Maldives Rules of Criminal Procedure

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PART I – GENERAL PROVISIONS

Rule 1.1 – Scope; Purpose

(a) Scope. These Rules govern the procedure in all criminal proceedings in the courts of the Maldives.

(b) Purpose; Construction. These Rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Rule 1.2 – Rights

(a) Right to Be Free from Unreasonable Government Searches and Seizures. A person has the right to be free from unreasonable government searches and seizures of his person and property. Whether or not a warrant is required under Rule 2.1 (Search and Seizure), all searches and seizures must be reasonable. A search or seizure is reasonable if it is conducted in a reasonable manner and if the government has sufficient reason to justify the extent of the government's invasion of a person's privacy, liberty, or property interests.

(b) Right to Remain Silent. A person has the right to be free from being compelled by the government to provide communicative evidence that would incriminate him. The right to remain silent includes the right to refuse to answer questions while being interrogated by law enforcement officers and the right to refuse to answer questions while testifying in any trial or proceeding. A person's exercise of his right to remain silent shall not be used as evidence against him.

(c) Right to Counsel.

(1) Generally. A person has the right to consult with an attorney:

(i) when being detained or questioned by law enforcement officials; and

(ii) at and in preparation for any proceeding, including an initial appearance, hearings, depositions, trial, and sentencing; and

(iii) in making any motions and appeals.

(2) Unrepresented Defendant. A defendant who is not represented by counsel is relieved of all time limits and notice requirements imposed by these Rules, is entitled to discovery under Part V of these Rules without making written requests, and does not waive any motions, objections, or rights under these Rules, if the unrepresented defendant:

(i) has requested counsel,

(ii) is unable to afford counsel, and

(iii) is not provided with counsel.

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(d) Right of Confrontation. A defendant has the right to see all the evidence against him and confront witnesses against him, subject to Rule 6.4 (Right of Confrontation at Trial). This right includes the right to be present at the initial appearance, the preliminary hearing, trial, and sentencing.

Rule 1.3 – Language

(a) Generally. All proceedings will be conducted and all records will be kept in Dhivehi.

(b) Translation. If a defendant is unable to read Dhivehi, translations of court documents, transcripts, and other records will be made available during or in preparation for any trial or hearing.

(c) Interpreters. If a defendant or witness is unable to understand or communicate effectively in Dhivehi, an interpreter will be used during any trial or hearing. The court shall select and appoint an interpreter.

Rule 1.4 – Time

(a) Scheduling. The court shall set the schedule for filing pretrial motions and notices, requesting and completing discovery, and conducting hearings, trial, and post-trial proceedings within the time limitations imposed by these Rules. The court may extend time periods or limitations as required in the interest of justice.

(b) Promptness. All hearings and trials shall be conducted as promptly as possible after the filing of a charging document.

Rule 1.5 – Recordkeeping; Recording of Proceedings

(a) Written Record. The court administrator shall keep records of all criminal proceedings before the court, including, but not limited to:

(1) charging documents,
(2) trial transcripts,
(3) orders of the court, and
(4) judgments.

(b) Proceedings to Be Recorded. All oral portions of the following proceedings shall be recorded in full:

(1) testimony by the defendant or witnesses at any proceeding before the court,
(2) depositions,
(3) proceedings at which the defendant waives any rights unless the waiver is otherwise a part of the written record, and
(4) any proceedings that provide the basis for a judicial decision and are not otherwise a part of the written record.

(c) Definition. "Recorded" means taken verbatim by accurate and reliable sound recording, audio-visual recording, or stenographic means.

(d) Manner of Recording. The court shall designate the particular means of recording as to any proceeding before it and may designate different means of recording as to different proceedings. The party taking a deposition under Rule 4.6 shall designate the means of recording, subject to alteration by the court upon motion by a party or deponent.

(e) Preparation of Transcript. On motion of a party, the court shall order the preparation of a transcript of all or a portion of any proceeding in the case unless the request would result in unnecessary delay.

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(f) Access. Except as otherwise provided in these Rules, any party must be permitted, under reasonable conditions:

(1) to hear, view, and record any sound or audio-visual recording of any proceeding in the case; and

(2) to inspect and photocopy any prepared transcript of any proceeding in the case.

Rule 1.6 – Motions

(a) Generally. A party may request the court to make a ruling or order by making a motion. A motion, whether oral or in writing, must state the grounds on which it is based and the relief desired.

(b) Form. A motion must be in writing unless the court permits otherwise or the motion arises during a hearing or trial in such a manner that a written motion would be impracticable. A motion may be supported by affidavit.

(c) Notice and Opportunity to Be Heard. All parties must be notified of a motion and given an opportunity to be heard before the court makes a ruling on a motion.

Rule 1.7 – Contempt of Court

(a) Failure to Comply with Rules. On its own or by motion of a party, the court may remedy a violation of these Rules by making any order in the interest of justice.

(b) Failure to Comply with a Court Order. If a person violates a court order, the court may, as justice requires:

(1) order imprisonment or house detention until he complies, and

(2) punish noncompliance by imposing:

(i) a term of imprisonment not to exceed six months, or

(ii) a term of house detention not to exceed one year, or

(iii) a fine not to exceed MVR [12,000], or

(iv) some combination of imprisonment, house detention, and fine whose total punishment effect does not exceed the equivalent of six months of imprisonment under Section 1006 (Punishment Method Equivalency Table) of the Penal Code.

Rule 1.8 – Definitions

(a) “Acquittal” has the meaning given in Section 17(2) of the Penal Code.

(b) "Close relative" has the meaning given in Section 17(14) of the Penal Code.

(c) "Communicative evidence" means the content of a person's written or oral communications and does not include physical evidence.

(d) "Conflict of interest" has the meaning given in Rule 6.9(c).

(e) "Conviction" has the meaning given in Section 17(20) of the Penal Code.

(f) "Dangerous weapon" has the meaning given in Section 17(28) of the Penal Code.

(g) "Dwelling" has the meaning given in Section 17(32) of the Penal Code.

(h) "Excuse defense" has the meaning given in Section 17(35) of the Penal Code.

(i) "Exigent circumstances" has the meaning given in Rule 2.1(d).

(j) “Force” has the meaning given in Section 17(43).

(k) "General defense" has the meaning given in Section 17(46).

(l) "He" or "Him" means a person as defined in subdivision (t).

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(m) “Identifying information” has the meaning given in Rule 2.3(b).

(n) "Incapacitated Victim" has the meaning given in Rule 7.3(d).

(o) "Instrument of crime" has the meaning given in Section 17(57).

(p) "Judicial officer" means any judge or other person authorized to conduct court proceedings.

(q) "Justification defense" and "Justification" has the meaning given in Section 17(61) of the Penal Code.

(r) "Law enforcement officer" has the meaning given in Section 17(64) of the Penal Code.

(s) "Mental disease or defect" has the meaning given in Section 26(b) of the Penal Code.

(t) "Nonexculpatory defense" has the meaning given in Section 17(74) of the Penal Code.

(u) "Party" means the prosecution or any defendant in the case.

(v) "Person” has the meaning given in Section 17(84) of the Penal Code.

(w) "Preponderance of the evidence" has the meaning given in Section 17(86) of the Penal Code.

(x) “Property” has the meaning given in Section 17(88) of the Penal Code.

(y) "Reason to believe” or “reasonable belief” means a standard that is higher than reason to suspect, but lower than preponderance of the evidence, and under which there are enough articulable facts to lead a reasonable person to believe that a condition exists or an event is occurring.

(z) "Reason to suspect" or “reasonable suspicion” means a standard that is higher than a guess, but lower than reason to believe, and under which there are some articulable facts or circumstances that would lead a reasonable person to suspect that a condition may exist or an event may occur.

(aa) "Reasonable doubt" has the meaning given in Section 17(94) of the Penal Code.

(bb) "Recorded" has the meaning given in Rule 1.5(c).

(cc) "Unlawful restraint" has the meaning given in Section 140 of the Penal Code.

(dd) "Victim" has the meaning given in Rule 7.2(c).

(ee) "Violent offense" has the meaning given in Section 17(116).

PART II – PRELIMINARY PROCEEDINGS

Rule 2.1 – Search and Seizure

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(a) Property, Information, or Persons Subject to Search or Seizure. The following may be searched for and seized by law enforcement officers:

(1) evidence of an offense,

(2) proceeds of an offense,

(3) contraband, instruments of crime, and other items illegally possessed; and

(4) a person who is:

(i) to be stopped, detained, or arrested under this Part, or

(ii) to be freed from unlawful restraint under Section 140 of the Penal Code.

(b) When a Warrant Is Authorized. After receiving an affidavit, sworn testimony, or other reliable information, a judicial officer shall issue a warrant if there is reason to believe that:

(1) the area or thing to be searched contains property, information, or a person of the type listed in subdivision (a), or

(2) the property, information, or person to be seized is of the type listed in subdivision (a).

(c) When a Warrant Is Required.

(1) Searches. A law enforcement officer must obtain a warrant before executing a search, unless:

(i) otherwise provided by these Rules, or

(ii) there is no reasonable expectation of privacy, or

(iii) the search is incident to an arrest that is authorized by Rule 2.7, or

(iv) the person controlling an area or thing to be searched consents to the search, or

(v) the officer has:

(aa) reason to believe that the area or thing to be searched contains property, information, or a person of the type listed in subdivision (a), and

(bb) reason to suspect that exigent circumstances exist.

(2) Seizures.

(i) Seizure of a Person. A law enforcement officer must obtain a warrant before arresting a person under Rule 2.7.

(ii) Seizure of Property or Information. A law enforcement officer must obtain a warrant before seizing property or information, unless:

(aa) the person possessing the property or information consents, or

(bb) the officer has reason to believe that the property or information is of the type listed in subdivision (a) and reason to suspect that exigent circumstances exist, or

(cc) the officer discovers the property or information and its incriminating nature through his ordinary senses while in a place he is entitled to be.

(d) Definition. "Exigent circumstances" exist when there is a substantial risk:

(1) of physical harm to any person, or

(2) that evidence will be destroyed, or

(3) that a fleeing suspect will escape.

(e) Contents of the Warrant. The warrant must specifically identify:

(1) the area or thing to be searched,

(2) the property, information, or person to be searched for and seized, and

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(3) the judicial officer to whom the warrant must be returned after execution.

(f) Executing the Warrant.

(1) Restraint During Execution of a Warrant. The law enforcement officer or officers executing a warrant may restrain a person to prevent him from destroying evidence or interfering with the execution of a warrant.

(2) Limitations on Executing the Warrant. The warrant must be executed within a time specified by the warrant, not to exceed [10 days]. When executing a warrant involves entering a dwelling, the officer or officers shall, unless effective execution of the warrant would be prevented, execute the warrant:

(i) during the daylight, and

(ii) only after they have announced themselves and their intention to enter to execute a warrant.

(3) Inventory. An officer present during the execution of the warrant must prepare and verify an inventory of any tangible property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken, if that person is available.

(4) Receipt. If tangible property is seized during the execution of a warrant, the officer executing the warrant must:

(i) give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken; or

(ii) leave a copy of the warrant and receipt at the place where the officer took the property;

(iii) take any other reasonable measures to ensure that the person from whom, or from whose premises, the property was taken receive a copy of the warrant and receipt.

(g) Limitations on Searching and Seizing Persons. A search or seizure of a person, with or without a warrant, must be conducted in a manner that is reasonable given the objective of the search or seizure.

(1) Intimate Searches. A search of a person's body or inner layers of clothing must be conducted with regard for decency. Such a search of a woman must be conducted by a female law enforcement officer and with heightened regard for decency.

(2) No Unnecessary Force or Restraint. When seizing a person, a law enforcement officer may use only the amount of force or restraint that is reasonably necessary to accomplish the detention or arrest and to prevent the person's escape.

(h) This Rule does not limit the authority of customs and immigration officials to conduct searches and seizures as authorized by other law.

Rule 2.2 – Investigative Stop

(a) Stop Authorized to Investigate an Offense. A law enforcement officer may stop a person to investigate an offense if the officer has reason to suspect that the person:

(1) has committed, is committing, or is about to commit an offense; or

(2) has information related to the investigation of an offense that the officer has reason to suspect has been, is being, or is about to be committed.

(b) Stop Authorized to Investigate Possible Self-Endangerment. If a law enforcement officer has reason to suspect that a person has injured himself, is injuring himself, or is about to

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injure himself, the officer must stop the person to investigate the potential self-endangerment, even in the absence of reasonable suspicion of an offense.

(c) Procedure upon Stop. Immediately upon stopping the person, the officer must identify himself as a law enforcement officer and inform the person generally of the reasons for the stop.

(d) Protective Frisk. Upon performing a stop, the officer may, without a warrant, conduct a search of the person, his clothing, and the area within the person's immediate reach for weapons. Before searching, the officer must have reason to suspect that the search is necessary for the protection of himself, other officers, or bystanders.

(e) Duration of Investigate Stop. An investigative stop may continue until the officer no longer has reasonable suspicion under subdivisions (a) and (b), at which point the person must be released.

Rule 2.3 – Investigative Detention

(a) Detention Authorized. A law enforcement officer may detain a person to investigate an offense if the officer has:

(1) reason to suspect that the person has committed, is committing, or is about to commit an offense, and:

(i) the officer requests identifying information from the person, and

(ii) the person refuses to provide the information or provides information that the officer has reason to believe is false; or

(2) (i) reason to believe that the person has information related to the investigation of an offense that the officer has reason to believe has been, is being, or is about to be committed; and

(ii) reason to suspect that:

(aa) a person will not respond to a summons to appear before a law enforcement officer, or

(bb) there are exigent circumstances.

(b) Definition. "Identifying information" means a person's name and address.

(c) Notices. Upon detaining a person, the officer must inform him:

(1) of his right to remain silent; and

(2) of his right to consult a lawyer; and

(3) if he is being taken somewhere for further investigation, where he is being taken and that he is being taken there for investigation.

(d) Duration of Investigative Detention. An investigative detention may continue:

(1) if detention is under subdivision (a)(1), until the person provides identifying information that the officer has no reason to believe is false, or 12 hours have elapsed, whichever occurs first; or

(2) if detention is under subdivision (a)(2), until the person provides all information related to an offense within his knowledge, or 6 hours have elapsed, whichever occurs first.

At the end of an investigative detention, a person must be released, unless the officer has grounds for an arrest under Rule 2.7.

Rule 2.4 – Questioning

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(a) Prohibition on Torture and Intimidation. When questioning a person under any circumstances, a law enforcement officer must not use torture or intimidation to persuade the person to answer questions or make a confession.

(b) Notice of Rights. When a law enforcement officer initiates questioning of a person who has been detained under Rule 2.3, arrested under Rule 2.7, or charged with an offense by the filing of a charging document under Rule 2.9, the officer must inform the person of his right to remain silent and his right to consult a lawyer.

Rule 2.5 – Complaint

(a) Complaint Filed by an Officer. If a law enforcement officer has reason to believe that a person has committed or is committing an offense, the officer may file a complaint with a judicial officer and request that a summons or arrest warrant be issued. The law enforcement officer must sign the complaint.

(b) Complaint Filed by a Non-Officer. If a non-officer has reason to believe that a person has committed or is committing an offense, he may file a complaint under the instruction of a law enforcement officer. The officer must promptly request that a judicial officer issue a summons or arrest warrant. The non-officer and the law enforcement officer must sign the complaint.

(c) Warrant or Summons Based on a Complaint. If the judicial officer determines that the complaint is supported by reasonable belief of commission of an offense, he must issue either a summons or arrest warrant to be served upon the subject of the complaint. The judicial officer may issue a summons in response to a complaint supported by reasonable belief even if the law enforcement officer has only requested an arrest warrant.

(d) Form of Complaint. The complaint shall be in writing and shall include:

(1) the date of issuance,
(2) the atoll in which it was issued,
(3) the name of the person for whom it was issued,
(4) the facts supporting reasonable belief of commission of an offense, and
(5) the common name or section number of the alleged offense or offenses.

Rule 2.6 – Summons

(a) Summons to Appear Before a Judicial Officer. If a law enforcement officer has reason to believe that a person has committed or is committing an offense, he may:

(1) issue the person a summons to appear before a judicial officer, or
(2) file a complaint with a judicial officer requesting issuance of a summons under Rule 2.5.

(b) Summons to Appear Before a Law Enforcement Officer. If a law enforcement officer has reason to believe that a person has information related to the investigation of an offense that the officer has reason to believe has been, is being, or is about to be committed, the officer may issue the person a summons to appear before the officer or another law enforcement officer for questioning.

(c) Contents of Summons. A summons shall:

(1) include the items specified in Rule 2.5(d)(1) through (5),
(2) include a notice of the right to remain silent and the right to consult a lawyer,
(3) contain a copy of the complaint if one was filed,
(4) order the person to appear at a stated time and place, and

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(5) state that if the person does not appear at the stated time and place, an arrest warrant may be issued and he may be subject to liability under Section 532 (Resisting or Obstructing a Law Enforcement Officer or Custodial Officer), Section 535 (Refusing to Aid an Officer), or Section 541 (Failure to Appear) of the Penal Code.

(d) Service of Summons. The summons shall be served by a law enforcement officer delivering a copy of the summons to the person. If the subject of the summons is a corporation, the summons shall be served upon the person employed by the corporation who is certified to accept the summons, or if that person is unavailable, the summons may be served upon any employee of the corporation who can reasonably be expected to deliver the summons to the person certified to accept it.

Rule 2.7 – Arrest

(a) Requirements for Arrest. If a law enforcement officer has reason to believe that a person has committed, is committing, or is about to commit an offense, he may arrest the person. An officer must obtain an arrest warrant prior to arresting a person unless he has reason to suspect that exigent circumstances exist.

(b) Arrest Instead of Summons. An officer may arrest a person in lieu of giving a summons only if the officer has reason to suspect that:

(1) the offense involves violence, or

(2) the person will continue to commit the offense, or

(3) the person will not respond to a summons.

(c) Arrest Warrant. An arrest warrant shall:

(1) include the items specified in Rule 2.5(d)(1) through (5),

(2) specify the approximate date and time the offense is alleged to have taken place,

(3) contain a copy of the complaint, and

(4) command that the person be arrested.

(d) Execution of Arrest Warrant. An arrest warrant shall be executed in accordance with Rule 2.1 (Search and Seizure).

(1) Notifications. Upon arresting a person, the officer must inform the person:

(i) that he is being arrested,

(ii) where he is being taken,

(iii) of his right to remain silent, and

(iv) of his right to consult a lawyer.

(2) Contact; Consultation. The arrested person must be permitted to contact a lawyer and must be permitted reasonable opportunity to consult in private with a lawyer, family member, or friend. The officer or his designee shall make a reasonable effort to notify a family member or friend of where the person is being held.

(3) Executing an Arrest Without a Copy of the Warrant. If the officer does not have the warrant in his possession at the time of arrest, he must inform the arrested person of the alleged offense and the fact that a warrant has been issued for his arrest. The arrested person shall be promptly furnished with a copy of the arrest warrant.

(e) Procedure upon Arrest Without Warrant. Upon arresting a person without obtaining a warrant, the officer must make the notifications provided in subdivision (d)(1) and permit the contact and consultation provided in subdivision (d)(2).

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(f) Issuance of Complaint Upon Arrest Without Warrant. After arresting a person without a warrant, the officer must issue the person a complaint listing:

(1) the items specified in subdivisions (c)(1) and (2) of this Rule, and

(2) the name of the officer or officers who performed the arrest and any other officers who were on the scene at the time of the arrest.

(g) Arrest by a Non-Officer.

(1) Prerequisites. A non-officer may arrest a person and keep the person in custody until an officer arrives if the non-officer:

(i) has reason to believe that a person is committing or is about to commit an offense, and

(ii) has reason to suspect that the only way to stop the person from continuing or beginning to commit an offense would be to arrest him.

(2) Contacting an Officer. The citizen performing the arrest must act as expeditiously as possible in contacting an officer. In the event that the citizen does not act in an expeditious manner, he may be subject to liability under Section 140 (Unlawful Detention) of the Penal Code.

Rule 2.8 – Initial Appearance

(a) Time. A person must be brought before a judicial officer for an initial appearance within 24 hours of arrest.

(b) Determination of Reasonable Belief. If a person has been summoned into court or arrested without a judicial officer issuing a summons or warrant, a judicial officer must determine during the initial appearance whether there is reason to believe that the person committed an offense. If the judicial officer finds that there is not reason to believe that the person committed an offense, the judicial officer must dismiss the complaint and discharge the person.

(c) Procedure. At the initial appearance, the judicial officer must:

(1) make a determination regarding pretrial release under Rule 3.1 (Determining Release or Detention),

(2) schedule a preliminary hearing,

(3) schedule a time for the commencement of pretrial motions, and

(4) inform the person of:

(i) the offense he is alleged to have committed,

(ii) his right to remain silent, and

(iii) his right to consult a lawyer.

(d) Documents. Copies of any complaints, summons, or arrest warrants that have been issued must be presented to the judicial officer at the initial appearance. These documents shall also be made available to the arrested or summoned person if he has not yet obtained them.

Rule 2.9 – Charging Document

(a) Generally. All offenses shall be prosecuted by a charging document, which must be filed within 20 days of the initial appearance of a defendant detained under Rule 3.4 and within 30 days of the initial appearance of a defendant released under Rule 3.2 or Rule 3.3. The charging document is a written statement signed by the prosecutor stating:

(1) the essential facts constituting the offense or offenses charged;

(2) the date, time, and place the offense or offenses took place if known;

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(3) the official or common name and section number of the laws which the defendant is alleged to have violated; and

(4) any property of which the prosecution will seek forfeiture under Rule 7.8.

(b) Joinder of Charges Allowed. A charging document may charge a defendant with two or more offenses, in separate counts, if the offenses charged:

(1) are of the same or similar character, or

(2) are based on the same act or transaction, or

(3) are based on two or more acts or transactions that are connected together or constitute parts of a common scheme or plan.

(c) Joinder of Defendants Allowed. A charging document may charge two or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. Each count in the charging document may charge the defendants together or separately. Not all of the defendants need to be charged in each count in the charging document.

(d) Relief from Prejudicial Joinder. If the court, upon motion by a party or its own motion, finds that joinder under subdivision (b) or (c) would be highly prejudicial to a defendant, the court must separate the charges or defendants into separate charging documents.

(e) Amending. The prosecution may amend the charging document unless it prejudices the defendant.

(1) Before Trial. In sufficient time before trial so as to provide reasonable notice to the defendant, the prosecution may amend the charging document to amend the alleged facts or add additional offenses based on the conduct that gave rise to the original offense or offenses.

(2) During Trial. Once trial has commenced, the prosecution:

(i) must not add additional offenses to the charging document, but

(ii) may amend the alleged facts with approval by the court.

(f) Dismissal of Charge. At any time before trial, the prosecution may drop any of the offenses charged from the charging document with or without preserving the ability to reinstate the charge at a later time. After trial has commenced, the prosecution may drop any of the offenses charged from the charging document but shall not be permitted to reinstate the charge at a later time.

Rule 2.10 – Preliminary Hearing

(a) Generally. A preliminary hearing must take place within 10 days from the filing of a charging document. The court must:

(1) ensure that the defendant has a copy of the charging document,

(2) explain the charge or charges to the defendant, and

(3) request that the defendant enter a plea.

(b) Determining Validity of Charge. During the hearing, the law enforcement officer assigned to the case or involved in the original arrest or summons shall testify regarding the factual basis of the charge or charges. If the court determines that the evidence, taken in the light most favorable to the prosecution, could not lead a reasonable person to believe that the defendant committed an offense, it must order dismissal of the charge.

(c) Plea. The defendant shall be asked to enter a plea of guilty, not convictable, no offense, or not guilty as to each charge. If the defendant does not enter a plea, the court must enter a plea of not guilty for him.

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(d) Motion Hearing. During the preliminary hearing, the court must set a date for a hearing on pretrial motions under Rule 4.1.

Rule 2.11 – Guilty Pleas

(a) Entering a Guilty Plea. Before allowing the defendant to enter a guilty plea, the court must inform the defendant that, by entering a guilty plea, he is waiving his right:

(1) to counsel,
(2) to trial,
(3) to confront and cross-examine adverse witnesses at trial,
(4) to be protected from compelled self-incrimination at trial,
(5) to testify and present evidence at trial,
(6) to compel the attendance of witnesses at trial, and
(7) to appeal a conviction, subject to subdivision (f).

The court must also explain the nature of each charge to which the defendant is pleading, describe any authorized penalty, including imprisonment, fines, and any alternate forms of punishment, any applicable forfeiture, and the court's authority to order restitution.

(b) Assuring the Plea Is Voluntary. Before accepting a plea of guilty, the court must address the defendant personally and determine that the plea is voluntary and did not result from force, threats, or promises, other than the promises involved in the plea agreement.

(c) Factual Basis. Before accepting a guilty plea, the court must determine that there is a factual basis for such a plea.

(d) Withdrawing a Guilty Plea. Prior to the court accepting a guilty plea, the defendant may withdraw a guilty plea without giving a reason. Once the court has accepted a guilty plea, but before it imposes sentence, the defendant may withdraw his guilty plea, but only if he can show a fair and just reason for the withdrawal.

(e) Finality of a Guilty Plea. After the court imposes sentence, the defendant may not withdraw a plea of guilty, and the plea may be set aside only on appeal.

(f) Waiver of Right to Appeal. By entering a guilty plea, the defendant waives his right to appeal a conviction except as to:

(1) the voluntariness of the plea, and
(2) the effectiveness of assistance of counsel.

(g) Plea Agreement. A prosecutor and the defendant or his attorney may discuss and reach a plea agreement. The court must not participate in these discussions.

(h) Variations of Plea Agreements. The defendant may agree to plead guilty to either a charged offense or a lesser or related offense in exchange for an agreement by the prosecutor:

(1) not to bring other charges,
(2) to dismiss other charges already brought,
(3) to recommend to the court that a certain sentence or sentencing range is appropriate,
(4) to agree not to oppose the defendant's request for a certain sentence, or
(5) to agree that a specific sentence or sentencing range is the correct disposition of the case.

The court is not bound to follow the prosecutor's recommendation or request in plea agreements under subdivisions (h)(3) and (4). If the court accepts a plea agreement under subdivision (h)(5), it is bound to follow the sentencing structure agreed to by the prosecutor. The

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court may defer accepting or rejecting a plea agreement until a presentence investigation and report under Rule 7.2 can be completed.

(i) Disclosing a Plea Agreement. The parties must disclose all terms of the plea agreement when the plea is offered. The plea agreement must be disclosed in open court, unless the court for good cause allows the parties to disclose it in private.

(j) Rejecting a Plea Agreement. The court may reject a plea agreement for any reason. The court must reject a plea agreement that would result in more punishment than is appropriate given the facts. If the court rejects a plea agreement, the court must:

(1) inform the parties that the court has rejected the plea agreement,

(2) state the reason or reasons for the rejection,

(3) give the defendant the opportunity to withdraw the plea, and

(4) advise the defendant that if the plea is not withdrawn the court will consider the plea to be a plea of guilty and none of the agreements made with the prosecutor will apply.

PART III – RELEASE BEFORE AND DURING TRIAL

Rule 3.1 – Determining Release or Detention

(a) Generally. At a person's initial appearance, the judicial officer shall issue an order that, pending trial, the person shall be:

(1) released on personal recognizance or bail under Rule 3.2;

(2) released on a condition or combination of conditions under Rule 3.3; or

(3) detained under Rule 3.4.

(b) Factors to Consider. In determining whether release is appropriate under this Part and whether there are conditions of release that will reasonably assure the person's appearance at subsequent proceedings and will not endanger the safety of any person or the community, the judicial officer shall take into account any available information concerning:

(1) the nature and circumstances of the offense or offenses charged, including:

(i) the grade of the offense or offenses, with a charge of a [Class A felony] providing sufficient grounds for pretrial detention; and

(ii) whether the offense or offenses involve violence [or a narcotic drug];

(2) the weight of the evidence against the person;

(3) whether the person is alleged to be involved in a continuing conspiracy with other persons not in custody and the circumstances surrounding such allegations;

(4) the person's history and characteristics, including:

(i) his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past

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conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(ii) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense; and

(5) the nature and seriousness of the danger that the person's release would pose to the community or any individual person.

Rule 3.2 – Release on Personal Recognizance or Bail

(a) Generally. If the judicial officer determines that releasing a person on personal recognizance or bail will reasonably assure his appearance at subsequent proceedings and will not endanger the safety of any person or the community, the judicial officer shall order release of the person on personal recognizance, or bail in an amount specified by the court, with the condition that the person not commit an offense during the period of release.

(b) Limitation on Amount of Bail Required. Bail shall be set at the minimum level necessary to reasonably assure the person's appearance at subsequent proceedings. Bail shall not be set at an amount so high as to result in pretrial detention.

(c) Forfeiture of Bail. If a person on release fails to appear when ordered to do so by the court, he shall forfeit any property or money that he has posted as bail. The court may, at its discretion, void or delay the forfeiture of bail.

(d) Contents of Release Order. An order to release a person on personal recognizance or bail shall:

(1) include a written statement that sets forth all the conditions of release in a manner sufficiently clear and specific as to serve as a guide for the person's conduct; and

(2) advise the person of:

(i) the penalties for violating a condition of release, including the penalties for committing an offense while on release;

(ii) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(iii) potential liability under Sections 530 (Obstructing Justice), 533 (Obstructing Administration of Law or Other Government Function), 540 (Intimidating, Improperly Influencing, and Retaliating Against Witnesses), and 541 (Failure to Appear) of the Penal Code.

Rule 3.3 – Release on Conditions

(a) Generally. If the judicial officer determines that release under Rule 3.2 will not reasonably assure a person's appearance at subsequent proceedings or will endanger the safety of any person or the community, the judicial officer shall order release with:

(1) the condition that the person not commit an offense during the period of release, and

(2) the least restrictive further condition, or combination of conditions, that the judicial officer determines will reasonably assure the person's appearance at subsequent proceedings and will not endanger the safety of any person and the community. These conditions may include requiring that the person:

(i) remain in the custody of a designated person who agrees to assume supervision and to report any violation of a release condition to the court, if the

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designated person can reasonably assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) commence or continue in an educational program;

(iv) abide by specified restrictions on personal associations, place of abode, or travel;

(v) avoid all contact with an alleged victim of the offense and with any potential witnesses who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency or other agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a dangerous weapon;

(ix) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified treatment institution if required;

(x) execute an agreement to forfeit, upon failing to appear as ordered by the court, property, including money, of a value sufficient to reasonably assure the person's appearance, and provide the court with proof of ownership and the value of the property; and

(xi) return to custody for specified hours following release for employment, schooling, or other limited purposes.

(b) Limitation on Financial Conditions. The judicial officer may not impose a financial condition so high as to result in pretrial detention.

(c) Release Order.

(1) Contents. An order to release a person on conditions shall contain the matters specified in Rule 3.2(d)(1) and (2).

(2) Amendment. The judicial officer may at any time amend the order to impose additional or different conditions of release.

Rule 3.4 – Detention

(a) Generally. If, after considering the factors in Rule 3.1(b), the judicial officer determines that no condition or combination of conditions will reasonably assure a person's appearance at subsequent proceedings and the safety of any person and the community, the judicial officer shall order detention of the person.

(b) Contents of Detention Order. An order to detain a person shall:

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed to the custody of [the Ministry of Home Affairs] for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal; and

(3) direct that the person be afforded reasonable opportunity for private consultation with counsel.

(c) Temporary Release. The judicial officer may, by subsequent order, permit the temporary release of a detained person, in the custody of a law enforcement official or another

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appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or another compelling reason.

Rule 3.5 – Release During Trial

A person released before trial continues on release during trial under the same terms and conditions. However, the court may order different terms and conditions or terminate release if necessary to ensure that the defendant will be present during the trial or that the defendant's conduct will not obstruct the orderly and expeditious progress of the trial.

Rule 3.6 – Review of a Release or Detention Order

(a) Generally. A motion for revocation or amendment of a release or detention order may be filed with the trial court at any time. After considering the prior findings of a judicial officer on the issue of release or detention and any additional information presented, the court shall make a determination of release or detention under Rule 3.1.

(b) Review of a Release Order. If a judicial officer has ordered release of a person under Rule 3.2 (Release on Personal Recognizance or Bail) or Rule 3.3 (Release on Conditions):

(1) the prosecution may file a motion for revocation of the release order or amendment of the conditions of release, and

(2) the person on release may file a motion for amendment of the conditions of release.

(c) Review of a Detention Order. If a judicial officer has ordered detention of a person under Rule 3.4 (Detention), the person may file a motion for revocation or amendment of the detention order.

PART IV – PRETRIAL PROCEEDINGS

Rule 4.1 – Pretrial Motions

(a) Generally. A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial.

(b) Motions Waived If Not Made Before Trial. If the following issues are not raised by motion before trial, they are waived:

(1) a defect in instituting the prosecution;

(2) a defect in the charging document, except for a claim that the charging document fails to state an offense, which is a claim that the court may hear at any time while the case is pending;

(3) admissibility of evidence, unless the moving party was not aware of, or could not reasonably have been aware of, the evidence before trial;

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(4) severance of charges or defendants under Rule 2.9 (Charging Document); and

(5) enforcement of discovery under Rule 5.4 (Requirement of Prompt Response to Discovery).

(c) Hearing. At the request of a party, the court shall hold a hearing on a pretrial motion.

(d) Time for Filing Pretrial Motions. All pretrial motions must be filed at least 30 days before trial. If a hearing is to be held, a party must serve a written motion and hearing notice at least 5 days before the hearing date.

(e) Affidavits. The moving party must serve any supporting affidavits with the motion. A responding party must serve any opposing affidavit at least 2 days before the hearing, unless the court permits later service.

(f) Ruling on a Motion. The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

Rule 4.2 – Application for a Nonexculpatory Defense

(a) Generally. If a defendant chooses to raise a nonexculpatory defense under Chapter 60 of the Penal Code, he must file a motion applying for a nonexculpatory defense within the time for filing pretrial motions.

(b) Judgment. If the court finds that the defendant has proven all elements of the nonexculpatory defense by a preponderance of the evidence, it must grant the defendant's motion and enter a judgment of "not convictable." Otherwise, the case shall continue to trial.

(c) Examination. If a defendant applies for a defense under Section 62 (Unfitness to Plead, Stand Trial, or Be Sentenced) of the Penal Code at any stage of the proceedings, the court may, on its own or upon motion by the prosecution, order the defendant to submit to a competency examination.

(1) Failure to Comply. If the defendant fails to submit to an examination ordered by the court, the court may exclude any expert evidence the defendant seeks to introduce on the issue of his mental condition.

(2) Inadmissibility of a Defendant's Statements During Examination. No statement made by a defendant during an examination under this subdivision, no testimony by an expert based on the statement, and no other fruits of the statement may be admitted into evidence against the defendant in any criminal proceeding except on an issue on which the defendant has introduced evidence of his mental condition.

Rule 4.3 – Notice of an Alibi Defense

(a) Generally. Within the time for filing pretrial motions, the defendant must serve written notice on the prosecution of any intended alibi defense. The defendant's notice must state:

(1) each specific place where the defendant claims to have been at the time of the alleged offense; and

(2) the name, address, and telephone number of each alibi witness on whom the defendant intends to rely.

(b) Continuing Duty to Disclose. The defendant must promptly disclose in writing to the prosecution the name, address, and telephone number of each additional witness if:

(1) he learns of the witness before or during trial, and

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(2) the witness should have been disclosed under subdivision (a) if the defendant had known of the witness earlier.

(c) Exception. The court may grant the defendant an exception to the requirement of notice of an alibi defense if justice so requires.

(d) Failure to Comply. If a party fails to comply with this Rule, the court shall exclude the testimony of any undisclosed witness regarding the defendant's alibi. This Rule does not limit a defendant's right to testify.

Rule 4.4 – Notice of Defenses and Mitigations Relating to Mental Disease or Defect

(a) Generally. Within the time for filing a pretrial motion, a defendant must notify the prosecution in writing if he intends to assert a defense or mitigation for which evidence of mental disease or defect would be admissible at trial.

(b) Expert Evidence. If a defendant intends to introduce expert evidence relating to a defense or mitigation in subdivision (a), he must, within the time for filing a pretrial motion, notify the prosecution in writing of this intention.

(c) Failure to File a Timely Notice. If a defendant fails to file a timely notice under subdivision (a) or (b), the court may grant the prosecution additional trial-preparation time, exclude the expert evidence, or make other appropriate orders in the interest of justice.

(d) Examination. The court may, upon motion by the prosecution, order the defendant to submit to a mental examination.

(1) Failure to Comply. If the defendant fails to submit to an examination ordered by the court, the court may exclude any expert evidence the defendant seeks to introduce on the issue of mental disease or defect.

(2) Inadmissibility of a Defendant's Statements During Examination. No statement made by a defendant during an examination under this subdivision, no testimony by an expert based on the statement, and no other fruits of the statement may be admitted into evidence against the defendant in any criminal proceeding except on an issue on which the defendant has introduced evidence of a mental disease or defect.

(e) Witnesses. Within the time for filing a pretrial motion, a defendant must serve the prosecution with a written statement of the name, address, and telephone number of each witness he intends to rely on to establish a defense or mitigation in subdivision (a).

(f) Continuing Duty to Disclose. The defendant must promptly disclose in writing to the prosecution the name, address, and telephone number of each additional witness if:

(1) he learns of the witness before or during trial, and

(2) the witness should have been disclosed under subdivision (e) if the defendant had known of the witness earlier.

(g) Failure to Comply. If the defendant fails to comply with subdivisions (e) or (f), the court may exclude the testimony of any undisclosed witness regarding the defense or mitigation. This Rule does not limit the defendant's right to testify.

Rule 4.5 – Pretrial Conference

The court may, on its own or on a party's motion, hold one or more pretrial conferences to promote a fair and expeditious trial. When a conference ends, the court must prepare and file a memorandum of any matters agreed to during the conference. The prosecution may not use any statement made during the conference by the defendant or the defendant's attorney unless it is in writing and signed by the defendant.

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Rule 4.6 – Depositions

(a) When Taken.

(1) By Order. A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court shall grant the motion if the moving party shows that it is probable that:

(i) a prospective witness will be unavailable at a trial or hearing as provided in subdivision (h), and

(ii) his testimony is material, and

(iii) it is necessary to take his deposition in the interest of justice.

(2) By Agreement. The parties may by agreement take a deposition with the court's consent.

(b) Production of Documents and Objects. If the court orders a deposition to be taken under subdivision (a), it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, data, or tangible object.

(c) Notice. A party seeking to take a deposition must give every other party reasonable written notice of the deposition's date and location. The notice must state the name and address of each deponent. If the defendant is in custody, a party seeking to take a deposition must also notify the officer who has custody of the defendant of the scheduled date and location.

(d) Alteration. If requested by a party receiving notice of a deposition, the court may, for good cause, change the deposition's date or location.

(e) Defendant's Presence. A defendant has the right to be present, at his own expense, and to be represented by counsel, also at his own expense, at any deposition taken in the case.

(1) Defendant in Custody. The officer who has custody of the defendant must produce the defendant at the deposition and keep the defendant in the witness's presence during the examination, unless the defendant:

(i) waives in writing the right to be present, or

(ii) persists in disruptive conduct justifying exclusion after being warned that disruptive conduct will result in his exclusion.

(2) Defendant Not in Custody. A defendant who is not in custody has the right to be present at the deposition, subject to any conditions imposed by the court. If the defendant fails to appear, absent good cause, the defendant waives both the right to be present at the deposition and any objection to the taking and use of the deposition based on his right to be present.

(f) Manner of Taking. Unless these Rules or a court order provide otherwise, a deposition shall include examination and cross-examination and must be taken and filed in the same manner as a deposition in a civil action, except that:

(1) a defendant shall not be deposed without his consent,

(2) the scope and manner of the deposition examination and cross-examination must be the same as would be allowed during trial, and

(3) the prosecution must provide to the defendant or his attorney, for use at the deposition, any statement of the deponent in the prosecutor's possession to which the defendant would be entitled at trial.

(g) Objections. A party objecting to deposition testimony or evidence must state the grounds for the objection during the deposition.

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(h) Use as Evidence. To the extent a deposition is otherwise admissible under [the Rules of Evidence], a party may use all or part of a deposition as evidence at a trial or hearing if:

(1) the witness is unavailable because:

(i) he is unable to attend or testify at the proceeding because of death or physical or mental illness or infirmity, or

(ii) he is out of the country, unless it appears that the absence of the witness was procured by the party offering the deposition, or

(iii) the party offering the deposition has been unable to procure the attendance of the witness by a demand for appearance or other reasonable means;

(2) the deposition is being offered for the purpose of refreshing the recollection or contradicting or impeaching the testimony of the deponent as a witness; or

(3) the opposing party has offered a part of the deposition.

Rule 4.7 – Demand for Appearance of Witnesses

(a) Issuance. Any party may request a demand for appearance of a witness. The court shall issue a demand for appearance of a witness, signed but otherwise blank, to the party requesting it, who shall fill in the blanks before it is served.

(b) Content. A demand for appearance of a witness must:

(1) state the name of the court and the title of the proceeding, and

(2) command each individual to whom it is directed to attend and testify at the specified time and place.

(c) Producing Documents and Objects.

(1) Documents and Objects. A demand for appearance may order the witness to produce any books, papers, documents, data, or other objects by designating the particular objects to be produced. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

(2) Canceling or Modifying the Demand. Upon a prompt motion by the witness, the court may cancel or modify a demand for appearance ordering production of documents or objects if compliance would be unreasonable or oppressive.

(d) Witness Fees and Allowances. All witness fees and allowances will be paid by the party requesting the demand for appearance.

(1) Attendance Fee. A witness shall be paid an attendance fee of at least MVR [100] per day for each day's attendance. A witness shall also be paid the attendance fee for necessary travel time to and from the place of attendance.

(2) Travel Allowance. A witness who travels by commercial transportation shall be paid for his actual expenses of travel unless he fails to:

(i) use reasonable means of transportation,

(ii) travel the shortest practical route, and

(iii) travel at the most economical rate reasonably available.

A witness who travels by privately owned vehicle, or a witness who is not entitled to actual expenses for travel by commercial transportation under this subdivision, shall be paid according to the most economical rate reasonably available for traveling the shortest practical route by reasonable means of commercial transportation. Upon motion by a

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party or witness, the court shall order payment or reimbursement if the party and witness cannot agree upon the amount of the travel allowance.

(3) Subsistence Allowance. A witness shall be paid a subsistence allowance of at least MVR [100] when he must stay overnight at the place of attendance because travel to and from his residence on a daily basis would be impracticable.

(4) Witnesses in Custody. Any witness who is in custody at the time of his appearance may not receive fees or allowances.

(e) Service. Any nonparty who is at least 18 years old may serve a demand for appearance on a witness. The server must deliver a copy of the demand to the witness and tender a one-day witness fee and necessary travel expenses.

(1) Place of Service. A demand for appearance requiring a witness to attend a hearing or trial may be served at any place within the Maldives or upon any national or resident of the Maldives in a foreign country.

(2) Travel Expenses Included with Service. The party requesting the demand shall make a reasonable estimate of the witness' necessary travel expenses. The witness shall be reimbursed for any difference between the estimated travel expenses included with service and the travel allowance determined under subdivision (c)(2).

(f) Demand for a Witness to Appear at a Deposition. The court shall issue a demand for appearance of a witness at a deposition when it orders a deposition under Rule 4.6.

(g) Failure to Appear. A witness who disobeys a demand for appearance served upon him may be subject to liability under Section 541 (Failure to Appear) of the Penal Code. The demand shall contain a written notice advising the witness of potential liability.

PART V – DISCOVERY

Rule 5.1 – Disclosure of Evidence by the Prosecution

(a) Information Subject to Discovery. Except as provided in subdivision (b), the information in this subdivision must be disclosed or made available for inspection or both if:

(i) it is within the prosecution's possession, custody, or control; and

(ii) the prosecutor knows, or by exercising due diligence could know, of its existence.

(1) Statement of Defendant. Upon written request by the defendant, the prosecution must disclose to the defendant and permit the defendant to inspect and copy or photograph any of the following:

(i) relevant written or recorded statements made by the defendant, and

(ii) the substance of any oral statement made by the defendant to a prosecutor or any law enforcement officer if the prosecution intends to use the statement at trial.

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The prosecution must disclose the statements in (i) and (ii) only if they were made in response to interrogation by a person the defendant knew was a government agent at the time of interrogation.

(2) Defendant's Prior Record. Upon written request by the defendant, the prosecution must provide the defendant with a copy of the defendant's prior criminal record.

(3) Documents and Objects. Upon written request by the defendant, the prosecution must permit the defendant to inspect and copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions thereof, that:

(i) are material to the preparation of his defense, or

(ii) are intended for use by the prosecution as evidence in its case-in-chief at trial, or

(iii) were obtained from or belong to the defendant.

(4) Reports of Examinations and Tests. Upon written request by the defendant, the prosecution must permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations or scientific tests or experiments made in connection with the particular case if the item is material to preparing the defense or the prosecution intends to use the item in its case-in-chief at trial.

(5) Evidence Favorable to Defendant. Upon written request by the defendant before trial, the prosecution must disclose to the defendant all evidence that is favorable to the defendant and material either to guilt or punishment.

(6) Witness Names and Addresses. Upon written request by the defendant, the prosecution must furnish to the defendant a written list of the names and addresses of all witnesses whom the prosecution intends to call at trial.

(b) Information Not Subject to Discovery. The information in subdivision (a) is not subject to disclosure and inspection obligations under the following circumstances.

(1) Work Product. Except as provided in subdivisions (a)(1), (2), (4), and (5), reports, memoranda, or other internal documents made by attorneys or agents for the government in connection with the investigation or prosecution of the case are not subject to disclosure or inspection.

(2) Witness Statements. Except as provided in subdivisions (a)(1) and (5), statements made by witnesses or prospective witnesses to attorneys or agents of the government are not subject to disclosure or inspection.

(3) Protective Order. The prosecution may move for a protective order to deny, restrict, or defer disclosure or inspection of any information subject to discovery under subdivision (a).

(i) Pending Motion for Protective Order. If the prosecution moves for a protective order, pending the court's ruling on the motion, it may deny access to the information to the extent the prosecution reasonably believes the protective order will permit.

(ii) Granting a Protective Order. In the interest of justice, the court may deny, place reasonable conditions on, or defer discovery if allowing or disclosure or inspection would:

(aa) subject any person to physical or substantial economic harm or coercion, or

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(bb) interfere with the integrity of a continuing investigation, or
(cc) destroy the evidentiary value of any matter.

Rule 5.2 – Disclosure of Evidence by a Defendant

(a) Information Subject to Discovery. Except as provided in subdivision (b), the information in this subdivision must be disclosed or made available for inspection or both if:

(i) it is within the defendant's possession, custody, or control; and
(ii) the defendant intends to use it in his case-in-chief at trial.

(1) Documents and Objects. If the defendant obtains discovery under Rule 5.1(a)(3) and the prosecution makes a written request, the defendant must permit the prosecution to inspect and copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions thereof.

(2) Reports of Examinations and Tests. If the defendant obtains discovery under Rule 5.1(a)(4) and the prosecution makes a written request, the defendant must permit the prosecution to inspect and copy or photograph any results or reports of physical or mental examinations or scientific tests or experiments made by or on behalf of the defendant in connection with the particular case.

(3) Witness Names and Addresses. If the defendant obtains discovery under Rule 5.1(a)(6) and the prosecution makes a written request, the defendant must furnish to the prosecution a list of the names and addresses of the witnesses he intends to call at trial.

(b) Information Not Subject to Discovery. The information in subdivision (a) is not subject to disclosure and inspection obligations under the following circumstances.

(1) Work Product. Except as provided in subdivision (a)(2), reports, memoranda, or other internal documents made by the defendant, the defendant's attorney, or the defendant's agent in connection with the investigation or defense of the case are not subject to disclosure or inspection.

(2) Witness Statements. Except as provided in subdivision (a)(2), statements made by the defendant, a witness, or a prospective witness to the defendant, the defendant's attorney, or the defendant's agent are not subject to disclosure or inspection.

(3) Protective Order. The defendant may move for a protective order to deny, restrict, or defer disclosure or inspection of any information subject to discovery under subdivision (a).

(i) Pending Motion for Protective Order. If the defendant moves for a protective order, pending the court's ruling on the motion, the defendant may deny access to the information to the extent the defendant's attorney reasonably believes the protective order will permit.

(ii) Granting a Protective Order. In the interest of justice, the court may deny, place reasonable conditions on, or defer discovery if allowing disclosure or inspection would:

(aa) subject any person to physical or substantial economic harm or coercion, or
(bb) destroy the evidentiary value of any matter.

Rule 5.3 – Continuing Duty to Disclose

A party who discovers additional evidence or material before or during trial must promptly disclose its existence to the other party or the court if:

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(1) the evidence or material is subject to discovery under Rule 5.1 (Disclosure of Evidence by the Prosecution) and Rule 5.2 (Disclosure of Evidence by a Defendant); and

(2) a party previously requested, or the court ordered, production of that category of evidence or material.

Rule 5.4 – Requirement of Prompt Response to Discovery

(a) Prompt Response. A party must produce the evidence or material subject to discovery under Rule 5.1 (Disclosure of Evidence by the Prosecution) or Rule 5.2 (Disclosure of Evidence by a Defendant) within the time period set by the court. The court shall set the time period for responding to discovery so as to insure that discovery is completed in sufficient time before trial to prevent prejudice to the party or parties seeking discovery.

(b) Failure to Comply with Discovery. If a party fails to timely comply with disclosure or inspection obligations under Rule 5.1 (Disclosure of Evidence by the Prosecution), Rule 5.2 (Disclosure of Evidence by a Defendant), and Rule 5.3 (Continuing Duty to Disclose), the court shall:

(1) order the party to permit the discovery or inspection, specify its time, place, and manner, and prescribe other just terms and conditions;

(2) grant a continuance;

(3) prohibit that party from introducing the undisclosed evidence; or

(4) enter any other order that is just under the circumstances.

Rule 5.5 – Inadmissibility Not a Bar

That information is inadmissible at trial under the [Rules of Evidence] does not bar a party from obtaining information otherwise subject to discovery under Rules 5.1 (Disclosure of Evidence by the Prosecution), Rule 5.2 (Disclosure of Evidence by a Defendant), and Rule 5.3 (Continuing Duty to Disclose) as long as the information is reasonably calculated to lead to the discovery of admissible evidence.

PART VI – TRIAL

Rule 6.1 – Time of Trial

(a) Time Limitation. A defendant must be brought to trial within:

(1) [60 days] from the filing of the charging document if the defendant remains in custody awaiting trial, or

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(2) [90 days] from the filing of the charging document if the defendant secures pretrial release under Part III (Release Before and During Trial).

(b) Waiver. A defendant may waive the time limitations in subdivision (a).

(c) Request for Extension. The prosecution may request the court to extend the time limitations in subdivision (a). The prosecution must provide specific reasons for the requested extension. The court shall grant the request if an extension is in the interest of justice.

Rule 6.2 – Continuity of Trial

Once a trial begins, it shall continue without undue interruption until it is complete. The court may suspend the proceedings briefly as necessary in the interest of justice.

Rule 6.3 – Conducting Trial

(a) Order of Proceeding. The court shall call the trial to order, after which the trial shall proceed in the following order, unless the court otherwise directs:

(1) the prosecutor shall state to the court the nature of the charge and the evidence upon which the prosecutor relies to support it;

(2) the defendant or the defendant's attorney may state the defense and the evidence upon which the defendant relies to support it or the defendant may reserve this opening statement until the conclusion of the evidence for the prosecution;

(3) the prosecutor must offer the evidence in support of the charge;

(4) the defendant or the defendant's attorney may make an opening statement, if reserved, and offer evidence in support of the defense;

(5) the parties respectively may offer rebutting evidence, unless the court, in the interest of justice, permits them to offer evidence-in-chief; and

(6) the parties may submit or argue the case to the court. In the argument, the prosecutor shall have the conclusion and the defendant or the defendant's attorney the opening. If more than one counsel is to take part in the closing argument on either side, or if several defendants have separate defenses and appear by different counsel, the court shall arrange the order of argument, always giving the prosecutor the closing argument.

(b) Taking of Testimony. After the parties have had an opportunity to question a witness, the court may question the witness. The testimony of witnesses must be taken in open court, unless the court determines that taking the witness's testimony in private is necessary to protect the witness from intimidation or substantial physical or psychological harm.

Rule 6.4 – Right of Confrontation at Trial

(a) Defendant's Presence. A defendant must be permitted to attend every stage of his trial, unless he:

(1) is voluntarily absent; or

(2) persists in conduct that is so disruptive as to justify exclusion from the courtroom after being warned by the court that disruptive conduct will cause his removal; or

(3) intimidates a witness, in which case the defendant may be excluded only during the witness's testimony.

(b) Cross-Examination. The defendant's attorney, or the defendant himself if he is not represented by counsel, must be permitted to cross-examine all witnesses against the defendant during trial.

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Rule 6.5 – Admission of Evidence

The court may only consider evidence that has been presented by the parties during trial. Admissibility of evidence may be contested by any party. The court shall rule on all questions of admissibility in accordance with the [Rules of Evidence].

Rule 6.6 – Judgments at Trial

(a) Generally. At the conclusion of a trial, the court must enter a judgment of "guilty," "no offense," or "not guilty" for each offense charged or an offense consisting of elements necessarily established by proof of an offense charged.

(1) Guilty. The court must enter a judgment of "guilty" if it finds that the requirements for liability in Section 20 of the Penal Code are fulfilled.

(2) No Offense. The court must enter a judgment of "no offense" if it finds that the defendant does not satisfy the requirements for liability in Section 20 of the Penal Code because of:

(i) an absence of an objective element under Section 21(a)(1) of the Penal Code,

(ii) a justification defense in Chapter 40 of the Penal Code, or

(iii) any other exemption from liability vitiating the offense harm or wrong.

(3) Not Guilty. The court must enter a judgment of "not guilty" if it finds that the defendant does not satisfy the requirements for liability in Section 20 of the Penal Code but is not entitled to a judgment of "no offense."

(b) Entering the Judgment. The judgment must be entered in open court. If a party requests before the judgment, the court must state its specific findings of fact in open court or in a written decision or opinion.

Rule 6.7 – Trial Motion for Acquittal

After the prosecution closes its evidence, the court, on motion of the defendant or its own motion, must order the entry of a judgment of no offense or not guilty, as defined in Rule 6.6 (Judgments at Trial), as to any offense for which the evidence would not reasonably permit a finding of guilty beyond a reasonable doubt. The court shall rule upon the motion for acquittal before calling upon the defendant to present his case. If the court denies a motion for a judgment of acquittal, the defendant may offer evidence without having reserved the right to do so.

Rule 6.8 – Mistrial

(a) Generally. On motion of a party, the court shall declare a mistrial at any time during trial if necessary in the interest of justice.

(1) For Prejudice to Defendant. The court shall declare a mistrial on a defendant's motion if there occurs during the trial an error or legal defect in the proceedings, or conduct in or outside the courtroom, resulting in substantial and irreparable prejudice to the defendant's case.

(2) For Prejudice to the Prosecution. The court shall declare a mistrial on the prosecution's motion if there occurs during the trial, either in or outside the courtroom, misconduct by the defendant, the defendant's lawyer, or someone acting at the

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defendant's or lawyer's request, resulting in substantial and irreparable prejudice to the prosecution's case.

(b) Opportunity to Be Heard. Before ordering a mistrial, the court must consider fairness to the parties and give each party an opportunity:

(1) to comment on the propriety of the order,

(2) to state whether that party consents or objects, and

(3) to suggest alternatives.

Rule 6.9 – Judge Unable to Proceed

(a) During Trial. If the judge before whom a trial began cannot proceed with a trial because of absence, death, sickness, other disability, termination of office, or a conflict of interest that did not exist or was not known before trial, a judge regularly sitting in or assigned to the court shall grant a new trial.

(b) After a Judgment of Guilty. After a judgment of guilty, if the judge who presided at trial cannot perform post-trial duties because of absence, death, sickness, other disability, termination of office, or a conflict of interest, a judge regularly sitting in or assigned to a court shall:

(1) complete the court's duties, or

(2) grant a new trial if a judge other than the one who presided at the trial cannot adequately perform the post-trial duties.

(c) Conflict of Interest. A conflict of interest exists when one of the parties involved in the case is a close relative or a business associate of the judge.

PART VII – POST-TRIAL PROCEEDINGS

Rule 7.1 – Presentence Release

Upon acceptance of a plea of guilty or entry of a judgment of guilty of an offense punishable by imprisonment, the court, pending sentencing, may continue the release of a defendant on release during trial on the same or modified conditions under Rule 3.2 (Release on Personal Recognizance or Bail) and Rule 3.3 (Release on Conditions), or order the defendant's detention under Rule 3.4 (Detention).

Rule 7.2 – Presentence Investigation and Report

(a) Generally. Upon a plea of guilty or a judgment of guilty, court personnel must conduct a presentence investigation and submit a report to the court before it imposes sentence unless:

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(1) the court finds, and the parties agree, that the information in the record is sufficient to impose an appropriate sentence; and

(2) the court explains its findings on the record.

(b) Contents of the Report. The presentence report must identify all applicable sentencing guidelines and any factor relevant to the application of the guidelines in accordance with Rule 7.4. The presentence report must also include:

(1) the defendant's history and characteristics, including:

(i) any prior criminal record,

(ii) the defendant's financial condition, and

(iii) any circumstances affecting the defendant's behavior that are helpful in imposing sentence or in correctional treatment;

(2) an impartial assessment of the financial, social, psychological, and medical impact on any victim;

(3) when appropriate, the nature and extent of nonprison programs and resources available for the defendant;

(4) when the law provides for restitution, information sufficient for a restitution order; and

(5) any other information that the court requires.

(c) Definition. A "victim" means a person against whom the defendant committed an offense for which the court is imposing sentence.

(d) Exclusion. The court may exclude, from both parties' copies, any portion of the report that, if disclosed, is likely to result in serious physical harm to the defendant or any harm to a person other than the defendant.

(e) Disclosure. The court personnel preparing the presentence report must give the report to the defendant, the defendant's attorney if he is represented by counsel, and a prosecutor at least [30 days] before sentencing unless the defendant waives this minimum period.

(f) Objections.

(1) Time to Object. Within [10 days] after receiving the presentence report, the parties must state in writing any objections to information contained in or omitted from the report.

(2) Serving Objections. An objecting party must provide a copy of its objections to the opposing party and to the court personnel preparing the report.

(3) Action on Objections. After receiving objections, the court personnel preparing the report may meet with the parties to discuss the objections, investigate further, and revise the presentence report as appropriate.

(4) Continuing Objections. If the objecting party is not satisfied with the revisions or lack thereof, it must provide the court with a written copy of its continuing objections.

Rule 7.3 – Sentencing Hearing

(a) Generally. Before imposing sentence upon a plea of guilty or a judgment of guilty, the court shall conduct a sentencing hearing.

(b) Imposing Sentence. The court shall impose sentence after considering:

(1) the presentence report,

(2) any applicable sentencing guidelines in accordance with Rule 7.4,

(3) the trial record, and

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(4) statements made by the parties at the sentencing hearing on any matter relevant to sentencing.

(c) Opportunity to Address the Court.

(1) By a Party. Before imposing sentence, the court must:

(i) address the defendant personally to permit the defendant to speak or present any information to argue for mitigating the sentence; and

(ii) if the defendant is represented by counsel, provide the defendant's attorney an opportunity to speak on the defendant's behalf; and

(iii) provide a prosecutor an opportunity to speak.

(2) By a Victim. The court may allow a victim, or a relative of a deceased or an incapacitated victim, to speak at the sentencing hearing or submit a written statement to the court. The victim or relative of a deceased or incapacitated victim may provide information regarding the circumstances of the offense and the extent of the loss or harm resulting from the offense, but must not provide opinions on what sentence should be imposed.

(d) Definition. "Incapacitated victim" means a victim who is not physically capable of attending the hearing, speaking to the court, or submitting a written statement.

(e) Notice of Right to Appeal. At the sentencing hearing, the court shall inform the defendant personally of any right the defendant has to an appeal under Rule 7.7.

Rule 7.4 – Application of the Sentencing Guidelines

The court shall apply the Sentencing Guidelines as provided in Chapter 1000 (Application of the Sentencing Guidelines) of the Penal Code.

Rule 7.5 – Execution of Judgment

The court must issue an order executing judgment that sets forth the plea and judgment. If there is a plea of guilty or judgment of guilty, the order must also set forth the sentence or other disposition, including forfeiture of property under Rule 7.8. The defendant must receive credit for any confinement because of inability to secure release before or during trial or pending sentence. If the defendant is entitled to be discharged, his discharge must be included in the order. The order must be signed by the judge and entered in the record.

Rule 7.6 – Post-trial Motions

(a) Post-trial Motion for Acquittal.

(1) Grounds. If a mistrial is declared any time after the close of the prosecution's evidence, the court, on motion of the defendant or its own motion, shall order the entry of a judgment of no offense or not guilty, as defined in Rule 6.6 (Judgments at Trial), as to any offense for which the evidence would not reasonably permit a finding of guilty beyond a reasonable doubt.

(2) Time for Motion. Unless the court otherwise permits in the interest of justice, a motion for acquittal must be made within ten days after mistrial or within any further time the court allows during the ten-day period.

(b) Motion for a New Trial.

(1) Granting the Motion. On motion of the defendant, the court shall grant the defendant a new trial if an error occurred and a new trial is required in the interest of

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justice. The court shall not grant the motion if it appears beyond a reasonable doubt that the error did not impact the outcome of the case.

(2) Entry of a New Judgment. In lieu of granting a new trial, the court may vacate any judgment entered, receive additional evidence from the parties, and direct the entry of a new judgment if the new judgment is supported by sufficient evidence.

(3) Time for Motion.

(i) Motion Based on Newly Discovered Evidence. A motion for a new trial based on newly discovered evidence must be made with reasonable diligence, considering the nature of the allegations in the motion. The court may grant the motion even though an appeal is pending.

(ii) Motion Based on Other Ground. Unless otherwise permitted by the court in the interest of justice, a motion for a new trial based upon any ground other than newly discovered evidence must be made within ten days after the entry of a judgment of guilty or within any further time the court allows during the ten-day period.

Rule 7.7 – Appeals

(a) Basis for an Appeal. All appeals must be based on a claim of legal error. The High Court shall reverse a trial court's ruling if it determines that a legal error occurred and that the error impacted the outcome of the case.

(b) Findings of fact. The High Court shall defer to the trial court on all findings of fact and may only overturn the trial court's determination of a factual issue if it is clearly erroneous.

(c) Appeal of a Dismissal or Acquittal. The prosecution may appeal a dismissal or acquittal to the High Court.

(d) Appeal of a Conviction. Subject to the limitations on appeals of guilty pleas in Rule 2.11(f), a defendant may appeal a conviction to the High Court.

(e) Appeal of a Sentence. A defendant or the prosecution may appeal a sentence to the High Court:

(1) as provided in Section 1004 (Guideline Sentence Need Not Be Imposed, But Departure Must Be Explained) of the Penal Code, or

(2) if the trial court has made a legal error in applying the guidelines and the party would have had the right to appeal absent the error.

(f) Appeal of a Forfeiture Order. A defendant may appeal a final order of forfeiture as provided in Rule 7.8 (Forfeiture).

(g) Time. The appealing party must file a notice of appeal with the trial court within [10 days] of the order being appealed.

(h) Release Pending Appeal by Defendant. Pending a defendant's appeal of a conviction or sentence, the trial court shall determine whether a defendant on presentence release under Rule 7.1 shall continue on release on the same or modified conditions under Rule 3.2 (Release on Personal Recognizance or Bail) and Rule 3.3 (Release on Conditions) or be detained under Rule 3.4 (Detention). A defendant on presentence release under Rule 7.1 may be detained pending his appeal if the trial court finds that the appeal is for the purpose of delay and not based on a claim of legal error that impacted the outcome of the case.

(i) Release Pending Appeal by the Prosecution. Pending the prosecution's appeal of a dismissal or acquittal, the trial court shall determine whether a defendant shall be released or

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detained under Rule 3.1 (Determining Release or Detention). Pending the prosecution's appeal of a sentence, the trial court shall:

(1) order the detention of a defendant sentenced to a term of imprisonment, and

(2) in any other circumstance, determine whether a defendant shall be released or detained under Rule 3.1 (Determining Release or Detention), except that a defendant shall not be detained if the trial court finds that the appeal is not based on a claim of legal error that impacted the outcome of the case.

Rule 7.8 – Forfeiture

(a) When Authorized. The court shall order that a defendant forfeit the proceeds of or contraband involved in an offense for which he has been convicted if it finds by a preponderance of the evidence that there is a connection between the property sought to be forfeited and the offense.

(b) Forfeiture Not Part of Sentence. An order of forfeiture is not part of sentence and shall not be included in the calculation of the guideline sentence under Part III (Sentencing Guidelines) of the Penal Code.

(c) Notice to the Defendant. A court must not enter an order of forfeiture unless the charging document contains notice to the defendant that the prosecution will seek the forfeiture of property.

(d) Entering a Preliminary Order of Forfeiture.

(1) In General. After acceptance of a plea of guilty or entry of a judgment of guilty on any count in the charging document regarding which criminal forfeiture is sought, the court shall determine what property is subject to forfeiture under subdivision (a) and the amount of any personal money judgment sought. The court's determination may be based on:

(i) evidence already in the record, including any written plea agreement; or

(ii) if the forfeiture is contested, on evidence or information presented by the parties at a hearing after the finding of guilt.

(2) Preliminary Order. If the court finds that property is subject to forfeiture, it must enter a preliminary order of forfeiture setting forth the amount of any money judgment and directing the forfeiture of specific property without regard to any third party's interest in all or part of it.

(3) Seizing Property. The entry of a preliminary order of forfeiture authorizes the Attorney General, or his designee, to:

(i) seize the specific property subject to forfeiture;

(ii) conduct any discovery the court considers proper in identifying, locating, or disposing of the property; and

(iii) commence proceedings that comply with any law governing third-party rights.

(e) Entering a Final Order of Forfeiture.

(1) When No Third Party Claims an Interest in the Property. If no third party files a timely petition, the preliminary order becomes the final order of forfeiture at the time of sentencing and must be included in the execution of judgment. The order of forfeiture may include conditions reasonably necessary to preserve the property's value pending any appeal. The defendant may not object to the entry of the final order on the ground that

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the property belongs, in whole or in part, to a third party if no third party claims an interest in the property.

(2) When a Third Party Claims an Interest in the Property. If a third party files a petition claiming an interest in the property to be forfeited, the court must conduct an ancillary proceeding to determine the third party's interests or rights.

(i) Conducting an Ancillary Proceeding. The ancillary proceeding will be conducted in accordance with rules governing civil actions. No ancillary proceeding is required to the extent that the forfeiture consists of a money judgment. An ancillary proceeding is not part of sentencing.

(ii) After Ancillary Proceeding. When the ancillary proceeding ends, the court must enter a final order of forfeiture by amending the preliminary order as necessary to account for any third-party rights.

(f) Stay Pending Appeal. If a defendant appeals from a conviction or an order of forfeiture, the court may stay the order of forfeiture on terms appropriate to ensure that the property remains available pending appellate review. A stay does not delay any ancillary proceedings determining a third party's rights or interests. If the court rules in favor of any third party while an appeal is pending, the court may amend the order of forfeiture but must not transfer any property interest to a third party until the decision on appeal becomes final, unless the defendant consents.

(g) Subsequently Located Property; Substitute Property.

(1) In General. On the prosecution's motion, the court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that:

(i) is subject to forfeiture under an existing order of forfeiture but was located and identified after that order was entered, or

(ii) is substitute property that qualifies for forfeiture under subdivision (g)(2).

(2) Substitute Property. Substitute property may consist of any property, including cash, up to the value of any property whose forfeiture is authorized under subdivision (a). Property may be substituted if any property that qualifies for forfeiture under subdivision (a), as a result of any act or omission of the defendant:

(i) cannot be located upon the exercise of due diligence;

(ii) has been transferred or sold to, or deposited with, a third party;

(iii) has been placed beyond the jurisdiction of the court;

(iv) has been substantially diminished in value; or

(v) has been commingled with other property which cannot be divided without difficulty.

(3) Ancillary Proceeding. If a third party files a petition claiming an interest in the subsequently located or substitute property, the court must conduct an ancillary proceeding under subdivision (e)(2).

*** END ***

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