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A BILL FOR AN ACT

To define major crimes as offenses against National interests; to amend sections 101, 104, 601, 602, 603, 604, and 1001 of title 11; to add new sections to title 11; and to repeal Sections 901 through 953 of title 11 of the Code of the Federated States of Micronesia; and for other purposes.

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

1           Section 1. Section 101 of title 11 of the Code of the  
2 Federated States of Micronesia is hereby amended to read as follows:

3           "Section 101. Title; National jurisdiction. This title  
4 shall be known and cited as the "National Criminal Code."

5           The National Government of the Federated States of  
6 Micronesia has exclusive jurisdiction over all major  
7 crimes as defined in section 104 of this chapter,  
8 pursuant to article IX, section 2(p), of the  
9 Constitution of the Federated States of Micronesia."

10          Section 2. Section 104 of title 11 of the Code of the Federated  
11 States of Micronesia is hereby amended to read as follows:

12          "Section 104. Definitions. The definitions in this  
13 section shall apply throughout this code, unless otherwise  
14 specified or a different meaning is plainly required.

15           (1) "Classification of crimes." A "felony" is an  
16 offense which may be punished by imprisonment for more  
17 than one year. A "petty misdemeanor" is an offense which  
18 may be punished by imprisonment for not more than thirty  
19 days. Every other offense is a "misdemeanor."

20           (2) "Criminal negligence." A person acts with  
21 criminal negligence, or is criminally negligent, with  
22 respect to attendant circumstances when his conduct  
23 creates a substantial and unjustifiable risk and causes  
24 the criminal result; or if his failure to be aware of  
25 the risk constitutes a gross deviation from the standard

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1 of care that a reasonable person would exercise  
2 in the situation.

3 (3) "Defendant." The term "defendant"  
4 includes a person who is an accessory or accomplice  
5 of the defendant.

6 (4) "Intent." A person acts intentionally, or  
7 with intent, with respect to his conduct or to a  
8 result thereof when it is his conscious purpose to  
9 engage in the conduct or cause the result.

10 (5) "Knowledge." A person acts knowingly, or  
11 with knowledge, with respect to his conduct or to  
12 attendant circumstances when he is aware of the  
13 nature of his conduct or that those circumstances  
14 exist. A person acts knowingly, or with knowledge,  
15 with respect to a result of his conduct when he is  
16 aware that his conduct is practically certain to  
17 cause the result.

18 (6) "Major crime." A "major crime" is ~~any crime~~  
19 ~~which is punishable by imprisonment for a period of~~  
20 ~~three years or more. An attempt to commit a major~~  
21 ~~crime is also a major crime.~~ an offense defined by the  
22 National Criminal Code or which is otherwise an offense  
23 against the National Government of the Federated States  
24 of Micronesia or against an interest over which the  
25 National Government has jurisdiction by law. An attempt

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1 to commit a major crime is also a major crime. Any  
2 offense not included in this definition shall be a matter  
3 for the jurisdictions of the various States.

4 (7) "National offense." A "National offense" is  
5 an offense defined by this code of which is otherwise  
6 an offense against the Federated States of Micronesia.

7 (8) (7) "Official proceeding." "Official proceeding"  
8 means a proceeding heard or which may be heard before  
9 any legislative, judicial, administrative, or other  
10 governmental agency of the National Government of the  
11 Federated States of Micronesia, or official authorized  
12 to take evidence under oath, including any referee,  
13 hearing examiner, commissioner, notary, or other person  
14 taking testimony or deposition in connection with any  
15 such proceeding. The term "official proceeding" includes  
16 all judicial and administrative proceedings of the  
17 Government of the Trust Territory of the Pacific Islands  
18 which arise out of the Federated States of Micronesia.

19 (9) (8) "Recklessness." "Recklessness" means to  
20 act with willful disregard to the attendant circumstances,  
21 or if unaware of the circumstances, to act in such a  
22 manner that constitutes a gross deviation from the  
23 standard of care that a reasonable person would exercise  
24 in the situation.

25 (10) (9) "Persons." The terms "person," "he,"

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1 "accused," and "defendant" include any natural person  
2 and, where relevant, a corporation or an unincorporated  
3 association.

4 ~~(11)~~ (10) "Public servant." A "public servant"  
5 means any officer or employee of, or any person acting  
6 on behalf of, the National Government of the Federated  
7 States of Micronesia, including legislators and judges,  
8 and any person acting as an advisor, consultant, or  
9 otherwise, in performing a governmental function; but  
10 the term does not include witnesses. The term "public  
11 servant" includes a public servant of the Government of  
12 the Trust Territory of the Pacific Islands when acting  
13 in judicial or administrative proceeding which has been  
14 brought in, or arises out of, the Federated States of  
15 Micronesia.

16 ~~(12)~~ (11) "State." The term "State" means a  
17 State of the Federated States of Micronesia."

18 Section 3. Section 601 of title 11 of the Code of the Federated  
19 States of Micronesia is hereby amended to read as follows:

20 "Section 601. Theft against the Government.

21 (1) "Theft." A person commits the offense of theft  
22 against the Government if he commits theft of any  
23 property or service in which the Government of the  
24 Federated States of Micronesia has any legal, equitable,  
25 or possessory interest.

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(2) Major crimes provisions applicable. The provisions of subchapter 777 of chapter 9 of this title relating to major crimes, excluding subsections (1) and (2) of section 931, shall apply to all cases of theft against the Government.

(1) (2) "Penalty." A person convicted under this section shall be punished:

(a) if the value of the property or service is \$5,000 or more, by imprisonment for not more than ten years; or

(b) if the value of the property or service is at least \$1,000 but less than \$5,000, by imprisonment for not more than five years; or

(c) if the value of the property or service is at least \$100 but less than \$1,000, by imprisonment for not more than one year; or

(d) if the value of the property or service is at least \$25 but less than \$100, by imprisonment for not more than six months; or

(e) if the value of the property or service is less than \$25, by imprisonment for not more than thirty days.

(3) "Amount involved." The amount involved in a theft shall be deemed to be the highest value, by any reasonable standard, of the property or service which the

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1 defendant stole or attempted to steal. Amounts  
2 involved in thefts committed pursuant to one scheme or  
3 cause of conduct, whether from the same person or  
4 several persons, may be aggregated in determining  
5 whether an offense has been committed and the grade  
6 of the offense.

7 (4) "Claim of right." It is an affirmative  
8 defense to prosecution for theft that the defendant:

9 (a) was unaware that the property or service  
10 was that of the Government; or

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

14 (c) took property exposed for sale, intending  
15 to purchase and pay for it promptly, or reasonably  
16 believing that the Government or its agent, if present,  
17 would have consented."

18 Section 4. A new section 602 is hereby added to title 11 of the  
19 Code of the Federated States of Micronesia to read as follows:

20 Section 602. Definitions. As used in this chapter:

21 (1) "Deprive." "Deprive" means:

22 (a) to withhold property of the  
23 Government permanently or for so extended a period as to  
24 appropriate a major portion of its economic value, or  
25 with intent to restore only upon payment of reward or

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1 other compensation; or

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

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

9 (3) "Government." "Government" means the National  
10 Government of the Federated States of Micronesia and any  
11 department, agency, or subdivision thereof, or any  
12 corporation or other association carrying out the functions  
13 of the Government.

14 (4) "Movable property." "Movable property" means  
15 property, the location of which can be changed, including  
16 things growing on, affixed to, or found in land, and  
17 documents, although the rights represented thereby have  
18 no physical location. "Immovable property" is all other  
19 property.

20 (5) "Obtain." "Obtain" means:

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

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

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1                   (6) "Property." "Property" means anything of value,  
 2                   including real estate, tangible and intangible personal  
 3                   property, contract rights, choses-in-action, and other  
 4                   interest in or claims to wealth, admission or transpor-  
 5                   tation tickets, captured or domestic animals, food and  
 6                   drink, electric or other power.

7                   (7) "Property of another." "Property of another"  
 8                   includes property in which the Government has  
 9                   an interest which the defendant is not privileged to  
 10                   infringe, regardless of the fact that the defendant also  
 11                   has an interest in the property and regardless of the  
 12                   fact that the Government might be precluded  
 13                   from civil recovery because the property was used in an  
 14                   unlawful transaction or was subject to forfeiture as  
 15                   contraband. Property in possession of the defendant  
 16                   shall not be deemed property of the Government when it  
 17                   has only a security interest therein, even if legal  
 18                   title is in the creditor pursuant to a conditional sales  
 19                   contract or other security agreement."

20                   Section 5. A new section 603 is hereby added to title 11 of the  
 21                   Code of the Federated States of Micronesia to read as follows:

22                   "Section 603. Theft by unlawful taking or disposition.  
 23                   (1) "Movable property." A person commits theft  
 24                   if he unlawfully takes or exercises unlawful control  
 25                   over movable property of the Government with purpose



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1 to deprive the Government thereof.

2 (2) "Immovable property." A person commits theft  
3 if he unlawfully transfers immovable property of the  
4 Government or any interest therein, with purpose to  
5 benefit himself or another not entitled thereto."

6 Section 6. A new section 604 is hereby added to title 11 of the  
7 Code of the Federated States of Micronesia to read as follows:

8 "Section 604. Theft by deception.

9 (1) A person commits theft if he purposely obtains  
10 property of the Government by deception. A person  
11 deceives if he purposely:

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

18 (b) prevents the Government or its agent from  
19 acquiring information which would affect his judgment  
20 of a transaction; or

21 (c) fails to correct a false impression  
22 which the deceiver previously created or enforced,  
23 or which the deceiver knows to be influencing the  
24 Government or its agent to whom he stands in a  
25 fiduciary or confidential relationship; or

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(d) fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

(2) The term "deceive" does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed."

Section 7. A new section 605 is hereby added to title 11 of the Code of the Federated States of Micronesia to read as follows:

"Section 605. Theft by extortion.

(1) A person commits theft if he purposely obtains property of the Government by threatening to:

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

(b) accuse anyone of a criminal offense; or

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

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

(e) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

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1                   (f) inflict any other harm which would  
2                   not benefit the defendant.

3                   (2) It is an affirmative defense prosecution  
4                   based on paragraphs (b), (c), or (d) in subsection (1)  
5                   of this section that the property obtained by threat of  
6                   accusation, exposure, lawsuits, or other invocation of  
7                   official action was honestly claimed as restitution or  
8                   indemnification for harm done in the circumstances to  
9                   which such accusation, exposure, lawsuit, or other  
10                   official action relates, or as compensation for property  
11                   or lawful services."

12                   Section 8. A new section 606 is hereby added to title 11 of the  
13 Code of the Federated States of Micronesia to read as follows:

14                   "Section 606. Theft of property lost, mislaid, or delivered  
15                   by mistake. A person who comes into control of property of  
16                   the Government that he knows to have been lost, mislaid, or  
17                   delivered under a mistake as to the nature or amount of the  
18                   property or the identity of the recipient commits theft if,  
19                   with purpose to deprive the owner thereof, he fails to  
20                   take reasonable measures to restore the property to a  
21                   person entitled to have it."

22                   Section 9. A new section 607 is hereby added to title 11 of the  
23 Code of the Federated States of Micronesia to read as follows:

24                   "Section 607. Receiving stolen property.  
25                   (1) A person commits theft if he purposely receives,

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1 retains, or disposes of movable property of the Government  
2 knowing that it has been stolen, or believing that it has  
3 probably been stolen, unless the property is received  
4 or disposed with purpose to restore it to the owner.

5 (2) "Receiving" means acquiring possession, control,  
6 or title of the property."

7 Section 10. A new section 608 is hereby added to title 11 of  
8 the Code of the Federated States of Micronesia to read as follows:

9 "Section 608. Theft of services.

10 (1) A person commits theft if he purposely obtains  
11 services which he knows are available only for compen-  
12 sation by deception or threat or by false token or other  
13 means to avoid payment for the service. "Services"  
14 includes labor; professional service; transportation;  
15 telephone or other public service; accommodation in  
16 hotels, restaurants, or elsewhere; admission to  
17 exhibitions; and use of vehicles or other movable property.

18 (2) A person commits theft if, having control over  
19 the disposition of Government services to which he is not  
20 entitled, he knowingly diverts such services to his own  
21 benefit or to the benefit of another not entitled thereto."

22 Section 11. A new section 609 is hereby added to title 11 of  
23 the Code of the Federated States of Micronesia to read as follows:

24 "Section 609. Theft by failure to make required disposition  
25 of funds received. A person who purposely obtains property

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1 upon agreement or subject to a known legal obligation  
2 to make specified payment or other disposition, whether  
3 from such property or its proceeds or from his own  
4 property in equivalent amount, commits theft if he  
5 deals with the property obtained as his own and fails  
6 to make the required payment or disposition. The  
7 foregoing applies notwithstanding that it may be  
8 impossible to identify particular property as belonging  
9 to the Government at the time of the defendant's  
10 failure to make the required payment or disposition.  
11 An officer or employee of the Government or of a  
12 financial institution is presumed:

- 13 (1) to know any legal obligation relevant to  
14 his criminal liability under this section; and  
15 (2) to have dealt with the property as his own if  
16 he fails to pay or account upon lawful demand, or if an  
17 audit reveals a shortage or falsification of account."

18 Section 12. Section 602 of title 11 of the Code of the  
19 Federated States of Micronesia is hereby amended to read as follows:

20 "Section ~~602~~610. Criminal mischief against the Government.

21-- (1) "Criminal mischief." A person commits the  
22 offense of criminal mischief against the Government if  
23 he intentionally or recklessly:

24 (a) causes any damage to property in which  
25 the Government of the Federated States of Micronesia has

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1 any legal, equitable, or possessory interest; or

2 (b) causes the Government of the Federated  
3 States of Micronesia by deception or threat to suffer  
4 any loss.

5 (2) "Amount involved." The amount involved in an  
6 offense of criminal mischief shall be deemed to be the  
7 highest value, by any reasonable standard, of the loss  
8 which the defendant caused or attempted to cause.  
9 Amounts involved in acts of criminal mischief committed  
10 pursuant to one scheme or course of conduct may be  
11 aggregated in determining the grade of the offense.

12 (3) "Claim of right." It is an affirmative defense  
13 to prosecution under subsection (1) (a) of this section  
14 that the defendant:

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

17 (b) acted under an honest claim of right  
18 to dispose of the property as he did.

19 (4) "Penalty." A person convicted under this  
20 section shall be punished:

21 (a) if the value of the loss is \$5,000 or  
22 more, by imprisonment for not more than ten years; or

23 (b) if the value of the loss is at least  
24 \$1,000 but less than \$5,000, by imprisonment for not  
25 more than five years; or

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- 1 (c) if the value of the loss is at least
- 2 \$100 but less than \$1,000, by imprisonment for not more
- 3 than one year; or
- 4 (d) if the value of the loss is at least \$25
- 5 but less than \$100, by imprisonment for not more than
- 6 six months; or
- 7 (e) if the value of the loss is less than \$25,
- 8 by imprisonment for not more than thirty days."

9 Section 13. Section 603 of title 11 of the Code of the  
10 Federated States of Micronesia is hereby amended to read as follows:

11 "Section ~~603~~611. Unauthorized possession or removal of  
12 Government property.

13 (1) "Unauthorized possession or removal." A person  
14 commits an offense if, knowing he does not have proper  
15 authority, he has in his possession or has removed from  
16 its location any property, wherever situated, in which  
17 the Government of the Federated States of Micronesia has  
18 any legal, equitable, or possessory interest.

19 (2) "Amount involved." The amount involved in a  
20 violation of subsection (1) of this section shall be  
21 deemed to be the highest value, by any reasonable  
22 standard, of either the loss to the Government or the  
23 fair rental value of the property involved. Amounts  
24 involved in acts of unauthorized possession or removal  
25 committed pursuant to one scheme or course of conduct

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1 may be aggregated in determining the grade of the offense.

2 (3) "Penalty." A person convicted under this  
3 section shall be punished:

4 (a) if the amount involved is \$5,000 or more,  
5 by imprisonment for not more than ten years; or

6 (b) if the amount involved is at least \$1,000  
7 but less than \$5,000, by imprisonment for not than five  
8 years; or

9 (c) if the amount involved is at least \$100  
10 but less than \$1,000, by imprisonment for not more than  
11 one year; or

12 (d) if the amount involved is at least \$25 but  
13 less than \$100, by imprisonment for not more than six  
14 months; or

15 (e) if the amount involved is less than \$25,  
16 by imprisonment for not more than thirty days."

17 Section 14. Section 604 of title 11 of the Code of the  
18 Federated States of Micronesia is hereby amended to read as follows:

19 "Section ~~604~~612. Trespass on Government property.

20 (1) A person commits the offense of trespass on  
21 Government property if he knowingly enters or remains  
22 unlawfully on any property owned, operated, or controlled  
23 by the Government of the Federated States of Micronesia.

24 (2) "Penalties." A person convicted under this  
25 section shall be punished:



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1 (a) by imprisonment for not more than one  
2 year if the defendant entered or remained in any  
3 building or structure, or in any area that is fenced  
4 or enclosed in such a manner as to exclude intruders:

5 (i) at night, or

6 (ii) while in possession of a dangerous  
7 weapon;

8 (b) otherwise, by imprisonment for not  
9 more than thirty days."

10 Section 15. Sections 901 through 953 of title 11 of the Code  
11 of the Federated States of Micronesia are hereby repealed in their  
12 entirety.

13 Section 16. Section 1001 of title 11 of the Code of the  
14 Federated States of Micronesia is hereby amended to read as follows:

15 "Section 1001. Fines. A person who has been convicted  
16 of a ~~national offense~~ major crime, in addition to any  
17 other punishment authorized by law, may be sentenced to  
18 pay a fine not exceeding:

19 (1) \$100,000, when the conviction is for an offense  
20 punishable by a maximum of ten years ~~imprisonment~~  
21 imprisonment;

22 (2) \$5,000, when the conviction is for an offense  
23 punishable by a maximum of five years imprisonment;

24 (3) \$1,000, when the conviction is for an offense  
25 punishable by a maximum of one year imprisonment;

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(4) \$200, when the conviction is for an offense punishable by a maximum of six months imprisonment;

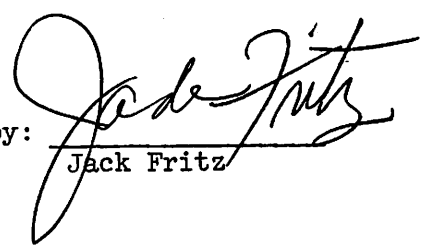
(5) \$50, when the conviction is for an offense punishable by a maximum of thirty days imprisonment;

(6) any higher amount equal to double the pecuniary gain obtained from the offense by the defendant; or

(7) any higher or lower amount specifically authorized by statute."

Section 17. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 5-17-83

Introduced by:   
Jack Fritz