; or

(6) creates, buys, procures, or possesses obscene matter or material with the purpose of distributing it in violation of this Section; or

(7) views obscene material with the purpose of gaining sexual pleasure.

(b) Exception. A person does not commit an offense under Subsections (a)(1) through (a)(6) if the distribution is only to an institution or an individual having scientific or other special justification for possession of such material.

(c) Rebuttable Presumption. The trier of fact shall presume, subject to rebuttal, a purpose to distribute from the creation, purchase, procurement, or possession of a mold, engraved plate, or other embodiment of obscenity specially adapted for reproducing multiple copies.

(d) Definition. Material or a performance is “obscene” if the average person, applying the contemporary adult community standards of the Maldives, would find that:

(1) taken as a whole, the material or performance appeals to a prurient interest, and

(2) depicts or describes sexual acts in a patently offensive way.

(e) Grading.

(1) Promoting Obscenity. The offenses in Subsections (a)(1) through (a)(6) are Class 1 misdemeanors.

(2) Consuming Obscenity. Otherwise the offense is a Class 3 misdemeanor.

(3) Aggravation for Child Pornography. The offense is one grade higher than it otherwise would be if the obscene material or performance is of a person who:

(A) is a minor, or

(B) cannot comprehend the nature of his acts because he is incompetent.

Section 623 – Abuse of Corpse

(a) Offense Defined. A person commits an offense if, except as authorized by law, he treats a corpse in a way that he knows would outrage ordinary family sensibilities.

(b) Grading. The offense is a Class 2 misdemeanor.

Section 624 – Sale of Human Body Parts

(a) Offense Defined. A person commits an offense if he knowingly buys or sells a part of a human body.

(b) Exceptions. A person does not commit the offense if he gives or receives compensation for a human body part that is only:

- (1) reimbursement of actual expenses incurred in donating a body part or fluid for medical or scientific use; or
 - (2) a payment provided under a plan of insurance or other health care coverage; or
 - (3) reimbursement of reasonable costs associated with the removal, storage, or transportation of a human body part or fluid for scientific purposes; or
 - (4) purchase or sale of drugs, reagents, or other substances made from human body parts, for use in medical or scientific research, treatment, or diagnosis.
- (c) Grading. The offense is a Class 1 misdemeanor.

Section 625 – Cruelty to Animals

- (a) Offense Defined. A person commits an offense if he negligently:
- (1) cruelly mistreats an animal, or
 - (2) neglects an animal in his custody.
- (b) Exception. A person does not commit an offense if he is acting in accordance with accepted veterinary practices or with accepted procedures for carrying on scientific research.
- (c) Grading. The offense is a Class 3 misdemeanor.

Section 626 – Definitions

- “Obscene” has the meaning given in Section 622(d).
“Sexual contact” has the meaning given in Section 132(b).
“Sexual intercourse” has the meaning given in Section 131(c).

CRIME CONTROL OFFENSES

CHAPTER 710. WEAPONS OFFENSES

Section 710 – Use of a Dangerous Weapon During an Offense

Section 711 – Trafficking, Manufacture, Sale, or Possession of Firearms or
Catastrophic Agents

Section 712 – Definitions

Section 710 – Use of a Dangerous Weapon During an Offense

(a) Offense Defined. A person commits an offense if he uses or displays a dangerous weapon in the course of committing an offense.

(b) Grading.

(1) If the person discharges a firearm, the offense is a Class C felony.

(2) Otherwise the offense is a Class D felony.

(c) Aggravation for Semiautomatic and Automatic Firearms. The offense is one grade higher than it otherwise would be if the person uses a semiautomatic or an automatic firearm.

(d) Definitions.

(1) “Automatic firearm” means a firearm that has an automatic loading action that will fire continuously while the trigger is depressed.

(2) “Automatic loading action” means a mechanism by which ammunition is automatically entered into the firing chamber of a firearm without human assistance.

(3) “Dangerous weapon”

(A) has the meaning given in Section 120(c)(1), and

(B) includes any firearm; any device that expels a projectile, including any pneumatic gun, spring gun, paint ball gun, or BB gun; any stun gun or taser; any sharp-edged or sharply pointed knife or razor blade; any axe or hatchet; and any billy, blackjack, bludgeon, or metal knuckles.

(4) “Firearm” means a device that is designed to expel a projectile by the action of an explosion, expansion of gas, or escape of gas that produces a muzzle velocity in excess of 250 meters per second or produces at least 60 foot-pounds of energy.

(5) “Semiautomatic firearm” means a firearm with automatic loading action but which only fires once per trigger pull.

(e) Sentencing Factor. The baseline sentence provided in the Guideline Sentence Table of Section 1002 for any offense under this Section is aggravated one level if a person commits the offense after dusk and before dawn.

Section 711 – Trafficking, Manufacture, Sale, or Possession of Catastrophic Agents or Firearms

(a) Offense Defined. A person commits an offense if, without license or express approval of the government, he knowingly:

- (1) traffics, manufactures, possesses, sells, or transfers a catastrophic agent to another; or
- (2) traffics or manufactures a firearm; or
- (3) sells or transfers a firearm to another; or
- (4) possesses a firearm.

(b) Rebuttable Presumptions. The trier of fact shall presume, subject to rebuttal, that a person who possesses more than:

- (1) 25 firearms satisfies the requirements of Subsection (a)(2).
- (2) 5 firearms satisfies the requirements of Subsection (a)(3).

(c) Grading. In addition to the offense in Section 613 (Operating a Regulated Business or Importing Without a License), if applicable,

- (1) the offenses in Subsection (a)(1) and Subsection (a)(2) are Class D felonies.
- (2) the offense in Subsection (a)(3) is a Class E felony.
- (3) otherwise the offense is a Class 1 misdemeanor.

(d) Aggravating Factors. If the offense involves a semiautomatic or automatic firearm, the offense is one grade higher than it otherwise would be.

Section 712 – Definitions

- “Automatic firearm” has the meaning given in Section 710(d)(1).
- “Automatic loading action” has the meaning given in Section 710(d)(2).
- “Catastrophic agent” has the meaning given in Section 121(c)(1).
- “Dangerous weapon” has the meaning given in Section 120(c)(1).
- “Firearm” has the meaning given in Section 710(d)(4).
- “Semiautomatic firearm” has the meaning given in Section 710(d)(5).

CHAPTER 720. DRUG OFFENSES

Section 720 – Drug Trafficking

Section 721 – Drug Sale

Section 722 – Drug Use

Section 723 – Drug Possession

Section 724 – Sale and Use of Other Harmful Substances

Section 725 – General Provisions Relating to Drug Offenses

Section 726 – Definitions

Section 720 – Drug Trafficking

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

- (1) sells a controlled drug for resale, or
- (2) possesses a controlled drug with the purpose of selling it for resale, or
- (3) manufactures a controlled drug without a license, or
- (4) improperly prescribes a controlled drug.

(b) Rebuttable Presumption. A purpose of selling a controlled drug for resale shall be presumed, subject to rebuttal, if a person possesses or sells to another more than [50] doses of a controlled drug.

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

(d) Definitions.

(1) A “controlled drug” is a drug that is listed on [the Maldives classified drug list].

(2) “Improperly prescribes” means prescribing or overprescribing a drug for the purpose of recreation or other non-medical reasons.

Section 721 – Drug Sale

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

- (1) agrees to transfer a controlled drug to another person in exchange for something of value, or
- (2) possesses a controlled drug with the purpose of selling it.

(b) Rebuttable Presumption. A purpose of selling a controlled drug shall be presumed, subject to rebuttal, if a person possesses more than [20] doses of a controlled drug.

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

Section 722 – Drug Use

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

- (1) uses a controlled drug for his own or another’s intoxication, or
- (2) possesses a controlled drug with the purpose of using it.

(b) Rebuttable Presumption. A purpose of using a controlled drug shall be

presumed, subject to rebuttal, if a person possesses more than [5] doses of a controlled drug.

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

Section 723 – Drug Possession

(a) Offense Defined. A person commits an offense if he knowingly possesses at least 1 dose of a controlled drug.

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

Section 724 – Sale and Use of Other Harmful Substances

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

(1) sells a solvent or an alcohol-based product with the knowledge that the purchaser will use the product for its intoxicating effect, or

(2) inhales a solvent, or

(3) consumes an alcohol-based product.

(b) Exception for Lawful License. A person does not commit an offense under Subsection (a)(1) if he is licensed to engage in the conduct and does so by the terms of that license.

(c) Exception for Medicine. A person does not commit an offense under Subsection (a)(3) if the alcohol-based product consumed is a medicine, and the amount consumed does not exceed the medically recommended dosage.

(d) Definitions.

(1) An “alcohol-based product” includes those substances that have a legal use but have an alcohol content above 20 percent, or have any alcohol content and are known to be used as intoxicating agents. Alcohol-based products include, but are not limited to, cologne, cola water, mouthwash, and cough syrup.

(2) A “solvent” means a product that has a legal use but is known to be inhaled for its intoxicating effect. Solvents include, but are not limited to, glue, Dunlop, lighter fluid, and gasoline.

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

Section 725 – General Provisions Relating to Drug Offenses

(a) Exception. A person does not commit an offense under this Chapter if he acts pursuant to explicit authorization by the government or as a licensed medical professional in keeping with common medical or pharmaceutical practice.

(b) Possession. A person possesses a controlled drug, within the meaning of this Chapter, at any time that he exercises substantial control over the disposition of the drug, including during the course of purchasing, manufacturing, growing, harvesting, importing, exporting, or holding the drug on his person or in his personal effects.

(c) Dose. The quantity of a particular controlled drug that constitutes a

dose is determined according the [Maldives classified drug list]. A person who commits an offense under this Chapter should be charged with a single offense that accounts for all the doses of any drug used in the conduct associated with that offense. The same quantity of drugs should not be grounds for multiple offenses under this Chapter, nor should a larger quantity of drugs be grounds for multiple redundant or lesser included charges.

(d) Aggravation for Dangerous Drug. If the offense involves a dangerous drug, the offense is one grade higher than it would otherwise be, provided that the elements of the offense are established as to the quantity of that dangerous drug.

(e) Definition. A “dangerous drug” is a drug classified as dangerous by [the Maldives classified drug list].

Section 726 – Definitions

“Alcohol-based product” has the meaning given in Section 724(d)(1).

“Controlled drug” has the meaning given in Section 720(d)(1).

“Dangerous drug” has the meaning given in Section 725(e).

“Improperly prescribes” has the meaning given in Section 720(d)(2).

“Licensed medical professional” has the meaning given in Section 44(e)(2).

“Solvent” has the meaning given in Section 724(d)(2).

CHAPTER 730. TERRORISM AND ORGANIZED CRIME

Section 730 – Participating in a Criminal Organization

Section 731 – Laundering of Monetary Instruments

Section 732 – Definitions

Section 730 – Participating in a Criminal Organization

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

- (1) participates in the operation of a criminal organization, or
- (2) recruits a person to participate in the operation of a criminal organization, or
- (3) provides financial or material support to a criminal organization, or
- (4) uses or invests the proceeds from the activities of a criminal organization, or
- (5) directs or controls the activity of a criminal organization in any way.

(b) Definitions.

- (1) A “criminal organization” means a:
 - (A) body that has a membership acting or united for a common purpose and has:
 - (aa) through its members or other associates, committed two or more acts involving violence, catastrophe, or a threat of either as part of an ongoing plan or purpose, or
 - (bb) through its members or other associates, committed two or more acts constituting drug trafficking or sale as defined in Sections 720 (Drug Trafficking) and 721 (Drug Sale), or
 - (cc) publicly announced or acknowledged that its plan or purpose includes the commission or threat of such offenses; or
 - (B) group designated as a criminal or terrorist organization by the United Nations.
 - (2) “Material support” means financial services, lodging, training, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, transportation, or any other physical assets, except medicine or religious materials.
- (c) Grading.
- (1) If the person knows that the organization is a criminal organization, then:
 - (A) the offense in Subsection (a)(5) is a Class B felony, and
 - (B) the offenses in Subsections (a)(1) through (a)(4) are Class

C felonies.

(2) If the person is reckless as to the criminal nature of the organization, then the offense in Subsection (a)(5) is a Class C felony.

(3) Otherwise the offense is a Class D felony.

Section 731 – Laundering of Monetary Instruments

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

(1) he conducts a financial transaction involving what he knows to be the proceeds of unlawful activity, and

(2) the transaction is designed in whole or in part to:

(A) promote the commission of unlawful activity;

(B) conceal the nature, location, source, ownership, or control of the proceeds of unlawful activity; or

(C) avoid a statutory transaction reporting requirement.

(b) Definitions.

(1) “Financial transaction” means a transaction that involves:

(A) the movement of funds by wire or other means, or

(B) the creation or transfer of a monetary instrument, or

(C) the transfer of title to any property.

(2) “Monetary instrument” means:

(A) coin or currency of the Maldives or of any other country, travelers’ checks, personal checks, bank checks, and money orders;
or

(B) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery.

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

Section 732 – Definitions

“Criminal organization” has the meaning given in Section 730(b)(1).

“Financial transaction” has the meaning given in Section 731(b)(1).

“Material support” has the meaning given in Section 730(b)(2).

“Monetary instrument” has the meaning given in Section 731(b)(2).

PART III: SENTENCING GUIDELINES

CHAPTER 1000. APPLICATION OF THE SENTENCING GUIDELINES

- Section 1000 – Determination and Announcement of Guideline Sentence Required
- Section 1001 – Guideline Sentence
- Section 1002 – Guideline Sentence Table
- Section 1003 – Guideline Sentence Need Not Be Imposed, But Departure Must Be Explained
- Section 1004 – Amount of Punishment Called for in Guideline Sentence Table May Be Imposed Through Any Authorized Punishment Method
- Section 1005 – Punishment Method Equivalency Table
- Section 1006 – Sentencing for Multiple Offenses
- Section 1007 – Equitable Powers of the Sentencing Court

Section 1000 – Determination and Announcement of Guideline Sentence Required

Before imposing sentence, the court shall determine the guideline sentence as provided in this Part and all other relevant provisions of this Code, and shall include the guideline sentence in the public record of the case along with an explanation of how it determined the guideline sentence. Sentencing court calculations in determining the guideline sentence shall regularly be reviewed for accuracy by the High Court.

Section 1001 – Guideline Sentence

Using the Guideline Sentence Table in Section 1002, the court shall determine the guideline sentence as follows:

(a) **Offense Grade Determines Table Column.** From Parts I and II of this Code, the sentencing court shall determine the grade of the offense of conviction and shall refer to the column of the Guideline Sentence Table that matches that grade.

(b) **Sentencing Factors Determine Table Row.** The sentencing court then shall determine the sentencing factors that are applicable to the case by:

(1) consulting any existing Sentencing Factors subsection of the offense of conviction in Parts I and II of this Code, and

(2) then consulting any relevant General Adjustment to Sentence in Chapter 1100, provided that those general sentencing factors are not already comprehensively addressed by the more specific Sentencing Factors subsection consulted in (1) above,

(3) then determining which of these sentencing factors, if any, have been established by clear and convincing evidence by the party seeking to benefit from the factor, and

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(4) for all factors so established, adding the aggravation "plus" values together and subtracting the mitigation "minus" values to determine the total sentencing factors adjustment.

(5) The resulting net sentencing factors adjustment determines the row of the Guideline Sentence Table that is applicable.

(c) Intersection of Column and Row Determines Guideline Cell. Referring to that column of the Table that matches the offense grade and to the row of the Table that matches the total sentencing factor adjustment, the sentence given in this resulting Table cell is the guideline sentence for the offense.

Section 1002 – Guideline Sentence Table

(a) The court shall determine the guideline sentence according to the instructions in Section 1003 and this Table.

	Felony A	Felony B	Felony C	Felony D	Felony E	M1	M2	M3
Statutory Maximum	25 Years	15 Years	8 Years	4 Years	2 Years	1 Year	6 Months	3 Months
+5	22y, 6m	13y, 6m	7y, 2m, 12d	3y, 7m, 6d	1y, 9m, 18d	10m, 24d	5m, 12d	2 m, 21d
+4	20y	12y	6y, 4m, 24d	3y, 2m, 12d	1y, 7m, 6d	9m, 18d	4m, 24d	2m, 12d
+3	17y, 6m	10y, 6m	5y, 7m, 6d	2y, 9m, 18d	1y, 4m, 24d	8m, 12d	4m, 6d	2m, 3d
+2	15y	9y	4y, 9m, 18d	2y, 4m, 24d	1y, 2m, 12d	7m, 6d	3m, 18d	1m, 24d
+1	12y, 6m	7y, 6m	4y	2y	1y	6m	3m	1m, 15d
Baseline Sentence	10y	6y	3y, 2m, 12d	1y, 7m, 6d	9m, 18d	4m, 24d	2m, 12d	1m, 6d
-1	7y, 6m	4y, 6m	2y, 4m, 24d	1y, 12d	7m, 6d	3m, 18d	1m, 24d	27d
-2	5y	3y	1y, 7m, 6d	9m, 18d	4m, 24d	2m, 12d	1m, 6d	18d
-3	2y, 6m	1y, 6m	9m, 18d	4m, 24d	2m, 12d	1m, 6d	18d	9d

(b) Time Increments. For the purposes of this Code, all time intervals should be calculated from the first day of punishment relating to the present offense, counting all periods of continuous punishment since that time.

(1) Years (y). A year is a period of 365 days.

(2) Months (m). A month is a period of 30 days.

(3) Days (d). A day is a period of 24 hours.

Section 1003 – Guideline Sentence Need Not Be Imposed, But Departure Must Be Explained

(a) The court is not required to impose the guideline sentence on the offender. The court may impose any sentence that is authorized by law and that serves the purposes of the Code that are set out in Section 11 (Principle of Construction; General Purposes).

(b) However, if the court imposes a sentence that is more than two aggravation or mitigation levels away from the guideline sentence, as provided in the Guideline Sentence Table in Section 1002, the court must provide on the record a written explanation for his departure from the guideline sentence.

(c) If a sentencing court deviates from the sentence provided by the guidelines by:

(1) [more than two aggravation levels,]¹⁷ the offender shall have the right of appeal to the High Court to challenge the sentence; or

(2) [more than two mitigation levels,] the government shall have the right of appeal to the High Court to challenge the sentence.

(d) Either the offender or the government may appeal to the High Court if the sentencing court errs in its legal interpretation or legal application of the sentencing guidelines.

Section 1004 – Amount of Punishment Called for in Guideline Sentence Table May Be Imposed Through Any Authorized Punishment Method

The Guideline Sentence Table expresses the amount of punishment to be imposed in terms of the length of an incarceration term, but this designated amount of punishment may be imposed by any method of punishment authorized in Section 1005 (Punishment Method Equivalency Table) or Section 1202 (Application of Alternative Punishments), or any combination of such methods of punishment, as long as the total amount of punishment is equivalent to that amount of punishment designated in the Guideline Sentence Table according to the

¹⁷ **Issue:** Should a right to appeal a sentence exist in every case?

Appellate Review Only If More Than Two Levels from the Guideline Sentence: The potential for reversal by the High Court is a useful tool to encourage, without requiring, judges to sentence offenders within the guideline range. If there were to be appellate review of sentence in all cases, there would be less incentive for judges to follow the guidelines. A range of two levels in each direction is an appropriate range for the guidelines to provide because judges need some discretion to accommodate factors otherwise unaccounted for by the sentencing guidelines.

Appellate Review in All Cases: By limiting the availability of appeal to cases of deviation of more than two levels, no appellate review is available to correct those cases where a court has kept within the guidelines but should have departed because of special circumstances in the case. Even if an appeal of right is not to be available permanently, it is important in the transitional period for the High Court to review the implementation of the sentencing guidelines carefully in each case.

Punishment Method Equivalency Table provided in Section 1005.

Section 1005 – Punishment Method Equivalency Table

(a) In fashioning a sentence, the court may use any authorized punishment method or combination of methods whose total punishment effect equal the guideline sentence according to the punishment method equivalencies provided in this Table.

Incarceration	House Arrest	Community Service	Fine – the greater of:	[Banishment]¹⁸	Intensive Supervision	Probation
1 year =	2 years	1920 hours	25,000 Rufiyaa or 1 year's income	[2 year]	4 years	6 years
6 months =	1 year	960 hours	12,500 Rufiyaa or 6 months' income	[1 year]	2 years	3 years
3 months =	6 months	480 hours	6,000 Rufiyaa or 3 months' income	[6 months]	1 year	1.5 years
1 month =	2 months	160 hours	2,000 Rufiyaa or 1 month's income	[2 month]	4 months	6 months
7 days =	15 days	40 hours	500 Rufiyaa or 7 days' income	[15 days]	1 month	1.5 months

(b) House Arrest; Treatment Programs. A house arrest program is one of detention at the offender's home, or at another facility that is not a correctional facility. During that time the offender is typically not permitted to leave the premises and can be subject to other punishment if he leaves the facility.

(c) Community Service. An offender may be sentenced to perform labor or

¹⁸ **Issue:** Should the Code eliminate the penalty of banishment?

Yes: The penalty is no longer effective today. Banishment to another island may improve the status of an offender, or at least may not pose a serious impairment in the context of modern communication. The punishment has lost much of its stigma. The deportation of an offender to another island tends to disrupt traditional life on the atoll.

No: The penalty is an effective and inexpensive means of punishment. The penalty has a traditional standing in the Maldives which should be maintained.

provide services in the interest of the general community. While performance of these tasks need not be particularly onerous or humiliating, performing the labor or providing the service should constitute a punishment in the eyes of the offender and the community.

(d) Fine. An offender may also be compelled to pay a monetary fine to the state. Wherever possible, subject to the limitations on fines available, a fine should be imposed proportionate to the offender's income or to the offender's total assets.

(e) Intensive Supervision. Intensive supervision is a program of supervision of the offender by an officer of the state. The court may impose on the offender any appropriate condition including, but are not limited to: requiring the offender to avoid certain people, barring the offender from certain locations or restricting him to a few locations (such as his home and his place of employment), imposing a curfew on the offender, requiring that an offender submit to frequent drug or alcohol tests, compelling the offender to submit to unannounced searches of his person and home, requiring the offender to attend certain educational or other programs, to maintain active employment of a certain sort, or any other requirement or restriction that will promote the safety of others, advance the offender's rehabilitation, or give the offender the punishment he deserves. Intensive probation may include the requirement that an offender attend a treatment program. A treatment program is one in which an offender is compelled to attend a facility that will treat him for his addiction or other condition contributing to the commission of his offense. An offender in such a program is legally obliged to comply with the terms of the program.

(f) Probation. Probation is a period of release subject to restrictions, including requiring periodic meetings with a supervisory officer, regular drug or alcohol tests, regular psychological counseling, or any other minimally invasive requirement or restrictions that will promote the safety of others, advance the offender's rehabilitation, or give the offender the punishment he deserves.

Section 1006 – Sentencing for Multiple Offenses

When an offender is convicted of more than one offense, the sentence for all of the offenses for which he has been convicted should be determined in the following manner:

(a) the appropriate sentence for each individual offense should be determined in light of the grading and sentencing provisions applicable to that offense as if the offender were being sentenced for that offense only;

(b) taking into consideration the sentences determined under Subsection (a), the offender should be sentenced to punishment equivalent to

(1) the full sentence of the greatest duration or severity,

(2) plus one-half of the sentence of the next greatest duration or severity,

(3) plus one-quarter of the sentence of the next greatest duration or severity,

(4) plus one-eighth of the sentence of the next greatest duration or severity,

(5) continuing in like manner for all sentences for each offense for which the offender has been convicted, thereby causing each additional offence to increase the total authorized maximum cumulative sentence, but by a decreasing increment.

(c) Concurrent Terms of Imprisonment Barred. When terms of imprisonment are imposed for more than one offense, those terms are to be served consecutively.

(d) Equivalent Duration or Severity. If a offender is convicted of more than one offense for which a sentencing court would otherwise impose punishment of precisely equivalent duration or severity, then a sentencing court may consider any of the those sentences as if it were of greater severity than other offenses punished with equivalent severity.

Section 1007. Equitable Powers of the Sentencing Court

(a) Sentencing Powers. In addition to sentencing an offender to periods of incarcerative or nonincarcerative punishment, the sentencing court retains the authority to impose orders on an offender as to certain actions that the offender must or must not perform. These orders may last longer than the period of other punishment.

(b) Punitive Equivalency of Orders. The court should take into account the punitive effect of such orders and limit the offender's other punishment in proportion to the punitive effect of the order.

CHAPTER 1100. GENERAL ADJUSTMENTS TO BASELINE SENTENCE

Section 1100 – Application of General Adjustments to Baseline Sentence

Section 1101 – Aggravation for Greater Culpability Level Than Required by Offense Definition

Section 1102 – Aggravation for Special Harms

Section 1103 – Aggravation for Cruelty

Section 1104 – Aggravations and Mitigations for Prior Criminal History

Section 1105 – Aggravation for Refusal to Compensate Victim

Section 1106 – Mitigation for Public Expression of Genuine Remorse

Section 1107 – Mitigation for Substantial Cooperation with Authorities

Section 1108 – Mitigation for Imperfect Justification

Section 1109 – Mitigation for Partial Excuse

Section 1110 – Mitigation for Extreme Emotional Distress

Section 1100 – Application of General Adjustments to Baseline Sentence

(a) General Application. In addition to any adjustments to the baseline sentence provided in the Sentencing Factor subsections of offense definitions in Parts I and II of the Code, the baseline sentence also shall be adjusted according to all applicable provisions of this Chapter.

(b) Non-Overlapping Application. If a particular offense definition, grading provision, or sentencing factor provision already takes into account the matters addressed by a general sentencing factor, then the general factor should be applied only in so far as the factors present in the case exceed those already taken into account.

Section 1101 – Aggravation for Greater Culpability Level Than Required by Offense Definition

If the offender satisfies a higher level of culpability than the level required by the offense for which he is convicted, the baseline sentence shall be aggravated one level for each higher level of culpability he satisfies, as defined by Section 24 (Culpability Requirements).

Section 1102 – Aggravation for Special Harms

(a) If an offender commits an offense:

(1) that injures the public interest because it:

(A) causes substantial harm to or impedes the ordinary function of a public facility, public institution, or public service, or

(B) substantially diminishes the public trust in or perceived honesty and transparency of a public facility, public institution, or public service, or

(C) injures an agent of the government, deprives the

government of property, or damages property of the government; or
(2) against a person who is particularly vulnerable to the harm contemplated by the offense definition:

(A) because that person is a child, a person over the age of 65, or a person with a mental or physical disability or illness, or a person to whom the offender owed a special fiduciary duty that he breached, or

(B) because of any combination of such factors; or

(3) that causes harm to a place, artifact, property or other interest of historical, religious, environmental, or cultural significance; or

(4) that otherwise causes harm substantially exceeding in degree or amount the minimum harm required by the offense definition;

(b) then the baseline sentence shall be aggravated one level if one factor is met and two levels if two factors are met. The baseline sentence shall be aggravated three levels only in extraordinary cases where the harm exceptionally exceeds the minimum harm required by the offense definition.

(c) Historical, Religious, Environmental, or Cultural Significance. A place, artifact, property, or interest is of historical, religious, environmental, or cultural significance if:

(1) it has particular historical, religious, environmental, or cultural importance

(A) of which an ordinary person would be aware, or

(B) of which the offender actually knows; or

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

Section 1103 – Aggravation for Cruelty

If an offender commits an offense in a manner displaying great cruelty or gross disregard for human dignity, then the baseline sentence shall be aggravated one level.

Section 1104 – Aggravation and Mitigation for Prior Criminal History

(a) Aggravation for Prior Criminal Record. If an offender commits an offense,

(1) having previously been convicted of a felony within the past 6 years, or a misdemeanor within the past 2 years, then the baseline sentence for the most serious offense shall be aggravated one level; or

(2) having previously been convicted of multiple felonies within the past 6 years or a violent felony within the past 10 years, then the baseline sentence for the most serious offense shall be aggravated two levels; or

(3) having previously been convicted of three violent felonies within the past 5 years, then the baseline sentence for the most serious offense

shall be aggravated three levels.

(b) Aggravation for Similar Offense. If an offender commits an offense, having previously been convicted of an offense of a nature substantially similar to the present offense, within the past 2 years, then the baseline sentence for any and all offenses substantially similar to a prior offense shall be aggravated one level.

(c) Calculation of Time Intervals. In calculating time intervals for this Section, the sentencing court shall exclude any period of time during which the offender was under punishment for another offense.

(d) Mitigation for Aberrant Behavior. If an offender commits an offense that:

(1) was committed without significant planning and was of limited duration, and

(2) represents a dramatic deviation from the normal behavior of the offender; and

(3) the offender has otherwise led a law-abiding life;

then the baseline sentence for all offenses with which the offender has been charged shall be mitigated one or two levels, as the court finds to be just.

(e) Offenses as a Minor. In determining an offender's criminal record, a sentencing court shall consider felonies committed while the offender was as a minor but shall not consider misdemeanors committed while a minor.

(f) Offenses under the Prior Law. For the purposes of this Section, an offense committed prior to the enactment of this code should be considered as a "felony" or a "misdemeanor" according to Section 91 (Unclassified Offenses).

Section 1105 – Aggravation for Refusal to Compensate Victim

(a) Refusal to Compensate. An offender who commits an offense causing harm to a person or legal entity must compensate the victim for the harm he has caused. If the offender refuses to compensate the victim in this fashion or to enter into a legally binding agreement to make such compensation over time, then the baseline sentence shall be aggravated one or two levels, as the court determines to be just.

(b) Compensation. Compensation under subsection (a) requires that the offender make all reasonable efforts within his capacity, financial and otherwise, to make good any injury he has caused to the victim and to restore to the victim any benefits of which he has deprived the victim. An offender unable to make complete compensation must still make reasonable efforts within his capacity to make as much partial compensation to the victim as he is capable, either at present or in the future.

(c) Rights of the Victim. The victim may play a role in the establishment of the terms of compensation, though the victim may not demand compensation in excess of the harm suffered. If a competent victim accepts an offer of compensation, the court shall be bound by that agreement. If the victim and the

offender are unable to agree on compensation, the court may impose terms for compensation.

(d) Compensation Not Punishment. Funds paid in compensation are not fines for the purpose of Section 93 (Authorized Fines), nor should the compensation be considered as an alternative punishment under Sections 1005 and 1202.

Section 1106 – Mitigation for Public Expression of Genuine Remorse

(a) Genuine Remorse. If an offender credibly and publicly acknowledges guilt and expresses genuine remorse before trial, his baseline sentence shall be mitigated two levels. An offender cannot receive a mitigation under this subsection unless he has pled guilty before trial.

(b) Guilty Plea. If an offender pleads guilty before trial but does not otherwise satisfy the requirements of subsection (a), his baseline sentence shall be mitigated one level.

Section 1107 – Mitigation for Substantial Cooperation with Authorities

(a) Cooperation. If an offender commits an offense and then provides substantial cooperation as to the capture or prosecution of other offenders with law enforcement authorities, the government may move for the mitigation of the offender's sentence by one level, two levels, or three levels.

(b) Governmental Discretion. The sentencing court must grant the motion for mitigation sought by the government. The sentencing court may not, in the absence of a motion by the government, seek to mitigate a sentence on the grounds of substantial cooperation.

Section 1108 – Mitigation for Imperfect Justification

If at the time of the offense the offender believes that his conduct is justified by a justification defense defined in Chapter 40, the baseline sentence shall be mitigated:

(a) one level, or

(b) two levels if the offense and offender's conditions and circumstances came close to providing a complete justification defense.

Section 1109 – Mitigation for Partial Excuse

If at the time of the offense the offender satisfied a substantial portion of the requirements of an excuse defense under Chapter 60, the baseline sentence shall be mitigated:

(a) one level, or

(b) two levels if the offense and offender's conditions and circumstances came close to providing a complete excuse defense.

Section 1110 – Mitigation for Extreme Emotional Distress

- (a) If at the time of the offense the offender acted:
- (1) under the influence of extreme mental or emotional disturbance,
 - (2) for which there is a reasonable explanation, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believes them to be,
- (b) then the baseline sentence shall be mitigated
- (1) one level, or
 - (2) two levels, if the extreme mental or emotional disturbance severely impaired the capacity of the offender to control his actions or to comprehend the meaning of his actions.

CHAPTER 1200. LIMITATIONS ON APPLICATION OF SENTENCING GUIDELINES

Section 1200 – Limitations on Aggravation or Mitigation

Section 1201 – Incarceration as Punishment

Section 1202 – Application of Alternative Punishments

Section 1203 – Failure to Comply with the Terms of an Alternative Punishment

Section 1204 – Death Penalty

Section 1200 – Limitations on Aggravation or Mitigation

(a) No matter the total number of aggravation levels applicable, a court is not authorized to impose a sentence that exceeds the statutory maximum punishment authorized by Section 92 (Authorized Terms of Imprisonment) and Section 93 (Authorized Fines).

(b) No matter the total number of mitigation levels applicable, the court may not impose a sentence of no punishment or meaningless punishment.

Section 1201 – Incarceration as Punishment

(a) Incarceration. Incarceration should be the primary, though not necessarily exclusive, form of punishment in cases where:

- (1) secluding the offender from the rest of society is necessary for the protection of the public,
- (2) imposing incarceration is necessary to indicate the seriousness with which society condemns the offender's offense, or
- (3) no other punishment is appropriate to the circumstances of the offense and offender.

(b) Minimum Incarcerative Sentence for Serious Offenses. If an offender is convicted of an A felony, a B felony, or a felony under Chapter 110 of this Code, at least one-fourth of the punishment to which the offender is to be sentenced under the Sentencing Guidelines Table must be an incarcerative sentence.

Section 1202 – Application of Alternative Punishments

(a) Generally. In determining whether a particular form of alternative punishment should be applied to an offender and what portion of the offender's punishment should be satisfied through that alternative punishment, a sentencing court should take into account:

- (1) the circumstances of the offense,
- (2) the characteristics of the offender,
- (3) the needs of the community, and
- (4) other factors relevant to the punishment method as indicated in subsections (b) through (h).

(b) House Arrest. A portion of an offender's sentence may appropriately be served as a period of house arrest if:

- (1) the offender does not present a danger to the community; and
- (2) (A) the offender can provide useful service in his home to his family, or
(B) the offender has particular needs that can best be met in the home.

(3) Duration. A period of house arrest may be appropriate as the sole means of punishment for certain minor offenses. Otherwise, house arrest may be appropriate as part of a sentence including other forms of punishment, particularly as a period of restraint subsequent to imprisonment to ease the offender's reentry into society.

(c) Community Service. Imposing a sentence of community service may be appropriate if:

- (1) the offender has particular skills that may be of service to the community, or
- (2) the community has a particular need for service that the offender can provide, or
- (3) the kind of community service performed tends to correct or to avoid the kind of harm brought about by the offense committed.

(4) Duration. Community service can be appropriate as a part of the punishment for most offenses. Generally, it should not be the sole punishment except in the cases of the most minor offenses.

(d) Fines.

(1) Fines are only appropriate as punishment for those who have the means to pay them.

(2) Determination of Fines. Fines typically should be imposed as a supplement to another form of punishment. A fine should never be imposed in a manner that allows or appears to allow a wealthy offender to "buy" his way out of meaningful punishment.

[(e) Banishment.

- (1) Banishment is appropriate as a punishment for an offender who:
 - (A) will not endanger others or their property, nor disturb the way of life on the island to which he is transferred; and
 - (B) will find the period of banishment sufficiently unpleasant that banishment will constitute appropriate punishment.

(2) Duration. Banishment can be an appropriate substitute for incarceration for minor and modestly serious offenses.]*

(f) Intensive Supervision.

(1) An offender, in order to qualify for intensive supervision, must demonstrate that he is responsible and capable of complying with the numerous rules relating to the period of supervision.

(2) Duration. A period of intensive supervision can be of whatever

* See footnote 18.

duration is appropriate. It is especially appropriate following a period of treatment, so that the effectiveness of the treatment can be monitored.

(g) Treatment Program.

(1) Imposing a period of mandated treatment may be appropriate if an offender's likelihood of committing further crimes can be reduced through the treatment.

(2) Duration. A sentence to a treatment program is only appropriate if the period is sufficient to accomplish the purposes of the treatment. The sentencing court should consult with the appropriate experts in the field as to what period of time is necessary for treatment. Treatment programs generally should be imposed during or after a sentence of incarceration, if any, rather than before incarceration. House arrest or supervised release may be appropriate as a follow-up to treatment, particularly if testing is required to ascertain whether the treatment has been effective.

(h) Probation.

(1) A period of probation would be appropriate punishment as a follow-up to a period of intensive supervision and may be made conditional on excellent cooperation with and rehabilitation under intensive supervision. Probation would be appropriate if the offender needs only modest imposition on his freedom to prevent further criminal acts.

(2) Duration. A sentencing court should generally not use a period of probation as the primary punishment for an offender.

Section 1203 – Failure to Comply with the Terms of an Alternative Punishment

(a) Consequences for Failure to Comply. If an offender violates the terms of an alternative punishment imposed on him by a sentencing court, the court may order that the offender serve the full incarcerative sentence that he would have served had that alternative punishment not been imposed.

(b) Determining a Violation of Alternative Punishment Terms. At a hearing before the court, if the government presents clear evidence that the offender has violated the terms of his alternative punishment, the burden shall be upon the offender to show that he has not. If the offender fails to do so, the court may resentence the offender as provided in Subsection (a).

Section 1204 – Death Penalty*

(a) Proof Required. In order to impose the penalty of death on any person, the government must prove the elements of the offense and prove that the offense committed is worse and represents more culpable behavior than any other offense imaginable to a practical certainty.

* See footnote 4.

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(b) Confessions. The government may not use the confession of the defendant to convict him of an offense for which it seeks the penalty of death, unless the defendant freely testifies in open court and under the advice of counsel, confessing every element of the crime.

(c) Evidentiary Requirements.

(1) Capacity. All witnesses that provide the testimony establishing the proof required in Subsection (a) must undergo evaluation to establish their capacity and competence to tell the truth on the matters at issue.

(2) Uncontradicted Evidence. If the testimony of any witness, or any portion of the testimony of any witness, including the defendant, is contradicted by the testimony of another witness, that witness's testimony may not be considered as meeting the requirements of proof in Subsection (a).

(d) Automatic Appeal. In the event that a sentencing court imposes the penalty of death, the decision shall be appealed to the High Court for complete review of all findings of fact and law.

SUMMARY GRADING TABLE

CLASS A FELONIES

Section	Offense Description
110(a)	Knowingly causing death of another person (murder)
110(b)	Recklessly causing death of another person under circumstances manifesting extreme indifference to the value of human life (reckless murder)

CLASS B FELONIES

Section	Offense Description
111(a)	Recklessly causing death of another person (manslaughter)
111(b)	Causing death of another while under influence of extreme mental or emotional disturbance (manslaughter)
113(a)	Causing another to commit suicide by force, duress, or deception, where the death, if caused directly by the offender, would constitute murder
131(d)(1)(A)	Engaging in sexual intercourse with a child less than 14 years old (rape)
131(d)(1)(B)	Engaging in sexual intercourse by force or threat (rape)
610(c)(1)	Inciting or commanding the violent overthrow of the government, directing five or more people (inciting insurrection)
710(c)	Discharging a semiautomatic or automatic firearm in the course of committing an offense
725(d)	Trafficking in a dangerous controlled drug
730(c)(1)(A)	Directing or controlling the activity of a criminal organization, knowing the organization is criminal

CLASS C FELONIES

Section	Offense Description
113 (a)	Causing another to commit suicide by force, duress, or deception, where the death, if caused directly by the offender, would constitute manslaughter
131 (d)(2)(A)	Engaging in sexual intercourse with a minor where the offender is at least 4 years older than the victim (aggravated sexual assault)
131 (d)(2)(B)	Engaging in sexual intercourse with a person incompetent to consent (aggravated sexual assault)
131 (d)(2)(C)	Engaging in sexual intercourse where the offender has custodial authority over the victim (aggravated sexual assault)
140 (c)(1)	Restraining another person's freedom of movement for the purpose of placing that person in involuntary servitude
210 (b)(1)	Theft, where the value of the property exceeds [500,000 MVR]
217	Knowingly making temporary use of property without or beyond the owner's consent, where the value of the use of the property exceeds [500,000 MVR] (unauthorized use of property)
510 (a)	Knowingly soliciting or accepting a benefit not lawfully authorized in exchange for influencing or using official authority (accepting bribe)
510 (b)	Knowingly offering or giving a public official a bribe in exchange for influencing official authority (offering bribe)
522 (c)(1)(A)	Falsely incriminating another resulting in a felony conviction of Class C or higher (aggravated false incrimination)
539 (c)(2)	Bringing or allowing guns, ammunition, or a catastrophic agent into a correctional institution, where the offender is a correctional employee
610 (c)(2)	Inciting or commanding a riot, directing five or more people, or military personnel (inciting a riot)
611	Recruiting, using, financing, or training of mercenaries
621 (b)(1)	Compelling, facilitating, or allowing use of a place for prostitution, where the prostitute is a minor (promoting child prostitution)
710 (b)(1)	Discharging a firearm in the course of committing an offense
710 (c)	Displaying or otherwise using a semiautomatic or automatic firearm in the course of committing an offense

CLASS C FELONIES (CONTINUED)

Section	Offense Description
711 (d)	Manufacturing or trafficking in semiautomatic or automatic firearms
720	Trafficking in a controlled drug
725 (d)	Selling a dangerous controlled drug
730 (c)(1)(B)	Participating in or otherwise supporting a criminal organization, knowing the organization is criminal
730 (c)(2)	Directing or controlling the activity of a criminal organization, with recklessness as to whether the organization is criminal

CLASS D FELONIES

Section	Offense Description
112	Negligently causing the death of another person (negligent homicide)
120 (b)(1)(A)	Reckless assault, causing serious bodily injury (serious assault)
120 (b)(1)(B)	Reckless assault with a dangerous weapon (serious assault)
121 (d)(1)	Recklessly creating a substantial risk of serious bodily harm or death of another (in circumstances manifesting an extreme indifference to the value of human life)
132 (c)(1)(A)	Causing sexual contact with a child less than 14 years old (aggravated sexual contact)
132 (c)(1)(B)	Causing sexual contact by force or threat (aggravated sexual contact)
140 (c)(2)	Restraining another person's freedom of movement (for more than one day)
210 (b)(2)	Theft, where the value of the property exceeds [50,000 MVR] or is a firearm, automobile, motorboat, or other motor vehicle
217	Knowingly making temporary use of property without or beyond the owner's consent, where the value of the use of the property exceeds [50,000 MVR] or is a firearm, an automobile, motorboat, or other motor vehicle (unauthorized use of property)

CLASS D FELONIES (CONTINUED)

Section	Offense Description
218	Receiving property, being reckless as to whether it has been stolen, where the value of the property exceeds [500,000 MVR]
220(d)(1)	Recklessly causing property damage resulting in loss exceeding [500,000 MVR]
221	Creating a substantial risk of damage to an inhabited structure or vital public facility exceeding [500,000 MVR]
222(a)(1)	Knowingly possessing a catastrophic agent with felonious purpose
310(c)(1)(A)	Forgery that purports to create, show, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status (counterfeiting)
310(c)(1)(B)	Forgery that purports to be any writing by the government (counterfeiting)
314(a)	Soliciting or accepting a commercial bribe
314(b)	Offering, conferring, or paying a commercial bribe
314(c)	Breaching a duty to act disinterestedly
315(a)(1)	Rigging publicly exhibited contest through bribery, threat, or tampering
315(a)(2)	Accepting bribe to rig publicly exhibited contest
315(a)(3)	Knowingly violating the laws governing bidding for a public contract
413(b)(1)	Incest, where the offender knows he is related as a parent, grandparent, or great-grandparent (aggravated incest)
511	Committing or threatening an offense with the purpose of influencing a public official (influencing official conduct)
513(a)	Using confidential information accessed as a public official, for the purpose of obtaining a benefit (misuse of confidential information)
513(b)	Using or influencing official authority, as a public official, for the purpose of obtaining a benefit
530	Knowingly obstructing the apprehension, prosecution, or defense of a person
537(c)(1)	Escaping from detention or penal custody
539(c)(1)(A)	Bringing or allowing guns, ammunition, or a catastrophic agent into a correctional institution (dangerous contraband)

CLASS D FELONIES (CONTINUED)

Section	Offense Description
539(c)(2)	Bringing or allowing dangerous or otherwise serious contraband into a correctional institution, where the offender is a correctional employee
610(c)(3)	Engaging in the violent overthrow of the government
612	Knowingly making a false accusation against another of unlawful sexual intercourse
621(b)(2)	Compelling, facilitating, or allowing use of a place for prostitution (promoting prostitution)
710(b)(2)	Displaying or otherwise using a firearm, in the course of committing an offense
711(c)(1)	Manufacturing or trafficking in firearms or catastrophic agent; possessing, selling, or transferring a catastrophic agent
711(d)	Selling or transferring semiautomatic or automatic firearms
721	Selling a controlled drug
725(d)	Using a dangerous controlled drug
730(c)(3)	Participating in, recruiting for, providing financial or material support to, or using the proceeds of, a criminal organization
731	Conducting a financial transaction with the purpose of concealing the proceeds of unlawful activity (money laundering)

CLASS E FELONIES

Section	Offense Description
113(b)(1)(A)	Knowingly aiding or soliciting another to commit suicide (if such aid or solicitation <i>causes</i> suicide or attempted suicide)
114	Concealing a death knowing that the death was caused by a person
132(c)(2)(A)	Causing sexual contact with a minor where the offender is at least 4 years older than the victim (criminal sexual contact)
132(c)(2)(B)	Causing sexual contact with a person incompetent to consent (criminal sexual contact)
132(c)(2)(C)	Causing sexual contact where the offender has custodial authority over the victim (criminal sexual contact)

CLASS E FELONIES (CONTINUED)

Section	Offense Description
141 (c)(1)	Threatening for the purpose of achieving a felony or threatening harm which would be a felony (felonious coercion)
210 (b)(3)	Theft, where the value of the property exceeds [5,000 MVR]
217	Knowingly making temporary use of property without or beyond the owner's consent, where the value of the use of the property exceeds [5,000 MVR] (unauthorized use of property)
218	Receiving property, being reckless as to whether it has been stolen, where the value of the property exceeds [50,000 MVR] or is a firearm, an automobile, motorboat, or other motor vehicle
220 (d)(2)	Recklessly causing property damage resulting in loss exceeding [50,000 MVR]
221	Creating a substantial risk of damage to an inhabited structure or vital public facility exceeding [50,000 MVR]
222 (a)(2)	Knowingly threatening to cause a catastrophe
230 (c)(1)	Trespass of dwelling, highly secured premises, or dangerous premises (felony trespass)
231 (a)(1)	Eavesdropping or surveilling another where the other has a reasonable expectation of privacy
231 (a)(2)	Intercepting, recording, amplifying or broadcasting a sound, image, event, or communication from another's property
232 (d)(1)	Acquiring highly secured information, knowing he has no license or authority
310 (c)(2)	Forgery or simulation of value or antiquity
311	Tampering with any writing, record, or device for the purpose of deceiving or concealing wrongdoing
312 (c)(1)	Creating an identity for sale or purchasing another's identity
315 (a)(4)	Knowingly participating in rigged contest
411 (c)(1)(A)	Adultery by a married person with anyone not his spouse
413 (b)(2)	Incest, generally
415	Failing to provide for support for a child, parents, or an incapacitated spouse
522 (c)(1)(B)	Falsely incriminating another, generally
536 (b)(1)	Concealing or aiding a fugitive charged with a felony

CLASS E FELONIES (CONTINUED)

Section	Offense Description
537(c)(2)	Failing to report to the place of detention, to return from furlough or work release, or to abide by the terms of home confinement if the underlying offense is a felony
539(c)(1)(B)	Bringing or allowing dangerous or otherwise serious contraband into a correctional institution
539(c)(2)	Bringing or allowing other contraband into a correctional institution, where the offender is a correctional employee
540(a)(2)(A)	Committing or threatening to commit an offense likely to cause great bodily or property damage, with the purpose of influencing a witness, voter, or a person performing a public duty (felonious interference)
540(a)(2)(B)	Committing or threatening to commit any other offense, with the purpose of influencing a witness, or a person performing a public duty (felonious interference)
540(a)(2)(C)	Offering or giving a benefit not authorized by law, with the purpose of influencing a witness, or a person performing a public duty (felonious interference)
610(c)(4)	Inciting, aiding, or engaging in a riot (participating in a riot)
613(b)(1)	Importing a firearm, catastrophic agent, or controlled drug
622(e)(3)	Promoting, performing, or selling obscenity involving children or the incompetent
711(c)(2)	Selling or transferring a firearm
711(d)	Possessing semiautomatic or automatic firearms
722	Using a controlled drug
725(d)	Possessing a dangerous controlled drug

CLASS 1 MISDEMEANORS

Section	Offense Description
87	Possessing instrument of crime with intent to employ it criminally
113(b)(1)(A)	Knowingly aiding or soliciting another to commit suicide (if such aid or solicitation <i>does not cause</i> suicide or attempted suicide)

CLASS 1 MISDEMEANORS (CONTINUED)

Section	Offense Description
113 (b)(1)(B)	Attempting to commit suicide
121 (d)(2)	Recklessly creating a substantial risk of serious bodily injury or death of another
122 (a)(1)	Threatening to commit any offense likely to cause bodily injury
122 (a)(2)	Knowingly giving false warning of a dangerous situation or imminent violent offense
131 (d)(3)	Engaging in sexual intercourse without consent (sexual assault)
132 (c)(3)	Causing sexual contact without consent (misdemeanor sexual contact)
133	Exposing one's genitals in public for sexual purposes (indecent exposure)
134 (b)(1)	Causing a person to disrobe for sexual purposes if the victim is legally incompetent (aggravated sexual exploitation)
140 (c)(3)	Restraining another (for less than one day) or recklessly restraining another
140 (c)(4)	Restraining another person's freedom of movement, reasonably believing that he is the parent of the person restrained
141 (c)(2)	Threatening substantial harm with the purpose of restricting freedom of action (criminal coercion)
210 (b)(4)	Theft, where the value of the property exceeds [500 MVR]
217	Knowingly making temporary use of property without or beyond the owner's consent, where the value of the use of the property exceeds [500 MVR] (unauthorized use of property)
218	Receiving property, being reckless as to whether it has been stolen, where the value of the property exceeds [5,000 MVR]
220 (d)(3)	Recklessly causing property damage resulting in loss exceeding [5,000 MVR]
221	Creating a substantial risk of damage to an inhabited structure or vital public facility exceeding [5,000 MVR]

CLASS 1 MISDEMEANORS (CONTINUED)

Section	Offense Description
230 (c)(2)	Trespass of enclosed space other than inhabited dwelling, highly secured premises, or dangerous premises (misdemeanor trespass)
232 (d)(2)	Acquiring private information, knowing he has no license or authority
233	Disclosing any information obtained by unlawful means or has no license or authority to acquire
312 (c)(2)	Misrepresenting oneself to be another person, resulting in harm to another or giving oneself a benefit to which one is not entitled (identity fraud)
313	Recklessly supplying false information or knowingly deceiving by acting contrary to established commercial practice (deceptive practices)
316	Defrauding secured creditors by destroying or interfering with secured property
317	Purposely dealing with property or knowingly falsifying records, or misrepresenting status of property, to avoid creditors' claims in insolvency
318	Receiving investment in failing financial institution as a director of the institution
319	Knowingly selling the right to participate in a pyramid sales scheme
410 (a)	Man marrying without consent of all existing wives, or if already married to four women, or if a sister of a current wife
410 (b)	Woman marrying if already married, or if within the post-marital waiting period
410 (c)	Marrying a close relative
411 (c)(1)(B)	Adultery by an unmarried person with a married person
411 (c)(2)	Homosexual intercourse
411 (c)(3)	Oral intercourse by a married person with anyone not his spouse
412 (d)(1)(A)	Sexual contact by a married person with anyone not his spouse

CLASS 1 MISDEMEANORS (CONTINUED)

Section	Offense Description
414(a)(1)	Leaving a child under 14 without supervision for a period of 24 hours or more, under circumstances that unreasonably endanger the child's welfare
414(a)(2)	Failing to take reasonable measures to prevent an offense against a child
414(a)(3)	Failing to register a child at birth
416	Terminating or requesting the termination of a pregnancy after the first 120 days of pregnancy (abortion)
512	Public official failing to perform a mandatory duty, or performing an illegal act (official misconduct)
514	Disclosing confidential information, as a public official, knowing that he is violating a duty
520	Making a false statement under oath in any official proceeding (perjury)
521(a)	Knowingly making a false written statement or omitting necessary information with the purpose of misleading a public official (written falsification)
521(b)	Knowingly making a false statement with the purpose of misleading a public official (false statements)
522(c)(2)	Making a fictitious report to law enforcement
531(b)(1)	Failing to report a vehicular accident, where someone is seriously injured
532	Knowingly resisting or obstructing a peace officer or custodial officer
533(a)(2)(A)	Obstructing administration of law or other government function by unlawful act
533(a)(2)(B)	Failing to report information required by tax authorities
533(a)(2)(C)	Failing to pay taxes or duties
536(b)(2)	Concealing or aiding a fugitive charged with a misdemeanor
537(c)(3)	Failing to report to the place of detention, to return from furlough or work release, or to abide by the terms of home confinement, if the underlying offense is a misdemeanor

CLASS 1 MISDEMEANORS (CONTINUED)

Section	Offense Description
538 (c)(1)	Causing or facilitating a prisoner's escape, or permitting a prisoner to escape, where the prisoner is detained for a felony
539 (c)(1)(C)	Bringing or allowing other contraband into a correctional institution
540 (a)(2)(D)	Communicating, otherwise than as authorized by law, with the purpose of influencing a witness, or a person performing a public duty (interference)
613 (b)(2)	Operating a regulated business in the manufacture, sale, or distribution of alcohol
614 (b)(1)	Entering the Exclusive Economic Zone of the Maldives for the purpose of fishing without license or authority
620	Performing a sexual act in exchange for anything of value (prostitution)
622 (e)(1)	Promoting, performing, or distributing obscenity
624	Knowingly buying or selling any part of a human body
711 (c)(3)	Possessing a firearm
723	Possessing a controlled drug
724	Selling, consuming, or inhaling a solvent or alcohol based product for the purpose of intoxication

CLASS 2 MISDEMEANORS

Section	Offense Description
120 (b)(2)	Reckless assault, causing non-serious bodily injury (injurious assault)
134 (b)(2)	Causing a person to disrobe for sexual purposes where the other person does not know of this purpose (sexual exploitation)
210 (b)(5)	Theft, where the value of the property is less than [500 MVR]

CLASS 2 MISDEMEANORS (CONTINUED)

Section	Offense Description
217	Knowingly making temporary use of another's property without or beyond the owner's consent, where the value of the use of the property is less than [500 MVR] (unauthorized use of property)
218	Receiving property, being reckless as to whether it has been stolen, where the value of the property exceeds [500 MVR]
220(d)(4)	Recklessly causing property damage resulting in loss exceeding [500 MVR]
221	Creating a substantial risk of damage to an inhabited structure or vital public facility exceeding [500 MVR]
411(c)(1)(C)	Engaging in sexual intercourse, if both the offender and his partner are unmarried
411(c)(3)	Oral intercourse by an unmarried person with a married person
411(c)(3)	Homosexual oral intercourse
412(d)(1)(B)	Sexual contact by an unmarried person with a married person
412(d)(2)	Homosexual sexual contact
523	Knowingly causing a false alarm of fire or other emergency
531(b)(2)	Failing to report a vehicular accident, generally
534	Resisting or obstructing the service or execution of any civil or criminal process
538(c)(2)	Causing or facilitating a prisoner's escape, or permitting a prisoner to escape, where the prisoner is detained for a misdemeanor
613(b)(3)	Operating a regulated business, or importing regulated items, without a license
614(b)(2)	Entering the Exclusive Economic Zone of the Maldives without license or authority, generally
622(e)(3)	Viewing obscene material with the purpose of gaining sexual pleasure, if the obscene material is of a child or incompetent person
623	Treating a corpse in a way which outrages ordinary sensibilities (abuse of corpse)

CLASS 3 MISDEMEANORS

Section	Offense Description
120(b)(3)	Recklessly touching another (simple assault)
218	Receiving property, being reckless as to whether it has been stolen, where the value of the property is less than [500 MVR]
220(d)(5)	Recklessly causing property damage resulting in loss less than [500 MVR]
221	Creating a substantial risk of damage to an inhabited structure or vital public facility less than [500 MVR]
230(c)(3)	Trespass of any non-enclosed space
411(c)(3)	Oral intercourse, if both the offender and his partner are unmarried
412(d)(1)(C)	Sexual contact, if both the offender and his partner are unmarried
535	Refusing to provide reasonable aid when requested to a police officer in apprehending a person or preventing an offense
615	Disorderly conduct, including fighting, unreasonable noise, abusive or obscene language, persistently following a person, soliciting sexual contact, or creating a hazardous condition with no purpose
616	Failing to fast during Ramadan or publicly consuming pork or alcohol
618	Unreasonably failing to warn or render aid when only minimal risk to do so and no superior duty
622(e)(2)	Viewing obscene material with the purpose of gaining sexual pleasure
625	Negligently subjecting any animal to cruel mistreatment or neglect

VIOLATIONS

Section	Offense Description
617(a)(1)	Engaging in religious oration in public or in a public medium with the purpose of insulting Islam
617(a)(2)	Producing, selling, distributing, or offering materials insulting of Islam

SPECIAL: 1 GRADE BELOW APPLICABLE STANDARD OFFENSE

Section	Offense Description
541	Failing to appear for a court appearance or violating a condition of release (<i>not higher than a Class 2 misdemeanor</i>)

SENTENCING FACTOR: 2 LEVELS ABOVE BASELINE SENTENCE

Section	Offense Description
86(b)(2)	Completing all conduct necessary to complete inchoate offense or completing all conduct offender was intended to complete when acting with others

SENTENCING FACTORS: 1 LEVEL ABOVE BASELINE SENTENCE

Section	Offense Description
86(b)(1)	Coming very close to completing offense attempted, offense solicited, or object of conspiracy
120(c)	Assault in home where victim is resident or guest
130(d)	Using deception to commit a sexual assault offense
413(c)	Incest, where the offender abused his position of special importance within his family
512(c)	Public official failing to perform a mandatory duty, or performing an illegal act, in exchange for a benefit (official misconduct)

SENTENCING FACTORS: 1 LEVEL ABOVE BASELINE SENTENCE (CONTINUED)

Section	Offense Description
610(d)(1)	Inciting or commanding the violent overthrow of the government or a riot, where the offender is the primary leader
610(d)(2)	Inciting, commanding, aiding, or engaging in a riot or insurrection that the offender knew would occur
710(e)	Using or displaying a dangerous weapon in the course of committing an offense between dusk and dawn

CONVERSION TABLE: DRAFT CODE TO CURRENT LAW

Draft Code Provision	Current Law Provision
Section 10. Short Title and Effective Date	Maldives Penal Code 1
Section 11. Principle of Construction; General Purposes	Maldives Penal Code 28g
Section 13. Jurisdiction	Law Governing Maldivians Who Go Abroad Law on Uninhabited Islands, Article 10
Section 13. Jurisdiction	Maldives Penal Code 2
Section 13. Jurisdiction	Maldives Penal Code 3
Section 13. Jurisdiction	Maldives Penal Code 5
Section 13. Jurisdiction	Maldives Penal Code 28a
Section 17. Definitions	Maldives Penal Code 28b
Section 17. Definitions	Maldives Penal Code 28d
Section 17. Definitions	Maldives Penal Code 28d
Section 17. Definitions	Maldives Penal Code 28e
Section 17. Definitions	Maldives Penal Code 28i
Section 17. Definitions	Maldives Penal Code 28j
Section 17. Definitions	Maldives Penal Code 28n
Section 17. Definitions	Maldives Penal Code 28o
Section 17. Definitions	Maldives Penal Code 28t
Section 17. Definitions	Maldives Penal Code 89
Section 22. Causal Relationship Between Conduct and Result	Maldives Penal Code 10
Section 22. Causal Relationship Between Conduct and Result	Maldives Penal Code 11
Section 23. Requirement of an Act; Possession Liability; Omission Liability	Maldives Penal Code 9
Section 25. Ignorance or Mistake Negating Required Culpability	Maldives Penal Code 23
Section 25. Ignorance or Mistake Negating Required Culpability	Maldives Penal Code 24
Section 26. Mental Disease or Defect Negating Required Culpability	Maldives Penal Code 24
Section 30. Accountability for the Conduct of Another	Maldives Penal Code 11
Section 30. Accountability for the Conduct of Another	Maldives Penal Code 12a

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Draft Code Provision	Current Law Provision
Section 30. Accountability for the Conduct of Another	Maldives Penal Code 12c
Section 31. Voluntary Intoxication	Maldives Penal Code 24
Section 42. Execution of Public Duty	Maldives Penal Code 40
Section 42. Execution of Public Duty	Maldives Penal Code 87b
Section 43. Law Enforcement Authority	Maldives Penal Code 40
Section 43. Law Enforcement Authority	Maldives Penal Code 87b
Section 45. Defense of Person	Maldives Penal Code 25
Section 50. General Provisions Governing Excuse Defenses	Maldives Penal Code 24
Section 52. Insanity	Maldives Penal Code 24
Section 53. Immaturity	Maldives Penal Code 6
Section 53. Immaturity	Maldives Penal Code 7
Section 53. Immaturity	Rules Relating to the Conduct of Judicial Proceedings 289
Section 54. Involuntary Intoxication	Maldives Penal Code 24
Section 56. Impaired Consciousness	Maldives Penal Code 24
Section 57. Ignorance or Mistake	Maldives Penal Code 20
Section 63. Diplomatic Immunity	Maldives Penal Code 4
Section 65. Former Prosecution for Different Offense as a Bar to Present Prosecution	Rules Relating to the Conduct of Judicial Proceedings 111
Section 70. Liability of Corporation or Unincorporated Association	Companies Act of Maldives (non-specific reference) Criminal Court Circulars 13/sp/2003
Section 80. Criminal Attempt	Maldives Penal Code 9
Section 80. Criminal Attempt	Maldives Penal Code 12
Section 81. Criminal Solicitation	Maldives Penal Code 88(27)
Section 81. Criminal Solicitation	Law on the Prevention of Terrorism in the Maldives 1990 - 6(a), 6(b), and 6(c)
Section 82. Criminal Conspiracy	Maldives Penal Code 12b
Section 82. Criminal Conspiracy	Maldives Penal Code 13
Section 82. Criminal Conspiracy	Maldives Penal Code 27
Section 86. Grading of Criminal Attempt, Solicitation, and Conspiracy	Maldives Penal Code 9
Section 86. Grading of Criminal Attempt, Solicitation, and Conspiracy	Maldives Penal Code 10
Section 86. Grading of Criminal Attempt, Solicitation, and Conspiracy	Maldives Penal Code 11

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Draft Code Provision	Current Law Provision
Section 86. Grading of Criminal Attempt, Solicitation, and Conspiracy	Maldives Penal Code 12
Section 86. Grading of Criminal Attempt, Solicitation, and Conspiracy	Maldives Penal Code 13
Section 86. Grading of Criminal Attempt, Solicitation, and Conspiracy	Maldives Penal Code 14
Section 86. Grading of Criminal Attempt, Solicitation, and Conspiracy	Maldives Penal Code 52
Section 86. Grading of Criminal Attempt, Solicitation, and Conspiracy	Maldives Penal Code 136
Section 87. Possession of Instruments of Crime	Maldives Penal Code 93
Section 92. Authorized Terms of Imprisonment	Maldives Penal Code 41b
Section 92. Authorized Terms of Imprisonment	Maldives Penal Code 60
Section 92. Authorized Terms of Imprisonment	Maldives Penal Code 16
Section 93. Authorized Fines	Maldives Penal Code 26
Section 110. Murder	Maldives Penal Code 88d
Section 111. Manslaughter	Maldives Penal Code 88d
Section 112. Negligent Homicide	Maldives Penal Code 88d
Section 113. Causing, Aiding, Soliciting, or Attempting Suicide	Maldives Penal Code 88(32)
Section 113. Causing, Aiding, Soliciting, or Attempting Suicide	Maldives Penal Code 88(33)
Section 114. Concealing a Homicide	Maldives Penal Code 76
Section 114. Concealing a Homicide	Maldives Penal Code 83
Section 120. Assault	Maldives Penal Code 88(b), 88(4), and 88(5)
Section 120. Assault	Maldives Penal Code 126
Section 120. Assault	Maldives Penal Code 127
Section 120. Assault	Maldives Penal Code 128
Section 120. Assault	Maldives Penal Code 129
Section 120. Assault	Maldives Penal Code 130
Section 121. Reckless Endangerment	Maldives Penal Code 101
Section 121. Reckless Endangerment	Maldives Penal Code 103
Section 121. Reckless Endangerment	Maldives Penal Code 104
Section 121. Reckless Endangerment	Maldives Penal Code 109
Section 121. Reckless Endangerment	Maldives Penal Code 111
Section 121. Reckless Endangerment	Maldives Penal Code 112
Section 121. Reckless Endangerment	Maldives Penal Code 113
Section 121. Reckless Endangerment	Maldives Penal Code 114
Section 121. Reckless Endangerment	Maldives Penal Code 115

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Section 121. Reckless Endangerment	Maldives Penal Code 117
Section 121. Reckless Endangerment	Maldives Penal Code 118
Section 131. Sexual Assault	Criminal Court Circulars 8/sp/2003
Section 131. Sexual Assault	Law on the Protection of the Rights of Children Sect.. 25
Section 131. Sexual Assault	Maldives Penal Code 88(5)
Section 131. Sexual Assault	Maldives Penal Code 88(6)
Section 131. Sexual Assault	Maldives Penal Code 88(7)
Section 131. Sexual Assault	Rules Relating to the Conduct of Judicial Proceedings 173(6)
Section 131. Sexual Assault	Rules Relating to the Conduct of Judicial Proceedings 173(7)
Section 131. Sexual Assault	Rules Relating to the Conduct of Judicial Proceedings 173(10)
Section 131. Sexual Assault	Rules Relating to the Conduct of Judicial Proceedings 173(12)
Section 131. Sexual Assault	Rules Relating to the Conduct of Judicial Proceedings 173(14)
Section 132. Criminal Sexual Contact	Rules Relating to the Conduct of Judicial Proceedings 173
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Section 140. Unlawful Restraint	Maldives Penal Code 131a
Section 210. Consolidation of Theft Offenses	Maldives Penal Code 132
Section 210. Consolidation of Theft Offenses	Maldives Penal Code 140
Section 210. Consolidation of Theft Offenses	Maldives Penal Code 141
Section 210. Consolidation of Theft Offenses	Maldives Penal Code 142
Section 210. Consolidation of Theft Offenses	Maldives Penal Code 143
Section 210. Consolidation of Theft Offenses	Maldives Penal Code 144
Section 210. Consolidation of Theft Offenses	Maldives Penal Code 145
Section 210. Consolidation of Theft Offenses	Maldives Penal Code 148
Section 211. Theft by Taking or Disposition	Maldives Penal Code 131a

Draft Code Provision	Current Law Provision
Section 211. Theft by Taking or Disposition	Maldives Penal Code 131b
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Section 211. Theft by Taking or Disposition	Maldives Penal Code 134a
Section 211. Theft by Taking or Disposition	Maldives Penal Code 134b
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Section 211. Theft by Taking or Disposition	Maldives Penal Code 134d
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Section 211. Theft by Taking or Disposition	Maldives Penal Code 136
Section 211. Theft by Taking or Disposition	Maldives Penal Code 137
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Section 211. Theft by Taking or Disposition	Maldives Penal Code 139
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Section 211. Theft by Taking or Disposition	Maldives Penal Code 141
Section 211. Theft by Taking or Disposition	Maldives Penal Code 143
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Section 211. Theft by Taking or Disposition	Maldives Penal Code 145
Section 211. Theft by Taking or Disposition	Maldives Penal Code 146
Section 211. Theft by Taking or Disposition	Maldives Penal Code 147
Section 211. Theft by Taking or Disposition	Maldives Penal Code 148
Section 212. Theft by Deception	Maldives Penal Code 88(13)
Section 212. Theft by Deception	Maldives Penal Code 88(23)
Section 212. Theft by Deception	Maldives Penal Code 131a
Section 212. Theft by Deception	Maldives Penal Code 132
Section 212. Theft by Deception	Maldives Penal Code 143
Section 212. Theft by Deception	Maldives Penal Code 144
Section 213. Theft by Extortion	Maldives Penal Code 88(12)
Section 213. Theft by Extortion	Maldives Penal Code 131a
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Section 213. Theft by Extortion	Maldives Penal Code 143
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Section 213. Theft by Extortion	Maldives Penal Code 147
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Section 215. Theft by Failure to Deliver Funds Entrusted	Maldives Penal Code 132
Section 215. Theft by Failure to Deliver Funds Entrusted	Maldives Penal Code 135
Section 215. Theft by Failure to Deliver Funds Entrusted	Maldives Penal Code 143
Section 215. Theft by Failure to Deliver Funds Entrusted	Maldives Penal Code 144
Section 215. Theft by Failure to Deliver Funds Entrusted	Maldives Penal Code 146
Section 215. Theft by Failure to Deliver Funds Entrusted	Maldives Penal Code 148
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Section 216. Theft of Property Lost, Mislaid, or Delivered by Mistake	Rules Relating to the Conduct of Judicial Proceedings 71
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Section 220. Criminal Property Damage	Maldives Penal Code 114
Section 220. Criminal Property Damage	Maldives Penal Code 115
Section 221. Endangering Property	Law on Services for Public Use, Art. 9
Section 221. Endangering Property	Maldives Penal Code 110
Section 221. Endangering Property	Maldives Penal Code 114
Section 221. Endangering Property	Maldives Penal Code 115
Section 222. Threatening Catastrophe	Maldives Penal Code 114
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Section 230. Criminal Trespass	Maldives Penal Code 46
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Section 310. Forgery and Counterfeiting; Simulating Objects of Special Value	Maldives Penal Code 97
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Section 310. Forgery and Counterfeiting; Simulating Objects of Special Value	Maldives Penal Code 99
Section 310. Forgery and Counterfeiting; Simulating Objects of Special Value	Maldives Penal Code 100
Section 310. Forgery and Counterfeiting; Simulating Objects of Special Value	Maldives Penal Code 107
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Section 310. Forgery and Counterfeiting; Simulating Objects of Special Value	Maldives Penal Code 88(35)
Section 310. Forgery and Counterfeiting; Simulating Objects of Special Value	Maldives Penal Code 88(37)
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Section 410. Unlawful Marriage	Family Law Act 2000 Sect. 70 06
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Section 415. Non-Support	Law on the Protection of the Rights of Children Sect. 21
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Section 415. Non-Support	Family Law Act 2000 Sect. 38
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Section 510. Bribery	Maldives Penal Code 120c
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Section 511. Influencing Official Conduct	Maldives Penal Code 81
Section 512. Official Misconduct	Maldives Penal Code 81
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Section 522. False Reports to Law Enforcement	Maldives Penal Code 75
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Section 530. Obstructing Justice	Maldives Penal Code 54
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Section 530. Obstructing Justice	Maldives Penal Code 70
Section 530. Obstructing Justice	Maldives Penal Code 73
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Section 530. Obstructing Justice	Maldives Penal Code 86b
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Section 537. Escape; Failure to Report to a Correctional Institution or to Report for Periodic Imprisonment	Criminal Court Circulars 14/sp/2003
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Section 539. Bringing or Allowing Contraband into a Correctional Institution; Possessing Contraband in a Correctional Institution	Maldives Penal Code 88(25)
Section 540. Intimidating, Improperly Influencing, or Retaliating Against a Public Official, Witness, or Voter	Maldives Penal Code 121
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Section 610. Rioting; Forceful Overthrow of the Government	Maldives Penal Code 56
Section 610. Rioting; Forceful Overthrow of the Government	Maldives Penal Code 57

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Section 610. Rioting; Forceful Overthrow of the Government	Maldives Penal Code 59
Section 610. Rioting; Forceful Overthrow of the Government	Law Relating to the Protection of Religious Unity, Sects. 4 and 6
Section 611. Recruiting Mercenaries	Maldives Penal Code 29
Section 611. Recruiting Mercenaries	Maldives Penal Code 37
Section 613. Operating a Regulated Business or Importing Without License	Maldives Penal Code 88(22)
Section 614. Entering the Exclusive Economic Zone	Criminal Court Circulars 16/jp/2003
Section 614. Entering the Exclusive Economic Zone	Maldives Penal Code 88(38)
Section 615. Disorderly Conduct	Law on Walking on Streets
Section 615. Disorderly Conduct	Maldives Penal Code 29
Section 615. Disorderly Conduct	Maldives Penal Code 58
Section 615. Disorderly Conduct	Maldives Penal Code 60
Section 615. Disorderly Conduct	Maldives Penal Code 88(29)
Section 615. Disorderly Conduct	Maldives Penal Code 88(39)
Section 615. Disorderly Conduct	Maldives Penal Code 88(40)
Section 616. Failing to Fast During Ramadan; Consuming Pork or Alcohol	Maldives Penal Code 88(21)
Section 617. Criticizing Islam	General Law, Sect. 8
Section 617. Criticizing Islam	Law Relating to the Protection of Religious Unity Act, Sects. 4 and 6
Section 617. Criticizing Islam	Law on Items That Are Prohibited to Be Brought in to Maldives, Art. 4(i)
Section 620. Prostitution	Maldives Penal Code 88(26)
Section 621. Promoting or Supporting Prostitution	Maldives Penal Code 88(27)
Section 623. Abuse of Corpse	Maldives Penal Code 88(30)
Section 624. Sale of Human Body Parts	Law On Items That Are Prohibited To Be Brought into the Maldives, Art. 6
Section 710. Use of a Dangerous Weapon During an Offense	Law On Items That Are Prohibited To Be Brought into the Maldives, Art. 2
Section 710. Use of a Dangerous Weapon During an Offense	Maldives Penal Cod 30

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Draft Code Provision	Current Law Provision
Section 710. Use of a Dangerous Weapon During an Offense	Maldives Penal Code 31
Section 710. Use of a Dangerous Weapon During an Offense	Maldives Penal Code 49
Section 710. Use of a Dangerous Weapon During an Offense	Maldives Penal Code 51
Section 710. Use of a Dangerous Weapon During an Offense	Maldives Penal Code 85
Section 710. Use of a Dangerous Weapon During an Offense	Maldives Penal Code 140
Section 710. Use of a Dangerous Weapon During an Offense	Maldives Penal Code 141
Section 710. Use of a Dangerous Weapon During an Offense	Maldives Penal Code 142
Section 711. Trafficking, Manufacture, Sale, or Possession of Firearms or Catastrophic Agents	Law On Items That Are Prohibited To Be Brought into the Maldives, Art. 2
Section 720. Drug Trafficking	Law on Narcotic Drugs and Psychotropic Substances, Sects. 2 and 3
Section 721. Drug Sale	Law on Narcotic Drugs and Psychotropic Substances, Sects. 2 and 3
Section 721. Drug Sale	Maldives Penal Code 105
Section 721. Drug Sale	Maldives Penal Code 106
Section 721. Drug Sale	Maldives Penal Code 107
Section 722. Drug Use	Law on Narcotic Drugs and Psychotropic Substances, Sects. 2 and 4
Section 722. Drug Use	Maldives Penal Code 88(15)
Section 722. Drug Use	Maldives Penal Code 88(16)
Section 722. Drug Use	Maldives Penal Code 88(17)
Section 722. Drug Use	Rules Relating to the Conduct of Judicial Proceedings 81
Section 723. Drug Possession	Law on Narcotic Drugs and Psychotropic Substances, Sects. 3 and 4
Section 724. Sale and Use of Other Harmful Substances	Criminal Court Circulars 10/sp/2003
Section 724. Sale and Use of Other Harmful Substances	Criminal Court Circulars 11/sp/2003

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Section 730. Participating in a Criminal Organization	Law on the Prevention of Terrorism in the Maldives, Sect. 3
Section 730. Participating in a Criminal Organization	Maldives Penal Code 71
Section 1003. Guideline Sentence Need Not Be Imposed, But Departure Must Be Explained	Maldives Penal Code 15
Section 1005. Punishment Method Equivalency Table	Maldives Penal Code 28q
Section 1104. Aggravations and Mitigations for Prior Criminal History	Rules Relating to the Conduct of Judicial Proceedings 289
Section 1105. Aggravation for Refusal to Compensate Victim	Rules Relating to the Conduct of Judicial Proceedings 296
Section 1202. Application of Alternative Punishments	Criminal Court Circulars 13/jp/2003
Section 1202. Application of Alternative Punishments	Maldives Penal Code 18
Section 1202. Application of Alternative Punishments	Maldives Penal Code 19
Section 1202. Application of Alternative Punishments	Maldives Penal Code 28r
Section 1202. Application of Alternative Punishments	Maldives Penal Code 28s

CONVERSION TABLE: CURRENT LAW TO DRAFT CODE

N.B.: “Regulatory” indicates that the current law provision would remain in effect upon enactment of the Crimes & Sentencing Code. “Civil,” “Evidentiary,” “Juvenile,” and “Procedural” indicate that the subject matter of the current law provision will be addressed, respectively, in the laws governing civil liability, the Rules of Evidence, the laws governing juveniles, and the Rules of Criminal Procedure.

Current Law Provision	Draft Code Provision
Civil Aviation Act	Regulatory
Companies Act of Maldives	70
Companies Act of Maldives	317
Consumer Protection Act	Regulatory
Consumer Protection Act Provision 8	313
Contract Act	Regulatory
Controlled Substance Regulations	Regulatory
Criminal Court Circulars 2/jp/2003	Procedural
Criminal Court Circulars 3/sp/2003	Procedural
Criminal Court Circulars 4/sp/2003	416
Criminal Court Circulars 5/jp/2003	Procedural
Criminal Court Circulars 5/sp/2003	Regulatory
Criminal Court Circulars 7/sp/2003	537
Criminal Court Circulars 8/sp/2003	131
Criminal Court Circulars 10/sp/2003	724
Criminal Court Circulars 11/jp/2003	Civil
Criminal Court Circulars 11/sp/2003	724
Criminal Court Circulars 12/sp/2003	Regulatory
Criminal Court Circulars 13/jp/2003	1202
Criminal Court Circulars 13/sp/2003	80

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Criminal Court Circulars 14/sp/2003	537
Criminal Court Circulars 16/jp/2003	614
Criminal Court Circulars 16/jp/2003	614
Criminal Court Circulars 19/jp/2003	Civil
Environment Act	Regulatory
Family Law Act 2000 Sect. 62	Civil
Family Law Act 2000 Sect. 63	Civil
Family Law Act 2000 Sect. 64	Civil
Family Law Act 2000 Sect. 65	410
Family Law Act 2000 Sect. 66	Civil
Family Law Act 2000 Sect. 67	Civil
Family Law Act 2000 Sect. 68	Civil
Family Law Act 2000 Sect. 69	411
Family Law Act 2000 Sect. 70 6	410
Family Law Act 2000 Sect. 70 7	410
Family Law Act 2000 Sect. 70 12	410
Family Law Act 2000 Sect. 70 34	Civil
Family Law Act 2000 Sect. 70 35	415
Family Law Act 2000 Sect. 70 38	415
Family Law Act 2000 Sect. 70 57	415
Family Law Act 2000 Sect. 70 58	415
Fisheries Act	Regulatory
Foreign Investment Act	Regulatory
General Law	616
Law Governing Extracting Stones, Sand, and Dead Coral from Inhabited Islands	Regulatory
Law Governing Licenses of Ship Stations	Regulatory
Law Governing Maldivians Who Go Abroad	13
Law of Contract	Civil
Law of Providing Information on Fishing Vessel	Regulatory

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Current Law Provision	Draft Code Provision
Law on Ancient and Historic Places	220
Law on Associations	No Law
Law on Bathing, Shrouding, and Burying the Dead	Regulatory
Law on Becoming a Resident of the Maldives	Regulatory
Law on Collection of Debts Owed to the Government	Civil
Law on Entry to Hulhule	Regulatory
Law on General Elections	Regulatory
Law On Items That Are Prohibited To Be Brought in to Maldives	624
Law On Items That Are Prohibited To Be Brought in to Maldives	710
Law on Keeping Hotels	Regulatory
Law on License for Armature Transmitting Stations	Regulatory
Law on License for Fixed Transmitting Stations	Regulatory
Law on Narcotic Drugs and Psychotropic Substances	720
Law on Narcotic Drugs and Psychotropic Substances	721
Law on Narcotic Drugs and Psychotropic Substances	722
Law on Narcotic Drugs and Psychotropic Substances	723
Law on News Publication and Such	613
Law on Operating Carnival	Regulatory
Law on Planting and Felling Trees	Regulatory
Law on Practicing Medicine	Regulatory
Law on Presidential Elections	Regulatory
Law on the Prevention of Terrorism	82
Law on the Prevention of Terrorism	730
Law on Public Services Art. 9	220

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Current Law Provision	Draft Code Provision
Law on Registration of Communication Frequency	Regulatory
Law on Services for Public Use	220
Law on Services for Public Use Art. 9	221
Law on Serving Government by Students Who Study in Government Schools	Regulatory
Law on Taxes Levied on Petroleum	Regulatory
Law on the Prevention of Terrorism 2b	140
Law on the Protection of the Rights of Children	Regulatory
Law on the Protection of the Rights of Children Sect. 20	120
Law on the Protection of the Rights of Children Sect. 21	120
Law on the Protection of the Rights of Children Sect. 21	414
Law on the Protection of the Rights of Children Sect. 21	415
Law on the Protection of the Rights of Children Sect. 25	120
Law on the Protection of the Rights of Children Sect. 25	131
Law on the Protection of the Rights of Children Sect. 25	413
Law on the Protection of the Rights of Children Sect. 25	414
Law on Uninhabited Islands	13
Law on Walking on Streets	610
Law on Women's Testimony	Evidentiary
Law Relating to Claiming Debts and Other Funds Due to the Government or Places to the Government	Regulatory
Law Relating to State-Owned Timber, 1970	Regulatory

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Current Law Provision	Draft Code Provision
Law Relating to the Lease of Uninhabited Islands for the Development of Tourist Resorts	Regulatory
Law Relating to the Levying of Fees on Foreign Nationals Holding Resident Permits in the Maldives	Regulatory
Law Relating to the Protection of Religious Unity Act	611
Law Relating to the Protection of Religious Unity Act	616
Law Requiring Lights on Vessels	Regulatory
Maldives Monetary Authority Act	510
Maldives Monetary Authority Act	514
Maldives Penal Code 1	10
Maldives Penal Code 2	13
Maldives Penal Code 3	13
Maldives Penal Code 4	63
Maldives Penal Code 5	13
Maldives Penal Code 6	53
Maldives Penal Code 7	53
Maldives Penal Code 8	Omitted
Maldives Penal Code 9	23
Maldives Penal Code 9	80
Maldives Penal Code 9	86
Maldives Penal Code 10	22
Maldives Penal Code 10	86
Maldives Penal Code 11	22
Maldives Penal Code 11	30
Maldives Penal Code 11	86
Maldives Penal Code 12	81
Maldives Penal Code 12	86
Maldives Penal Code 12a	30
Maldives Penal Code 12a	30
Maldives Penal Code 12b	82
Maldives Penal Code 12c	30
Maldives Penal Code 12c	30
Maldives Penal Code 13	82
Maldives Penal Code 13	86

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Maldives Penal Code 14	86
Maldives Penal Code 15	1003
Maldives Penal Code 16	92
Maldives Penal Code 18	1202
Maldives Penal Code 18a	1202
Maldives Penal Code 18b	1202
Maldives Penal Code 18c	1202
Maldives Penal Code 19	1202
Maldives Penal Code 20	57
Maldives Penal Code 20	57
Maldives Penal Code 21	Procedural
Maldives Penal Code 23	25
Maldives Penal Code 24	25
Maldives Penal Code 24	26
Maldives Penal Code 24	31
Maldives Penal Code 24	50
Maldives Penal Code 24	52
Maldives Penal Code 24	54
Maldives Penal Code 24	56
Maldives Penal Code 25	45
Maldives Penal Code 26	93
Maldives Penal Code 27	82
Maldives Penal Code 28a	13
Maldives Penal Code 28b	17
Maldives Penal Code 28c	Omitted
Maldives Penal Code 28d	17
Maldives Penal Code 28d	17
Maldives Penal Code 28e	17
Maldives Penal Code 28f	Omitted
Maldives Penal Code 28g	11
Maldives Penal Code 28h	Omitted
Maldives Penal Code 28i	17
Maldives Penal Code 28j	17
Maldives Penal Code 28k	Omitted
Maldives Penal Code 28l	Omitted
Maldives Penal Code 28m	310
Maldives Penal Code 28n	17
Maldives Penal Code 28o	17

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Maldives Penal Code 28p	Omitted
Maldives Penal Code 28q	1005
Maldives Penal Code 28r	1202
Maldives Penal Code 28s	1202
Maldives Penal Code 28t	17
Maldives Penal Code 28t	Omitted
Maldives Penal Code 28u	Omitted
Maldives Penal Code 28v	Omitted
Maldives Penal Code 28v	Omitted
Maldives Penal Code 29	610
Maldives Penal Code 29	611
Maldives Penal Code 29	612
Maldives Penal Code 30	611
Maldives Penal Code 30	710
Maldives Penal Code 31	611
Maldives Penal Code 31	710
Maldives Penal Code 32	530
Maldives Penal Code 33	530
Maldives Penal Code 33	532
Maldives Penal Code 33	532
Maldives Penal Code 33	532
Maldives Penal Code 33	533
Maldives Penal Code 34	532
Maldives Penal Code 34	533
Maldives Penal Code 35	530
Maldives Penal Code 36	532
Maldives Penal Code 36	533
Maldives Penal Code 37	611
Maldives Penal Code 37	612
Maldives Penal Code 38	611
Maldives Penal Code 39	537
Maldives Penal Code 39	538
Maldives Penal Code 40	42
Maldives Penal Code 40	43
Maldives Penal Code 40	532
Maldives Penal Code 40	533
Maldives Penal Code 40	535
Maldives Penal Code 41a	530

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Maldives Penal Code 41b	92
Maldives Penal Code 41b	92
Maldives Penal Code 41c	530
Maldives Penal Code 46	230
Maldives Penal Code 46	611
Maldives Penal Code 47	611
Maldives Penal Code 48	611
Maldives Penal Code 49	533
Maldives Penal Code 49	611
Maldives Penal Code 49	710
Maldives Penal Code 50	611
Maldives Penal Code 51	611
Maldives Penal Code 51	710
Maldives Penal Code 52	86
Maldives Penal Code 53	611
Maldives Penal Code 54	530
Maldives Penal Code 54	532
Maldives Penal Code 55	611
Maldives Penal Code 56	611
Maldives Penal Code 57	611
Maldives Penal Code 58	610
Maldives Penal Code 59	220
Maldives Penal Code 59	611
Maldives Penal Code 60	92
Maldives Penal Code 60	610
Maldives Penal Code 61	530
Maldives Penal Code 61	532
Maldives Penal Code 61	535
Maldives Penal Code 62	520
Maldives Penal Code 63	520
Maldives Penal Code 64	523
Maldives Penal Code 65	523
Maldives Penal Code 66	520
Maldives Penal Code 67	523
Maldives Penal Code 68	520
Maldives Penal Code 69	520
Maldives Penal Code 70	530
Maldives Penal Code 71	730

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Maldives Penal Code 72	Procedural
Maldives Penal Code 73	520
Maldives Penal Code 73	530
Maldives Penal Code 74	530
Maldives Penal Code 75	522
Maldives Penal Code 75	613
Maldives Penal Code 76	114
Maldives Penal Code 76	536
Maldives Penal Code 77	536
Maldives Penal Code 78	536
Maldives Penal Code 79	312
Maldives Penal Code 79	525
Maldives Penal Code 80	536
Maldives Penal Code 80	538
Maldives Penal Code 81	510
Maldives Penal Code 81	511
Maldives Penal Code 81	512
Maldives Penal Code 82	538
Maldives Penal Code 83	114
Maldives Penal Code 83	536
Maldives Penal Code 83	537
Maldives Penal Code 84	537
Maldives Penal Code 85	710
Maldives Penal Code 86	533
Maldives Penal Code 86a	530
Maldives Penal Code 86a	532
Maldives Penal Code 86a	532
Maldives Penal Code 86b	530
Maldives Penal Code 86b	532
Maldives Penal Code 86b	532
Maldives Penal Code 87a	Omitted
Maldives Penal Code 87b	42
Maldives Penal Code 87b	43
Maldives Penal Code 88	120
Maldives Penal Code 88	537
Maldives Penal Code 88a	Civil
Maldives Penal Code 88b	Civil
Maldives Penal Code 88c	Civil

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Maldives Penal Code 88d	110
Maldives Penal Code 88d	111
Maldives Penal Code 88d	112
Maldives Penal Code 88(1)	537
Maldives Penal Code 88(2)	537
Maldives Penal Code 88(3)	230
Maldives Penal Code 88(4)	Omitted
Maldives Penal Code 88(5)	131
Maldives Penal Code 88(6)	131
Maldives Penal Code 88(7)	131
Maldives Penal Code 88(8)	Civil
Maldives Penal Code 88(9)	416
Maldives Penal Code 88(10)	532
Maldives Penal Code 88(10)	535
Maldives Penal Code 88(11)	532
Maldives Penal Code 88(11)	532
Maldives Penal Code 88(11)	533
Maldives Penal Code 88(12)	213
Maldives Penal Code 88(13)	212
Maldives Penal Code 88(14)	313
Maldives Penal Code 88(15)	722
Maldives Penal Code 88(16)	722
Maldives Penal Code 88(17)	531
Maldives Penal Code 88(18)	531
Maldives Penal Code 88(19)	220
Maldives Penal Code 88(20)	615
Maldives Penal Code 88(21)	617
Maldives Penal Code 88(22)	212
Maldives Penal Code 88(23)	536
Maldives Penal Code 88(23)	538
Maldives Penal Code 88(24)	539
Maldives Penal Code 88(25)	620
Maldives Penal Code 88(25)	621
Maldives Penal Code 88(26)	81
Maldives Penal Code 88(27)	411
Maldives Penal Code 88(28)	610
Maldives Penal Code 88(29)	623
Maldives Penal Code 88(30)	Omitted

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Maldives Penal Code 88(31)	113
Maldives Penal Code 88(32)	113
Maldives Penal Code 88(33)	Civil
Maldives Penal Code 88(34)	310
Maldives Penal Code 88(35)	311
Maldives Penal Code 88(36)	310
Maldives Penal Code 88(37)	614
Maldives Penal Code 88(38)	610
Maldives Penal Code 88(39)	610
Maldives Penal Code 88(40)	312
Maldives Penal Code 89	17
Maldives Penal Code 90	310
Maldives Penal Code 91	310
Maldives Penal Code 92	310
Maldives Penal Code 92	311
Maldives Penal Code 93	87
Maldives Penal Code 93	87
Maldives Penal Code 94	310
Maldives Penal Code 95	310
Maldives Penal Code 96	310
Maldives Penal Code 97	310
Maldives Penal Code 98	310
Maldives Penal Code 99	310
Maldives Penal Code 100	310
Maldives Penal Code 101	121
Maldives Penal Code 102	533
Maldives Penal Code 103	121
Maldives Penal Code 104	121
Maldives Penal Code 105	721
Maldives Penal Code 106	721
Maldives Penal Code 107	310
Maldives Penal Code 107	721
Maldives Penal Code 109	121
Maldives Penal Code 110	220
Maldives Penal Code 110	221
Maldives Penal Code 111	121
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Maldives Penal Code 114	121
Maldives Penal Code 114	220
Maldives Penal Code 114	221
Maldives Penal Code 114	222
Maldives Penal Code 115	121
Maldives Penal Code 115	220
Maldives Penal Code 115	221
Maldives Penal Code 115	222
Maldives Penal Code 116	121
Maldives Penal Code 117	121
Maldives Penal Code 118	121
Maldives Penal Code 119	Regulatory
Maldives Penal Code 119a	Regulatory
Maldives Penal Code 119b	Regulatory
Maldives Penal Code 120a	510
Maldives Penal Code 120b	510
Maldives Penal Code 120c	510
Maldives Penal Code 120d	510
Maldives Penal Code 120e	510
Maldives Penal Code 120f	510
Maldives Penal Code 120g	510
Maldives Penal Code 121	540
Maldives Penal Code 121a	540
Maldives Penal Code 121b	540
Maldives Penal Code 121c	312
Maldives Penal Code 122	510
Maldives Penal Code 123	Regulatory
Maldives Penal Code 124	Omitted
Maldives Penal Code 125	310
Maldives Penal Code 126	120
Maldives Penal Code 127	120
Maldives Penal Code 128	120
Maldives Penal Code 129	120
Maldives Penal Code 130	120
Maldives Penal Code 131a	210
Maldives Penal Code 131a	211
Maldives Penal Code 131a	212
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Maldives Penal Code 131b	211
Maldives Penal Code 132	210
Maldives Penal Code 132	211
Maldives Penal Code 132	212
Maldives Penal Code 132	213
Maldives Penal Code 132	215
Maldives Penal Code 134a	211
Maldives Penal Code 134b	211
Maldives Penal Code 134c	211
Maldives Penal Code 134d	211
Maldives Penal Code 135	211
Maldives Penal Code 135	213
Maldives Penal Code 135	213
Maldives Penal Code 135	215
Maldives Penal Code 135	215
Maldives Penal Code 136	86
Maldives Penal Code 136	211
Maldives Penal Code 137	211
Maldives Penal Code 138	211
Maldives Penal Code 138	213
Maldives Penal Code 139	211
Maldives Penal Code 139	213
Maldives Penal Code 140	210
Maldives Penal Code 140	211
Maldives Penal Code 140	213
Maldives Penal Code 140	710
Maldives Penal Code 141	210
Maldives Penal Code 141	211
Maldives Penal Code 141	211
Maldives Penal Code 141	213
Maldives Penal Code 141	710
Maldives Penal Code 142	210
Maldives Penal Code 142	213
Maldives Penal Code 142	710
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Maldives Penal Code 143	215
Maldives Penal Code 144	210
Maldives Penal Code 144	211
Maldives Penal Code 144	212
Maldives Penal Code 144	213
Maldives Penal Code 144	215
Maldives Penal Code 145	210
Maldives Penal Code 145	211
Maldives Penal Code 145	213
Maldives Penal Code 146	211
Maldives Penal Code 146	215
Maldives Penal Code 147	211
Maldives Penal Code 147	213
Maldives Penal Code 148	210
Maldives Penal Code 148	211
Maldives Penal Code 148	213
Maldives Penal Code 148	215
Maldives Penal Code 150	611
Maldives Penal Code 150	613
Maldives Penal Code 151	611
Maldives Penal Code 151	613
Maldives Penal Code 152	611
Maldives Penal Code 152	613
Maldives Penal Code 153	611
Maldives Penal Code 153	613
Maldives Penal Code 153a	611
Maldives Penal Code 153b	611
Maldives Penal Code 153c	611
Maldives Penal Code 154	611
Maldives Penal Code 154	613
Maldives Penal Code 155	611
Maldives Penal Code 155	613
Maldives Penal Code 156	611
Maldives Penal Code 156	613
Maldives Penal Code 157	611
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Maldives Penal Code 158	611

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Maldives Penal Code 158	613
Maldives Penal Code 159	611
Maldives Penal Code 159	613
Maldives Penal Code 160	611
Maldives Penal Code 160	613
Maldives Penal Code 161	611
Maldives Penal Code 161	613
Maldives Penal Code 162	611
Maldives Penal Code 162	613
Maldives Penal Code 163	611
Maldives Penal Code 163	613
Maldives Penal Code 164	611
Maldives Penal Code 164	613
Maldives Penal Code 164a	Civil
Maldives Penal Code 164b	Civil
Maldives Penal Code 165	611
Maldives Penal Code 165	613
Maldives Penal Code 166	611
Maldives Penal Code 166	613
Maldivian Import and Export Law	Regulatory
Maritime Zones MDV 1996 Act	Regulatory
Mortgage Act	Regulatory
Negotiable Instruments Act	Regulatory
Partnership Act	Regulatory
Regulation on the Issuance of Permits to Foreign Vessels to Visit and Sail Within the Maldives for the Purchase of Reef Fish	Regulatory
Rules Relating to the Conduct of Judicial Proceedings 3	Procedural
Rules Relating to the Conduct of Judicial Proceedings 20	541
Rules Relating to the Conduct of Judicial Proceedings 20	Procedural, Civil
Rules Relating to the Conduct of Judicial Proceedings 24	541
Rules Relating to the Conduct of Judicial Proceedings 35	Procedural

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Rules Relating to the Conduct of Judicial Proceedings 65	Procedural
Rules Relating to the Conduct of Judicial Proceedings 67	231
Rules Relating to the Conduct of Judicial Proceedings 71	216
Rules Relating to the Conduct of Judicial Proceedings 72	213
Rules Relating to the Conduct of Judicial Proceedings 76	Procedural
Rules Relating to the Conduct of Judicial Proceedings 80	Procedural
Rules Relating to the Conduct of Judicial Proceedings 81	722
Rules Relating to the Conduct of Judicial Proceedings 92	Procedural, Civil
Rules Relating to the Conduct of Judicial Proceedings 100	411
Rules Relating to the Conduct of Judicial Proceedings 108	Procedural
Rules Relating to the Conduct of Judicial Proceedings 109	121
Rules Relating to the Conduct of Judicial Proceedings 111	65
Rules Relating to the Conduct of Judicial Proceedings 116	541
Rules Relating to the Conduct of Judicial Proceedings 116	Procedural, Civil
Rules Relating to the Conduct of Judicial Proceedings 164	Procedural
Rules Relating to the Conduct of Judicial Proceedings 173	132
Rules Relating to the Conduct of Judicial Proceedings 173	133
Rules Relating to the Conduct of Judicial Proceedings 173(1)	411
Rules Relating to the Conduct of Judicial Proceedings 173(2)	411
Rules Relating to the Conduct of Judicial Proceedings 173(3)	411

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Rules Relating to the Conduct of Judicial Proceedings 173(5)	411
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Rules Relating to the Conduct of Judicial Proceedings 173(6)	413
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Rules Relating to the Conduct of Judicial Proceedings 197(2)	521
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Rules Relating to the Conduct of Judicial Proceedings 197(4)	Procedural

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Rules Relating to the Conduct of Judicial Proceedings 212	Procedural
Rules Relating to the Conduct of Judicial Proceedings 221	Procedural
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Sale of Goods Act	Regulatory
The Law Governing Business by Foreign Nationals	Regulatory
The Maldives Tourism Act of 1999	Regulatory

ANALYSIS OF SAMPLE CASES UNDER THE DRAFT CODE

Case #1

Statement of Facts: Mohamed and Fatima are married. Fatima is a little late getting dinner on the table one night. Mohamed, who is relatively bad tempered, is quite furious with this because it has happened before. In his rage, he beats her with a lamp. During the beating, the lamp breaks, injuring Fatima’s face and left eye. A neighbor hears Fatima screaming and calls the police. Upon arrival, the police arrest Mohamed and take Fatima to the hospital. She has suffered serious injuries, including a fractured jaw, bruises, and a cut to her left eye. After several days in the hospital, she fully recovers from the bruises, the fractured jaw is set and will heal completely, but she has permanently lost all sight in her left eye. A subsequent investigation reveals the above facts, as well as the fact that Mohamed was convicted for simple assault against Fatima a year ago in a similar encounter.

Relevant Provisions: 120(a) (Assault), 120(b)(1)(A), 17 (“serious bodily injury”) (Definitions), 120(b)(1)(B), 120(b)(1)(A), 24(h) (Culpability Requirements), 24(e), 92 (Authorized Terms of Imprisonment), 93 (Authorized Fines), 1001 (Guideline Sentence), 1002 (Guideline Sentence Table), 1001(a), 1001(b), 120(c), 1104(a)(1) (Aggravations and Mitigations for Prior Criminal History), and 1104(b).

Analysis: Mohamed’s conduct satisfies the objective elements of the definition of assault in § 120(a) because he injured Fatima without her consent. The offense’s grading provision, § 120(b)(1)(A), provides that serious assault is a Class D felony if “the person causes serious bodily injury.” Serious bodily injury is defined in § 17, which collects all the defined terms in the Code. Fatima’s blindness constitutes permanent disfigurement, so Mohamed has caused serious bodily injury. (The grading provision in § 120(b)(1)(B) does not apply because the lamp does not satisfy the definition of a dangerous weapon in § 120(d)(1)(A).)

Because no culpability term is expressly stated in the offense definition, § 24(h) applies, which reads in a minimum culpability requirement recklessness as to each objective element of the offense. Recklessness is defined in § 24(e). By severely beating Fatima with a lamp, Mohamed consciously disregarded a substantial and unjustifiable risk that he would cause serious bodily injury to her, and his disregard involved a gross deviation from acceptable standards of conduct. Therefore, Mohamed was reckless as to causing serious bodily injury and is liable for serious assault under § 120(b)(1)(A), a Class D felony. Under § 92, the maximum authorized term of imprisonment for a Class D felony is 4 years. Under § 93, the maximum authorized fine for a Class D felony is 100,000 Rufiyaa.

The guideline sentence for the offense is determined according to § 1001

and the Guideline Sentence Table in § 1002. The relevant column of the table is determined by the grade of the offense, here a class D felony (§ 1001(a)). Next, sentencing factors are used to determine the relevant table row (§ 1001(b)). Section 120(c) contains a sentencing factor, which provides for a one level aggravation because Mohamed assaulted Fatima in a home where she is a resident. Because of Mohamed's past conviction for simple assault of Fatima, he would receive two general adjustments: a one level aggravation for a prior misdemeanor conviction in the past two years under § 1104(a)(1), and a one level aggravation for committing a substantially similar offense in the past two years under § 1104(b). The aggravating factor in § 120(c) is added to the two levels of aggravation in § 1104 for a +3 aggravation. The cell in the Guideline Sentence Table corresponding to a class D felony and a +3 aggravation provides for a guideline sentence of 2 years, 9 months, and 18 days.

Case #2

Statement of Facts: Ali is an assistant manager at a retail store where Mariyam is a clerk. Mariyam works during a shift supervised not by Ali, but by another assistant manager. Mariyam is responsible for keeping the key to the store's safe during her shift. Ali wants to steal from the safe, but he wants to avoid detection by stealing the money during the other assistant manager's shift. Because Mariyam has the only key to the safe, Ali tells her that he is going to steal the money from the safe and that he needs her key to get into the safe. While she would not normally help him in his scheme, he threatens her by threatening to get her fired if she does not help. Mariyam needs to keep her job to support her family and believes Ali really can get her fired. Mariyam gives Ali the key, which he uses to open the safe and steal 35,000 Rufiyaa in cash. Several days later, the theft is discovered, and the ensuing police investigation reveals the above facts.

Relevant Provisions for Ali: § 211 (Theft by Taking or Disposition), § 210(b)(3) (Consolidation of Theft Offenses), § 92 (Authorized Terms of Imprisonment), § 93 (Authorized Fines), § 1002 (Guideline Sentence Table)

Analysis of Ali's liability: Ali knowingly took the store's property with the purpose of permanently depriving the store of possession. Therefore, the objective elements and culpability requirements of the offense definition of theft by taking or disposition under § 211 are satisfied. Under § 210(b)(3), the grade of the offense is a Class E felony because the value of the property is above 5,000 Rufiyaa but below 50,000 Rufiyaa. Under § 92, the maximum authorized term of imprisonment for a Class E felony is 2 years. Under § 93, the maximum authorized fine for a Class E felony is 50,000 Rufiyaa.

There are no relevant sentencing factors in Parts I and II of the Code, and there are no relevant general adjustments under Chapter 1100, so the baseline sentence is used to determine the guideline sentence. The cell in the Guideline Sentence Table in § 1002 that corresponds to the Class E Felony column and the Baseline Sentence Row provides for a sentence of 9 months and 18 days for Ali.

Relevant Provisions for Mariyam: § 30(a)(3) (Accountability for the Conduct of Another), §30(b)(1), § 211 (Theft by Taking or Disposition), §30(d)(4)(B), § 30(d)(4)(A), § 30(d)(4)(C), § 30(d)(2), § 92 (Authorized Terms of Imprisonment), § 93 (Authorized Fines), § 55 (Duress), § 55(a)(1), § 55(a)(2), § 1109 (Mitigation for Partial Excuse), § 1002 (Guideline Sentence Table), § 1004 (Amount of Punishment Called for in Guideline Sentence Table May Be Imposed Through Any Authorized Punishment Method), § 1005 (Punishment Method Equivalency Table)

Analysis of Mariyam’s liability: Mariyam did not herself engage in the conduct necessary to commit theft by taking; however, under **§ 30(a)(3)**, she would be liable for Ali’s conduct because she helped him. By giving Ali the key to the safe, knowing what he was going to do with it, she knowingly aided Ali with the purpose of facilitating his commission of the theft. Therefore, she has fulfilled the requirements for accomplice liability under **§ 30(b)(1)** and would thus be liable for theft by taking or disposition under **§ 211** (see analysis of Ali’s liability).

The grade of her offense is determined by starting with the grade of the theft she assisted and adjusting it according to her level of involvement in the commission. Because she gave Ali the only key to the safe, her conduct was necessary for the success of the theft, so she is not a minor participant as defined in **§ 30(d)(4)(B)**. She was not an organizer or leader as defined in **§ 30(d)(4)(A)** because she did not exercise any responsibility for or control over any other accomplices. Therefore, she was a participant as defined in **§ 30(d)(4)(C)**, so the grade of her offense under **§ 30(d)(2)** is one grade lower than the Class E felony of theft of 35,000 Rufiyaa by taking. Therefore, she would be liable for a Class 1 misdemeanor. Under **§ 92**, the maximum authorized term of imprisonment for a Class 1 misdemeanor is 1 year. Under **§ 93**, the maximum authorized fine for a Class 1 misdemeanor is 25,000 Rufiyaa.

Although Mariyam satisfies the offense definition for theft by taking, she may try to claim the general excuse defense of duress under **§ 55** because she only gave the key to Ali after he threatened to fire her. She might argue that she was compelled to give Ali the key (see **§ 55(a)(1)**). However, the source of the compulsion was only a threat that she would lose her job, which is not so serious a threat that a person of reasonable firmness in her situation would have been unable to resist it (see **§ 55(a)(2)**). Therefore she does not satisfy the requirements for a complete defense of duress and would still be liable for a Class 1 misdemeanor.

Although Ali’s threat was not sufficiently serious to allow Mariyam to completely avoid liability, she did commit the offense under coercion from Ali, rather than willingly, and this is relevant in judging the amount of punishment she deserves. She believed that Ali would be able to fire her and take away the income she needed to support her family. Therefore, the coercion may still be relevant as a partial excuse, providing a general adjustment to a guideline sentence. Under **§ 1109**, Mariyam would receive a two level mitigation because she came close to satisfying the duress defense. In the Sentencing Guideline table in **§ 1002**, the cell corresponding to the -2 mitigation row and the Class 1 misdemeanor column provides for a sentence of 2 months and 12 days. Mariyam, who is working to support her family, would probably be a good candidate for alternative sentences, so any authorized punishment method could be used to satisfy her sentence under **§ 1004**. Using the Punishment Method Equivalency Table in **§ 1005**, her sentence might be converted into 160 hours of community service (equivalent to 1 month of imprisonment) and 8 months, 12 days of

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probation (equivalent to 1 month, 12 days of imprisonment), or any other combination of authorized punishment methods that would be equivalent to a 2 month, 12 day sentence.