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:

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

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

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

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

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

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

(2) "Criminal negligence." A person acts with criminal negligence, or is criminally negligent, with respect to attendant circumstances when his conduct creates a substantial and unjustifiable risk and causes the criminal result; or if his failure to be aware of the risk constitutes a gross deviation from the standard
of care that a reasonable person would exercise in the situation.

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

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

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

(6) "Major crime." A "major crime" is an offense defined by the National Criminal Code or which is otherwise an offense against the National Government of the Federated States of Micronesia or against an interest over which the National Government has jurisdiction by law. An attempt
to commit a major crime is also a major crime. Any offense not included in this definition shall be a matter for the jurisdictions of the various States.

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

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

§§ 9 (9) "Persons." The terms "person," "he,"
"accused," and "defendant" include any natural person and, where relevant, a corporation or an unincorporated association.

\texttt{\textit{III (10)}} "Public servant." A "public servant" means any officer or employee of, or any person acting on behalf of, the National Government of the Federated States of Micronesia, including legislators and judges, and any person acting as an advisor, consultant, or otherwise, in performing a governmental function; but the term does not include witnesses. The term "public servant" includes a public servant of the Government of the Trust Territory of the Pacific Islands when acting in judicial or administrative proceeding which has been brought in, or arises out of, the Federated States of Micronesia.

\texttt{\textit{III (11)}} "State." The term "State" means a State of the Federated States of Micronesia."

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

"Section 601. Theft against the Government.

(1) "Theft." A person commits the offense of theft against the Government if he commits theft of any property or service in which the Government of the Federated States of Micronesia has any legal, equitable, or possessory interest.
"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
defendant stole or attempted to steal. Amounts
involved in thefts committed pursuant to one scheme or
cause of conduct, whether from the same person or
several persons, may be aggregated in determining
whether an offense has been committed and the grade
of the offense.

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

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

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

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

Section 4. A new section 602 is hereby added to title 11 of the
Code of the Federated States of Micronesia to read as follows:
Section 602. Definitions. As used in this chapter:

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

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

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

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

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

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

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

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

(b) in relation to labor or service, to secure performance thereof.
(6) "Property." "Property" means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action, and other interest in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power.

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

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

"Section 603. Theft by unlawful taking or disposition.

(1) "Movable property." A person commits theft if he unlawfully takes or exercises unlawful control over movable property of the Government with purpose
to deprive the Government thereof.

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

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

"Section 604. Theft by deception.

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

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

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

(c) fails to correct a false impression which the deceiver previously created or enforced, or which the deceiver knows to be influencing the Government or its agent to whom he stands in a fiduciary or confidential relationship; or
(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 "decease" 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
(r) inflict any other harm which would not benefit the defendant.

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

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

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

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

"Section 607. Receiving stolen property.

(1) A person commits theft if he purposely receives,
retains, or disposes of movable property of the Government
knowing that it has been stolen, or believing that it has
probably been stolen, unless the property is received
or disposed with purpose to restore it to the owner.
(2) "Receiving" means acquiring possession, control,
or title of the property."

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

"Section 608. Theft of services.

(1) A person commits theft if he purposely obtains
services which he knows are available only for compensa-
tion by deception or threat or by false token or other
means to avoid payment for the service. "Services"
includes labor; professional service; transportation;
television or other public service; accommodation in
hotels, restaurants, or elsewhere; admission to
exhibitions; and use of vehicles or other movable property.
(2) A person commits theft if, having control over
the disposition of Government services to which he is not
entitled, he knowingly diverts such services to his own
benefit or to the benefit of another not entitled thereto."

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

"Section 609. Theft by failure to make required disposition
of funds received. A person who purposely obtains property
upon agreement or subject to a known legal obligation
to make specified payment or other disposition, whether
from such property or its proceeds or from his own
property in equivalent amount, commits theft if he
deals with the property obtained as his own and fails
to make the required payment or disposition. The
foregoing applies notwithstanding that it may be
impossible to identify particular property as belonging
to the Government at the time of the defendant's
failure to make the required payment or disposition.
An officer or employee of the Government or of a
financial institution is presumed:

(1) to know any legal obligation relevant to
his criminal liability under this section; and

(2) to have dealt with the property as his own if
he fails to pay or account upon lawful demand, or if an
audit reveals a shortage or falsification of account."

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

"Section 602. Criminal mischief against the Government.

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

(a) causes any damage to property in which
the Government of the Federated States of Micronesia has
any legal, equitable, or possessory interest; or

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

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

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

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

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

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

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

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

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

(e) if the value of the loss is less than $25, by imprisonment for not more than thirty days."

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

"Section 607611. Unauthorized possession or removal of Government property.

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

(2) "Amount involved." The amount involved in a violation of subsection (1) of this section shall be deemed to be the highest value, by any reasonable standard, of either the loss to the Government or the fair rental value of the property involved. Amounts involved in acts of unauthorized possession or removal committed pursuant to one scheme or course of conduct
may be aggregated in determining the grade of the offense.

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

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

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

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

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

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

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

"Section §612. Trespass on Government property.

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

(2) "Penalties." A person convicted under this section shall be punished:
(a) by imprisonment for not more than one
year if the defendant entered or remained in any
building or structure, or in any area that is fenced
or enclosed in such a manner as to exclude intruders:
   (i) at night, or
   (ii) while in possession of a dangerous
weapon;
(b) otherwise, by imprisonment for not
more than thirty days."

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

Section 16. Section 1001 of title 11 of the Code of the
Federated States of Micronesia is hereby amended to read as follows:
"Section 1001. Fines. A person who has been convicted
of a national offense major crime, in addition to any
other punishment authorized by law, may be sentenced to
pay a fine not exceeding:
   (1) $100,000, when the conviction is for an offense
punishable by a maximum of ten years imprisonment;
   (2) $5,000, when the conviction is for an offense
punishable by a maximum of five years imprisonment;
   (3) $1,000, when the conviction is for an offense
punishable by a maximum of one year imprisonment;
(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