

By: Representative Blackmon

To: Judiciary B; Corrections

HOUSE BILL NO. 1496

1 AN ACT TO CREATE THE MISSISSIPPI PENAL CODE; TO STATE THE
2 PURPOSES AND APPLICABILITY OF THIS ACT; TO PROVIDE CLASSES OF
3 CRIMES; TO DEFINE OFFENSES; TO PROVIDE TIME LIMITATIONS; TO
4 PROVIDE FOR PROSECUTION METHODS; TO DEFINE WHEN A PROSECUTION IS
5 BARRED; TO DEFINE CERTAIN TERMS; TO SPECIFY GENERAL PRINCIPLES OF
6 LIABILITY; TO REQUIRE THAT LIABILITY BE BASED ON A VOLUNTARY ACT;
7 TO PROVIDE GENERAL REQUIREMENTS OF CULPABILITY; TO REQUIRE A
8 CAUSAL, RELATIONSHIP BETWEEN CONDUCT AND RESULT; TO PROVIDE THE
9 DEFENSE OF IGNORANCE OR MISTAKE; TO PROVIDE FOR WHEN CULPABILITY
10 REQUIREMENTS ARE INAPPLICABLE TO CERTAIN OFFENSES; TO PROVIDE FOR
11 LIABILITY FOR THE CONDUCT OF ANOTHER; TO PROVIDE FOR WHEN
12 CULPABILITY REQUIREMENTS ARE INAPPLICABLE TO CERTAIN OFFENSES; TO
13 PROVIDE FOR LIABILITY FOR THE CONDUCT OF ANOTHER; TO PROVIDE FOR
14 LIABILITY OF CORPORATIONS; TO PROVIDE WHEN THE DEFENSE OF
15 INTOXICATION IS APPLICABLE; TO PROVIDE FOR THE DEFENSE OF DURESS;
16 TO PROVIDE FOR THE DEFENSE OF CONSENT; TO PROVIDE FOR DE MINIMIS
17 INFRACTIONS AND ENTRAPMENT; TO PROVIDE FOR GENERAL PRINCIPLES OF
18 JUSTIFICATION INCLUDING THE USE OF FORCE; TO PROVIDE FOR MISTAKE
19 OF LAW AS TO UNLAWFULNESS OF FORCE OR LEGALITY OF ARREST; TO
20 PROVIDE FOR JUSTIFICATION IN PROPERTY CRIMES; TO ADDRESS CRIMINAL
21 RESPONSIBILITY INCLUDING MENTAL DISEASES OR DEFECTS WHICH EXCLUDE
22 RESPONSIBILITY; TO PROVIDE FOR THE ADMISSIBILITY OF EVIDENCE
23 RELATING TO MENTAL CONDITION; TO PROVIDE FOR PSYCHIATRIC
24 EXAMINATIONS; TO ADDRESS THE DETERMINATION OF WHEN TO PROCEED
25 BASED ON THE DEFENDANT'S FITNESS; TO PROVIDE FOR THE DETERMINATION
26 OF IRRESPONSIBILITY; TO PROVIDE FOR THE LEGAL EFFECT OF ACQUITTAL
27 ON THE GROUND OF MENTAL DISEASE OR DEFECT EXCLUDING
28 RESPONSIBILITY; TO ADDRESS IMMATURITY EXCLUDING CRIMINAL
29 CONVICTION; TO PROVIDE FOR INCHOATE CRIMES INCLUDING ATTEMPT,
30 SOLICITATION AND CONSPIRACY; TO PROVIDE FOR INCAPACITY,
31 IRRESPONSIBILITY OR IMMUNITY OF A PARTY TO SOLICITATION OR
32 CONSPIRACY; TO ADDRESS THE USE OF WEAPONS AS INSTRUMENTS OF CRIME;
33 TO PROVIDE FOR THE DEGREES OF FELONIES; TO PROVIDE FOR SENTENCING,
34 FINES AND PENALTIES UNDER THIS ACT; TO PROVIDE FOR SENTENCE
35 REVISION; TO PROVIDE CRITERIA AND PROCEDURE FOR SENTENCING AND
36 IMPOSING FINES; TO ADDRESS MULTIPLE SENTENCES; TO ADDRESS FORMER
37 CONVICTIONS IN OTHER JURISDICTIONS; TO PROVIDE FOR CREDIT FOR TIME
38 SERVED PRIOR TO SENTENCING; TO PROVIDE FOR THE OFFENSE OF CRIMINAL
39 HOMICIDE WHICH INCLUDES MURDER, MANSLAUGHTER, NEGLIGENT HOMICIDE
40 AND CAUSING OR AIDING SUICIDE; TO PROVIDE FOR THE OFFENSES OF
41 ASSAULT, RECKLESS ENDANGERING AND TERRORISTIC THREATS; TO PROVIDE
42 FOR THE OFFENSE OF KIDNAPPING, FELONIOUS RESTRAINT, FALSE
43 IMPRISONMENT, INTERFERENCE WITH CUSTODY AND CRIMINAL COERCION; TO
44 PROVIDE FOR SEXUAL OFFENSES INCLUDING RAPE, SEXUAL ASSAULT,
45 INDECENT EXPOSURE AND CORRUPTION OF MINORS AND SEDUCTION; TO
46 PROVIDE FOR THE OFFENSES OF ARSON, CAUSING OR RISKING CATASTROPHE
47 AND CRIMINAL MISCHIEF; TO PROVIDE FOR THE OFFENSES OF BURGLARY AND
48 CRIMINAL TRESPASS; TO PROVIDE FOR THE OFFENSE OF ROBBERY; TO
49 PROVIDE FOR VARIOUS THEFT AND RELATED OFFENSES; TO PROVIDE FOR THE
50 OFFENSES OF FORGERY AND FRAUDULENT PRACTICES INCLUDING TAMPERING
51 OR DESTRUCTION OF RECORDS, ISSUING BAD CHECKS, CREDIT CARD FRAUD,
52 DECEPTIVE BUSINESS PRACTICES AND OTHER FRAUD; TO PROVIDE FOR THE

53 OFFENSES OF BIGAMY AND POLYGAMY, INCEST, ABORTION, ENDANGERING THE
54 WELFARE OF CHILDREN AND PERSISTENT NONSUPPORT; TO PROVIDE FOR THE
55 OFFENSES OF BRIBERY AND CORRUPT INFLUENCE INCLUDING OFFENSES
56 RELATED TO PUBLIC OFFICIALS; TO PROVIDE FOR THE OFFENSES OF
57 PERJURY, FALSE SWEARING, UNSWORN FALSIFICATION TO AUTHORITIES,
58 FALSE ALARMS, FALSE REPORTS, AND TAMPERING WITH WITNESSES,
59 INFORMANTS, EVIDENCE AND PUBLIC RECORDS; TO PROVIDE FOR THE
60 OFFENSES OF OBSTRUCTING GOVERNMENTAL OPERATIONS, RESISTING ARREST,
61 HINDERING APPREHENSION OR PROSECUTION, AIDING CONSUMMATION OF
62 CRIME, COMPOUNDING, ESCAPE AND BAIL JUMPING; TO PROVIDE FOR
63 OFFENSES RELATING TO ABUSE OF OFFICE; TO PROVIDE FOR THE OFFENSES
64 OF RIOT, DISORDERLY CONDUCT, FALSE PUBLIC ALARMS, HARASSMENT,
65 PUBLIC INTOXICATION, LOITERING, OBSTRUCTING HIGHWAYS, DESECRATION
66 OF VENERATED OBJECTS, ABUSE OF CORPSE, CRUELTY TO ANIMALS AND
67 VIOLATION OF PRIVACY; TO PROVIDE FOR THE OFFENSES OF PROSTITUTION,
68 LOITERING TO SOLICIT DEVIATE SEXUAL RELATIONS AND OBSCENITY; TO
69 PROVIDE FOR TREATMENT AND CORRECTION OF OFFENDERS; TO PROVIDE
70 CONDITIONS OF SUSPENSION OF SENTENCE OR PROBATION; TO PROVIDE FOR
71 THE DETERMINATION OF THE PERIOD OF SUSPENSION OR PROBATION; TO
72 PROVIDE FOR MODIFICATION OF CONDITIONS; TO PROVIDE FOR SUSPENSION
73 AND PROBATION PROCEEDINGS AND HEARINGS UPON NOTICE; TO PROVIDE FOR
74 CRIMINAL FINES AND METHODS OF PAYMENT INCLUDING THE CONSEQUENCES
75 OF NONPAYMENT AND REVOCATION OF FINES; TO PROVIDE FOR SHORT-TERM
76 AND LONG-TERM IMPRISONMENT AND THE ADMINISTRATION OF PRISONERS; TO
77 PROVIDE FOR DISCIPLINE AND CONTROL OF PRISONERS, WORKING PRISONERS
78 AND REDUCTION OF SENTENCES FOR GOOD BEHAVIOR; TO PROVIDE
79 COMPASSIONATE LEAVE; TO PROVIDE FOR RELEASE FROM INSTITUTIONS; TO
80 PROVIDE FOR PAROLE; TO PROVIDE FOR REDUCTION IN PRISON AND PAROLE
81 TERMS FOR GOOD BEHAVIOR; TO PROVIDE FOR PAROLE ELIGIBILITY AND
82 PAROLE HEARINGS; TO ESTABLISH PAROLE CRITERIA, CONDITIONS,
83 SUPERVISION AND REVOCATION; TO ADDRESS THE LOSS AND RESTORATION
84 OF RIGHTS INCIDENT TO CONVICTION AND IMPRISONMENT; TO CREATE THE
85 DEPARTMENT OF CORRECTIONS AND PROVIDE FOR ITS PERSONNEL, POWERS
86 AND DUTIES; TO CREATE DIVISIONS WITHIN THE DEPARTMENT; TO CREATE
87 THE COMMISSION ON CORRECTION AND COMMUNITY SERVICES; TO PROVIDE
88 FOR INSPECTION OF INSTITUTIONS; TO CREATE THE PAROLE BOARD AND
89 PRESCRIBE ITS DUTIES AND POWERS; TO PROVIDE FOR THE ADMINISTRATION
90 OF PENAL INSTITUTIONS; TO CREATE THE DIVISION OF PAROLE AND
91 PRESCRIBE ITS DUTIES AND POWERS; TO CREATE THE DIVISION OF
92 PROBATION AND PRESCRIBE ITS DUTIES AND POWERS; TO REPEAL SECTIONS
93 97-1-1, 97-1-7 AND 97-1-9, MISSISSIPPI CODE OF 1972, WHICH PROVIDE
94 FOR THE CRIMINAL OFFENSES OF CONSPIRACY AND ATTEMPTS; TO REPEAL
95 SECTIONS 97-3-3 AND 97-3-5, MISSISSIPPI CODE OF 1972, WHICH
96 PROVIDE FOR THE CRIMINAL OFFENSE OF ABORTION; TO REPEAL SECTION
97 97-3-7, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR CRIMINAL
98 ASSAULTS; TO REPEAL SECTIONS 97-3-19, 97-3-21, 97-3-23, 97-3-25,
99 97-3-27, 97-3-29, 97-3-31, 97-3-33, 97-3-35, 97-3-37, 97-3-39,
100 97-3-41, 97-3-43, 97-3-45, 97-3-47, 97-3-49, 99-19-101 AND
101 99-19-103, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR VARIOUS
102 HOMICIDE OFFENSES, CAPITAL CASES SENTENCING AND AIDING SUICIDE; TO
103 REPEAL SECTION 97-3-53, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
104 FOR THE CRIMINAL OFFENSE OF KIDNAPPING; TO REPEAL SECTIONS 97-3-85
105 AND 97-3-87, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
106 OFFENSE OF CRIMINAL THREATS; TO REPEAL SECTIONS 97-3-65, 97-3-67,
107 97-3-71, 97-3-95, 97-3-97, 97-3-99, 97-3-101 AND 97-3-103,
108 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE CRIMES OF RAPE AND
109 SEXUAL ASSAULT; TO REPEAL SECTIONS 97-17-1, 97-17-3, 97-17-5,
110 97-17-7, 97-17-9, 97-17-11 AND 97-17-13, MISSISSIPPI CODE OF 1972,
111 WHICH PROVIDE FOR THE CRIME OF ARSON; TO REPEAL SECTIONS 97-17-19,
112 97-17-21, 97-17-23, 97-17-25, 97-17-27, 97-17-29, 97-17-31,
113 97-17-33, 97-17-35 AND 97-17-37, MISSISSIPPI CODE OF 1972, WHICH
114 PROVIDE FOR THE CRIME OF BURGLARY; TO REPEAL SECTIONS 97-3-73,
115 97-3-75, 97-3-77, 97-3-79, 97-3-81 AND 97-3-83, MISSISSIPPI CODE
116 OF 1972, WHICH PROVIDE FOR THE CRIME OF ROBBERY; TO REPEAL SECTION
117 97-3-82, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE CRIME OF
118 EXTORTION; TO REPEAL SECTIONS 97-17-45, 97-17-47, 97-17-49,

119 97-17-51, 97-17-53, 97-17-55, 97-17-58, 97-17-59, 97-17-61,
120 97-17-63 AND 97-17-64, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR
121 THE CRIME OF LARCENY; TO REPEAL SECTION 97-17-67, MISSISSIPPI CODE
122 OF 1972, WHICH PROVIDES FOR THE CRIME OF MALICIOUS MISCHIEF; TO
123 REPEAL SECTION 97-17-70, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
124 FOR THE CRIME OF RECEIVING STOLEN PROPERTY; TO REPEAL SECTIONS
125 97-21-1, 97-21-3, 97-21-7, 97-21-9, 97-21-11, 97-21-13, 97-21-15,
126 97-21-17, 97-21-19, 97-21-21, 97-21-23, 97-21-25, 97-21-27,
127 97-21-29, 97-21-31, 97-21-33, 97-21-35, 97-21-37, 97-21-39,
128 97-21-41, 97-21-43, 97-21-45, 97-21-47, 97-21-49, 97-21-51,
129 97-21-53, 97-21-55, 97-21-57, 97-21-59, 97-21-61 AND 97-21-63,
130 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE CRIME OF FORGERY;
131 TO REPEAL SECTIONS 97-19-7, 97-19-9, 97-19-11, 97-19-13, 97-19-15,
132 97-19-17, 97-19-19, 97-19-21, 97-19-23, 97-19-25, 97-19-27,
133 97-19-29 AND 97-19-31, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR
134 THE FRAUDULENT USE OF CREDIT CARDS; TO REPEAL SECTIONS 97-19-55
135 AND 97-19-67, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
136 CRIME OF FRAUD FOR ISSUING BAD CHECKS; TO REPEAL SECTIONS 97-29-13
137 AND 97-29-15, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
138 CRIME OF BIGAMY; TO REPEAL SECTIONS 97-29-5, 97-29-27 AND
139 97-29-29, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE CRIME OF
140 INCEST; TO REPEAL SECTION 97-29-31, MISSISSIPPI CODE OF 1972,
141 WHICH PROVIDES FOR THE CRIME OF INDECENT EXPOSURE; TO REPEAL
142 SECTIONS 97-9-5, 97-9-7, 97-9-9, 97-9-10, 97-11-11, 97-11-13,
143 97-11-53, 97-13-1 AND 97-13-3, MISSISSIPPI CODE OF 1972, WHICH
144 PROVIDE FOR THE CRIME OF BRIBERY; TO REPEAL SECTIONS 97-9-59,
145 97-9-61, 97-9-63 AND 97-9-65, MISSISSIPPI CODE OF 1972, WHICH
146 PROVIDE FOR THE CRIME OF PERJURY; TO REPEAL SECTIONS 97-9-45,
147 97-9-47 AND 97-9-49, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR
148 THE CRIME OF ESCAPE; TO REPEAL SECTION 97-29-47, MISSISSIPPI CODE
149 OF 1972, WHICH PROVIDES FOR THE CRIME OF PUBLIC DRUNKENNESS; TO
150 REPEAL SECTIONS 97-41-1, 97-41-5, 97-41-7, 97-41-9 AND 97-41-11,
151 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE CRIME OF CRUELTY
152 TO ANIMALS; TO BRING FORWARD FOR PURPOSES OF AMENDMENT SECTIONS
153 47-1-1, 47-1-3, 47-1-5, 47-1-7, 47-1-9, 47-1-11, 47-1-13, 47-1-15,
154 47-1-17, 47-1-19, 47-1-21, 47-1-23, 47-1-27, 47-1-29, 47-1-31,
155 47-1-33, 47-1-35, 47-1-37, 47-1-39, 47-1-41, 47-1-43, 47-1-45,
156 47-1-47, 47-1-49, 47-1-51, 47-1-55, 47-1-57, 47-1-59, 47-1-61 AND
157 47-1-63, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE
158 INCARCERATION AND ADMINISTRATION OF COUNTY AND MUNICIPAL PRISONS
159 AND PRISONERS; TO BRING FORWARD FOR PURPOSES OF AMENDMENT SECTIONS
160 47-4-1, 47-4-3 AND 47-4-5, MISSISSIPPI CODE OF 1972, WHICH PROVIDE
161 FOR PRIVATELY OPERATED CORRECTIONAL FACILITIES; TO BRING FORWARD
162 SECTIONS 47-5-1, 47-5-3, 47-5-4, 47-5-5, 47-5-8, 47-5-10, 47-5-20,
163 47-5-23, 47-5-24, 47-5-26, 47-5-28, 47-5-35, 47-5-37, 47-5-49,
164 47-5-54, 47-5-99, 47-5-101, 47-5-103, 47-5-104, 47-5-110,
165 47-5-119, 47-5-120, 47-5-121, 47-5-126, 47-5-138, 47-5-139,
166 47-5-140, 47-5-142, 47-5-173, 47-5-177 AND 47-5-901, MISSISSIPPI
167 CODE OF 1972, WHICH CREATE THE CORRECTIONAL SYSTEM FOR THE STATE
168 OF MISSISSIPPI AND PRESCRIBE THE DUTIES AND POWERS THEREUNDER; TO
169 BRING FORWARD SECTIONS 47-7-1, 47-7-5, 47-7-17, 47-7-53, 47-7-3,
170 47-7-9, 47-7-23, 47-7-25, 47-7-27, 47-7-29, 47-7-31, 47-7-33,
171 47-7-35, 47-7-37, 47-7-41, 47-7-47 AND 47-7-49, MISSISSIPPI CODE
172 OF 1972, WHICH PROVIDE FOR PROBATION AND PAROLE AND SPECIFY THE
173 POWERS AND DUTIES RELATED THERETO; AND FOR RELATED PURPOSES.

174 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

175 ARTICLE 1

176 **SECTION 1.** (1) This act shall be known and may be cited as
177 the Mississippi Penal Code.

178 (2) Except as provided in subsections (3) and (4) of this
179 section, this act does not apply to offenses committed prior to
180 its effective date and prosecutions for such offenses shall be
181 governed by the prior law, which is continued in effect for that
182 purpose, as if this act were not in force. For the purposes of
183 this section, an offense was committed prior to the effective date
184 of this act if any of the elements of the offense occurred prior
185 thereto.

186 (3) In any case pending on or after the effective date of
187 this act, involving an offense committed prior to such date:

188 (a) Procedural provisions of this act shall govern,
189 insofar as they are justly applicable and their application does
190 not introduce confusion or delay;

191 (b) Provisions of this act according a defense or
192 mitigation shall apply, with the consent of the defendant;

193 (c) The court, with the consent of the defendant, may
194 impose sentence under the provisions of this act applicable to the
195 offense and the offender.

196 (4) Provisions of this act governing the treatment and the
197 release or discharge of prisoners, probationers and parolees shall
198 apply to persons under sentence for offenses committed prior to
199 the effective date of this act, except that the minimum or maximum
200 period of their detention or supervision shall in no case be
201 increased.

202 **SECTION 2.** (1) The general purposes of the provisions
203 governing the definition of offenses are:

204 (a) To forbid and prevent conduct that unjustifiably
205 and inexcusably inflicts or threatens substantial harm to
206 individual or public interests;

207 (b) To subject to public control persons whose conduct
208 indicates that they are disposed to commit crimes;

209 (c) To safeguard conduct that is without fault from
210 condemnation as criminal;

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

213 (e) To differentiate on reasonable grounds between
214 serious and minor offenses.

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

217 (a) To prevent the commission of offenses;

218 (b) To promote the correction and rehabilitation of
219 offenders;

220 (c) To safeguard offenders against excessive,
221 disproportionate or arbitrary punishment;

222 (d) To give fair warning of the nature of the sentences
223 that may be imposed on conviction of an offense;

224 (e) To differentiate among offenders with a view to a
225 just individualization in their treatment;

226 (f) To define, coordinate and harmonize the powers,
227 duties and functions of the courts and of administrative officers
228 and agencies responsible for dealing with offenders;

229 (g) To advance the use of generally accepted scientific
230 methods and knowledge in the sentencing and treatment of
231 offenders;

232 (h) To integrate responsibility for the administration
233 of the correctional system in the Mississippi Department of
234 Corrections.

235 (3) The provisions of this act shall be construed according
236 to the fair import of their terms but when the language is
237 susceptible of differing constructions it shall be interpreted to
238 further the general purposes stated in this section and the
239 special purposes of the particular provision involved. The
240 discretionary powers conferred by this act shall be exercised in
241 accordance with the criteria stated in this act and, insofar as
242 such criteria are not decisive, to further the general purposes
243 stated in this section.

244 SECTION 3. (1) Except as otherwise provided in this
245 section, a person may be convicted under the law of this state of
246 an offense committed by his own conduct or the conduct of another
247 for which he is legally accountable if:

248 (a) Either the conduct which is an element of the
249 offense or the result which is such an element occurs within this
250 state; or

251 (b) Conduct occurring outside the state is sufficient
252 under the law of this state to constitute an attempt to commit an
253 offense within the state; or

254 (c) Conduct occurring outside the state is sufficient
255 under the law of this state to constitute a conspiracy to commit
256 an offense within the state and an overt act in furtherance of
257 such conspiracy occurs within the state; or

258 (d) Conduct occurring within the state establishes
259 complicity in the commission of, or an attempt, solicitation or
260 conspiracy to commit, an offense in another jurisdiction which
261 also is an offense under the law of this state; or

262 (e) The offense consist of the omission to perform a
263 legal duty imposed by the law of this state with respect to
264 domicile, residence or a relationship to a person, thing or
265 transaction in the state; or

266 (f) The offense is based on a statute of this state
267 which expressly prohibits conduct outside the state, when the
268 conduct bears a reasonable relation to a legitimate interest of
269 this state and the actor knows or should know that his conduct is
270 likely to affect that interest.

271 (2) Subsection (1)(a) does not apply when either causing a
272 specified result or a purpose to cause or danger of causing such a
273 result is an element of an offense and the result occurs or is
274 designed or likely to occur only in another jurisdiction where the
275 conduct charged would not constitute an offense, unless a

276 legislative purpose plainly appears to declare the conduct
277 criminal regardless of the place of the result.

278 (3) Subsection (1)(a) does not apply when causing a
279 particular result is an element of an offense and the result is
280 caused by conduct occurring outside the state which would not
281 constitute an offense if the result had occurred there, unless the
282 actor purposely or knowingly caused the result within the state.

283 (4) When the offense is homicide, either the death of the
284 victim or the bodily impact causing death constitutes a "result,"
285 within the meaning of subsection (1)(a) and if the body of a
286 homicide victim is found within the state, it is presumed that
287 such result occurred within the state.

288 (5) This state includes the land and water and the air space
289 above such land and water with respect to which the state has
290 legislative jurisdiction.

291 **SECTION 4.** (1) An offense defined by this act or by any
292 other statute of this state, for which a sentence of death or of
293 imprisonment is authorized, constitutes a crime. Crimes are
294 classified as felonies, misdemeanors or petty misdemeanors.

295 (2) A crime is a felony if it is so designated in this act
296 or if persons convicted thereof may be sentenced to death or to
297 imprisonment for a term which, apart from an extended term, is in
298 excess of one (1) year.

299 (3) A crime is a misdemeanor if it is so designated in this
300 act or in a statute other than this act enacted subsequent
301 thereto.

302 (4) A crime is a petty misdemeanor if it is so designated in
303 this act or in a statute other than this act enacted subsequent
304 thereto or if it is defined by a statute other than this act which
305 now provides that persons convicted thereof may be sentenced to
306 imprisonment for a term of which the maximum is less than one (1)
307 year.

308 (5) An offense defined by this act or by any other statute
309 of this state constitutes a violation if it is so designated in
310 this act or in the law defining the offense or if no other
311 sentence than a fine, or fine and forfeiture or other civil
312 penalty is authorized upon conviction or if it is defined by a
313 statute other than this act which now provides that the offense
314 shall not constitute a crime. A violation does not constitute a
315 crime and conviction of a violation shall not give rise to any
316 disability or legal disadvantage based on conviction of a criminal
317 offense.

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

321 (7) An offense defined by any statute of this state other
322 than this act shall be classified as provided in this section and
323 the sentence that may be imposed upon conviction thereof shall
324 hereafter be governed by this act.

325 **SECTION 5.** (1) No conduct constitutes an offense unless it
326 is a crime or violation under this act or another statute of this
327 state.

328 (2) The provisions of Articles 1 through 7 of this act are
329 applicable to offenses defined by other statutes, unless this act
330 otherwise provides.

331 (3) This section does not affect the power of a court to
332 punish for contempt or to employ any sanction authorized by law
333 for the enforcement of an order or a civil judgment or decree.

334 **SECTION 6.** (1) A prosecution for murder may be commenced at
335 any time.

336 (2) Except as otherwise provided in this section,
337 prosecutions for other offenses are subject to the following
338 periods of limitation:

339 (a) A prosecution for a felony of the first degree must
340 be commenced within six (6) years after it is committed;

341 (b) A prosecution for any other felony must be
342 commenced within three (3) years after it is committed;

343 (c) A prosecution for a misdemeanor must be commenced
344 within two (2) years after it is committed;

345 (d) A prosecution for a petty misdemeanor or a
346 violation must be commenced within six (6) months after it is
347 committed.

348 (3) If the period prescribed in subsection (2) has expired,
349 a prosecution may nevertheless be commenced for:

350 (a) Any offense a material element of which is either
351 fraud or a breach of fiduciary obligation within one (1) year
352 after discovery of the offense by an aggrieved party or by a
353 person who has legal duty to represent an aggrieved party and who
354 is himself not a party to the offense, but in no case shall this
355 provision extend the period of limitation otherwise applicable by
356 more than three (3) years; and

357 (b) Any offense based upon misconduct in office by a
358 public officer or employee at any time when the defendant is in
359 public office or employment or within two (2) years thereafter,
360 but in no case shall this provision extend the period of
361 limitation otherwise applicable by more than three (3) years.

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

367 (5) A prosecution is commenced either when an indictment is
368 found or an information filed or when a warrant or other process
369 is issued, provided that such warrant or process is executed
370 without unreasonable delay.

371 (6) The period of limitation does not run:

372 (a) During any time when the accused is continuously
373 absent from the state or has no reasonably ascertainable place of

374 abode or work within the state, but in no case shall this
375 provision extend the period of limitation otherwise applicable by
376 more than three (3) years; or

377 (b) During any time when a prosecution against the
378 accused for the same conduct is pending in this state.

379 **SECTION 7.** (1) **Prosecution for Multiple Offenses;**

380 **Limitation on Convictions.** When the same conduct of a defendant
381 may establish the commission of more than one (1) offense, the
382 defendant may be prosecuted for each such offense. He may not,
383 however, be convicted of more than one (1) offense if:

384 (a) One offense is included in the other, as defined in
385 subsection (4) of this section; or

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

388 (c) Inconsistent findings of fact are required to
389 establish the commission of the offenses; or

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

393 (e) The offense is defined as a continuing course of
394 conduct and the defendant's course of conduct was uninterrupted,
395 unless the law provides that specific periods of such conduct
396 constitute separate offenses.

397 (2) **Limitation on Separate Trials for Multiple Offenses.**

398 Except as provided in subsection (3) of this section, a defendant
399 shall not be subject to separate trials for multiple offenses
400 based on the same conduct or arising from the same criminal
401 episode, if such offenses are known to the appropriate prosecuting
402 officer at the time of the commencement of the first trial and are
403 within the jurisdiction of a single court.

404 (3) **Authority of Court to Order Separate Trials.** When a
405 defendant is charged with two (2) or more offenses based on the
406 same conduct or arising from the same criminal episode, the court,

407 on application of the prosecuting attorney or of the defendant,
408 may order any such charge to be tried separately, if it is
409 satisfied that justice so requires.

410 (4) **Conviction of Included Offense Permitted.** A defendant
411 may be convicted of an offense included in an offense charged in
412 the indictment or the information. An offense is so included
413 when:

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

417 (b) It consists of an attempt or solicitation to commit
418 the offense charged or to commit an offense otherwise included
419 therein; or

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

424 (5) **Submission of Included Offense to Jury.** The court shall
425 not be obligated to charge the jury with respect to an included
426 offense unless there is a rational basis for a verdict acquitting
427 the defendant of the offense charged and convicting him of the
428 included offense.

429 **SECTION 8.** When a prosecution is for a violation of the same
430 provision of the statutes and is based upon the same facts as a
431 former prosecution, it is barred by such former prosecution under
432 the following circumstances:

433 (a) The former prosecution resulted in an acquittal.
434 There is an acquittal if the prosecution resulted in a finding of
435 not guilty by the trier of fact or in a determination that there
436 was insufficient evidence to warrant a conviction. A finding of
437 guilty of a lesser included offense is an acquittal of the greater
438 inclusive offense, although the conviction is subsequently set
439 aside.

440 (b) The former prosecution was terminated, after the
441 information had been filed or the indictment found, by a final
442 order or judgment for the defendant, which has not been set aside,
443 reversed, or vacated and which necessarily required a
444 determination inconsistent with a fact or a legal proposition that
445 must be established for conviction of the offense.

446 (c) The former prosecution resulted in a conviction.
447 There is a conviction if the prosecution resulted in a judgment of
448 conviction which has not been reversed or vacated, a verdict of
449 guilty which has not been set aside and which is capable of
450 supporting a judgment, or a plea of guilty accepted by the court.
451 In the latter two (2) cases failure to enter judgment must be for
452 a reason other than a motion of the defendant.

453 (d) The former prosecution was improperly terminated.
454 Except as provided in this subsection, there is an improper
455 termination of a prosecution if the termination is for reasons not
456 amounting to an acquittal, and it takes place after the first
457 witness is sworn but before verdict. Termination under any of the
458 following circumstances is not improper:

459 (i) The defendant consents to the termination or
460 waives, by motion to dismiss or otherwise, his right to object to
461 the termination.

462 (ii) The trial court finds that the termination is
463 necessary because:

464 1. It is physically impossible to proceed
465 with the trial in conformity with law; or

466 2. There is a legal defect in the proceedings
467 which would make any judgment entered upon a verdict reversible as
468 a matter of law; or

469 3. Prejudicial conduct, in or outside the
470 courtroom, makes it impossible to proceed with the trial without
471 injustice to either the defendant or the state; or

472 4. The jury is unable to agree upon a
473 verdict; or

474 5. False statements of a juror on voir dire
475 prevent a fair trial.

476 SECTION 9. Although a prosecution is for a violation of a
477 different provision of the statutes than a former prosecution or
478 is based on different facts, it is barred by such former
479 prosecution under the following circumstances:

480 (a) The former prosecution resulted in an acquittal or
481 in a conviction as defined in Section 8 of this act and the
482 subsequent prosecution is for:

483 (i) Any offense of which the defendant could have
484 been convicted on the first prosecution; or

485 (ii) Any offense for which the defendant should
486 have been tried on the first prosecution under Section 7 of this
487 act, unless the court ordered a separate trial of the charge of
488 such offense; or

489 (iii) The same conduct, unless 1. the offense of
490 which the defendant was formerly convicted or acquitted and the
491 offense for which he is subsequently prosecuted each requires
492 proof of a fact not required by the other and the law defining
493 each of such offenses is intended to prevent a substantially
494 different harm or evil, or 2. the second offense was not
495 consummated when the former trial began.

496 (b) The former prosecution was terminated, after the
497 information was filed or the indictment found, by an acquittal or
498 by a final order or judgment for the defendant which has not been
499 set aside, reversed or vacated and which acquittal, final order or
500 judgment necessarily required a determination inconsistent with a
501 fact which must be established for conviction of the second
502 offense.

503 (c) The former prosecution was improperly terminated,
504 as improper termination is defined in Section 8 of this act, and

505 the subsequent prosecution is for an offense of which the
506 defendant could have been convicted had the former prosecution not
507 been improperly terminated.

508 **SECTION 10.** When conduct constitutes an offense within the
509 concurrent jurisdiction of this state and of the United States or
510 another state, a prosecution in any such other jurisdiction is a
511 bar to a subsequent prosecution in this state under the following
512 circumstances:

513 (a) The first prosecution resulted in an acquittal or
514 in a conviction as defined in Section 8 of this act and the
515 subsequent prosecution is based on the same conduct, unless (i)
516 the offense of which the defendant was formerly convicted or
517 acquitted and the offense for which he is subsequently prosecuted
518 each requires proof of a fact not required by the other and the
519 law defining each of such offenses is intended to prevent a
520 substantially different harm or evil or (ii) the second offense
521 was not consummated when the former trial began; or

522 (b) The former prosecution was terminated, after the
523 information was filed or the indictment found, by an acquittal or
524 by a final order or judgment for the defendant which has not been
525 set aside, reversed or vacated and which acquittal, final order or
526 judgment necessarily required a determination inconsistent with a
527 fact which must be established for conviction of the offense of
528 which the defendant is subsequently prosecuted.

529 **SECTION 11.** A prosecution is not a bar within the meaning of
530 Sections 8, 9 and 10 of this act under any of the following
531 circumstances:

532 (a) The former prosecution was before a court which
533 lacked jurisdiction over the defendant or the offense; or

534 (b) The former prosecution was procured by the
535 defendant without the knowledge of the appropriate prosecuting
536 officer and with the purpose of avoiding the sentence which might
537 otherwise be imposed; or

538 (c) The former prosecution resulting in a judgment of
539 conviction which was held invalid in a subsequent proceeding on a
540 writ of habeas corpus, coram nobis or similar process.

541 SECTION 12. (1) No person may be convicted of an offense
542 unless each element of such offense is proved beyond a reasonable
543 doubt. In the absence of such proof, the innocence of the
544 defendant is assumed.

545 (2) Subsection (1) of this section does not:

546 (a) Require the disproof of an affirmative defense
547 unless and until there is evidence supporting such defense; or

548 (b) Apply to any defense which this at or another
549 statute plainly requires the defendant to prove by a preponderance
550 of evidence.

551 (3) A ground of defense is affirmative, within the meaning
552 of subsection (2)(a) of this section, when:

553 (a) It arises under a section of this act which so
554 provides; or

555 (b) It relates to an offense defined by a statute other
556 than this act and such statute so provides; or

557 (c) It involves a matter of excuse or justification
558 peculiarly within the knowledge of the defendant on which he can
559 fairly be required to adduce supporting evidence.

560 (4) When the application of this act depends upon the
561 finding of a fact which is not an element of an offense, unless
562 this act otherwise provides:

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

566 (b) The fact must be proved to the satisfaction of the
567 court or jury, as the case may be.

568 (5) When this act establishes a presumption with respect to
569 any fact which is an element of an offense, it has the following
570 consequences:

571 (a) When there is evidence of the facts which give rise
572 to the presumption, the issue of the existence of the presumed
573 fact must be submitted to the jury, unless the court is satisfied
574 that the evidence as a whole clearly negatives the presumed fact;
575 and

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

582 (6) A presumption not established by this act or
583 inconsistent with it has the consequences otherwise accorded it by
584 law.

585 **SECTION 13.** In this act, unless a different meaning plainly
586 is required:

587 (a) "Statute" includes the Constitution, the laws of
588 the State of Mississippi and a local law or ordinance of a
589 political subdivision of the state;

590 (b) "Act" or "action" means a bodily movement whether
591 voluntary or involuntary;

592 (c) "Voluntary" has the meaning specified in Section 14
593 of this act;

594 (d) "Omission" means a failure to act;

595 (e) "Conduct" means an action or omission and its
596 accompanying state of mind, or, where relevant, a series of acts
597 and omissions;

598 (f) "Actor" includes, where relevant, a person guilty
599 of an omission;

600 (g) "Acted" includes, where relevant, "omitted to act";

601 (h) "Person," "he" and "actor" include any natural
602 person and, where relevant, a corporation or an unincorporated
603 association;

604 (i) "Element of an offense" means (i) such conduct or
605 (ii) such attendant circumstances or (iii) such a result of
606 conduct as:

607 1. Is included in the description of the
608 forbidden conduct in the definition of the offense; or

609 2. Establishes the required kind of
610 culpability; or

611 3. Negatives an excuse or justification for
612 such conduct; or

613 4. Negatives a defense under the statute of
614 limitations; or

615 5. Establishes jurisdiction or venue;

616 (j) "Material element of an offense" means an element
617 that does not relate exclusively to the statute of limitations,
618 jurisdiction, venue or to any other matter similarly unconnected
619 with (i) the harm or evil, incident to conduct, sought to be
620 prevented by the law defining the offense, or (ii) the existence
621 of a justification or excuse for such conduct;

622 (k) "Purposely" has the meaning specified in Section 15
623 of this act and equivalent terms such as "with purpose,"
624 "designed" or "with design" have the same meaning;

625 (l) "Intentionally" or "with intent" means purposely;

626 (m) "Knowingly" has the meaning specified in Section 15
627 of this act and equivalent terms such as "knowing" or "with
628 knowledge" have the same meaning;

629 (n) "Recklessly" has the meaning specified in Section
630 15 of this act and equivalent terms such as "recklessness" or
631 "with recklessness" have the same meaning;

632 (o) "Negligently" has the meaning specified in Section
633 15 of this act and equivalent terms such as "negligence" or "with
634 negligence" have the same meaning;

668 (2) **Kinds of Culpability Defined.**

669 (a) A person acts purposely with respect to a material
670 element of an offense when:

671 (i) If the element involves the nature of his
672 conduct or a result thereof, it is his conscious object to engage
673 in conduct of that nature or to cause such a result; and

674 (ii) If the element involves the attendant
675 circumstances, he is aware of the existence of such circumstances
676 or he believes or hopes that they exist.

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

679 (i) If the element involves the nature of his
680 conduct or the attendant circumstances, he is aware that his
681 conduct is of that nature or that such circumstances exist; and

682 (ii) If the element involves a result of his
683 conduct, he is aware that it is practically certain that his
684 conduct will cause such a result.

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

693 (d) A person acts negligently with respect to a
694 material element of an offense when he should be aware of a
695 substantial and unjustifiable risk that the material element
696 exists or will result from his conduct. The risk must be of such
697 a nature and degree that the actor's failure to perceive it,
698 considering the nature and purpose of his conduct and the
699 circumstances known to him, involves a gross deviation from the

700 standard of care that a reasonable person would observe in the
701 actor's situation.

702 (3) **Culpability Required Unless Otherwise Provided.** When
703 the culpability sufficient to establish a material element of an
704 offense is not prescribed by law, such element is established if a
705 person acts purposely, knowingly or recklessly with respect
706 thereto.

707 (4) **Prescribed Culpability Requirement Applies to All**
708 **Material Elements.** When the law defining an offense prescribed
709 the kind of culpability that is sufficient for the commission of
710 an offense, without distinguishing among the material elements
711 thereof, such provision shall apply to all the material elements
712 of the offense, unless a contrary purpose plainly appears.

713 (5) **Substitutes for Negligence, Recklessness and Knowledge.**
714 When the law provides that negligence suffices to establish an
715 element of an offense, such element also is established if a
716 person acts purposely, knowingly or recklessly. When recklessness
717 suffices to establish an element, such element also is established
718 if a person acts purposely or knowingly. When acting knowingly
719 suffices to establish an element, such element also is established
720 if a person acts purposely.

721 (6) **Requirement of Purpose Satisfied if Purpose is**
722 **Conditional.** When a particular purpose is an element of an
723 offense, the element is established although such purpose is
724 conditional, unless the condition negatives the harm or evil
725 sought to be prevented by the law defining the offense.

726 (7) **Requirement of Knowledge Satisfied by Knowledge of High**
727 **Probability.** When knowledge of the existence of a particular fact
728 is an element of an offense, such knowledge is established if a
729 person is aware of a high probability of its existence, unless he
730 actually believes that it does not exist.

731 (8) **Requirement of Wilfulness Satisfied by Acting Knowingly.**
732 A requirement that an offense be committed wilfully is satisfied

733 if a person acts knowingly with respect to the material elements
734 of the offense, unless a purpose to impose further requirements
735 appears.

736 (9) **Culpability as to Illegality of Conduct.** Neither
737 knowledge nor recklessness or negligence as to whether conduct
738 constitutes an offense or as to the existence, meaning or
739 application of the law determining the elements of an offense is
740 an element of such offense, unless the definition of the offense
741 or this act so provides.

742 (10) **Culpability as Determinant of Grade of Offense.** When
743 the grade or degree of an offense depends on whether the offense
744 is committed purposely, knowingly, recklessly or negligently, its
745 grade or degree shall be the lowest for which the determinative
746 kind of culpability is established with respect to any material
747 element of the offense.

748 **SECTION 16.** (1) Conduct is the cause of a result when:

749 (a) It is an antecedent but for which the result in
750 question would not have occurred; and

751 (b) The relationship between the conduct and result
752 satisfies any additional causal requirements imposed by this act
753 or by the law defining the offense.

754 (2) When purposely or knowingly causing a particular result
755 is an element of an offense, the element is not established if the
756 actual result is not within the purpose or the contemplation of
757 the actor unless:

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

763 (b) The actual result involves the same kind of injury
764 or harm as that designed or contemplated and is not too remote or

765 accidental in its occurrence to have a just bearing on the actor's
766 liability or on the gravity of his offense.

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

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

776 (b) The actual result involves the same kind of injury
777 or harm as the probable result and is not too remote or accidental
778 in its occurrence to have a [just] bearing on the actor's
779 liability or on the gravity of his offense.

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

784 **SECTION 17.** (1) Ignorance or mistake as to a matter of fact
785 or law is a defense if:

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

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

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

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

800 (a) The statute or other enactment defining the offense
801 is not known to the actor and has not been published or otherwise
802 reasonably made available prior to the conduct alleged; or

803 (b) He acts in reasonable reliance upon an official
804 statement of the law, afterward determined to be invalid or
805 erroneous, contained in (i) a statute or other enactment; (ii) a
806 judicial decision, opinion or judgment; (iii) an administrative
807 order or grant of permission; or (iv) an official interpretation
808 of the public officer or body charged by law with responsibility
809 for the interpretation, administration or enforcement of the law
810 defining the offense.

811 (4) The defendant must prove a defense arising under
812 subsection (3) of this section by a preponderance of evidence.

813 **SECTION 18.** (1) The requirements of culpability prescribed
814 by Sections 14 and 15 of this act do not apply to:

815 (a) Offenses which constitute violations, unless the
816 requirement involved is included in the definition of the offense
817 or the court determines that its application is consistent with
818 effective enforcement of the law defining the offense; or

819 (b) Offenses defined by statutes other than this act,
820 insofar as a legislative purpose to impose absolute liability for
821 such offenses or with respect to any material element thereof
822 plainly appears.

823 (2) Notwithstanding any other provision of existing law and
824 unless a subsequent statute otherwise provides:

825 (a) When absolute liability is imposed with respect to
826 any material element of an offense defined by a statute other than
827 this act and a conviction is based upon such liability, the
828 offense constitutes a violation; and

829 (b) Although absolute liability is imposed by law with
830 respect to one or more of the material elements of an offense
831 defined by a statute other than this act, the culpable commission
832 of the offense may be charged and proved, in which event
833 negligence with respect to such elements constitutes sufficient
834 culpability and the classification of the offense and the sentence
835 that may be imposed therefor upon conviction are determined by
836 Section 4 and Article 6 of this act.

837 SECTION 19. (1) A person is guilty of an offense if it is
838 committed by his own conduct or by the conduct of another person
839 for which he is legally accountable, or both.

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

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

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

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

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

851 (a) With the purpose of promoting or facilitating the
852 commission of the offense, he:

853 (i) Solicits such other person to commit it; or

854 (ii) Aids or agrees or attempts to aid such other
855 person in planning or committing it; or

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

859 (b) His conduct is expressly declared by law to
860 establish his complicity.

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

866 (5) A person who is legally incapable of committing a
867 particular offense himself may be guilty thereof if it is
868 committed by the conduct of another person for which he is legally
869 accountable, unless such liability is inconsistent with the
870 purpose of the provision establishing his incapacity.

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

874 (a) He is victim of that offense; or

875 (b) The offense is so defined that his conduct is
876 inevitably incident to its commission; or

877 (c) He terminates his complicity prior to the
878 commission of the offense and:

879 (i) Wholly deprives it of effectiveness in the
880 commission of the offense; or

881 (ii) Gives timely warning to the law enforcement
882 authorities or otherwise makes proper effort to prevent the
883 commission of the offense.

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

890 **SECTION 20.** (1) A corporation may be convicted of the
891 commission of an offense if:

892 (a) The offense is a violation or the offense is
893 defined by a statute other than this act in which a legislative

894 purpose to impose liability on corporations plainly appears and
895 the conduct is performed by an agent of the corporation acting in
896 behalf of the corporation within the scope of his office or
897 employment, except that if the law defining the offense designates
898 the agents for whose conduct the corporation is accountable or the
899 circumstances under which it is accountable, such provisions shall
900 apply; or

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

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

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

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

913 (a) The offense is defined by a statute other than this
914 act which expressly provides for the liability of such an
915 association and the conduct is performed by an agent of the
916 association acting in behalf of the association within the scope
917 of his office or employment, except that if the law defining the
918 offense designates the agents for whose conduct the association is
919 accountable or the circumstances under which it is accountable,
920 such provisions shall apply; or

921 (b) The offense consists of an omission to discharge a
922 specific duty of affirmative performance imposed on associations
923 by law.

924 (4) As used in this section:

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

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

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

938 (5) In any prosecution of a corporation or an unincorporated
939 association for the commission of an offense included within the
940 terms of subsection (1)(a) or subsection (3)(a) of this section,
941 other than an offense for which absolute liability has been
942 imposed, it shall be a defense if the defendant proves by a
943 preponderance of evidence that the high managerial agent having
944 supervisory responsibility over the subject matter of the offense
945 employed due diligence to prevent its commission. This paragraph
946 shall not apply if it is plainly inconsistent with the legislative
947 purpose in defining the particular offense.

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

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

958 (c) When a person is convicted of an offense by reason
959 of his legal accountability for the conduct of a corporation or an
960 unincorporated association, he is subject to the sentence
961 authorized by law when a natural person is convicted of an offense
962 of the grade and the degree involved.

963 **SECTION 21.** (1) Except as provided in subsection (4) of
964 this section, intoxication of the actor is not a defense unless it
965 negatives an element of the offense.

966 (2) When recklessness establishes an element of the offense,
967 if the actor, due to self-induced intoxication, is unaware of a
968 risk of which he would have been aware had he been sober, such
969 unawareness is immaterial.

970 (3) Intoxication does not, in itself, constitute mental
971 disease within the meaning of Section 38 of this act.

972 (4) Intoxication which (a) is not self-induced or (b) is
973 pathological is an affirmative defense if by reason of such
974 intoxication the actor at the time of his conduct lacks
975 substantial capacity either to appreciate its criminality or to
976 conform his conduct to the requirements of law.

977 (5) **Definitions.** In this section unless a different meaning
978 plainly is required:

979 (a) "Intoxication" means a disturbance of mental or
980 physical capacities resulting from the introduction of substances
981 into the body;

982 (b) "Self-induced intoxication" means intoxication
983 caused by substances which the actor knowingly introduces into his
984 body, the tendency of which to cause intoxication he knows or
985 ought to know, unless he introduces them pursuant to medical
986 advice or under such circumstances as would afford a defense to a
987 charge of crime;

988 (c) "Pathological intoxication" means intoxication
989 grossly excessive in degree, given the amount of the intoxicant,
990 to which the actor does not know he is susceptible.

991 SECTION 22. (1) It is an affirmative defense that the actor
992 engaged in the conduct charged to constitute an offense because he
993 was coerced to do so by the use of, or a threat to use, unlawful
994 force against his person or the person of another, which a person
995 of reasonable firmness in his situation would have been unable to
996 resist.

997 (2) The defense provided by this section is unavailable if
998 the actor recklessly placed himself in a situation in which it was
999 probable that he would be subjected to duress. The defense is
1000 also unavailable if he was negligent in placing himself in such a
1001 situation, whenever negligence suffices to establish culpability
1002 for the offense charged.

1003 (3) It is not a defense that a women acted on the command of
1004 her husband, unless she acted under such coercion as would
1005 establish a defense under this section. The presumption that a
1006 woman, acting in the presence of her husband, is coerced is
1007 abolished.

1008 (4) When the conduct of the actor would otherwise be
1009 justifiable under Section 28 of this act, this section does not
1010 preclude such defense.

1011 SECTION 23. It is an affirmative defense that the actor, in
1012 engaging in the conduct charged to constitute an offense, does no
1013 more than execute an order of his superior in the armed services
1014 which he does not know to be unlawful.

1015 SECTION 24. (1) **In General.** The consent of the victim to
1016 conduct charged to constitute an offense or to the result thereof
1017 is a defense if such consent negatives an element of the offense
1018 or precludes the infliction of the harm or evil sought to be
1019 prevented by the law defining the offense.

1020 (2) **Consent to Bodily Harm.** When conduct is charged to
1021 constitute an offense because it causes or threatens bodily harm,
1022 consent to such conduct or to the infliction of such harm is a
1023 defense if:

1024 (a) The bodily harm consented to or threatened by the
1025 conduct consented to is not serious; or

1026 (b) The conduct and the harm are reasonably foreseeable
1027 hazards of joint participation in a lawful athletic contest or
1028 competitive sport; or

1029 (c) The consent establishes a justification for the
1030 conduct under Article 3 of this act.

1031 (3) **Ineffective Consent.** Unless otherwise provided by this
1032 act or by the law defining the offense, assent does not constitute
1033 consent if:

1034 (a) It is given by a person who is legally incompetent
1035 to authorize the conduct charged to constitute the offense; or

1036 (b) It is given by a person who by reason of youth,
1037 mental disease or defect or intoxication is manifestly unable or
1038 known by the actor to be unable to make a reasonable judgment as
1039 to the nature or harmfulness of the conduct charged to constitute
1040 the offense; or

1041 (c) It is given by a person whose improvident consent
1042 is sought to be prevented by the law defining the offense; or

1043 (d) It is induced by force, duress or deception of a
1044 kind sought to be prevented by the law defining the offense.

1045 **SECTION 25.** The court shall dismiss a prosecution if, having
1046 regard to the nature of the conduct charged to constitute an
1047 offense and the nature of the attendant circumstances, it finds
1048 that the defendant's conduct:

1049 (a) Was within a customary license or tolerance,
1050 neither expressly negatived by the person whose interest was
1051 infringed nor inconsistent with the purpose of the law defining
1052 the offense; or

1053 (b) Did not actually cause or threaten the harm or evil
1054 sought to be prevented by the law defining the offense or did so
1055 only to an extent too trivial to warrant the condemnation of
1056 conviction; or

1088 (2) The fact that conduct is justifiable under this article
1089 does not abolish or impair any remedy for such conduct which is
1090 available in any civil action.

1091 **SECTION 28.** (1) Conduct which the actor believes to be
1092 necessary to avoid a harm or evil to himself or to another is
1093 justifiable, provided that:

1094 (a) The harm or evil sought to be avoided by such
1095 conduct is greater than that sought to be prevented by the law
1096 defining the offense charged; and

1097 (b) Neither this act nor other law defining the offense
1098 provides exceptions or defenses dealing with the specific
1099 situation involved; and

1100 (c) A legislative purpose to exclude the justification
1101 claimed does not otherwise plainly appear.

1102 (2) When the actor was reckless or negligent in bringing
1103 about the situation requiring a choice of harms or evils or in
1104 appraising the necessity for his conduct, the justification
1105 afforded by this section is unavailable in a prosecution for any
1106 offense for which recklessness or negligence, as the case may be,
1107 suffices to establish culpability.

1108 **SECTION 29.** (1) Except as provided in subsection (2) of
1109 this section, conduct is justifiable when it is required or
1110 authorized by:

1111 (a) The law defining the duties or functions of a
1112 public officer or the assistance to be rendered to such officer in
1113 the performance of his duties; or

1114 (b) The law governing the execution of legal process;
1115 or

1116 (c) The judgment or order of a competent court or
1117 tribunal; or

1118 (d) The law governing the armed services or the lawful
1119 conduct of war; or

1120 (e) Any other provision of law imposing a public duty.

1121 (2) The other sections of this article apply to:

1122 (a) The use of force upon or toward the person of
1123 another for any of the purposes dealt with in such sections; and

1124 (b) The use of deadly force for any purpose, unless the
1125 use of such force is otherwise expressly authorized by law or
1126 occurs in the lawful conduct of war.

1127 (3) The justification afforded by subsection (1) of this
1128 section applies:

1129 (a) When the actor believes his conduct to be required
1130 or authorized by the judgment or direction of a competent court or
1131 tribunal or in the lawful execution of legal process,
1132 notwithstanding lack of jurisdiction of the court or defect in the
1133 legal process; and

1134 (b) When the actor believes his conduct to be required
1135 or authorized to assist a public officer in the performance of his
1136 duties, notwithstanding that the officer exceeded his legal
1137 authority.

1138 **SECTION 30.** (1) **Use of Force Justifiable for Protection of**
1139 **the Person.** Subject to the provisions of this section and of
1140 Section 35 of this act, the use of force upon or toward another
1141 person is justifiable when the actor believes that such force is
1142 immediately necessary for the purpose of protecting himself
1143 against the use of unlawful force by such other person on the
1144 present occasion.

1145 (2) **Limitations on Justifying Necessity for Use of Force.**

1146 (a) The use of force is not justifiable under this
1147 section:

1148 (i) To resist an arrest which the actor knows is
1149 being made by a peace officer, although the arrest is unlawful; or

1150 (ii) To resist force used by the occupier or
1151 possessor of property or by another person on his behalf, where
1152 the actor knows that the person using the force is doing so under

1153 a claim of right to protect the property, except that this
1154 limitation shall not apply if:

1155 1. The actor is a public officer acting in
1156 the performance of his duties or a person lawfully assisting him
1157 therein or a person making or assisting in a lawful arrest; or

1158 2. The actor has been unlawfully dispossessed
1159 of the property and is making a reentry or recaption justified by
1160 Section 32 of this act; or

1161 3. The actor believes that such force is
1162 necessary to protect himself against death or serious bodily harm.

1163 (b) The use of deadly force is not justifiable under
1164 this section unless the actor believes that such force is
1165 necessary to protect himself against death, serious bodily harm,
1166 kidnapping or sexual intercourse compelled by force or threat; nor
1167 is it justifiable if:

1168 (i) The actor, with the purpose of causing death
1169 or serious bodily harm, provoked the use of force against himself
1170 in the same encounter; or

1171 (ii) The actor knows that he can avoid the
1172 necessity of using such force with complete safety by retreating
1173 or by surrendering possession of a thing to a person asserting a
1174 claim of right thereto or by complying with a demand that he
1175 abstain from any action which he has no duty to take, except that:

1176 1. The actor is not obliged to retreat from
1177 his dwelling or place of work, unless he was the initial aggressor
1178 or is assailed in his place of work by another person whose place
1179 of work the actor knows it to be; and

1180 2. A public officer justified in using force
1181 in the performance of his duties or a person justified in using
1182 force in his assistance or a person justified in using force in
1183 making an arrest or preventing an escape is not obliged to desist
1184 from efforts to perform such duty, effect such arrest or prevent

1185 such escape because of resistance or threatened resistance by or
1186 on behalf of the person against whom such action is directed.

1187 (c) Except as required by paragraphs (a) and (b) of
1188 this subsection, a person employing protective force may estimate
1189 the necessity thereof under the circumstances as he believes them
1190 to be when the force is used, without retreating surrendering
1191 possession, doing any other act which he has no legal duty to do
1192 or abstaining from any lawful action.

1193 (3) **Use of Confinement as Protective Force.** The
1194 justification afforded by this section extends to the use of
1195 confinement as protective force only if the actor takes all
1196 reasonable measures to terminate the confinement as soon as he
1197 knows that he safely can, unless the person confined has been
1198 arrested on a charge of crime.

1199 **SECTION 31.** (1) Subject to the provisions of this section
1200 and of Section 35 of this act, the use of force upon or toward the
1201 person of another is justifiable to protect a third person when:

1202 (a) The actor would be justified under Section 30 of
1203 this act in using such force to protect himself against the injury
1204 he believes to be threatened to the person whom he seeks to
1205 protect; and

1206 (b) Under the circumstances as the actor believes them
1207 to be, the person whom he seeks to protect would be justified in
1208 using such protective force; and

1209 (c) The actor believes that his intervention is
1210 necessary for the protection of such other person.

1211 (2) Notwithstanding subsection (1) of this section:

1212 (a) When the actor would be obliged under Section 30 of
1213 this act to retreat, to surrender the possession of a thing or to
1214 comply with a demand before using force in self-protection, he is
1215 not obliged to do so before using force for the protection of
1216 another person, unless he knows that he can thereby secure the
1217 complete safety of such other person; and

1218 (b) When the person whom the actor seeks to protect
1219 would be obliged under Section 30 of this act to retreat, to
1220 surrender the possession of a thing or to comply with a demand if
1221 he knew that he could obtain complete safety by so doing, the
1222 actor is obliged to try to cause him to do so before using force
1223 in his protection if the actor knows that he can obtain complete
1224 safety in that way; and

1225 (c) Neither the actor nor the person whom he seeks to
1226 protect is obliged to retreat when in the other's dwelling or
1227 place of work to any grater extent than in his own.

1228 **SECTION 32.** (1) **Use of Force Justifiable for Protection of**
1229 **Property.** Subject to the provisions of this section and Section
1230 35 of this act, the use of force upon or toward the person of
1231 another is justifiable when the actor believes that such force is
1232 immediately necessary:

1233 (a) To prevent or terminate an unlawful entry or other
1234 trespass upon land or a trespass against or the unlawful carrying
1235 away of tangible, movable property, provided that such land or
1236 movable property is, or is believed by the actor to be, in his
1237 possession or in the possession of another person for whose
1238 protection he acts; or

1239 (b) To effect an entry or reentry upon land or to
1240 retake tangible movable property, provided that the actor believes
1241 that he or the person by whose authority he acts or a person from
1242 whom he or such other person derives title was unlawfully
1243 dispossessed of such land or movable property and is entitled to
1244 possession, and provided further, that:

1245 (i) The force is used immediately or on fresh
1246 pursuit after such dispossession; or

1247 (ii) The actor believes that the person against
1248 whom he uses force has no claim of right to the possession of the
1249 property and, in the case of land, the circumstances, as the actor
1250 believes them to be, are of such urgency that it would be an

1251 exceptional hardship to postpone the entry or reentry until a
1252 court order is obtained.

1253 (2) **Meaning of Possession.** For the purposes of subsection
1254 (1) of this section:

1255 (a) A person who has parted with the custody of
1256 property to another who refuses to restore it to him is no longer
1257 in possession, unless the property is movable and was and still is
1258 located on land in his possession;

1259 (b) A person who has been dispossessed of land does not
1260 regain possession thereof merely by setting foot thereon;

1261 (c) A person who has a license to use or occupy real
1262 property is deemed to be in possession thereof except against the
1263 licensor acting under claim of right.

1264 (3) **Limitations on Justifiable Use of Force.**

1265 (a) **Request to Desist.** The use of force is justifiable
1266 under this section only if the actor first requests the person
1267 against whom such force is used to desist from his interference
1268 with the property, unless the actor believes that:

1269 (i) Such request would be useless; or

1270 (ii) It would be dangerous to himself or another
1271 person to make the request; or

1272 (iii) Substantial harm will be done to the
1273 physical condition of the property which is sought to be protected
1274 before the request can effectively be made.

1275 (b) **Exclusion of Trespasser.** The use of force to
1276 prevent or terminate a trespass is not justifiable under this
1277 section if the actor knows that the exclusion of the trespasser
1278 will expose him to substantial danger of serious bodily harm.

1279 (c) **Resistance of Lawful Reentry or Recaption.** The use
1280 of force to prevent an entry or reentry upon land or the recaption
1281 of movable property is not justifiable under this section,
1282 although the actor believes that such reentry or recaption is
1283 unlawful, if:

1284 (i) The reentry or recaption is made by or on
1285 behalf of a person who was actually dispossessed of the property;
1286 and

1287 (ii) It is otherwise justifiable under paragraph
1288 (1)(b) of this section.

1289 (d) **Use of Deadly Force.** The use of deadly force is
1290 not justifiable under this section unless the actor believes that:

1291 (i) The person against whom the force is used is
1292 attempting to dispossess him of his dwelling otherwise than under
1293 a claim of right to its possession; or

1294 (ii) The person against whom the force is used is
1295 attempting to commit or consummate arson, burglary, robbery or
1296 other felonious theft or property destruction and either:

1297 1. Has employed or threatened deadly force
1298 against or in the presence of the actor; or

1299 2. The use of force other than deadly force
1300 to prevent the commission or the consummation of the crime would
1301 expose the actor or another in his presence to substantial danger
1302 of serious bodily harm.

1303 (4) **Use of Confinement as Protective Force.** The
1304 justification afforded by this section extends to the use of
1305 confinement as protective force only if the actor takes all
1306 reasonable measures to terminate the confinement as soon as he
1307 knows that he can do so with safety to the property, unless the
1308 person confined has been arrested on a charge of crime.

1309 (5) **Use of Device to Protect Property.** The justification
1310 afforded by this section extends to the use of a device for the
1311 purpose of protecting property only if:

1312 (a) The device is not designed to cause or known to
1313 create a substantial risk of causing death or serious bodily harm;
1314 and

1315 (b) The use of the particular device to protect the
1316 property from entry or trespass is reasonable under the
1317 circumstances, as the actor believes them to be; and

1318 (c) The device is one customarily used for such a
1319 purpose or reasonable care is taken to make known to probable
1320 intruders the fact that it is used.

1321 (6) **Use of Force to Pass Wrongful Obstructor.** The use of
1322 force to pass a person whom the actor believes to be purposely or
1323 knowingly and unjustifiably obstructing the actor from going to a
1324 place to which he may lawfully go is justifiable, provided that:

1325 (a) The actor believes that the person against whom he
1326 uses force has no claim of right to obstruct the actor; and

1327 (b) The actor is not being obstructed from entry or
1328 movement on land which he knows to be in the possession or custody
1329 of the person obstructing him, or in the possession or custody of
1330 another person by whose authority the obstructor acts, unless the
1331 circumstances, as the actor believes them to be, are of such
1332 urgency that it would not be reasonable to postpone the entry or
1333 movement on such land until a court order is obtained; and

1334 (c) The force used is not greater than would be
1335 justifiable if the person obstructing the actor were using force
1336 against him to prevent his passage.

1337 **SECTION 33.** (1) **Use of Force Justifiable to Effect an**
1338 **Arrest.** Subject to the provisions of this section and of Section
1339 35 of this act, the use of force upon or toward the person of
1340 another is justifiable when the actor is making or assisting in
1341 making an arrest and the actor believes that such force is
1342 immediately necessary to effect a lawful arrest.

1343 (2) **Limitations on the Use of Force.**

1344 (a) the use of force is not justifiable under this
1345 section unless:

1346 (i) The actor makes known the purpose of the
1347 arrest or believes that it is otherwise known by or cannot
1348 reasonably be made known to the person to be arrested; and

1349 (ii) When the arrest is made under a warrant, the
1350 warrant is valid or believed by the actor to be valid.

1351 (b) The use of deadly force is not justifiable under
1352 this section unless:

1353 (i) The arrest is for a felony; and

1354 (ii) The person effecting the arrest is authorized
1355 to act as a peace officer or is assisting a person whom he
1356 believes to be authorized to act as a peace officer; and

1357 (iii) The actor believes that the force employed
1358 creates no substantial risk of injury to innocent persons; and

1359 (iv) The actor believes that:

1360 1. The crime for which the arrest is made
1361 involved conduct including the use or threatened use of deadly
1362 force; or

1363 2. There is a substantial risk that the
1364 person to be arrested will cause death or serious bodily harm if
1365 his apprehension is delayed.

1366 (3) **Use of Force to Prevent Escape from Custody.** The use of
1367 force to prevent the escape of an arrested person from custody is
1368 justifiable when the force could justifiably have been employed to
1369 effect the arrest under which the person is in custody, except
1370 that a guard or other person authorized to act as a peace officer
1371 is justified in using any force, including deadly force, which he
1372 believes to be immediately necessary to prevent the escape of a
1373 person from a jail, prison or other institution for the detention
1374 of persons charged with or convicted of a crime.

1375 (4) **Use of Force by Private Person Assisting an Unlawful**
1376 **Arrest.**

1377 (a) A private person who is summoned by a peace officer
1378 to assist in effecting an unlawful arrest, is justified in using

1379 any force which he would be justified in using if the arrest were
1380 lawful, provided that he does not believe the arrest is unlawful.

1381 (b) A private person who assists another private person
1382 in effecting an unlawful arrest, or who, not being summoned,
1383 assists a peace officer in effecting an unlawful arrest, is
1384 justified in using any force which he would be justified in using
1385 if the arrest were lawful, provided that (i) he believes the
1386 arrest is lawful, and (ii) the arrest would be lawful if the facts
1387 were as he believes them to be.

1388 (5) **Use of Force to Prevent Suicide or the Commission of a**
1389 **Crime.**

1390 (a) The use of force upon or toward the person of
1391 another is justifiable when the actor believes that such force is
1392 immediately necessary to prevent such other person from committing
1393 suicide, inflicting serious bodily harm upon himself, committing
1394 or consummating the commission of a crime involving or threatening
1395 bodily harm, damage to or loss of property or a breach of the
1396 peace, except that:

1397 (i) Any limitations imposed by the other
1398 provisions of this article on the justifiable use of force in
1399 self-protection, for the protection of others, the protection of
1400 property, the effectuation of an arrest or the prevention of an
1401 escape from custody shall apply notwithstanding the criminality of
1402 the conduct against which such force is used; and

1403 (ii) The use of deadly force is not in any event
1404 justifiable under this subsection unless:

1405 1. The actor believes that there is a
1406 substantial risk that the person whom he seeks to prevent from
1407 committing a crime with cause death or serious bodily harm to
1408 another unless the commission or the consummation of the crime is
1409 prevented and that the use of such force presents no substantial
1410 risk of injury to innocent persons; or

1411 2. The actor believes that the use of such
1412 force is necessary to suppress a riot or mutiny after the rioters
1413 or mutineers have been ordered to disperse and warned, in any
1414 particular manner that the law may require, that such force will
1415 be used if they do not obey.

1416 (b) The justification afforded by this subsection
1417 extends to the use of confinement as preventive force only if the
1418 actor takes all reasonable measures to terminate the confinement
1419 as soon as he knows that he safely can, unless the person confined
1420 has been arrested on a charge of crime.

1421 SECTION 34. The use of force upon or toward the person of
1422 another is justifiable if:

1423 (a) The actor is the parent or guardian or other person
1424 similarly responsible for the general care and supervision of a
1425 minor or a person acting at the request of such parent, guardian
1426 or other responsible person and:

1427 (i) The force is used for the purpose of
1428 safeguarding or promoting the welfare of the minor, including the
1429 prevention or punishment of his misconduct; and

1430 (ii) The force used is not designed to cause or
1431 known to create a substantial risk of causing death, serious
1432 bodily harm, disfigurement, extreme pain or mental distress or
1433 gross degradation; or

1434 (b) The actor is a teacher or a person otherwise
1435 entrusted with the care or supervision for a special purpose of a
1436 minor and:

1437 (i) The actor believes that the force used is
1438 necessary to further such special purpose, including the
1439 maintenance of reasonable discipline in a school, class or other
1440 group, and that the use of such force is consistent with the
1441 welfare of the minor; and

1442 (ii) The degree of force, if it had been used by
1443 the parent or guardian of the minor, would not be unjustifiable
1444 under paragraph (a)(ii) of this section; or

1445 (c) The actor is the guardian or other person similarly
1446 responsible for the general care and supervision of an incompetent
1447 person; and:

1448 (i) The force is used for the purpose of
1449 safeguarding or promoting the welfare of the incompetent person,
1450 including the prevention of his misconduct, or, when such
1451 incompetent person is in a hospital or other institution for his
1452 care and custody, for the maintenance of reasonable discipline in
1453 such institution; and

1454 (ii) The force used is not designed to cause or
1455 known to create a substantial risk of causing death, serious
1456 bodily harm, disfigurement, extreme or unnecessary pain, mental
1457 distress, or humiliation; or

1458 (d) The actor is a doctor or other therapist or a
1459 person assisting him at his direction; and

1460 (i) The force is used for the purpose of
1461 administering a recognized form of treatment which the actor
1462 believes to be adapted to promoting the physical or mental health
1463 of the patient; and

1464 (ii) The treatment is administered with the
1465 consent of the patient or, if the patient is a minor or an
1466 incompetent person, with the consent of his parent or guardian or
1467 other person legally competent to consent in his behalf, or the
1468 treatment is administered in an emergency when the actor believes
1469 that no one competent to consent can be consulted and that a
1470 reasonable person, wishing to safeguard the welfare of the
1471 patient, would consent; or

1472 (e) The actor is a warden or other authorized official
1473 of a correctional institution; and

1474 (i) He believes that the force used is necessary
1475 for the purpose of enforcing the lawful rules or procedures of the
1476 institution, unless his belief in the lawfulness of the rule or
1477 procedure sought to be enforced is erroneous and his error is due
1478 to ignorance or mistake as to the provisions of this act, any
1479 other provision of the criminal law or the law governing the
1480 administration of the institution; and

1481 (ii) The nature or degree of force used is not
1482 forbidden by Article 303 or 304 of the Code; and

1483 (iii) If deadly force is used, its use is
1484 otherwise justifiable under this article; or

1485 (f) The actor is a person responsible for the safety of
1486 a vessel or an aircraft or a person acting at his direction; and

1487 (i) He believes that the force used is necessary
1488 to prevent interference with the operation of the vessel or
1489 aircraft or obstruction of the execution of a lawful order, unless
1490 his belief in the lawfulness of the order is erroneous and his
1491 error is due to ignorance or mistake as to the law defining his
1492 authority; and

1493 (ii) If deadly force is used, its use is otherwise
1494 justifiable under this article; or

1495 (g) The actor is a person who is authorized or required
1496 by law to maintain order or decorum in a vehicle, train or other
1497 carrier or in a place where others are assembled; and

1498 (i) He believes that the force used is necessary
1499 for such purpose; and

1500 (ii) The force used is not designed to cause or
1501 known to create a substantial risk of causing death, bodily harm
1502 or extreme mental distress.

1503 **SECTION 35.** (1) The justification afforded by Sections 30
1504 through 33 of this act, inclusive, is unavailable when:

1505 (a) The actor's belief in the unlawfulness of the force
1506 or conduct against which he employs protective force or his belief

1507 in the lawfulness of an arrest which he endeavors to effect by
1508 force is erroneous; and

1509 (b) His error is due to ignorance or mistake as to the
1510 provisions of this act, any other provision of the criminal law or
1511 the law governing the legality of an arrest or search.

1512 (2) When the actor believes that the use of force upon or
1513 toward the person of another is necessary for any of the purposes
1514 for which such belief would establish a justification under
1515 Sections 29 through 34 of this act but the actor is reckless or
1516 negligent in having such belief or in acquiring or failing to
1517 acquire any knowledge or belief which is material to the
1518 justifiability of his use of force, the justification afforded by
1519 those sections is unavailable in a prosecution for an offense for
1520 which recklessness or negligence, as the case may be, suffices to
1521 establish culpability.

1522 (3) When the actor is justified under Sections 29 through 34
1523 of this act in using force upon or toward the person of another
1524 but he recklessly or negligently injures or creates a risk of
1525 injury to innocent persons, the justification afforded by those
1526 sections is unavailable in a prosecution for such recklessness or
1527 negligence towards innocent persons.

1528 **SECTION 36.** Conduct involving the appropriation, seizure or
1529 destruction of, damage to, intrusion on or interference with
1530 property is justifiable under circumstances which would establish
1531 a defense of privilege in a civil action based thereon, unless:

1532 (a) This act or the law defining the offense deals with
1533 the specific situation involved; or

1534 (b) A legislative purpose to exclude the justification
1535 claimed otherwise plainly appears.

1536 **SECTION 37.** In this article, unless a different meaning
1537 plainly is required:

1538 (a) "Unlawful force" means force, including
1539 confinement, which is employed without the consent of the person

1573 prove that the defendant did or did not have a state of mind which
1574 is an element of the offense.

1575 (2) Whenever the jury or the court is authorized to
1576 determine or to recommend whether or not the defendant shall be
1577 sentenced to death or imprisonment upon conviction, evidence that
1578 the capacity of the defendant to appreciate the criminality of his
1579 conduct or to conform his conduct to the requirements of law was
1580 impaired as a result of mental disease or defect is admissible in
1581 favor of sentence of imprisonment.

1582 **SECTION 40.** (1) Mental disease or defect excluding
1583 responsibility is an affirmative defense.

1584 (2) Evidence of mental disease or defect excluding
1585 responsibility is not admissible unless the defendant, at the time
1586 of entering his plea of not guilty or within ten (10) days
1587 thereafter or at such later time as the court may for good cause
1588 permit, files a written notice of his purpose to rely on such
1589 defense.

1590 (3) When the defendant is acquitted on the ground of mental
1591 disease or defect excluding responsibility, the verdict and the
1592 judgment shall so state.

1593 **SECTION 41.** No person who as a result of mental disease or
1594 defect lacks capacity to understand the proceedings against him or
1595 to assist in his own defense shall be tried, convicted or
1596 sentenced for the commission of an offense so long as such
1597 incapacity endures.

1598 **SECTION 42.** (1) Whenever the defendant has filed a notice
1599 of intention to rely on the defense of mental disease or defect
1600 excluding responsibility, or there is reason to doubt his fitness
1601 to proceed, or reason to believe that mental disease or defect of
1602 the defendant will otherwise become an issue in the cause, the
1603 court shall appoint at least one (1) qualified psychiatrist or
1604 shall request the Superintendent of the Mississippi State Hospital
1605 to designate at least one (1) qualified psychiatrist, which

1606 designation may be or include himself, to examine and report upon
1607 the mental condition of the defendant. The court may order the
1608 defendant to be committed to a hospital or other suitable facility
1609 for the purpose of the examination for a period of not exceeding
1610 sixty (60) days or such longer period as the court determines to
1611 be necessary for the purpose and may direct that a qualified
1612 psychiatrist retained by the defendant be permitted to witness and
1613 participate in the examination.

1614 (2) In such examination any method may be employed which is
1615 accepted by the medical profession for the examination of those
1616 alleged to be suffering from mental disease or defect.

1617 (3) The report of the examination shall include the
1618 following: (a) a description of the nature of the examination;
1619 (b) a diagnosis of the mental condition of the defendant; (c) if
1620 the defendant suffers from a mental disease or defect, an opinion
1621 as to his capacity to understand the proceedings against him and
1622 to assist in his own defense; (d) when a notice of intention to
1623 rely on the defense of irresponsibility has been filed, an opinion
1624 as to the extent, if any, to which the capacity of the defendant
1625 to appreciate the criminality of his conduct or to conform his
1626 conduct to the requirements of law was impaired at the time of the
1627 criminal conduct charged; and (e) when directed by the court, an
1628 opinion as to the capacity of the defendant to have a particular
1629 state of mind which is an element of the offense charged.

1630 If the examination cannot be conducted by reason of the
1631 unwillingness of the defendant to participate therein, the report
1632 shall so state and shall include, if possible, an opinion as to
1633 whether such unwillingness of the defendant was the result of
1634 mental disease or defect.

1635 The report of the examination shall be filed with the clerk
1636 of the court, who shall cause copies to be delivered to the
1637 district attorney and to counsel for the defendant.

1638 SECTION 43. (1) When the defendant's fitness to proceed is
1639 drawn in question, the issue shall be determined by the court. If
1640 neither the prosecuting attorney nor counsel for the defendant
1641 contests the finding of the report filed pursuant to Section 42 of
1642 this act, the court may make the determination on the basis of
1643 such report. If the finding is contested, the court shall hold a
1644 hearing on the issue. If the report is received in evidence upon
1645 such hearing, the party who contests the finding thereof shall
1646 have the right to summon and to cross-examine the psychiatrists
1647 who joined in the report and to offer evidence upon the issue.

1648 (2) If the court determines that the defendant lacks fitness
1649 to proceed, the proceeding against him shall be suspended, except
1650 as provided in subsection (3) of this section and the court shall
1651 commit him to the custody of the Executive Director of the
1652 Department of Public Health to be placed in an appropriate
1653 institution of the Department of Public Health for so long as such
1654 unfitness shall endure. When the court, on its own motion or upon
1655 the application of the Executive Director of the Department of
1656 Public Health or the prosecuting attorney, determines, after a
1657 hearing if a hearing is requested, that the defendant has regained
1658 fitness to proceed, the proceeding shall be resumed. If, however,
1659 the court is of the view that so much time has elapsed since the
1660 commitment of the defendant that it would be unjust to resume the
1661 criminal proceeding, the court may dismiss the charge and may
1662 order the defendant to be discharged or, subject to the law
1663 governing the civil commitment of persons suffering from mental
1664 disease or defect, order the defendant to be committed to an
1665 appropriate institution of the Department of Public Health.

1666 (3) The fact that the defendant is unfit to proceed does not
1667 preclude any legal objection to the prosecution which is
1668 susceptible of fair determination prior to trial and without the
1669 personal participation of the defendant.

1670 **SECTION 44.** (1) If the report filed pursuant to Section 42
1671 of this act finds that the defendant at the time of the criminal
1672 conduct charged suffered from a mental disease or defect which
1673 substantially impaired his capacity to appreciate the criminality
1674 of his conduct or to conform his conduct to the requirements of
1675 law, and the court, after a hearing if a hearing is requested by
1676 the prosecuting attorney or the defendant, is satisfied that such
1677 impairment was sufficient to exclude responsibility, the court on
1678 motion of the defendant shall enter judgment of acquittal on the
1679 ground of mental disease or defect excluding responsibility.

1680 (2) When, notwithstanding the report filed pursuant to
1681 Section 42 of this act, the defendant wishes to be examined by a
1682 qualified psychiatrist or other expert of his own choice, such
1683 examiner shall be permitted to have reasonable access to the
1684 defendant for the purposes of such examination.

1685 (3) Upon the trial, the psychiatrists who reported pursuant
1686 to Section 42 of this act may be called as witnesses by the
1687 prosecution, the defendant or the court. If the issue is being
1688 tried before a jury, the jury may be informed that the
1689 psychiatrists were designated by the court or by the
1690 Superintendent of the Mississippi State Hospital at the request of
1691 the court, as the case may be. If called by the court, the
1692 witness shall be subject to cross-examination by the prosecution
1693 and by the defendant. Both the prosecution and the defendant may
1694 summon any other qualified psychiatrist or other expert to
1695 testify, but no one who has not examined the defendant shall be
1696 competent to testify to an expert opinion with respect to the
1697 mental condition or responsibility of the defendant, as
1698 distinguished from the validity of the procedure followed by, or
1699 the general scientific propositions stated by, another witness.

1700 (4) When a psychiatrist or other expert who has examined the
1701 defendant testifies concerning his mental condition, he shall be
1702 permitted to make a statement as to the nature of his examination,

1703 his diagnosis of the mental condition of the defendant at the time
1704 of the commission of the offense charged and his opinion as to the
1705 extent, if any, to which the capacity of the defendant to
1706 appreciate the criminality of his conduct or to conform his
1707 conduct to the requirements of law or to have a particular state
1708 of mind which is an element of the offense charged was impaired as
1709 a result of mental disease or defect at that time. He shall be
1710 permitted to make any explanation reasonably serving to clarify
1711 his diagnosis and opinion and may be cross-examined as to any
1712 matter bearing on his competency or credibility or the validity of
1713 his diagnosis or opinion.

1714 SECTION 45. (1) When a defendant is acquitted on the ground
1715 of mental disease or defect excluding responsibility, the court
1716 shall order him to be committed to the custody of the Executive
1717 Director of the Department of Public Health to be placed in an
1718 appropriate institution for custody, care and treatment.

1719 (2) If the Executive Director of the Department of Public
1720 Health is of the view that a person committed to his custody,
1721 pursuant to subsection (1) of this section, may be discharged or
1722 released on condition without danger to himself or to others, he
1723 shall make application for the discharge or release of such person
1724 in a report to the court by which such person was committed and
1725 shall transmit a copy of such application and report to the
1726 prosecuting attorney of the county from which the defendant was
1727 committed. The court shall thereupon appoint at least two (2)
1728 qualified psychiatrists to examine such person and to report
1729 within sixty (60) days, or such longer period as the court
1730 determines to be necessary for the purpose, their opinion as to
1731 his mental condition. To facilitate such examination and the
1732 proceedings thereon, the court may cause such person to be
1733 confined in any institution located near the place where the court
1734 sits, which may hereafter be designated by the Executive Director

1735 of the Department of Public Health as suitable for the temporary
1736 detention of irresponsible persons.

1737 (3) If the court is satisfied by the report filed pursuant
1738 to subsection (2) of this section and such testimony of the
1739 reporting psychiatrists as the court deems necessary that the
1740 committed person may be discharged or released on condition
1741 without danger to himself or others, the court shall order his
1742 discharge or his release on such conditions as the court
1743 determines to be necessary. If the court is not so satisfied, it
1744 shall promptly order a hearing to determine whether such person
1745 may safely be discharged or released. Any such hearing shall be
1746 deemed a civil proceeding and the burden shall be upon the
1747 committed person to prove that he may safely be discharged or
1748 released. According to the determination of the court upon the
1749 hearing, the committed person shall thereupon be discharged or
1750 released on such conditions as the court determines to be
1751 necessary, or shall be recommitted to the custody of the Executive
1752 Director of the Department of Public Health, subject to discharge
1753 or release only in accordance with the procedure prescribed above
1754 for a first hearing.

1755 (4) If, within five (5) years after the conditional release
1756 of a committed person, the court shall determine, after hearing
1757 evidence, that the conditions of release have not been fulfilled
1758 and that for the safety of such person or for the safety of others
1759 his conditional release should be revoked, the court shall
1760 forthwith order him to be recommitted to the Executive Director of
1761 the Department of Public Health, subject to discharge or release
1762 only in accordance with the procedure prescribed above for a first
1763 hearing.

1764 (5) A committed person may make application for his
1765 discharge or release to the court by which he was committed, and
1766 the procedure to be followed upon such application shall be the
1767 same as that prescribed above in the case of an application by the

1768 Executive Director of the Department of Public Health. However,
1769 no such application by a committed person need be considered until
1770 he has been confined for a period of not less than six (6) months
1771 from the date of the order of commitment, and if the determination
1772 of the court be adverse to the application, such person shall not
1773 be permitted to file a further application until one (1) year has
1774 elapsed from the date of any preceding hearing on an application
1775 for his release or discharge.

1776 **SECTION 46.** A statement made by a person subjected to
1777 psychiatric examination or treatment pursuant to Sections 42, 43
1778 or 45 of this act for the purposes of such examination or
1779 treatment shall not be admissible in evidence against him in any
1780 criminal proceeding on any issue other than that of his mental
1781 condition but it shall be admissible upon that issue, whether or
1782 not it would otherwise be deemed a privileged communication,
1783 unless such statement constitutes an admission of guilt of the
1784 crime charged.

1785 **SECTION 47.** (1) A person shall not be tried for or
1786 convicted of an offense if:

1787 (a) At the time of the conduct charged to constitute
1788 the offense he was under the jurisdiction of the youth court; or

1789 (b) At the time of the conduct charged to constitute
1790 the offense he was sixteen (16) or seventeen (17) years of age,
1791 unless:

1792 (i) The juvenile court has no jurisdiction over
1793 him; or

1794 (ii) The juvenile court has entered an order
1795 waiving jurisdiction, transferring jurisdiction to circuit court
1796 and consenting to the institution of criminal proceedings against
1797 him.

1798 (2) No court shall have jurisdiction to try or convict a
1799 person of an offense if criminal proceedings against him are
1800 barred by subsection (1) of this section. When it appears that a

1801 person charged with the commission of an offense may be of such an
1802 age that criminal proceedings may be barred under subsection (1)
1803 of this section, the court shall hold a hearing thereon, and the
1804 burden shall be on the prosecution to establish to the
1805 satisfaction of the court that the criminal proceeding is not
1806 barred upon such grounds. If the court determines that the
1807 proceeding is barred, custody of the person charged shall be
1808 surrendered to the youth court, and the case, including all papers
1809 and processes relating thereto, shall be transferred.

1810 ARTICLE 5

1811 INCHOATE CRIMES

1812 **SECTION 48.** (1) **Definition of Attempt.** A person is guilty
1813 of an attempt to commit a crime if, acting with the kind of
1814 culpability otherwise required for commission of the crime, he:

1815 (a) Purposely engages in conduct which would constitute
1816 the crime if the attendant circumstances were as he believes them
1817 to be; or

1818 (b) When causing a particular result is an element of
1819 the crime, does or omits to do anything with the purpose of
1820 causing or with the belief that it will cause such result without
1821 further conduct on his part; or

1822 (c) Purposely does or omits to do anything which, under
1823 the circumstances as he believes them to be, is an act or omission
1824 constituting a substantial step in a course of conduct planned to
1825 culminate in his commission of the crime.

1826 (2) **Conduct Which May Be Held Substantial Step Under**
1827 **Subsection (1)(c).** Conduct shall not be held to constitute a
1828 substantial step under subsection (1)(c) of this section unless it
1829 is strongly corroborative of the actor's criminal purpose.
1830 Without negating the sufficiency of other conduct, the
1831 following, if strongly corroborative of the actor's criminal
1832 purpose, shall not be held insufficient as a matter of law:

1833 (a) Lying in wait, searching for or following the
1834 contemplated victim of the crime;

1835 (b) Enticing or seeking to entice the contemplated
1836 victim of the crime to go to the place contemplated for its
1837 commission;

1838 (c) Reconnoitering the place contemplated for the
1839 commission of the crime;

1840 (d) Unlawful entry of a structure, vehicle or enclosure
1841 in which it is contemplated that the crime will be committed;

1842 (e) Possession of materials to be employed in the
1843 commission of the crime, which are specially designed for such
1844 unlawful use or which can serve no lawful purpose of the actor
1845 under the circumstances;

1846 (f) Possession, collection or fabrication of materials
1847 to be employed in the commission of the crime, at or near the
1848 place contemplated for its commission, where such possession,
1849 collection or fabrication serves no lawful purpose of the actor
1850 under the circumstances;

1851 (g) Soliciting an innocent agent to engage in conduct
1852 constituting an element of the crime.

1853 (3) **Conduct Designed to Aid Another in Commission of a**
1854 **Crime.** A person who engages in conduct designed to aid another to
1855 commit a crime which would establish his complicity under Section
1856 19 of this act if the crime were committed by such other person,
1857 is guilty of an attempt to commit the crime, although the crime is
1858 not committed or attempted by such other person.

1859 (4) **Renunciation of Criminal Purpose.** When the actor's
1860 conduct would otherwise constitute an attempt under subsection
1861 (1)(b) or (1)(c) of this section, it is an affirmative defense
1862 that he abandoned his effort to commit the crime or otherwise
1863 prevented its commission, under circumstances manifesting a
1864 complete and voluntary renunciation of his criminal purpose. The
1865 establishment of such defense does not, however, affect the

1866 liability of an accomplice who did not join in such abandonment or
1867 prevention.

1868 Within the meaning of this article, renunciation of criminal
1869 purpose is not voluntary if it is motivated, in whole or in part,
1870 by circumstances, not present or apparent at the inception of the
1871 actor's course of conduct, which increase the probability of
1872 detection or apprehension or which make more difficult the
1873 accomplishment of the criminal purpose. Renunciation is not
1874 complete if it is motivated by a decision to postpone the criminal
1875 conduct until a more advantageous time or to transfer the criminal
1876 effort to another but similar objective or victim.

1877 **SECTION 49.** (1) **Definition of Solicitation.** A person is
1878 guilty of solicitation to commit a crime if with the purpose of
1879 promoting or facilitating its commission he commands, encourages
1880 or requests another person to engage in specific conduct which
1881 would constitute such crime or an attempt to commit such crime or
1882 which would establish his complicity in its commission or
1883 attempted commission.

1884 (2) **Uncommunicated Solicitation.** It is immaterial under
1885 subsection (1) of this section that the actor fails to communicate
1886 with the person he solicits to commit a crime if his conduct was
1887 designed to effect such communication.

1888 (3) **Renunciation of Criminal Purpose.** It is an affirmative
1889 defense that the actor, after soliciting another person to commit
1890 a crime, persuaded him not to do so or otherwise prevented the
1891 commission of the crime, under circumstances manifesting a
1892 complete and voluntary renunciation of his criminal purpose.

1893 **SECTION 50.** (1) **Definition of Conspiracy.** A person is
1894 guilty of conspiracy with another person or persons to commit a
1895 crime if with the purpose of promoting or facilitating its
1896 commission he:

1897 (a) Agrees with such other person or persons that they
1898 or one or more of them will engage in conduct which constitutes
1899 such crime or an attempt or solicitation to commit such crime; or

1900 (b) Agrees to aid such other person or persons in the
1901 planning or commission of such crime or of an attempt or
1902 solicitation to commit such crime.

1903 (2) **Scope of Conspiratorial Relationship.** If a person
1904 guilty of conspiracy, as defined by subsection (1) of this
1905 section, knows that a person with whom he conspires to commit a
1906 crime has conspired with another person or persons to commit the
1907 same crime, he is guilty of conspiring with such other person or
1908 persons, whether or not he knows their identity, to commit such
1909 crime.

1910 (3) **Conspiracy With Multiple Criminal Objectives.** If a
1911 person conspires to commit a number of crimes, he is guilty of
1912 only one (1) conspiracy so long as such multiple crimes are the
1913 object of the same agreement or continuous conspiratorial
1914 relationship.

1915 (4) **Joinder and Venue in Conspiracy Prosecutions.**

1916 (a) Subject to the provisions of paragraph (b) of this
1917 subsection, two (2) or more persons charged with criminal
1918 conspiracy may be prosecuted jointly if:

1919 (i) They are charged with conspiring with one
1920 another; or

1921 (ii) The conspiracies alleged, whether they have
1922 the same or different parties, are so related that they constitute
1923 different aspects of a scheme of organized criminal conduct.

1924 (b) In any joint prosecution under paragraph (a) of
1925 this subsection:

1926 (i) No defendant shall be charged with a
1927 conspiracy in any county or district other than one in which he
1928 entered into such conspiracy or in which an overt act pursuant to

1929 such conspiracy was done by him or by a person with whom he
1930 conspired; and

1931 (ii) Neither the liability of any defendant nor
1932 the admissibility against him of evidence of acts or declarations
1933 of another shall be enlarged by such joinder; and

1934 (iii) The court shall order a severance or take a
1935 special verdict as to any defendant who so requests, if it deems
1936 it necessary or appropriate to promote the fair determination of
1937 his guilt or innocence, and shall take any other proper measures
1938 to protect the fairness of the trial.

1939 (5) **Overt Act.** No person may be convicted of conspiracy to
1940 commit a crime, other than a felony of the first or second degree,
1941 unless an overt act in pursuance of such conspiracy is alleged and
1942 proved to have been done by him or by a person with whom he
1943 conspired.

1944 (6) **Renunciation of Criminal Purpose.** It is an affirmative
1945 defense that the actor, after conspiring to commit a crime,
1946 thwarted the success of the conspiracy, under circumstances
1947 manifesting a complete and voluntary renunciation of his criminal
1948 purpose.

1949 (7) **Duration of Conspiracy.** For purposes of Section 6(4) of
1950 this act:

1951 (a) Conspiracy is a continuing course of conduct which
1952 terminates when the crime or crimes which are its object are
1953 committed or the agreement that they be committed is abandoned by
1954 the defendant and by those with whom he conspired; and

1955 (b) Such abandonment is presumed if neither the
1956 defendant nor anyone with whom he conspired does any overt act in
1957 pursuance of the conspiracy during the applicable period of
1958 limitation; and

1959 (c) If an individual abandons the agreement, the
1960 conspiracy is terminated as to him only if and when he advises
1961 those with whom he conspired of his abandonment or he informs the

1962 law enforcement authorities of the existence of the conspiracy and
1963 of his participation therein.

1964 **SECTION 51.** (1) Except as provided in subsection (2) of
1965 this section, it is immaterial to the liability of a person who
1966 solicits or conspires with another to commit a crime that:

1967 (a) He or the person whom he solicits or with whom he
1968 conspires does not occupy a particular position or have a
1969 particular characteristic which is an element of such crime, if he
1970 believes that one of them does; or

1971 (b) The person whom he solicits or with whom he
1972 conspires is irresponsible or has an immunity to prosecution or
1973 conviction for the commission of the crime.

1974 (2) It is a defense to a charge of solicitation or
1975 conspiracy to commit a crime that if the criminal object were
1976 achieved, the actor would not be guilty of a crime under the law
1977 defining the offense or as an accomplice under Section 19(5) or
1978 19(6)(a) or (b) of this act.

1979 **SECTION 52.** (1) **Grading.** Except as otherwise provided in
1980 this section, attempt, solicitation and conspiracy are crimes of
1981 the same grade and degree as the most serious offense which is
1982 attempted or solicited or is an object of the conspiracy. An
1983 attempt, solicitation or conspiracy to commit a capital crime or a
1984 felony of the first degree is a felony of the second degree.

1985 (2) **Mitigation.** If the particular conduct charged to
1986 constitute a criminal attempt, solicitation or conspiracy is so
1987 inherently unlikely to result or culminate in the commission of a
1988 crime that neither such conduct nor the actor presents a public
1989 danger warranting the grading of such offense under this section,
1990 the court shall exercise its power under Section 66 of this act to
1991 enter judgment and impose sentence for a crime of lower grade or
1992 degree or, in extreme cases, may dismiss the prosecution.

1993 (3) **Multiple Convictions.** A person may not be convicted of
1994 more than one (1) offense defined by this article for conduct

1995 designed to commit or to culminate in the commission of the same
1996 crime.

1997 **SECTION 53.** (1) **Criminal Instruments Generally.** A person
1998 commits a misdemeanor if he possesses any instrument of crime with
1999 purpose to employ it criminally. "Instrument of crime" means:

2000 (a) Anything specially made or specially adapted for
2001 criminal use; or

2002 (b) Anything commonly used for criminal purposes and
2003 possessed by the actor under circumstances which do not negative
2004 unlawful purpose.

2005 (2) **Presumption of Criminal Purpose from Possession of**
2006 **Weapon.** If a person possesses a firearm or other weapon on or
2007 about his person, in a vehicle occupied by him, or otherwise
2008 readily available for use, it is presumed that he had the purpose
2009 to employ it criminally, unless:

2010 (a) The weapon is possessed in the actor's home or
2011 place of business;

2012 (b) The actor is licensed or otherwise authorized by
2013 law to possess such weapon; or

2014 (c) The weapon is of a type commonly used in lawful
2015 sport.

2016 "Weapon" means anything readily capable of lethal use and
2017 possessed under circumstances not manifestly appropriate for
2018 lawful uses which it may have; the term includes a firearm which
2019 is not loaded or lacks a clip or other component to render it
2020 immediately operable, and components which can readily be
2021 assembled into a weapon.

2022 (3) **Presumptions as to Possession of Criminal Instruments in**
2023 **Automobiles.** Where a weapon or other instrument of crime is found
2024 in an automobile, it shall be presumed to be in the possession of
2025 the occupant if there is but one (1). If there is more than one
2026 (1) occupant, it shall be presumed to be in the possession of all,
2027 except under the following circumstances:

2028 (a) Where it is found upon the person of one of the
2029 occupants;

2030 (b) Where the automobile is not a stolen one and the
2031 weapon or instrument is found out of view in a glove compartment,
2032 car trunk or other enclosed customary depository, in which case it
2033 shall be presumed to be in the possession of the occupant or
2034 occupants who own or have authority to operate the automobile;

2035 (c) In the case of a taxicab, a weapon or instrument
2036 found in the passenger's portion of the vehicle shall be presumed
2037 to be in the possession of all the passengers, if there are any,
2038 and, if not, in the possession of the driver.

2039 **SECTION 54.** A person commits a misdemeanor if, except as
2040 authorized by law, he makes, repairs, sells, or otherwise deals
2041 in, uses or possesses any offensive weapon. "Offensive weapon"
2042 means any bomb, machine gun, sawed-off shotgun, firearm specially
2043 made or specially adapted for concealment or silent discharge, any
2044 blackjack, sandbag, metal knuckles, dagger or other implement for
2045 the infliction of serious bodily injury which serves no common
2046 lawful purpose. It is a defense under this section for the
2047 defendant to prove by a preponderance of evidence that he
2048 possessed or dealt with the weapon solely as a curio or in a
2049 dramatic performance, or that he possessed it briefly in
2050 consequence of having found it or taken it from an aggressor, or
2051 under circumstances similarly negating any purpose or likelihood
2052 that the weapon would be used unlawfully. The presumptions
2053 provided in Section 53(3) of this act are applicable to
2054 prosecutions under this section.

2055 ARTICLE 6

2056 **AUTHORIZED DISPOSITION OF OFFENDERS**

2057 **SECTION 55.** (1) Felonies defined by this act are
2058 classified, for the purpose of sentence, into three (3) degrees,
2059 as follows:

2060 (a) Felonies of the first degree;

2061 (b) Felonies of the second degree;

2062 (c) Felonies of the third degree.

2063 A felony is of the first or second degree when it is so
2064 designated by this act. A crime declared to be a felony, without
2065 specification of degree, is of the third degree.

2066 (2) Notwithstanding any other provision of law, a felony
2067 defined by any statute of this state other than this act shall
2068 constitute for the purpose of sentence a felony of the third
2069 degree.

2070 **SECTION 56.** (1) No person convicted of an offense shall be
2071 sentenced otherwise than in accordance with this article.

2072 (2) The court shall sentence a person who has been convicted
2073 of murder to death or imprisonment, in accordance with Section 23.

2074 (3) Except as provided in subsection (2) of this section and
2075 subject to the applicable provisions of this act, the court may
2076 suspend the imposition of sentence on a person who has been
2077 convicted of a crime, may order him to be committed in lieu of
2078 sentence, in accordance with Section 67 of this act, or may
2079 sentence him as follows:

2080 (a) To pay a fine authorized by Section 56 of this act;
2081 or

2082 (b) To be placed on probation, and, in the case of a
2083 person convicted of a felony or misdemeanor to imprisonment for a
2084 term fixed by the court not exceeding thirty (30) days to be
2085 served as a condition of probation; or

2086 (c) To imprisonment for a term authorized by Sections
2087 59, 60, 61, 62, 63 or 73 of this act; or

2088 (d) To fine and probation or fine and imprisonment, but
2089 not to probation and imprisonment, except as authorized in
2090 paragraph (b) of this subsection.

2091 (4) The court may suspend the imposition of sentence on a
2092 person who has been convicted of a violation or may sentence him
2093 to pay a fine authorized by Section 57 of this act.

2094 (5) This article does not deprive the court of any authority
2095 conferred by law to decree a forfeiture of property, suspend or
2096 cancel a license, remove a person from office, or impose any other
2097 civil penalty. Such a judgment or order may be included in the
2098 sentence.

2099 **SECTION 57.** A person who has been convicted of an offense
2100 may be sentenced to pay a fine not exceeding:

2101 (a) Ten Thousand Dollars (\$10,000.00), when the
2102 conviction is of a felony of the first or second degree;

2103 (b) Five Thousand Dollars (\$5,000.00), when the
2104 conviction is of a felony of the third degree;

2105 (c) One Thousand Dollars (\$1,000.00), when the
2106 conviction is of a misdemeanor;

2107 (d) Five Hundred Dollars (\$500.00), when the conviction
2108 is of a petty misdemeanor or a violation;

2109 (e) Any higher amount equal to double the pecuniary
2110 gain derived from the offense by the offender;

2111 (f) Any higher amount specifically authorized by
2112 statute.

2113 **SECTION 58.** (1) The court may suspend the sentence of a
2114 corporation or an unincorporated association which has been
2115 convicted of an offense or may sentence it to pay a fine
2116 authorized by Section 57 of this act.

2117 (2) (a) The prosecuting attorney is authorized to institute
2118 civil proceedings in the appropriate court of general jurisdiction
2119 to forfeit the charter of a corporation organized under the laws
2120 of this state or to revoke the certificate authorizing a foreign
2121 corporation to conduct business in this state. The court may
2122 order the charter forfeited or the certificate revoked upon
2123 finding (i) that the board of directors or a high managerial agent
2124 acting in behalf of the corporation has, in conducting the
2125 corporation's affairs, purposely engaged in a persistent course of
2126 criminal conduct and (ii) that for the prevention of future

2127 criminal conduct of the same character, the public interest
2128 requires the charter of the corporation to be forfeited and the
2129 corporation to be dissolved or the certificate to be revoked.

2130 (b) When a corporation is convicted of a crime or a
2131 high managerial agent of a corporation, as defined in Section 20
2132 of this act, is convicted of a crime committed in the conduct of
2133 the affairs of the corporation, the court, in sentencing the
2134 corporation or the agent, may direct the prosecuting attorney to
2135 institute proceedings authorized by paragraph (a) of this
2136 subsection.

2137 (c) The proceedings authorized by paragraph (a) of this
2138 subsection shall be conducted in accordance with the procedures
2139 authorized by law for the involuntary dissolution of a corporation
2140 or the revocation of the certificate authorizing a foreign
2141 corporation to conduct business in this state. Such proceedings
2142 shall be deemed additional to any other proceedings authorized by
2143 law for the purpose of forfeiting the charter of a corporation or
2144 revoking the certificate of a foreign corporation.

2145 **SECTION 59.** (1) **Specialized Correctional Treatment.** A
2146 young adult offender is a person convicted of a crime who, at the
2147 time of sentencing, is sixteen (16) but less than twenty-two (22)
2148 years of age. A young adult offender who is sentenced to a term
2149 of imprisonment which may exceed thirty (30) days shall be
2150 committed to the custody of the Department of Corrections, and
2151 shall receive, as far as practicable, such special and
2152 individualized correctional and rehabilitative treatment as may be
2153 appropriate to his needs.

2154 (2) **Special Term.** A young adult offender convicted of a
2155 felony may, in lieu of any other sentence of imprisonment
2156 authorized by this article, be sentenced to a special term of
2157 imprisonment without a minimum and with a maximum of four (4)
2158 years, regardless of the degree of the felony involved, if the
2159 court is of the opinion that such special term is adequate for his

2160 correction and rehabilitation and will not jeopardize the
2161 protection of the public.

2162 (3) **Removal of Disabilities; Vacation of Conviction.**

2163 (a) In sentencing a young adult offender to the special
2164 term provided by this section or to any sentence other than one of
2165 imprisonment, the court may order that so long as he is not
2166 convicted of another felony, the judgment shall not constitute a
2167 conviction for the purposes of any disqualification or disability
2168 imposed by law upon conviction of a crime.

2169 (b) When any young adult offender is unconditionally
2170 discharged from probation or parole before the expiration of the
2171 maximum term thereof, the court may enter an order vacating the
2172 judgment of conviction.

2173 (4) **Commitment for Observation.** If, after presentence
2174 investigation, the court desires additional information concerning
2175 a young adult offender before imposing sentence, it may order that
2176 he be committed, for a period not exceeding ninety (90) days, to
2177 the custody of the Department of Corrections for observation and
2178 study at an appropriate reception or classification center. Such
2179 division of the Department of Corrections and the Parole Board
2180 shall advise the court of their findings and recommendations on or
2181 before the expiration of such ninety-day period.

2182 **SECTION 60.** A person who has been convicted of a felony may
2183 be sentenced to imprisonment, as follows:

2184 (a) In the case of a felony of the first degree, for a
2185 term the minimum of which shall be fixed by the court at not less
2186 than one (1) year nor more than ten (10) years, and the maximum of
2187 which shall be life imprisonment;

2188 (b) In the case of a felony of the second degree, for a
2189 term the minimum of which shall be fixed by the court at not less
2190 than one (1) year nor more than three (3) years, and the maximum
2191 of which shall be ten (10) years;

2192 (c) In the case of a felony of the third degree, for a
2193 term the minimum of which shall be fixed by the court at not less
2194 than one (1) year nor more than two (2) years, and the maximum of
2195 which shall be five (5) years.

2196 **SECTION 61.** In the cases designated in Section 70 of this
2197 act, a person who has been convicted of a felony may be sentenced
2198 to an extended term of imprisonment, as follows:

2199 (a) In the case of a felony of the first degree, for a
2200 term the minimum of which shall be fixed by the court at not less
2201 than five (5) years nor more than ten (10) years, and the maximum
2202 of which shall be life imprisonment;

2203 (b) In the case of a felony of the second degree, for a
2204 term the minimum of which shall be fixed by the court at not less
2205 than one (1) year nor more than five (5) years, and the maximum of
2206 which shall be fixed by the court at not less than ten (10) nor
2207 more than twenty (20) years;

2208 (c) In the case of a felony of the third degree, for a
2209 term the minimum of which shall be fixed by the court at not less
2210 than one (1) year nor more than three (3) years, and the maximum
2211 of which shall be fixed by the court at not less than five (5) nor
2212 more than ten (10) years.

2213 **SECTION 62.** A person who has been convicted of a misdemeanor
2214 or a petty misdemeanor may be sentenced to imprisonment for a
2215 definite term which shall be fixed by the court and shall not
2216 exceed one (1) year in the case of a misdemeanor or thirty (30)
2217 days in the case of a petty misdemeanor.

2218 **SECTION 63.** (1) In the cases designated in Section 71 of
2219 this act, a person who has been convicted of a misdemeanor or a
2220 petty misdemeanor may be sentenced to an extended term of
2221 imprisonment, as follows:

2222 (a) In the case of a misdemeanor, for a term the
2223 minimum of which shall be fixed by the court at not more than one
2224 (1) year and the maximum of which shall be three (3) years;

2225 (b) In the case of a petty misdemeanor, for a term the
2226 minimum of which shall be fixed by the court at not more than six
2227 (6) months and the maximum of which shall be two (2) years.

2228 (2) No such sentence for an extended term shall be imposed
2229 unless:

2230 (a) The Commissioner of the Department of Corrections
2231 has certified that there is an institution in the Department of
2232 Corrections, or in a county or city which is appropriate for the
2233 detention and correctional treatment of such misdemeanants or
2234 petty misdemeanants, and that such institution is available to
2235 receive such commitments; and

2236 (b) The Parole Board has certified that the Parole
2237 Board is able to visit such institution and to assume
2238 responsibility for the release of such prisoners on parole and for
2239 their parole supervision.

2240 **SECTION 64.** (1) **First Release of All Offenders on Parole.**

2241 An offender sentenced to an indefinite term of imprisonment in
2242 excess of one (1) year under Section 59, 60, 61, 63 or 73 of this
2243 act shall be released conditionally on parole at or before the
2244 expiration of the maximum of such term, in accordance with Article
2245 28.

2246 (2) **Sentence of Imprisonment Includes Separate Parole Term;**

2247 **Length of Parole Term.** A sentence to an indefinite term of
2248 imprisonment in excess of one (1) year under Section 59, 60, 61,
2249 63 or 73 of this act includes as a separate portion of the
2250 sentence a term of parole or of recommitment for violation of the
2251 conditions of parole which governs the duration of parole or
2252 recommitment after the offender's first conditional release on
2253 parole. The minimum of such term is one (1) year and the maximum
2254 is five (5) years, unless the sentence was imposed under Section
2255 59 or Section 63 of this act, in which case the maximum is two (2)
2256 years.

2257 (3) **Length of Recommitment and Reparole after Revocation of**
2258 **Parole.** If an offender is recommitted upon revocation of his
2259 parole, the term of further imprisonment upon such recommitment
2260 and of any subsequent reparole or recommitment under the same
2261 sentence shall be fixed by the Parole Board but shall not exceed
2262 in aggregate length the unserved balance of the maximum parole
2263 term provided by subsection (2) of this section.

2264 (4) **Final Unconditional Release.** When the maximum of his
2265 parole term has expired or he has been sooner discharged from
2266 parole under Section 31, an offender shall be deemed to have
2267 served his sentence and shall be released unconditionally.

2268 **SECTION 65.** (1) When a person is sentenced to imprisonment
2269 for an indefinite term with a maximum in excess of one (1) year,
2270 the court shall commit him to the custody of the Department of
2271 Corrections for the term of his sentence and until released in
2272 accordance with law.

2273 (2) When a person is sentenced to imprisonment for a
2274 definite term, the court shall designate the institution or agency
2275 to which he is committed for the term of his sentence and until
2276 released in accordance with law.

2277 **SECTION 66.** If, when a person has been convicted of a
2278 felony, the court, having regard to the nature and circumstances
2279 of the crime and to the history and character of the defendant, is
2280 of the view that it would be unduly harsh to sentence the offender
2281 in accordance with this act, the court may enter judgment of
2282 conviction for a lesser degree of felony or for a misdemeanor and
2283 impose sentence accordingly.

2284 **SECTION 67.** (1) When a person prosecuted for a felony of
2285 the third degree, misdemeanor or petty misdemeanor is a chronic
2286 alcoholic, narcotic addict or person suffering from mental
2287 abnormality and the court is authorized by law to order the civil
2288 commitment of such person to a hospital or other institution for
2289 medical, psychiatric or other rehabilitative treatment, the court

2290 may order such commitment and dismiss the prosecution. The order
2291 of commitment may be made after conviction in which event the
2292 court may set aside the verdict or judgment of conviction and
2293 dismiss the prosecution.

2294 (2) The court shall not make an order under subsection (1)
2295 of this section unless it is of the view that it will
2296 substantially further the rehabilitation of the defendant and will
2297 not jeopardize the protection of the public.

2298 ARTICLE 7

2299 **AUTHORITY OF COURT IN SENTENCING**

2300 **SECTION 68.** (1) The court shall deal with a person who has
2301 been convicted of a crime without imposing sentence of
2302 imprisonment unless, having regard to the nature and circumstances
2303 of the crime and the history, character and condition of the
2304 defendant, it is of the opinion that his imprisonment is necessary
2305 for protection of the public because:

2306 (a) There is undue risk that during the period of a
2307 suspended sentence or probation the defendant will commit another
2308 crime; or

2309 (b) The defendant is in need of correctional treatment
2310 that can be provided most effectively by his commitment to an
2311 institution; or

2312 (c) A lesser sentence will depreciate the seriousness
2313 of the defendant's crime.

2314 (2) The following grounds, while not controlling the
2315 discretion of the court, shall be accorded weight in favor of
2316 withholding sentence of imprisonment:

2317 (a) The defendant's criminal conduct neither caused nor
2318 threatened serious harm;

2319 (b) The defendant did not contemplate that his criminal
2320 conduct would cause or threaten serious harm;

2321 (c) The defendant acted under a strong provocation;

2322 (d) There were substantial grounds tending to excuse or
2323 justify the defendant's criminal conduct, though failing to
2324 establish a defense;

2325 (e) The victim of the defendant's criminal conduct
2326 induced or facilitated its commission;

2327 (f) The defendant has compensated or will compensate
2328 the victim of his criminal conduct for the damage or injury that
2329 he sustained;

2330 (g) The defendant has no history of prior delinquency
2331 or criminal activity or has led a law-abiding life for a
2332 substantial period of time before the commission of the present
2333 crime;

2334 (h) The defendant's criminal conduct was the result of
2335 circumstances unlikely to recur;

2336 (i) The character and attitudes of the defendant
2337 indicate that he is unlikely to commit another crime;

2338 (j) The defendant is particularly likely to respond
2339 affirmatively to probationary treatment;

2340 (k) The imprisonment of the defendant would entail
2341 excessive hardship to himself or his dependents.

2342 (3) When a person who has been convicted of a crime is not
2343 sentenced to imprisonment, the court shall place him on probation
2344 if he is in need of the supervision, guidance, assistance or
2345 direction that the probation service can provide.

2346 **SECTION 69.** (1) The court shall not sentence a defendant
2347 only to pay a fine, when any other disposition is authorized by
2348 law, unless having regard to the nature and circumstances of the
2349 crime and to the history and character of the defendant, it is of
2350 the opinion that the fine alone suffices for protection of the
2351 public.

2352 (2) The court shall not sentence a defendant to pay a fine
2353 in addition to a sentence of imprisonment or probation unless:

2354 (a) The defendant has derived a pecuniary gain from the
2355 crime; or

2356 (b) The court is of the opinion that a fine is
2357 specially adapted to deterrence of the crime involved or to the
2358 correction of the offender.

2359 (3) The court shall not sentence a defendant to pay a fine
2360 unless:

2361 (a) The defendant is or will be able to pay the fine;
2362 and

2363 (b) The fine will not prevent the defendant from making
2364 restitution or reparation to the victim of the crime.

2365 (4) In determining the amount and method of payment of a
2366 fine, the court shall take into account the financial resources of
2367 the defendant and the nature of the burden that its payment will
2368 impose.

2369 **SECTION 70.** (1) The court may sentence a person who has
2370 been convicted of a felony to an extended term of imprisonment if
2371 it finds one or more of the grounds specified in this section.
2372 The finding of the court shall be incorporated in the record.

2373 (2) The defendant is a persistent offender whose commitment
2374 for an extended term is necessary for protection of the public.

2375 The court shall not make such a finding unless the defendant
2376 is over twenty-one (21) years of age and has previously been
2377 convicted of two (2) felonies or of one (1) felony and two (2)
2378 misdemeanors, committed at different times when he was over
2379 thirteen (13) years of age.

2380 (3) The defendant is a professional criminal whose
2381 commitment for an extended term is necessary for protection of the
2382 public.

2383 The court shall not make such a finding unless the defendant
2384 is over twenty-one (21) years of age and:

2385 (a) The circumstances of the crime show that the
2386 defendant has knowingly devoted himself to criminal activity as a
2387 major source of livelihood; or

2388 (b) The defendant has substantial income or resources
2389 not explained to be derived from a source other than criminal
2390 activity.

2391 (4) The defendant is a dangerous, mentally abnormal person
2392 whose commitment for an extended term is necessary for protection
2393 of the public.

2394 The court shall not make such a finding unless the defendant
2395 has been subjected to a psychiatric examination resulting in the
2396 conclusions that his mental condition is gravely abnormal; that
2397 his criminal conduct has been characterized by a pattern of
2398 repetitive or compulsive behavior or by persistent aggressive
2399 behavior with heedless indifference to consequences; and that such
2400 condition makes him a serious danger to others.

2401 (5) The defendant is a multiple offender whose criminality
2402 was so extensive that a sentence of imprisonment for an extended
2403 term is warranted.

2404 The court shall not make such a finding unless:

2405 (a) The defendant is being sentenced for two (2) or
2406 more felonies, or is already under sentence of imprisonment for
2407 felony, and the sentences of imprisonment involved will run
2408 concurrently under Section 73 of this act; or

2409 (b) The defendant admits in open court the commission
2410 of one or more other felonies and asks that they be taken into
2411 account when he is sentenced; and

2412 (c) The longest sentences of imprisonment authorized
2413 for each of the defendant's crimes, including admitted crimes
2414 taken into account, if made to run consecutively would exceed in
2415 length the minimum and maximum of the extended term imposed.

2416 **SECTION 71.** (1) The court may sentence a person who has
2417 been convicted of a misdemeanor or petty misdemeanor to an

2418 extended term of imprisonment if it finds one or more of the
2419 grounds specified in this section. The finding of the court shall
2420 be incorporated in the record.

2421 (2) The defendant is a persistent offender whose commitment
2422 for an extended term is necessary for protection of the public.

2423 The court shall not make such a finding unless the defendant
2424 has previously been convicted of two (2) crimes, committed at
2425 different times when he was over thirteen (13) years of age.

2426 (3) The defendant is a professional criminal whose
2427 commitment for an extended term is necessary for protection of the
2428 public.

2429 The court shall not make such a finding unless:

2430 (a) The circumstances of the crime show that the
2431 defendant has knowingly devoted himself to criminal activity as a
2432 major source of livelihood; or

2433 (b) The defendant has substantial income or resources
2434 not explained to be derived from a source other than criminal
2435 activity.

2436 (4) The defendant is a chronic alcoholic, narcotic addict,
2437 prostitute or person of abnormal mental condition who requires
2438 rehabilitative treatment for a substantial period of time.

2439 The court shall not make such a finding unless, with respect
2440 to the particular category to which the defendant belongs, the
2441 Commissioner of the Department of Corrections has certified that
2442 there is a specialized institution or facility which is
2443 satisfactory for the rehabilitative treatment of such persons and
2444 which otherwise meets the requirements of Section 63, subsection
2445 (2) of this act.

2446 (5) The defendant is a multiple offender whose criminality
2447 was so extensive that a sentence of imprisonment for an extended
2448 term is warranted.

2449 The court shall not make such a finding unless:

2450 (a) The defendant is being sentenced for a number of
2451 misdemeanors or petty misdemeanors or is already under sentence of
2452 imprisonment for crime of such grades, or admits in open court the
2453 commission of one or more such crimes and asks that they be taken
2454 into account when he is sentenced; and

2455 (b) Maximum fixed sentences of imprisonment for each of
2456 the defendant's crimes, including admitted crimes taken into
2457 account, if made to run consecutively, would exceed in length the
2458 maximum period of the extended term imposed.

2459 **SECTION 72.** (1) For purposes of Section 70 or 71 of this
2460 act, a conviction of the commission of a crime in another
2461 jurisdiction shall constitute a previous conviction. Such
2462 conviction shall be deemed to have been of a felony if sentence of
2463 death or of imprisonment in excess of one (1) year was authorized
2464 under the law of such other jurisdiction, of a misdemeanor if
2465 sentence of imprisonment in excess of thirty (30) days but not in
2466 excess of a year was authorized and of a petty misdemeanor if
2467 sentence of imprisonment for not more than thirty (30) days was
2468 authorized.

2469 (2) An adjudication by a court of competent jurisdiction
2470 that the defendant committed a crime constitutes a conviction for
2471 purposes of Sections 70 through 72, of this act, although sentence
2472 or the execution thereof was suspended, provided that the time to
2473 appeal has expired and that the defendant was not pardoned on the
2474 ground of innocence.

2475 (3) Prior conviction may be proved by any evidence,
2476 including fingerprint records made in connection with arrest,
2477 conviction or imprisonment, that reasonably satisfies the court
2478 that the defendant was convicted.

2479 (4) When the defendant has asked that other crimes admitted
2480 in open court be taken into account when he is sentenced and the
2481 court has not rejected such request, the sentence shall bar the

2482 prosecution or conviction of the defendant in this state for any
2483 such admitted crime.

2484 **SECTION 73.** (1) **Sentences of Imprisonment for More than One**

2485 **(1) Crime.** When multiple sentences of imprisonment are imposed on
2486 a defendant for more than one (1) crime, including a crime for
2487 which a previous suspended sentence or sentence of probation has
2488 been revoked, such multiple sentences shall run concurrently or
2489 consecutively as the court determines at the time of sentence,
2490 except that:

2491 (a) A definite and an indefinite term shall run
2492 concurrently and both sentences shall be satisfied by service of
2493 the indefinite term; and

2494 (b) the aggregate of consecutive definite terms shall
2495 not exceed one (1) year; and

2496 (c) The aggregate of consecutive indefinite terms shall
2497 not exceed in minimum or maximum length the longest extended term
2498 authorized for the highest grade and degree of crime for which any
2499 of the sentences was imposed; and

2500 (d) Not more than one (1) sentence for an extended term
2501 shall be imposed.

2502 **(2) Sentences of Imprisonment Imposed at Different Times.**

2503 When a defendant who has previously been sentenced to imprisonment
2504 is subsequently sentenced to another term for a crime committed
2505 prior to the former sentence, other than a crime committed while
2506 in custody:

2507 (a) The multiple sentences imposed shall so far as
2508 possible conform to subsection (1) of this section; and

2509 (b) Whether the court determines that the terms shall
2510 run concurrently or consecutively, the defendant shall be credited
2511 with time served in imprisonment on the prior sentence in
2512 determining the permissible aggregate length of the term or terms
2513 remaining to be served; and

2514 (c) When a new sentence is imposed on a prisoner who is
2515 on parole, the balance of the parole term on the former sentence
2516 shall be deemed to run during the period of the new imprisonment.

2517 (3) **Sentence of Imprisonment for Crime Committed While on**
2518 **Parole.** When a defendant is sentenced to imprisonment for a crime
2519 committed while on parole in this state, such term of imprisonment
2520 and any period of reimprisonment that the Parole Board may require
2521 the defendant to serve upon the revocation of his parole shall run
2522 concurrently, unless the court orders them to run consecutively.

2523 (4) **Multiple Sentences of Imprisonment in Other Cases.**
2524 Except as otherwise provided in this section, multiple terms of
2525 imprisonment shall run concurrently or consecutively as the court
2526 determines when the second or subsequent sentence is imposed.

2527 (5) **Calculation of Concurrent and Consecutive Terms of**
2528 **Imprisonment.**

2529 (a) When indefinite terms run concurrently, the shorter
2530 minimum terms merge in and are satisfied by serving the longest
2531 minimum term and the shorter maximum terms merge in and are
2532 satisfied by discharge of the longest maximum term.

2533 (b) When indefinite terms run consecutively, the
2534 minimum terms are added to arrive at an aggregate minimum to be
2535 served equal to the sum of all minimum terms and the maximum terms
2536 are added to arrive at an aggregate maximum equal to the sum of
2537 all maximum terms.

2538 (c) When a definite and an indefinite term run
2539 consecutively, the period of the definite term is added to both
2540 the minimum and maximum of the indefinite term and both sentences
2541 are satisfied by serving the indefinite term.

2542 (6) **Suspension of Sentence or Probation and Imprisonment;**
2543 **Multiple Terms of Suspension and Probation.** When a defendant is
2544 sentenced for more than one (1) offense or a defendant already
2545 under sentence is sentenced for another offense committed prior to
2546 the former sentence:

2547 (a) The court shall not sentence to probation a
2548 defendant who is under sentence of imprisonment with more than
2549 thirty (30) days to run or impose a sentence of probation and a
2550 sentence of imprisonment, except as authorized by Section 56(3)(b)
2551 of this act; and

2552 (b) Multiple periods of suspension or probation shall
2553 run concurrently from the date of the first such disposition; and

2554 (c) When a sentence of imprisonment is imposed for an
2555 indefinite term, the service of such sentence shall satisfy a
2556 suspended sentence on another count or a prior suspended sentence
2557 or sentence to probation; and

2558 (d) When a sentence of imprisonment is imposed for a
2559 definite term, the period of a suspended sentence on another count
2560 or a prior suspended sentence or sentence to probation shall run
2561 during the period of such imprisonment.

2562 (7) **Offense Committed While Under Suspension of Sentence or**
2563 **Probation.** When a defendant is convicted of an offense committed
2564 while under suspension of sentence or on probation and such
2565 suspension or probation is not revoked:

2566 (a) If the defendant is sentenced to imprisonment for
2567 an indefinite term, the service of such sentence shall satisfy the
2568 prior suspended sentence or sentence to probation; and

2569 (b) If the defendant is sentenced to imprisonment for a
2570 definite term, the period of the suspension or probation shall not
2571 run during the period of such imprisonment; and

2572 (c) If sentence is suspended or the defendant is
2573 sentenced to probation, the period of such suspension or probation
2574 shall run concurrently with or consecutively to the remainder of
2575 the prior periods, as the court determines at the time of the
2576 sentence.

2577 **SECTION 74.** (1) The court shall not impose sentence without
2578 first ordering a presentence investigation of the defendant and

2579 according due consideration to a written report of such
2580 investigation where:

2581 (a) The defendant has been convicted of a felony; or

2582 (b) The defendant is less than twenty-two (22) years of
2583 age and has been convicted of a crime; or

2584 (c) The defendant will be placed on probation or
2585 sentenced to imprisonment for an extended term.

2586 (2) The court may order a presentence investigation in any
2587 other case.

2588 (3) The presentence investigation shall include an analysis
2589 of the circumstances attending the commission of the crime, the
2590 defendant's history of delinquency or criminality, physical and
2591 mental condition, family situation and background, economic
2592 status, education, occupation and personal habits and any other
2593 matters that the probation officer deems relevant or the court
2594 directs to be included.

2595 (4) Before imposing sentence, the court may order the
2596 defendant to submit to psychiatric observation and examination for
2597 a period of not exceeding sixty (60) days or such longer period as
2598 the court determines to be necessary for the purpose. the
2599 defendant may be remanded for this purpose to any available clinic
2600 or mental hospital or the court may appoint a qualified
2601 psychiatrist to make the examination. The report of the
2602 examination shall be submitted to the court.

2603 (5) Before imposing sentence, the court shall advise the
2604 defendant or his counsel of the factual contents and the
2605 conclusions of any presentence investigation or psychiatric
2606 examination and afford fair opportunity, if the defendant so
2607 requests, to controvert them. The sources of confidential
2608 information need not, however, be disclosed.

2609 (6) The court shall not impose a sentence of imprisonment
2610 for an extended term unless the ground therefor has been
2611 established at a hearing after the conviction of the defendant and

2612 on written notice to him of the ground proposed. Subject to the
2613 limitation of subsection (5) of this section, the defendant shall
2614 have the right to hear and controvert the evidence against him and
2615 to offer evidence upon the issue.

2616 (7) If the defendant is sentenced to imprisonment, a copy of
2617 the report of any presentence investigation or psychiatric
2618 examination shall be transmitted forthwith to the Department of
2619 Corrections or, when the defendant is committed to the custody of
2620 a specific institution, to such institution.

2621 **SECTION 75.** (1) If, after presentence investigation, the
2622 court desires additional information concerning an offender
2623 convicted of a felony or misdemeanor before imposing sentence, it
2624 may order that he be committed, for a period of not exceeding
2625 ninety (90) days, to the custody of the Department of Corrections
2626 for observation and study at an appropriate reception or
2627 classification center. The department and the Parole Board shall
2628 advise the court of their findings and recommendations on or
2629 before the expiration of such ninety-day period. If the offender
2630 is thereafter sentenced to imprisonment, the period of such
2631 commitment for observation shall be deducted from the maximum term
2632 and from the minimum, if any, of such sentence.

2633 (2) When a person has been sentenced to imprisonment upon
2634 conviction of a felony, whether for an ordinary or extended term,
2635 the sentence shall be deemed tentative, to the extent provided in
2636 this section, for the period of one (1) year following the date
2637 when the offender is received in custody by the Department of
2638 Corrections.

2639 (3) If, as a result of the examination and classification by
2640 the Department of Corrections of a person under sentence of
2641 imprisonment upon conviction of a felony, the Commissioner of the
2642 Department of Corrections is satisfied that the sentence of the
2643 court may have been based upon a misapprehension as to the
2644 history, character or physical or mental condition of the

2645 offender, the commissioner, during the period when the offender's
2646 sentence is deemed tentative under subsection (2) of this section
2647 shall file in the sentencing court a petition to resentence the
2648 offender. The petition shall set forth the information as to the
2649 offender that is deemed to warrant his resentence and may include
2650 a recommendation as to the sentence to be imposed.

2651 (4) The court may dismiss a petition filed under subsection
2652 (3) of this section without a hearing if it deems the information
2653 set forth insufficient to warrant reconsideration of the sentence.
2654 If the court is of the view that the petition warrants such
2655 reconsideration, a copy of the petition shall be served on the
2656 offender, who shall have the right to be heard on the issue and to
2657 be represented by counsel.

2658 (5) When the court grants a petition filed under subsection
2659 (3) of this section, it shall resentence the offender and may
2660 impose any sentence that might have been imposed originally for
2661 the felony of which the defendant was convicted. The period of
2662 his imprisonment prior to resentence and any reduction for good
2663 behavior to which he is entitled shall be applied in satisfaction
2664 of the final sentence.

2665 (6) For all purposes other than this section, a sentence of
2666 imprisonment has the same finality when it is imposed that it
2667 would have if this section were not in force.

2668 (7) Nothing in this section shall alter the remedies
2669 provided by law for vacating or correcting an illegal sentence.

2670 **SECTION 76.** (1) When a defendant who is sentenced to
2671 imprisonment has previously been detained in any state or local
2672 correctional or other institution following his arrest for the
2673 crime for which such sentence is imposed, such period of detention
2674 following his arrest shall be deducted from the maximum term, and
2675 from the minimum, if any, of such sentence. The officer having
2676 custody of the defendant shall furnish a certificate to the court
2677 at the time of sentence, showing the length of such detention of

2678 the defendant prior to sentence in any state or local correctional
2679 or other institution, and the certificate shall be annexed to the
2680 official records of the defendant's commitment.

2681 (2) When a judgment of conviction is vacated and a new
2682 sentence is thereafter imposed upon the defendant for the same
2683 crime, the period of detention and imprisonment theretofore served
2684 shall be deducted from the maximum term, and from the minimum, if
2685 any, of the new sentence. The officer having custody of the
2686 defendant shall furnish a certificate to the court at the time of
2687 sentence, showing the period of imprisonment served under the
2688 original sentence, and the certificate shall be annexed to the
2689 official records of the defendant's new commitment.

2690 OFFENSES INVOLVING DANGER TO THE PERSON

2691 ARTICLE 8

2692 CRIMINAL HOMICIDE

2693 **SECTION 77.** In Articles 8, 9, 10 and 11, unless a different
2694 meaning plainly is required:

2695 (a) "Human being" means a person who has been born and
2696 is alive;

2697 (b) "Bodily injury" means physical pain, illness or any
2698 impairment of physical condition;

2699 (c) "Serious bodily injury" means bodily injury which
2700 creates a substantial risk of death or which causes serious,
2701 permanent disfigurement, or protracted loss or impairment of the
2702 function of any bodily member or organ;

2703 (d) "Deadly weapon" means any firearm, or other weapon,
2704 device, instrument, material or substance, whether animate or
2705 inanimate, which in the manner it is used or is intended to be
2706 used is known to be capable of producing death or serious bodily
2707 injury.

2708 **SECTION 78.** (1) A person is guilty of criminal homicide if
2709 he purposely, knowingly, recklessly or negligently causes the
2710 death of another human being.

2711 (2) Criminal homicide is murder, manslaughter or negligent
2712 homicide.

2713 **SECTION 79.** (1) Except as provided in Section 80 of this
2714 act, criminal homicide constitutes murder when:

2715 (a) It is committed purposely or knowingly; or

2716 (b) It is committed recklessly under circumstances
2717 manifesting extreme indifference to the value of human life. Such
2718 recklessness and indifference are presumed if the actor is engaged
2719 or is an accomplice in the commission of, or an attempt to commit,
2720 or flight after committing or attempting to commit robbery, rape
2721 or deviate sexual intercourse by force or threat of force, arson,
2722 burglary, kidnapping or felonious escape.

2723 (2) Murder is a felony of the first degree but a person
2724 convicted of murder may be sentenced to death, as provided in
2725 Section 83 of this act.

2726 **SECTION 80.** (1) Criminal homicide constitutes manslaughter
2727 when:

2728 (a) It is committed recklessly; or

2729 (b) A homicide which would otherwise be murder is
2730 committed under the influence of extreme mental or emotional
2731 disturbance for which there is reasonable explanation or excuse.
2732 The reasonableness of such explanation or excuse shall be
2733 determined from the viewpoint of a person in the actor's situation
2734 under the circumstances as he believes them to be.

2735 (2) Manslaughter is a felony of the second degree.

2736 **SECTION 81.** (1) Criminal homicide constitutes negligent
2737 homicide when it is committed negligently.

2738 (2) Negligent homicide is a felony of the third degree.

2739 **SECTION 82.** (1) **Causing Suicide as Criminal Homicide.** A
2740 person may be convicted of criminal homicide for causing another
2741 to commit suicide only if he purposely causes such suicide by
2742 force, duress or deception.

2743 (2) **Aiding or Soliciting Suicide as an Independent Offense.**

2744 A person who purposely aids or solicits another to commit suicide
2745 is guilty of a felony of the second degree if his conduct causes
2746 such suicide or an attempted suicide, and otherwise of a
2747 misdemeanor.

2748 **SECTION 83.** (1) **Death Sentence Excluded.** When a defendant
2749 is found guilty of murder, the court shall impose sentence for a
2750 felony of the first degree if it is satisfied that:

2751 (a) None of the aggravating circumstances enumerated in
2752 subsection (3) of this section was established by the evidence at
2753 the trial or will be established if further proceedings are
2754 initiated under subsection (2) of this section; or

2755 (b) Substantial mitigating circumstances, established
2756 by the evidence at the trial, call for leniency; or

2757 (c) The defendant, with the consent of the prosecuting
2758 attorney and the approval of the court, pleaded guilty to murder
2759 as a felony of the first degree; or

2760 (d) The defendant was under eighteen (18) years of age
2761 at the time of the commission of the crime; or

2762 (e) The defendant's physical or mental condition calls
2763 for leniency; or

2764 (f) Although the evidence suffices to sustain the
2765 verdict, it does not foreclose all doubt respecting the
2766 defendant's guilt.

2767 (2) **Determination by Court or by Court and Jury.** Unless the
2768 court imposes sentence under subsection (1) of this section, it
2769 shall conduct a separate proceeding to determine whether the
2770 defendant should be sentenced for a felony of the first degree or
2771 sentenced to death. The proceeding shall be conducted before the
2772 court alone if the defendant was convicted by a court sitting
2773 without a jury or upon his plea of guilty or if the prosecuting
2774 attorney and the defendant waive a jury with respect to sentence.
2775 In other cases it shall be conducted before the court sitting with

2776 the jury which determined the defendant's guilt or, if the court
2777 for good cause shown discharges that jury, with a new jury
2778 empaneled for the purpose.

2779 In the proceeding, evidence may be presented as to any matter
2780 that the court deems relevant to sentence, including but not
2781 limited to the nature and circumstances of the crime, the
2782 defendant's character, background, history, mental and physical
2783 condition and any of the aggravating or mitigating circumstances
2784 enumerated in subsections (3) and (4) of this section. Any such
2785 evidence, not legally privileged, which the court deems to have
2786 probative force, may be received regardless of its admissibility
2787 under the exclusionary rules of evidence, provided that the
2788 defendant's counsel is accorded a fair opportunity to rebut such
2789 evidence. The prosecuting attorney and the defendant or his
2790 counsel shall be permitted to present argument for or against
2791 sentence of death.

2792 The determination whether sentence of death shall be imposed
2793 shall be in the discretion of the court, except that when the
2794 proceeding is conducted before the court sitting with a jury, the
2795 court shall not impose sentence of death unless it submits to the
2796 jury the issue whether the defendant should be sentenced to death
2797 or to imprisonment and the jury returns a verdict that the
2798 sentence should be death. If the jury is unable to reach a
2799 unanimous verdict, the court shall dismiss the jury and impose
2800 sentence for a felony of the first degree.

2801 The court, in exercising its discretion as to sentence, and
2802 the jury, in determining upon its verdict, shall take into account
2803 the aggravating and mitigating circumstances enumerated in
2804 subsections (3) and (4) and any other facts that it deems
2805 relevant, but it shall not impose or recommend sentence of death
2806 unless it finds one (1) of the aggravating circumstances
2807 enumerated in subsection (3) and further finds that there are no
2808 mitigating circumstances sufficiently substantial to call for

2809 leniency. When the issue is submitted to the jury, the court
2810 shall so instruct and also shall inform the jury of the nature of
2811 the sentence of imprisonment that may be imposed, including its
2812 implication with respect to possible release upon parole, if the
2813 jury verdict is against sentence of death.

2814 (3) **Aggravating Circumstances.** (a) The murder was
2815 committed by a convict under sentence of imprisonment.

2816 (b) The defendant was previously convicted of another
2817 murder or of a felony involving the use or threat of violence to
2818 the person.

2819 (c) At the time the murder was committed the defendant
2820 also committed another murder.

2821 (d) The defendant knowingly created a great risk of
2822 death to many persons.

2823 (e) The murder was committed while the defendant was
2824 engaged or was an accomplice in the commission of, or an attempt
2825 to commit, or flight after committing or attempting to commit
2826 robbery, rape or deviate sexual intercourse by force or threat of
2827 force, arson, burglary or kidnapping.

2828 (f) The murder was committed for the purpose of
2829 avoiding or preventing a lawful arrest or effecting an escape from
2830 lawful custody.

2831 (g) The murder was committed for pecuniary gain.

2832 (h) The murder was especially heinous, atrocious or
2833 cruel, manifesting exceptional depravity.

2834 (4) **Mitigating Circumstances.** (a) The defendant has no
2835 significant history of prior criminal activity.

2836 (b) The murder was committed while the defendant was
2837 under the influence of extreme mental or emotional disturbance.

2838 (c) The victim was a participant in the defendant's
2839 homicidal conduct or consented to the homicidal act.

2840 (d) The murder was committed under circumstances which
2841 the defendant believed to provide a moral justification or
2842 extenuation for his conduct.

2843 (e) The defendant was an accomplice in a murder
2844 committed by another person and his participation in the homicidal
2845 act was relatively minor.

2846 (f) The defendant acted under duress or under the
2847 domination of another person.

2848 (g) At the time of the murder, the capacity of the
2849 defendant to appreciate the criminality of his conduct or to
2850 conform his conduct to the requirements of law was impaired as a
2851 result of mental disease or defect or intoxication.

2852 (h) The youth of the defendant at the time of the
2853 crime.

2854 ARTICLE 9

2855 **ASSAULT; RECKLESS ENDANGERING; THREATS**

2856 **SECTION 84.** In this article, the definitions given in
2857 Section 77 of this act apply unless a different meaning plainly is
2858 required.

2859 **SECTION 85.** (1) **Simple Assault.** A person is guilty of
2860 assault if he:

2861 (a) Attempts to cause or purposely, knowingly or
2862 recklessly causes bodily injury to another; or

2863 (b) Negligently causes bodily injury to another with a
2864 deadly weapon; or

2865 (c) Attempts by physical menace to put another in fear
2866 of imminent serious bodily injury.

2867 Simple assault is a misdemeanor unless committed in a fight
2868 or scuffle entered into by mutual consent, in which case it is a
2869 petty misdemeanor.

2870 (2) **Aggravated Assault.** A person is guilty of aggravated
2871 assault if he:

2904 (a) To hold for ransom or reward, or as a shield or
2905 hostage; or

2906 (b) To facilitate commission of any felony or flight
2907 thereafter; or

2908 (c) To inflict bodily injury on or to terrorize the
2909 victim or another; or

2910 (d) To interfere with the performance of any
2911 governmental or political function.

2912 Kidnapping is a felony of the first degree unless the actor
2913 voluntarily releases the victim alive and in a safe place prior to
2914 trial, in which case it is a felony of the second degree. A
2915 removal or confinement is unlawful within the meaning of this
2916 section if it is accomplished by force, threat or deception, or,
2917 in the case of a person who is under the age of fourteen (14) or
2918 incompetent, if it is accomplished without the consent of a
2919 parent, guardian or other person responsible for general
2920 supervision of his welfare.

2921 **SECTION 90.** A person commits a felony of the third degree if
2922 he knowingly:

2923 (a) Restrains another unlawfully in circumstances
2924 exposing him to risk of serious bodily injury; or

2925 (b) Holds another in a condition of involuntary
2926 servitude.

2927 **SECTION 91.** A person commits a misdemeanor if he knowingly
2928 restrains another unlawfully so as to interfere substantially with
2929 his liberty.

2930 **SECTION 92.** (1) **Custody of Children.** A person commits an
2931 offense if he knowingly or recklessly takes or entices any child
2932 under the age of eighteen (18) from the custody of its parent,
2933 guardian or other lawful custodian, when he has no privilege to do
2934 so. It is an affirmative defense that:

2935 (a) The actor believed that his action was necessary to
2936 preserve the child from danger to its welfare; or

2937 (b) The child, being at the time not less than fourteen
2938 (14) years old, was taken away at its own instigation without
2939 enticement and without purpose to commit a criminal offense with
2940 or against the child.

2941 Proof that the child was below the critical age gives rise to
2942 a presumption that the actor knew the child's age or acted in
2943 reckless disregard thereof. The offense is a misdemeanor unless
2944 the actor, not being a parent or person in equivalent relation to
2945 the child, acted with knowledge that his conduct would cause
2946 serious alarm for the child's safety, or in reckless disregard of
2947 a likelihood of causing such alarm, in which case the offense is a
2948 felony of the third degree.

2949 (2) **Custody of Committed Persons.** A person is guilty of a
2950 misdemeanor if he knowingly or recklessly takes or entices any
2951 committed person away from lawful custody when he is not
2952 privileged to do so. "Committed person" means, in addition to
2953 anyone committed under judicial warrant, any orphan, neglected or
2954 delinquent child, mentally defective or insane person, or other
2955 dependent or incompetent person entrusted to another's custody by
2956 or through a recognized social agency or otherwise by authority of
2957 law.

2958 **SECTION 93.** (1) **Offense Defined.** A person is guilty of
2959 criminal coercion if, with purpose unlawfully to restrict
2960 another's freedom of action to his detriment, he threatens to:

2961 (a) Commit any criminal offense; or

2962 (b) Accuse anyone of a criminal offense; or

2963 (c) Expose any secret tending to subject any person to
2964 hatred, contempt or ridicule, or to impair his credit or business
2965 repute; or

2966 (d) Take or withhold action as an official, or cause an
2967 official to take or withhold action.

2968 It is an affirmative defense to prosecution based on
2969 paragraphs (b), (c) or (d) that the actor believed the accusation

2970 or secret to be true or the proposed official action justified and
2971 that his purpose was limited to compelling the other to behave in
2972 a way reasonably related to the circumstances which were the
2973 subject of the accusation, exposure or proposed official action,
2974 as by desisting from further misbehavior, making good a wrong
2975 done, refraining from taking any action or responsibility for
2976 which the actor believes the other disqualified.

2977 (2) **Grading.** Criminal coercion is a misdemeanor unless the
2978 threat is to commit a felony or the actor's purpose is felonious,
2979 in which cases the offense is a felony of the third degree.

2980 ARTICLE 11

2981 **SEXUAL OFFENSES**

2982 **SECTION 94.** In this article, unless a different meaning
2983 plainly is required:

2984 (a) The definitions given in Section 77 of this act
2985 apply;

2986 (b) "Sexual intercourse" includes intercourse per os or
2987 per anus, with some penetration however slight; emission is not
2988 required;

2989 (c) "Deviate sexual intercourse" means sexual
2990 intercourse per os or per anus between human beings who are not
2991 husband and wife, and any form of sexual intercourse with an
2992 animal.

2993 **SECTION 95.** (1) **Rape.** A male who has sexual intercourse
2994 with a female not his wife is guilty of rape if:

2995 (a) He compels her to submit by force or by threat of
2996 imminent death, serious bodily injury, extreme pain or kidnapping,
2997 to be inflicted on anyone; or

2998 (b) He has substantially impaired her power to appraise
2999 or control her conduct by administering or employing without her
3000 knowledge drugs, intoxicants or other means for the purpose of
3001 preventing resistance; or

3002 (c) The female is unconscious; or

3003 (d) The female is less than ten (10) years old.
3004 Rape is a felony of the second degree unless (i) in the
3005 course thereof the actor inflicts serious bodily injury upon
3006 anyone, or (ii) the victim was not a voluntary social companion of
3007 the actor upon the occasion of the crime and had not previously
3008 permitted him sexual liberties, in which cases the offense is a
3009 felony of the first degree.

3010 (2) **Gross Sexual Imposition.** A male who has sexual
3011 intercourse with a female not his wife commits a felony of the
3012 third degree if:

3013 (a) He compels her to submit by any threat that would
3014 prevent resistance by a woman of ordinary resolution; or

3015 (b) He knows that she suffers from a mental disease or
3016 defect which renders her incapable of appraising the nature of her
3017 conduct; or

3018 (c) He knows that she is unaware that a sexual act is
3019 being committed upon her or that she submits because she
3020 mistakenly supposes that he is her husband.

3021 **SECTION 96.** (1) **By Force or Its Equivalent.** A person who
3022 engages in deviate sexual intercourse with another person, or who
3023 causes another to engage in deviate sexual intercourse, commits a
3024 felony of the second degree if:

3025 (a) He compels the other person to participate by force
3026 or by threat of imminent death, serious bodily injury, extreme
3027 pain or kidnapping, to be inflicted on anyone; or

3028 (b) He has substantially impaired the other person's
3029 power to appraise or control his conduct, by administering or
3030 employing without the knowledge of the other person drugs,
3031 intoxicants or other means for the purpose of preventing
3032 resistance; or

3033 (c) The other person is unconscious; or

3034 (d) The other person is less than ten (10) years old.

3035 (2) **By Other Imposition.** A person who engages in deviate
3036 sexual intercourse with another person, or who causes another to
3037 engage in deviate sexual intercourse, commits a felony of the
3038 third degree if:

3039 (a) He compels the other person to participate by any
3040 threat that would prevent resistance by a person of ordinary
3041 resolution; or

3042 (b) He knows that the other person suffers from a
3043 mental disease or defect which renders him incapable of appraising
3044 the nature of his conduct; or

3045 (c) He knows that the other person submits because he
3046 is unaware that a sexual act is being committed upon him.

3047 **SECTION 97.** (1) **Offense Defined.** A male who has sexual
3048 intercourse with a female not his wife, or any person who engages
3049 in deviate sexual intercourse or causes another to engage in
3050 deviate sexual intercourse, is guilty of an offense if:

3051 (a) The other person is less than sixteen (16) years
3052 old and the actor is at least four (4) years older than the other
3053 person; or

3054 (b) The other person is less than twenty-one (21) years
3055 old and the actor is his guardian or otherwise responsible for
3056 general supervision of his welfare; or

3057 (c) The other person is in custody of law or detained
3058 in a hospital or other institution and the actor has supervisory
3059 or disciplinary authority over him; or

3060 (d) The other person is a female who is induced to
3061 participate by a promise of marriage which the actor does not mean
3062 to perform.

3063 (2) **Grading.** An offense under paragraph (a) of subsection
3064 (1) is a felony of the third degree. Otherwise an offense under
3065 this section is a misdemeanor.

3066 **SECTION 98.** A person who has sexual contact with another not
3067 his spouse, or causes such other to have sexual contact with him,
3068 is guilty of sexual assault, a misdemeanor, if:

3069 (a) He knows that the contact is offensive to the other
3070 person; or

3071 (b) He knows that the other person suffers from a
3072 mental disease or defect which renders him or her incapable of
3073 appraising the nature of his or her conduct; or

3074 (c) He knows that the other person is unaware that a
3075 sexual act is being committed; or

3076 (d) The other person is less than ten (10) years old;
3077 or

3078 (e) He has substantially impaired the other person's
3079 power to appraise or control his or her conduct, by administering
3080 or employing without the other's knowledge drugs, intoxicants or
3081 other means for the purpose of preventing resistance; or

3082 (f) The other person is less than sixteen (16) years
3083 old and the actor is at least four (4) years older than the other
3084 person; or

3085 (g) The other person is less than twenty-one (21) years
3086 old and the actor is his guardian or otherwise responsible for
3087 general supervision of his welfare; or

3088 (h) The other person is in custody of law or detained
3089 in a hospital or other institution and the actor has supervisory
3090 or disciplinary authority over him.

3091 Sexual contact is any touching of the sexual or other
3092 intimate parts of the person for the purpose of arousing or
3093 gratifying sexual desire.

3094 **SECTION 99.** A person commits a misdemeanor if, for the
3095 purpose of arousing or gratifying sexual desire of himself or of
3096 any person other than his spouse, he exposes his genitals under
3097 circumstances in which he knows his conduct is likely to cause
3098 affront or alarm.

3099 **SECTION 100.** (1) **Mistake as to Age.** Whenever in this
3100 article the criminality of conduct depends on a child's being
3101 below the age of ten (10), it is no defense that the actor did not
3102 know the child's age, or reasonably believed the child to be older
3103 than ten (10). When criminality depends on the child's being
3104 below a critical age other than ten (10), it is a defense for the
3105 actor to prove by a preponderance of the evidence that he
3106 reasonably believed the child to be above the critical age.

3107 (2) **Spouse Relationships.** Whenever in this article the
3108 definition of an offense excludes conduct with a spouse, the
3109 exclusion shall be deemed to extend to persons living as man and
3110 wife, regardless of the legal status of their relationship. The
3111 exclusion shall be inoperative as respects spouses living apart
3112 under a decree of judicial separation. Where the definition of an
3113 offense excludes conduct with a spouse or conduct by a woman, this
3114 shall not preclude conviction of a spouse or woman as accomplice
3115 in a sexual act which he or she causes another person, not within
3116 the exclusion, to perform.

3117 (3) **Sexually Promiscuous Complainants.** It is a defense to
3118 prosecution under Section 97 of this act and paragraphs (f), (g)
3119 and (h) of Section 98 of this act for the actor to prove by a
3120 preponderance of the evidence that the alleged victim had, prior
3121 to the time of the offense charged, engaged promiscuously in
3122 sexual relations with others.

3123 (4) **Prompt Complaint.** No prosecution may be instituted or
3124 maintained under this article unless the alleged offense was
3125 brought to the notice of public authority within three (3) months
3126 of its occurrence or, where the alleged victim was less than
3127 sixteen (16) years old or otherwise incompetent to make complaint,
3128 within three (3) months after a parent, guardian or other
3129 competent person specially interested in the victim learns of the
3130 offense.

3163 (3) **Failure to Control or Report Dangerous Fire.** A person
3164 who knows that a fire is endangering life or a substantial amount
3165 of property of another and fails to take reasonable measures to
3166 put out or control the fire, when he can do so without substantial
3167 risk to himself, or to give a prompt fire alarm, commits a
3168 misdemeanor if:

3169 (a) He knows that he is under an official, contractual,
3170 or other legal duty to prevent or combat the fire; or

3171 (b) The fire was started, albeit lawfully, by him or
3172 with his assent, or on property in his custody or control.

3173 (4) **Definitions.** "Occupied structure" means any structure,
3174 vehicle or place adapted for overnight accommodation of persons,
3175 or for carrying on business therein, whether or not a person is
3176 actually present. Property is that of another, for the purposes
3177 of this section, if anyone other than the actor has a possessory
3178 or proprietary interest therein. If a building or structure is
3179 divided into separately occupied units, any unit not occupied by
3180 the actor is an occupied structure of another.

3181 **SECTION 102.** (1) **Causing Catastrophe.** A person who causes
3182 a catastrophe by explosion, fire, flood, avalanche, collapse of
3183 building, release of poison gas, radioactive material or other
3184 harmful or destructive force or substance, or by any other means
3185 of causing potentially widespread injury or damage, commits a
3186 felony of the second degree if he does so purposely or knowingly,
3187 or a felony of the third degree if he does so recklessly.

3188 (2) **Risking Catastrophe.** A person is guilty of a
3189 misdemeanor if he recklessly creates a risk of catastrophe in the
3190 employment of fire, explosives or other dangerous means listed in
3191 subsection (1).

3192 (3) **Failure to Prevent Catastrophe.** A person who knowingly
3193 or recklessly fails to take reasonable measures to prevent or
3194 mitigate a catastrophe commits a misdemeanor if:

3195 (a) He knows that he is under an official, contractual
3196 or other legal duty to take such measures; or

3197 (b) He did or assented to the act causing or
3198 threatening the catastrophe.

3199 **SECTION 103.** (1) **Offense Defined.** A person is guilty of
3200 criminal mischief if he:

3201 (a) Damages tangible property of another purposely,
3202 recklessly, or by negligence in the employment of fire,
3203 explosives, or other dangerous means listed in Section 100 of this
3204 act; or

3205 (b) Purposely or recklessly tampers with tangible
3206 property of another so as to endanger person or property; or

3207 (c) Purposely or recklessly causes another to suffer
3208 pecuniary loss by deception or threat.

3209 (2) **Grading.** Criminal mischief is a felony of the third
3210 degree if the actor purposely causes pecuniary loss in excess of
3211 Five Thousand Dollars (\$5,000.00), or a substantial interruption
3212 or impairment of public communication, transportation, supply of
3213 water, gas or power, or other public service. It is a misdemeanor
3214 if the actor purposely causes pecuniary loss in excess of One
3215 Hundred Dollars (\$100.00), or a petty misdemeanor if he purposely
3216 or recklessly causes pecuniary loss in excess of Twenty-five
3217 Dollars (\$25.00). Otherwise criminal mischief is a violation.

3218 ARTICLE 13

3219 **BURGLARY AND OTHER CRIMINAL INTRUSION**

3220 **SECTION 104.** In this article, unless a different meaning
3221 plainly is required:

3222 (a) "Occupied structure" means any structure, vehicle
3223 or place adapted for overnight accommodation of persons, or for
3224 carrying on business therein, whether or not a person is actually
3225 present.

3226 (b) "Night" means the period between thirty (30)
3227 minutes past sunset and thirty (30) minutes before sunrise.

3228 **SECTION 105.** (1) **Burglary Defined.** A person is guilty of
3229 burglary if he enters a building or occupied structure, or
3230 separately secured or occupied portion thereof, with purpose to
3231 commit a crime therein, unless the premises are at the time open
3232 to the public or the actor is licensed or privileged to enter. It
3233 is an affirmative defense to prosecution for burglary that the
3234 building or structure was abandoned.

3235 (2) **Grading.** Burglary is a felony of the second degree if
3236 it is perpetrated in the dwelling of another at night, or if, in
3237 the course of committing the offense, the actor:

3238 (a) Purposely, knowingly or recklessly inflicts or
3239 attempts to inflict bodily injury on anyone; or

3240 (b) Is armed with explosives or a deadly weapon

3241 Otherwise, burglary is a felony of the third degree. An act
3242 shall be deemed "in the course of committing" an offense if it
3243 occurs in an attempt to commit the offense or in flight after the
3244 attempt or commission.

3245 (3) **Multiple Convictions.** A person may not be convicted
3246 both for burglary and for the offense which it was his purpose to
3247 commit after the burglarious entry or for an attempt to commit
3248 that offense, unless the additional offense constitutes a felony
3249 of the first or second degree.

3250 **SECTION 106.** (1) **Buildings and Occupied Structures.** A
3251 person commits an offense if, knowing that he is not licensed or
3252 privileged to do so, he enters or surreptitiously remains in any
3253 building or occupied structure, or separately secured or occupied
3254 portion thereof. An offense under this subsection is a
3255 misdemeanor if it is committed in a dwelling at night. Otherwise
3256 it is a petty misdemeanor.

3257 (2) **Defiant Trespasser.** A person commits an offense if,
3258 knowing that he is not licensed or privileged to do so, he enters
3259 or remains in any place as to which notice against trespass is
3260 given by:

- 3261 (a) Actual communication to the actor; or
3262 (b) Posting in a manner prescribed by law or reasonably
3263 likely to come to the attention of intruders; or
3264 (c) Fencing or other enclosure manifestly designed to
3265 exclude intruders.

3266 An offense under this subsection constitutes a petty
3267 misdemeanor if the offender defies an order to leave personally
3268 communicated to him by the owner of the premises or other
3269 authorized person. Otherwise it is a violation.

3270 (3) **Defenses.** It is an affirmative defense to prosecution
3271 under this section that:

3272 (a) A building or occupied structure involved in an
3273 offense under subsection (1) was abandoned; or

3274 (b) The premises were at the time open to members of
3275 the public and the actor complied with all lawful conditions
3276 imposed on access to or remaining in the premises; or

3277 (c) The actor reasonably believed that the owner of the
3278 premises, or other person empowered to license access thereto,
3279 would have licensed him to enter or remain.

3280 ARTICLE 14

3281 **ROBBERY**

3282 **SECTION 107.** (1) **Robbery Defined.** A person is guilty of
3283 robbery if, in the course of committing a theft, he:

3284 (a) Inflicts serious bodily injury upon another; or

3285 (b) Threatens another with or purposely puts him in
3286 fear of immediate serious bodily injury; or

3287 (c) Commits or threatens immediately to commit any
3288 felony of the first or second degree.

3289 An act shall be deemed "in the course of committing a theft"
3290 if it occurs in an attempt to commit theft or in flight after the
3291 attempt or commission.

3292 (2) **Grading.** Robbery is a felony of the second degree,
3293 except that it is a felony of the first degree if in the course of

3294 committing the theft the actor attempts to kill anyone, or
3295 purposely inflicts or attempts to inflict serious bodily injury.

3296 ARTICLE 15

3297 THEFT AND RELATED OFFENSES

3298 SECTION 108. In this article, unless a different meaning
3299 plainly is required:

3300 (a) "Deprive" means: (i) to withhold property of
3301 another permanently or for so extended a period as to appropriate
3302 a major portion of its economic value, or with intent to restore
3303 only upon payment of reward or other compensation; or (ii) to
3304 dispose of the property so as to make it unlikely that the owner
3305 will recover it.

3306 (b) "Financial institution" means a bank, insurance
3307 company, credit union, building and loan association, investment
3308 trust or other organization held out to the public as a place of
3309 deposit of funds or medium of savings or collective investment.

3310 (c) "Government" means the United States, any state,
3311 county, municipality, or other political unit, or any department,
3312 agency or subdivision of any of the foregoing, or any corporation
3313 or other association carrying out the functions of government.

3314 (d) "Movable property" means property the location of
3315 which can be changed, including things growing on, affixed to, or
3316 found in land, and documents although the rights represented
3317 thereby have no physical location. "Immovable property" is all
3318 other property.

3319 (e) "Obtain" means: (i) in relation to property, to
3320 bring about a transfer or purported transfer of a legal interest
3321 in the property, whether to the obtainer or another; or (ii) in
3322 relation to labor or service, to secure performance thereof.

3323 (f) "Property" means anything of value, including real
3324 estate, tangible and intangible personal property, contract
3325 rights, choses-in-action and other interests in or claims to

3326 wealth, admission or transportation tickets, captured or domestic
3327 animals, food and drink, electric or other power.

3328 (g) "Property of another" includes property in which
3329 any person other than the actor has an interest which the actor is
3330 not privileged to infringe, regardless of the fact that the actor
3331 also has an interest in the property and regardless of the fact
3332 that the other person might be precluded from civil recovery
3333 because the property was used in an unlawful transaction or was
3334 subject to forfeiture as contraband. Property in possession of
3335 the actor shall not be deemed property of another who has only a
3336 security interest therein, even if legal title is in the creditor
3337 pursuant to a conditional sales contract or other security
3338 agreement.

3339 **SECTION 109.** (1) **Consolidation of Theft Offenses.** Conduct
3340 denominated theft in this article constitutes a single offense.
3341 An accusation of theft may be supported by evidence that it was
3342 committed in any manner that would be theft under this article,
3343 notwithstanding the specification of a different manner in the
3344 indictment or information, subject only to the power of the court
3345 to ensure fair trial by granting a continuance or other
3346 appropriate relief where the conduct of the defense would be
3347 prejudiced by lack of fair notice or by surprise.

3348 (2) **Grading of Theft Offenses.**

3349 (a) Theft constitutes a felony of the third degree if
3350 the amount involved exceeds Five Hundred Dollars (\$500.00), or if
3351 the property stolen is a firearm, automobile, airplane,
3352 motorcycle, motorboat, or other motor-propelled vehicle, or in the
3353 case of theft by receiving stolen property, if the receiver is in
3354 the business of buying or selling stolen property.

3355 (b) Theft not within the preceding paragraph
3356 constitutes a misdemeanor, except that if the property was not
3357 taken from the person or by threat, or in breach of a fiduciary
3358 obligation, and the actor proves by a preponderance of the

3359 evidence that the amount involved was less than Fifty Dollars
3360 (\$50.00), the offense constitutes a petty misdemeanor.

3361 (c) The amount involved in a theft shall be deemed to
3362 be the highest value, by any reasonable standard, of the property
3363 or services which the actor stole or attempted to steal. Amounts
3364 involved in thefts committed pursuant to one (1) scheme or course
3365 of conduct, whether from the same person or several persons, may
3366 be aggregated in determining the grade of the offense.

3367 (3) **Claim of Right.** It is an affirmative defense to
3368 prosecution for theft that the actor:

3369 (a) Was unaware that the property or service was that
3370 of another; or

3371 (b) Acted under an honest claim of right to the
3372 property or service involved or that he had a right to acquire or
3373 dispose of it as he did; or

3374 (c) Took property exposed for sale, intending to
3375 purchase and pay for it promptly, or reasonably believing that the
3376 owner, if present, would have consented.

3377 (4) **Theft from Spouse.** It is no defense that theft was from
3378 the actor's spouse, except that misappropriation of household and
3379 personal effects, or other property normally accessible to both
3380 spouses, is theft only if it occurs after the parties have ceased
3381 living together.

3382 **SECTION 110.** (1) **Movable Property.** A person is guilty of
3383 theft if he unlawfully takes, or exercises unlawful control over,
3384 movable property of another with purpose to deprive him thereof.

3385 (2) **Immovable Property.** A person is guilty of theft if he
3386 unlawfully transfers immovable property of another or any interest
3387 therein with purpose to benefit himself or another not entitled
3388 thereto.

3389 **SECTION 111.** A person is guilty of theft if he purposely
3390 obtains property of another by deception. A person deceives if he
3391 purposely:

3392 (a) Creates or reinforces a false impression, including
3393 false impressions as to law, value, intention or other state of
3394 mind; but deception as to a person's intention to perform a
3395 promise shall not be inferred from the fact alone that he did not
3396 subsequently perform the promise; or

3397 (b) Prevents another from acquiring information which
3398 would affect his judgment of a transaction; or

3399 (c) Fails to correct a false impression which the
3400 deceiver previously created or reinforced, or which the deceiver
3401 knows to be influencing another to whom he stands in a fiduciary
3402 or confidential relationship; or

3403 (d) Fails to disclose a known lien, adverse claim or
3404 other legal impediment to the enjoyment of property which he
3405 transfers or encumbers in consideration for the property obtained,
3406 whether such impediment is or is not valid, or is or is not a
3407 matter of official record.

3408 The term "deceive" does not, however, include falsity as to
3409 matters having no pecuniary significance, or puffing by statements
3410 unlikely to deceive ordinary persons in the group addressed.

3411 **SECTION 112.** A person is guilty of theft if he purposely
3412 obtains property of another by threatening to:

3413 (a) Inflict bodily injury on anyone or commit any other
3414 criminal offense; or

3415 (b) Accuse anyone of a criminal offense; or

3416 (c) Expose any secret tending to subject any person to
3417 hatred, contempt or ridicule, or to impair his credit or business
3418 repute; or

3419 (d) Take or withhold action as an official, or cause an
3420 official to take or withhold action; or

3421 (e) Bring about or continue a strike, boycott or other
3422 collective unofficial action, if the property is not demanded or
3423 received for the benefit of the group in whose interest the actor
3424 purports to act; or

3425 (f) Testify or provide information or withhold
3426 testimony or information with respect to another's legal claim or
3427 defense; or

3428 (g) Inflict any other harm which would not benefit the
3429 actor.

3430 It is an affirmative defense to prosecution based on
3431 paragraphs (b), (c) or (d) that the property obtained by threat of
3432 accusation, exposure, lawsuit or other invocation of official
3433 action was honestly claimed as restitution or indemnification for
3434 harm done in the circumstances to which such accusation, exposure,
3435 lawsuit or other official action relates, or as compensation for
3436 property or lawful services.

3437 **SECTION 113.** A person who comes into control of property of
3438 another that he knows to have been lost, mislaid, or delivered
3439 under a mistake as to the nature or amount of the property or the
3440 identity of the recipient is guilty of theft if, with purpose to
3441 deprive the owner thereof, he fails to take reasonable measures to
3442 restore the property to a person entitled to have it.

3443 **SECTION 114.** (1) **Receiving.** A person is guilty of theft if
3444 he purposely receives, retains, or disposes of movable property of
3445 another knowing that it has been stolen, or believing that it has
3446 probably been stolen, unless the property is received, retained or
3447 disposed with purpose to restore it to the owner. "Receiving"
3448 means acquiring possession, control or title, or lending on the
3449 security of the property.

3450 (2) **Presumption of Knowledge.** The requisite knowledge or
3451 belief is presumed in the case of a dealer who:

3452 (a) Is found in possession or control of property
3453 stolen from two (2) or more persons on separate occasions; or

3454 (b) Has received stolen property in another transaction
3455 within the year preceding the transaction charged; or

3456 (c) Being a dealer in property of the sort received,
3457 acquires it for a consideration which he knows is far below its
3458 reasonable value.

3459 "Dealer" means a person in the business of buying or selling goods
3460 including a pawnbroker.

3461 **SECTION 115.** (1) A person is guilty of theft if he
3462 purposely obtains services which he knows are available only for
3463 compensation, by deception or threat, or by false token or other
3464 means to avoid payment for the service. "Services" includes
3465 labor, professional service, transportation, telephone or other
3466 public service, accommodation in hotels, restaurants or elsewhere,
3467 admission to exhibitions, use of vehicles or other movable
3468 property. Where compensation for service is ordinarily paid
3469 immediately upon the rendering of such service, as in the case of
3470 hotels and restaurants, refusal to pay or absconding without
3471 payment or offer to pay gives rise to a presumption that the
3472 service was obtained by deception as to intention to pay.

3473 (2) A person commits theft if, having control over the
3474 disposition of services of others, to which he is not entitled, he
3475 knowingly diverts such services to his own benefit or to the
3476 benefit of another not entitled thereto.

3477 **SECTION 116.** A person who purposely obtains property upon
3478 agreement, or subject to a known legal obligation, to make
3479 specified payment or other disposition, whether from such property
3480 or its proceeds or from his own property to be reserved in
3481 equivalent amount, is guilty of theft if he deals with the
3482 property obtained as his own and fails to make the required
3483 payment or disposition. The foregoing applies notwithstanding
3484 that it may be impossible to identify particular property as
3485 belonging to the victim at the time of the actor's failure to make
3486 the required payment or disposition. An officer or employee of
3487 the government or of a financial institution is presumed: (a) to
3488 know any legal obligation relevant to his criminal liability under

3489 this section, and (b) to have dealt with the property as his own
3490 if he fails to pay or account upon lawful demand, or if an audit
3491 reveals a shortage or falsification of accounts.

3492 **SECTION 117.** A person commits a misdemeanor if he operates
3493 another's automobile, airplane, motorcycle, motorboat or other
3494 motor-propelled vehicle without consent of the owner. It is an
3495 affirmative defense to prosecution under this section that the
3496 actor reasonably believed that the owner would have consented to
3497 the operation had he known of it.

3498 ARTICLE 16

3499 **FORGERY AND FRAUDULENT PRACTICES**

3500 **SECTION 118.** In this article, the definitions given in
3501 Section 108 of this act apply unless a different meaning plainly
3502 is required.

3503 **SECTION 119.** (1) **Definition.** A person is guilty of forgery
3504 if, with purpose to defraud or injure anyone, or with knowledge
3505 that he is facilitating a fraud or injury to be perpetrated by
3506 anyone, the actor:

3507 (a) Alters any writing of another without his
3508 authority; or

3509 (b) Makes, completes, executes, authenticates, issues
3510 or transfers any writing so that it purports to be the act of
3511 another who did not authorize that act, or to have been executed
3512 at a time or place or in a numbered sequence other than was in
3513 fact the case, or to be a copy of an original when no such
3514 original existed; or

3515 (c) Utters any writing which he knows to be forged in a
3516 manner specified in paragraphs (a) or (b).

3517 "Writing" includes printing or any other method of recording
3518 information, money, coins, tokens, stamps, seals, credit cards,
3519 badges, trademarks and other symbols of value, right, privilege or
3520 identification.

3521 (2) **Grading.** Forgery is a felony of the second degree if
3522 the writing is or purports to be part of an issue of money,
3523 securities, postage or revenue stamps, or other instruments issued
3524 by the government, or part of an issue of stock, bonds or other
3525 instruments representing interests in or claims against any
3526 property or enterprise. Forgery is a felony of the third degree
3527 if the writing is or purports to be a will, deed, contract,
3528 release, commercial instrument, or other document evidencing,
3529 creating, transferring, altering, terminating or otherwise
3530 affecting legal relations. Otherwise forgery is a misdemeanor.

3531 **SECTION 120.** A person commits a misdemeanor if, with purpose
3532 to defraud anyone or with knowledge that he is facilitating a
3533 fraud to be perpetrated by anyone, he makes, alters or utters any
3534 object so that it appears to have value because of antiquity,
3535 rarity, source or authorship which it does not possess.

3536 **SECTION 121.** A person commits a felony of the third degree
3537 if, with purpose to deceive or injure anyone, he destroys, removes
3538 or conceals any will, deed, mortgage, security instrument or other
3539 writing for which the law provides public recording.

3540 **SECTION 122.** A person commits a misdemeanor if, knowing that
3541 he has no privilege to do so, he falsifies, destroys, removes or
3542 conceals any writing or record, with purpose to deceive or injure
3543 anyone or to conceal any wrongdoing.

3544 **SECTION 123.** A person who issues or passes a check or
3545 similar sight order for the payment of money, knowing that it will
3546 not be honored by the drawee, commits a misdemeanor. For the
3547 purposes of this section as well as in any prosecution for theft
3548 committed by means of a bad check, an issuer is presumed to know
3549 that the check or order (other than a postdated check or order)
3550 would not be paid, if:

3551 (a) The issuer had no account with the drawee at the
3552 time the check or order was issued; or

3553 (b) Payment was refused by the drawee for lack of
3554 funds, upon presentation within thirty (30) days after issue, and
3555 the issuer failed to make good within ten (10) days after
3556 receiving notice of that refusal.

3557 **SECTION 124.** A person commits an offense if he uses a credit
3558 card for the purpose of obtaining property or services with
3559 knowledge that:

3560 (a) The card is stolen or forged; or

3561 (b) The card has been revoked or cancelled; or

3562 (c) For any other reason his use of the card is
3563 unauthorized by the issuer.

3564 It is an affirmative defense to prosecution under paragraph
3565 (c) if the actor proves by a preponderance of the evidence that he
3566 had the purpose and ability to meet all obligations to the issuer
3567 arising out of his use of the card. "Credit card" means a writing
3568 or other evidence of an undertaking to pay for property or
3569 services delivered or rendered to or upon the order of a
3570 designated person or bearer. An offense under this section is a
3571 felony of the third degree if the value of the property or
3572 services secured or sought to be secured by means of the credit
3573 card exceeds Five Hundred Dollars (\$500.00); otherwise it is a
3574 misdemeanor.

3575 **SECTION 125.** A person commits a misdemeanor if in the
3576 course of business he:

3577 (a) Uses or possesses for use a false weight or
3578 measure, or any other device for falsely determining or recording
3579 any quality or quantity; or

3580 (b) Sells, offers or exposes for sale, or delivers less
3581 than the represented quantity of any commodity or service; or

3582 (c) Takes or attempts to take more than the represented
3583 quantity of any commodity or service when as buyer he furnishes
3584 the weight or measure; or

3585 (d) Sell, offers or exposes for sale adulterated or
3586 mislabeled commodities. "Adulterated" means varying from the
3587 standard of composition or quality prescribed by or pursuant to
3588 any statute providing criminal penalties for such variance, or set
3589 by established commercial usage. "Mislabeled" means varying from
3590 the standard of truth or disclosure in labeling prescribed by or
3591 pursuant to any statute providing criminal penalties for such
3592 variance, or set by established commercial usage; or

3593 (e) Makes a false or misleading statement in any
3594 advertisement addressed to the public or to a substantial segment
3595 thereof for the purpose of promoting the purchase or sale of
3596 property or services; or

3597 (f) Makes a false or misleading written statement for
3598 the purpose of obtaining property or credit; or

3599 (g) Makes a false or misleading written statement for
3600 the purpose of promoting the sale of securities, or omits
3601 information required by law to be disclosed in written documents
3602 relating to securities.

3603 It is an affirmative defense to prosecution under this
3604 section if the defendant proves by a preponderance of the evidence
3605 that his conduct was not knowingly or recklessly deceptive.

3606 **SECTION 126.** (1) A person commits a misdemeanor if he
3607 solicits, accepts or agrees to accept any benefit as consideration
3608 for knowingly violating or agreeing to violate a duty of fidelity
3609 to which he is subject as:

3610 (a) Partner, agent or employee of another;

3611 (b) Trustee, guardian, or other fiduciary;

3612 (c) Lawyer, physician, accountant, appraiser, or other
3613 professional adviser or informant;

3614 (d) Officer, director, manager or other participant in
3615 the direction of the affairs of an incorporated or unincorporated
3616 association; or

3617 (e) Arbitrator or other purportedly disinterested
3618 adjudicator or referee.

3619 (2) A person who holds himself out to the public as being
3620 engaged in the business of making disinterested selection,
3621 appraisal, or criticism of commodities or services commits a
3622 misdemeanor if he solicits, accepts or agrees to accept any
3623 benefit to influence his selection, appraisal or criticism.

3624 (3) A person commits a misdemeanor if he confers, or offers
3625 or agrees to confer, any benefit the acceptance of which would be
3626 criminal under this section.

3627 **SECTION 127.** (1) A person commits a misdemeanor if, with
3628 purpose to prevent a publicly exhibited contest from being
3629 conducted in accordance with the rules and usages purporting to
3630 govern it, he:

3631 (a) Confers or offers or agrees to confer any benefit
3632 upon, or threatens any injury to a participant, official or other
3633 person associated with the contest or exhibition; or

3634 (b) Tamper with any person, animal or thing.

3635 (2) **Soliciting or Accepting Benefit for Rigging.** A person
3636 commits a misdemeanor if he knowingly solicits, accepts or agrees
3637 to accept any benefit the giving of which would be criminal under
3638 subsection (1).

3639 (3) **Participation in Rigged Contest.** A person commits a
3640 misdemeanor if he knowingly engages in, sponsors, produces,
3641 judges, or otherwise participates in a publicly exhibited contest
3642 knowing that the contest is not being conducted in compliance with
3643 the rules and usages purporting to govern it, by reason of conduct
3644 which would be criminal under this section.

3645 **SECTION 128.** A person commits a misdemeanor if he destroys,
3646 removes, conceals, encumbers, transfers or otherwise deals with
3647 property subject to a security interest with purpose to hinder
3648 enforcement of that interest.

3649 **SECTION 129.** A person commits a misdemeanor if, knowing that
3650 proceedings have been or are about to be instituted for the
3651 appointment of a receiver or other person entitled to administer
3652 property for the benefit of creditors, or that any other
3653 composition or liquidation for the benefit of creditors has been
3654 or is about to made, he:

3655 (a) Destroys, removes, conceals, encumbers, transfers,
3656 or otherwise deals with any property with purpose to defeat or
3657 obstruct the claim of any creditor, or otherwise to obstruct the
3658 operation of any law relating to administration of property for
3659 the benefit of creditors; or

3660 (b) Knowingly falsifies any writing or record relating
3661 to the property; or

3662 (c) Knowingly misrepresents or refuses to disclose to a
3663 receiver or other person entitled to administer property for the
3664 benefit of creditors, the existence, amount or location of the
3665 property, or any other information which the actor could be
3666 legally required to furnish in relation to such administration.

3667 **SECTION 130.** An officer, manager or other person directing
3668 or participating in the direction of a financial institution
3669 commits a misdemeanor if he receives or permits the receipt of a
3670 deposit, premium payment or other investment in the institution
3671 knowing that:

3672 (a) Due to financial difficulties the institution is
3673 about to suspend operations or go into receivership or
3674 reorganization; and

3675 (b) The person making the deposit or other payment is
3676 unaware of the precarious situation of the institution.

3677 **SECTION 131.** A person commits an offense if he applies or
3678 disposes of property that has been entrusted to him as a
3679 fiduciary, or property of the government or of a financial
3680 institution, in a manner which he knows is unlawful and involves
3681 substantial risk of loss or detriment to the owner of the property

3682 or to a person for whose benefit the property was entrusted. The
3683 offense is a misdemeanor if the amount involved exceeds Fifty
3684 Dollars (\$50.00); otherwise it is a petty misdemeanor.

3685 "Fiduciary" includes trustee, guardian, executor, administrator,
3686 receiver and any person carrying on fiduciary functions on behalf
3687 of a corporation or other organization which is a fiduciary.

3688 **SECTION 132.** A person commits a misdemeanor if by deception
3689 he causes another to execute any instrument affecting or
3690 purporting to affect or likely to affect the pecuniary interest of
3691 any person.

3692 OFFENSES AGAINST THE FAMILY

3693 ARTICLE 17

3694 OFFENSES AGAINST THE FAMILY

3695 **SECTION 133.** (1) **Bigamy.** A married person is guilty of
3696 bigamy, a misdemeanor, if he contracts or purports to contract
3697 another marriage, unless at the time of the subsequent marriage:

3698 (a) The actor believes that the prior spouse is dead;
3699 or

3700 (b) The actor and the prior spouse have been living
3701 apart for five (5) consecutive years throughout which the prior
3702 spouse was not known by the actor to be alive; or

3703 (c) A court has entered a judgment purporting to
3704 terminate or annul any prior disqualifying marriage, and the actor
3705 does not know that judgment to be invalid; or

3706 (d) The actor reasonably believes that he is legally
3707 eligible to remarry.

3708 (2) **Polygamy.** A person is guilty of polygamy, a felony of
3709 the third degree, if he marries or cohabits with more than one
3710 spouse at a time in purported exercise of the right of plural
3711 marriage. The offense is a continuing one until all cohabitation
3712 and claim of marriage with more than one (1) spouse terminates.
3713 This section does not apply to parties to a polygamous marriage,
3714 lawful in the country of which they are residents or nationals,

3715 while they are in transit through or temporarily visiting this
3716 state.

3717 (3) **Other Party to Bigamous or Polygamous Marriage.** A
3718 person is guilty of bigamy or polygamy, as the case may be, if he
3719 contracts or purports to contract marriage with another knowing
3720 that the other is thereby committing bigamy or polygamy.

3721 **SECTION 134.** A person is guilty of incest, a felony of the
3722 third degree, if he knowingly marries or cohabits or has sexual
3723 intercourse with an ancestor or descendant, a brother or sister of
3724 the whole or half blood or an uncle, aunt, nephew or niece of the
3725 whole blood. "Cohabit" means to live together under the
3726 representation or appearance of being married. The relationships
3727 referred to herein include blood relationships without regard to
3728 legitimacy, and relationship of parent and child by adoption.

3729 **SECTION 135.** (1) **Unjustified Abortion.** A person who
3730 purposely and unjustifiably terminates the pregnancy of another
3731 otherwise than by a live birth commits a felony of the third
3732 degree or, where the pregnancy has continued beyond the
3733 twenty-sixth week, a felony of the second degree.

3734 (2) **Justifiable Abortion.** A licensed physician is justified
3735 in terminating a pregnancy if he believes there is substantial
3736 risk that continuance of the pregnancy would gravely impair the
3737 physical or mental health of the mother or that the child would be
3738 born with grave physical or mental defect, or that the pregnancy
3739 resulted from rape, incest, or other felonious intercourse. An
3740 illicit intercourse with a girl below the age of sixteen (16)
3741 shall be deemed felonious for purposes of this subsection.
3742 Justifiable abortions shall be performed only in a licensed
3743 hospital except in case of emergency when hospital facilities are
3744 unavailable.

3745 (3) **Physicians' Certificates; Presumption from**
3746 **Non-Compliance.** No abortion shall be performed unless two (2)
3747 physicians, one (1) of whom may be the person performing the

3748 abortion, shall have certified in writing the circumstances which
3749 they believe to justify the abortion. Such certificate shall be
3750 submitted before the abortion to the hospital where it is to be
3751 performed and, in the case of abortion following felonious
3752 intercourse, to the prosecuting attorney or the police. Failure
3753 to comply with any of the requirements of this subsection gives
3754 rise to a presumption that the abortion was unjustified.

3755 (4) **Self-Abortion.** A woman whose pregnancy has continued
3756 beyond the twenty-sixth week commits a felony of the third degree
3757 if she purposely terminates her own pregnancy otherwise than by a
3758 live birth, or if she uses instruments, drugs or violence upon
3759 herself for that purpose. Except as justified under subsection
3760 (2), a person who induces or knowingly aids a woman to use
3761 instruments, drugs or violence upon herself for the purpose of
3762 terminating her pregnancy otherwise than by a live birth commits a
3763 felony of the third degree whether or not the pregnancy has
3764 continued beyond the twenty-sixth week.

3765 (5) **Pretended Abortion.** A person commits a felony of the
3766 third degree if, representing that it is his purpose to perform an
3767 abortion, he does an act adapted to cause abortion in a pregnant
3768 woman although the woman is in fact not pregnant, or the actor
3769 does not believe she is. A person charged with unjustified
3770 abortion under subsection (1) or an attempt to commit that offense
3771 may be convicted thereof upon proof of conduct prohibited by this
3772 subsection.

3773 (6) **Distribution of Abortifacients.** A person who sells,
3774 offers to sell, possesses with intent to sell, advertises, or
3775 displays for sale anything specially designed to terminate a
3776 pregnancy, or held out by the actor as useful for that purpose,
3777 commits a misdemeanor, unless:

3778 (a) The sale, offer or display is to a physician or
3779 druggist or to an intermediary in a chain of distribution to
3780 physicians or druggists; or

3781 (b) The sale is made upon prescription or order of a
3782 physician; or

3783 (c) The possession is with intent to sell as authorized
3784 in paragraphs (a) and (b); or

3785 (d) The advertising is addressed to persons named in
3786 paragraph (a) and confined to trade or professional channels not
3787 likely to reach the general public.

3788 (7) **Section Inapplicable to Prevention of Pregnancy.**

3789 Nothing in this section shall be deemed applicable to the
3790 prescription, administration or distribution of drugs or other
3791 substances for avoiding pregnancy, whether by preventing
3792 implantation of a fertilized ovum or by any other method that
3793 operated before, at or immediately after fertilization.

3794 **SECTION 136.** A parent, guardian, or other person supervising
3795 the welfare of a child under eighteen (18) commits a misdemeanor
3796 if he knowingly endangers the child's welfare by violating a duty
3797 of care, protection or support.

3798 **SECTION 137. Persistent Nonsupport.** A person commits a
3799 misdemeanor if he persistently fails to provide support which he
3800 can provide and which he knows he is legally obliged to provide to
3801 a spouse, child or other dependent.

3802 OFFENSES AGAINST PUBLIC ADMINISTRATION

3803 ARTICLE 18

3804 **BRIBERY AND CORRUPT INFLUENCE**

3805 **SECTION 138.** Definitions in Articles 18, 19, 20 and 21, of
3806 this act, unless a different meaning plainly is required:

3807 (a) "Benefit" means gain or advantage, or anything
3808 regarded by the beneficiary as gain or advantage, including
3809 benefit to any other person or entity in whose welfare he is
3810 interested, but not an advantage promised generally to a group or
3811 class of voters as a consequence of public measures which a
3812 candidate engages to support or oppose;

3813 (b) "Government" includes any branch, subdivision or
3814 agency of the government of the state or any locality within it;

3815 (c) "Harm" means loss, disadvantage or injury, or
3816 anything so regarded by the person affected, including loss,
3817 disadvantage or injury to any other person or entity in whose
3818 welfare he is interested;

3819 (d) "Official proceeding" means a proceeding heard or
3820 which may be heard before any legislative, judicial,
3821 administrative or other governmental agency or official authorized
3822 to take evidence under oath, including any referee, hearing
3823 examiner, commissioner, notary or other person taking testimony or
3824 deposition in connection with any such proceeding;

3825 (e) "Party official" means a person who holds an
3826 elective or appointive post in a political party in the United
3827 States by virtue of which he directs or conducts, or participates
3828 in directing or conducting party affairs at any level of
3829 responsibility;

3830 (f) "Pecuniary benefit" is benefit in the form of
3831 money, property, commercial interests or anything else the primary
3832 significance of which is economic gain;

3833 (g) "Public servant" means any officer or employee of
3834 government, including legislators and judges, and any person
3835 participating as juror, advisor, consultant or otherwise, in
3836 performing a governmental function; but the term does not include
3837 witnesses;

3838 (h) "Administrative proceeding" means any proceeding,
3839 other than a judicial proceeding, the outcome of which is required
3840 to be based on a record or documentation prescribed by law, or in
3841 which law or regulation is particularized in application to
3842 individuals.

3843 **SECTION 139.** A person is guilty of bribery, a felony of the
3844 third degree, if he offers, confers or agrees to confer upon
3845 another, or solicits, accepts or agrees to accept from another:

3846 (a) Any pecuniary benefit as consideration for the
3847 recipient's decision, opinion, recommendation, vote or other
3848 exercise of discretion as a public servant, party official or
3849 voter; or

3850 (b) Any benefit as consideration for the recipient's
3851 decision, vote, recommendation or other exercise of official
3852 discretion in a judicial or administrative proceeding; or

3853 (c) Any benefit as consideration for a violation of a
3854 known legal duty as public servant or party official.

3855 It is no defense to prosecution under this section that a
3856 person whom the actor sought to influence was not qualified to act
3857 in the desired way whether because he had not yet assumed office,
3858 or lacked jurisdiction, or for any other reason.

3859 **SECTION 140.** (1) **Offenses Defined.** A person commits an
3860 offense if he:

3861 (a) Threatens unlawful harm to any person with purpose
3862 to influence his decision, opinion, recommendation, vote or other
3863 exercise of discretion as a public servant, party official or
3864 voter; or

3865 (b) Threatens harm to any public servant with purpose
3866 to influence his decision, opinion, recommendation, vote or other
3867 exercise of discretion in a judicial or administrative proceeding;
3868 or

3869 (c) Threatens harm to any public servant or party
3870 official with purpose to influence him to violate his known legal
3871 duty; or

3872 (d) Privately addresses to any public servant who has
3873 or will have an official discretion in a judicial or
3874 administrative proceeding any representation, entreaty, argument
3875 or other communication with purpose to influence the outcome on
3876 the basis of considerations other than those authorized by law.

3877 It is no defense to prosecution under this Section that a
3878 person whom the actor sought to influence was not qualified to act

3879 in the desired way, whether because he had not yet assumed office,
3880 or lacked jurisdiction, or for any other reason.

3881 (2) **Grading.** An offense under this section is a misdemeanor
3882 unless the actor threatened to commit a crime or made a threat
3883 with purpose to influence a judicial or administrative proceeding,
3884 in which cases the offense is a felony of the third degree.

3885 **SECTION 141.** A person commits a misdemeanor if he solicits,
3886 accepts or agrees to accept any pecuniary benefit as compensation
3887 for having, as public servant, given a decision, opinion,
3888 recommendation or vote favorable to another, or for having
3889 otherwise exercised a discretion in his favor, or for having
3890 violated his duty. A person commits a misdemeanor if he offers,
3891 confers or agrees to confer compensation acceptance of which is
3892 prohibited by this section.

3893 **SECTION 142.** A person commits a misdemeanor if he harms
3894 another by any unlawful act in retaliation for anything lawfully
3895 done by the latter in the capacity of public servant.

3896 **SECTION 143.** (1) **Regulatory and Law Enforcement Officials.**
3897 No public servant in any department or agency exercising
3898 regulatory functions, or conducting inspections or investigations,
3899 or carrying on civil or criminal litigation on behalf of the
3900 government, or having custody of prisoners, shall solicit, accept
3901 or agree to accept any pecuniary benefit from a person known to be
3902 subject to such regulation, inspection, investigation or custody,
3903 or against whom such litigation is known to be pending or
3904 contemplated.

3905 (2) **Officials Concerned with Government Contracts and**
3906 **Pecuniary Transactions.** No public servant having any
3907 discretionary function to perform in connection with contracts,
3908 purchases, payments, claims or other pecuniary transactions of the
3909 government shall solicit, accept or agree to accept any pecuniary
3910 benefit from any person known to be interested in or likely to

3911 become interested in any such contract, purchase, payment, claim
3912 or transaction.

3913 (3) **Judicial and Administrative Officials.** No public
3914 servant having judicial or administrative authority and no public
3915 servant employed by or in a court or other tribunal having such
3916 authority, or participating in the enforcement of its decisions,
3917 shall solicit, accept or agree to accept any pecuniary benefit
3918 from a person known to be interested in or likely to become
3919 interested in any matter before such public servant or a tribunal
3920 with which he is associated.

3921 (4) **Legislative Officials.** No legislator or public servant
3922 employed by the Legislature or by any committee or agency thereof
3923 shall solicit, accept or agree to accept any pecuniary benefit
3924 from any person known to be interested in a bill, transaction or
3925 proceeding, pending or contemplated, before the Legislature or any
3926 committee or agency thereof.

3927 (5) **Exceptions.** This section shall not apply to:

3928 (a) Fees prescribed by law to be received by a public
3929 servant, or any other benefit for which the recipient gives
3930 legitimate consideration or to which he is otherwise legally
3931 entitled; or

3932 (b) Gifts or other benefits conferred on account of
3933 kinship or other personal, professional or business relationship
3934 independent of the official status of the receiver; or

3935 (c) Trivial benefits incidental to personal,
3936 professional or business contacts and involving no substantial
3937 risk of undermining official impartiality.

3938 (6) **Offering Benefits Prohibited.** No person shall knowingly
3939 confer, or offer or agree to confer, any benefit prohibited by the
3940 foregoing subsections.

3941 (7) **Grade of Offense.** An offense under this section is a
3942 misdemeanor.

3976 **IN OFFICIAL MATTERS**

3977 **SECTION 146.** In this article, unless a different meaning
3978 plainly is required:

3979 (a) The definitions given in Section 138 of this act
3980 apply; and

3981 (b) "Statement" means any representation, but includes
3982 a representation of opinion, belief or other state of mind only if
3983 the representation clearly relates to state of mind apart from or
3984 in addition to any facts which are the subject of the
3985 representation.

3986 **SECTION 147.** (1) **Offense Defined.** A person is guilty of
3987 perjury, a felony of the third degree, if in any official
3988 proceeding he makes a false statement under oath or equivalent
3989 affirmation, or swears or affirms the truth of a statement
3990 previously made, when the statement is material and he does not
3991 believe it to be true.

3992 (2) **Materiality.** Falsification is material, regardless of
3993 the admissibility of the statement under rules of evidence, if it
3994 could have affected the course or outcome of the proceeding. It
3995 is no defense that the declarant mistakenly believed the
3996 falsification to be immaterial. Whether a falsification is
3997 material in a given factual situation is a question of law.

3998 (3) **Irregularities No Defense.** It is not a defense to
3999 prosecution under this section that the oath or affirmation was
4000 administered or taken in an irregular manner or that the declarant
4001 was not competent to make the statement. A document purporting to
4002 be made upon oath or affirmation at any time when the actor
4003 presents it as being so verified shall be deemed to have been duly
4004 sworn or affirmed.

4005 (4) **Retraction.** No person shall be guilty of an offense
4006 under this section if he retracted the falsification in the course
4007 of the proceeding in which it was made before it became manifest

4008 that the falsification was or would be exposed and before the
4009 falsification substantially affected the proceeding.

4010 (5) **Inconsistent Statements.** Where the defendant made
4011 inconsistent statements under oath or equivalent affirmation, both
4012 having been made within the period of the statute of limitations,
4013 the prosecution may proceed by setting forth the inconsistent
4014 statements in a single count alleging in the alternative that one
4015 or the other was false and not believed by the defendant. In such
4016 case it shall not be necessary for the prosecution to prove which
4017 statement was false but only that one or the other was false and
4018 not believed by the defendant to be true.

4019 (6) **Corroboration.** No person shall be convicted of an
4020 offense under this section where proof of falsity rests solely
4021 upon contradiction by testimony of a single person other than the
4022 defendant.

4023 **SECTION 148.** (1) **False Swearing in Official Matters.** A
4024 person makes a false statement under oath or equivalent
4025 affirmation, or swears or affirms the truth of such a statement
4026 previously made, when he does not believe the statement to be
4027 true, is guilty of a misdemeanor if:

4028 (a) The falsification occurs in an official proceeding;
4029 or

4030 (b) The falsification is intended to mislead a public
4031 servant in performing his official function.

4032 (2) **Other False Swearing.** A person who makes a false
4033 statement under oath or equivalent affirmation, or swears or
4034 affirms the truth of such a statement previously made, when he
4035 does not believe the statement to be true, is guilty of a petty
4036 misdemeanor, if the statement is one which is required by law to
4037 be sworn or affirmed before a notary or other person authorized to
4038 administer oaths.

4039 (3) **Perjury Provisions Applicable.** Subsections (3) to (6)
4040 of Section 146 of this act apply to the present section.

4041 **SECTION 149.** (1) **In General.** A person commits a
4042 misdemeanor if, with purpose to mislead a public servant in
4043 performing his official function, he:

4044 (a) Makes any written false statement which he does not
4045 believe to be true; or

4046 (b) Purposely creates a false impression in a written
4047 application for any pecuniary or other benefit, by omitting
4048 information necessary to prevent statements therein from being
4049 misleading; or

4050 (c) Submits or invites reliance on any writing which he
4051 knows to be forged, altered or otherwise lacking in authenticity;
4052 or

4053 (d) Submits or invites reliance on any sample,
4054 specimen, map, boundary mark, or other object which he knows to be
4055 false.

4056 (2) **Statements "Under Penalty."** A person commits a petty
4057 misdemeanor if he makes a written false statement which he does
4058 not believe to be true, on or pursuant to a form bearing notice,
4059 authorized by law, to the effect that false statements made
4060 therein are punishable.

4061 (3) **Perjury Provisions Applicable.** Subsections (3) through
4062 (6) of Section 146 of this act, apply to the present section.

4063 **SECTION 150.** A person who knowingly causes a false alarm of
4064 fire or other emergency to be transmitted to or within any
4065 organization, official or volunteer, for dealing with emergencies
4066 involving danger to life or property commits a misdemeanor.

4067 **SECTION 151.** (1) **Falsely Incriminating Another.** A person
4068 who knowingly gives false information to any law enforcement
4069 officer with purpose to implicate another commits a misdemeanor.

4070 (2) **Fictitious Reports.** A person commits a petty
4071 misdemeanor if he:

4072 (a) Reports to law enforcement authorities an offense
4073 or other incident within their concern knowing that it did not
4074 occur;

4075 (b) Pretends to furnish such authorities with
4076 information relating to an offense or incident when he knows he
4077 has no information relating to such offense or incident.

4078 **SECTION 152.** (1) **Tampering.** A person commits an offense
4079 if, believing that an official proceeding or investigation is
4080 pending or about to be instituted, he attempts to induce or
4081 otherwise cause a witness or informant to:

4082 (a) Testify or inform falsely; or

4083 (b) Withhold any testimony, information, document or
4084 thing; or

4085 (c) Elude legal process summoning him to testify or
4086 supply evidence; or

4087 (d) Absent himself from any proceeding or investigation
4088 to which he has been legally summoned.

4089 The offense is a felony of third degree if the actor employs
4090 force, deception, threat or offer of pecuniary benefit. Otherwise
4091 it is a misdemeanor.

4092 (2) **Retaliation Against Witness or Informant.** A person
4093 commits a misdemeanor if he harms another by any unlawful act in
4094 retaliation for anything lawfully done in the capacity of witness
4095 or informant.

4096 (3) **Witness or Informant Taking Bribe.** A person commits a
4097 felony of the third degree if he solicits, accepts or agrees to
4098 accept any benefit in consideration of his doing any of the things
4099 specified in clauses (a) to (d) of subsection (1).

4100 **SECTION 153.** A person commits a misdemeanor if, believing
4101 that an official proceeding or investigation is pending or about
4102 to be instituted, he:

4103 (a) Alters, destroys, conceals or removes any record,
4104 document or thing with purpose to impair its verity or
4105 availability in such proceeding or investigation; or

4106 (b) Makes, presents or uses any record, document or
4107 thing knowing it to be false and with purpose to mislead a public
4108 servant who is or may be engaged in such proceeding or
4109 investigation.

4110 **SECTION 154.** (1) **Offense Defined.** A person commits an
4111 offense if he:

4112 (a) Knowingly makes a false entry in, or false
4113 alteration of, any record, document or thing belonging to, or
4114 received or kept by, the government for information or record, or
4115 required by law to be kept by others for information of the
4116 government; or

4117 (b) Makes, presents or uses any record, document or
4118 thing knowing it to be false, and with purpose that it be taken as
4119 a genuine part of information or records referred to in paragraph
4120 (a); or

4121 (c) Purposely and unlawfully destroys, conceals,
4122 removes or otherwise impairs the verity or availability of any
4123 such record, document or thing.

4124 (2) **Grading.** An offense under this section is a misdemeanor
4125 unless the actor's purpose is to defraud or injure anyone, in
4126 which case the offense is a felony of the third degree.

4127 **SECTION 155.** A person commits a misdemeanor if he falsely
4128 pretends to hold a position in the public service with purpose to
4129 induce another to submit to such pretended official authority or
4130 otherwise to act in reliance upon that pretense to his prejudice.

4131 ARTICLE 20

4132 **OBSTRUCTING GOVERNMENTAL OPERATIONS; ESCAPES**

4133 **SECTION 156.** In this article, unless another meaning plainly
4134 is required, the definitions given in Section 137 of this act
4135 apply.

4136 SECTION 157. A person commits a misdemeanor if he purposely
4137 obstructs, impairs or perverts the administration of law or other
4138 governmental function by force, violence, physical interference or
4139 obstacle, breach of official duty, or any other unlawful act,
4140 except that this section does not apply to flight by a person
4141 charged with crime, refusal to submit to arrest, failure to
4142 perform a legal duty other than an official duty, or any other
4143 means of avoiding compliance with law without affirmative
4144 interference with governmental functions.

4145 SECTION 158. A person commits a misdemeanor if, for the
4146 purpose of preventing a public servant from effecting a lawful
4147 arrest or discharging any other duty, the person creates a
4148 substantial risk of bodily injury to the public servant or anyone
4149 else, or employs means justifying or requiring substantial force
4150 to overcome the resistance.

4151 SECTION 159. A person commits an offense if, with purpose to
4152 hinder the apprehension, prosecution, conviction or punishment of
4153 another for crime, he:

4154 (a) harbors or conceals the other; or

4155 (b) Provides or aids in providing a weapon,
4156 transportation, disguise or other means of avoiding apprehension
4157 or effecting escape; or

4158 (c) Conceals or destroys evidence of the crime, or
4159 tampers with a witness, informant, document or other source of
4160 information, regardless of its admissibility in evidence; or

4161 (d) Warns the other of impending discovery or
4162 apprehension, except that this paragraph does not apply to a
4163 warning given in connection with an effort to bring another into
4164 compliance with law; or

4165 (e) Volunteers false information to a law enforcement
4166 officer.

4167 The offense is a felony of third degree if the conduct which
4168 the actor knows has been charged or is liable to be charged

4169 against the person aided would constitute a felony of the first or
4170 second degree. Otherwise it is a misdemeanor.

4171 **SECTION 160.** A person commits an offense if he purposely
4172 aids another to accomplish an unlawful object of a crime, as by
4173 safeguarding the proceeds thereof or converting the proceeds into
4174 negotiable funds. The offense is a felony of the third degree if
4175 the principal offense was a felony of the first or second degree.
4176 Otherwise it is a misdemeanor.

4177 **SECTION 161.** A person commits a misdemeanor if he accepts or
4178 agrees to accept any pecuniary benefit in consideration of
4179 refraining from reporting to law enforcement authorities the
4180 commission or suspected commission of any offense or information
4181 relating to an offense. It is an affirmative defense to
4182 prosecution under this section that the pecuniary benefit did not
4183 exceed an amount which the actor believed to be due as restitution
4184 or indemnification for harm caused by the offense.

4185 **SECTION 162.** (1) **Escape.** A person commits an offense if he
4186 unlawfully removes himself from official detention or fails to
4187 return to official detention following temporary leave granted for
4188 a specific purpose or limited period. "Official detention" means
4189 arrest, detention in any facility for custody of persons under
4190 charge or conviction of crime or alleged or found to be
4191 delinquent, detention for extradition or deportation, or any other
4192 detention for law enforcement purposes; but "official detention"
4193 does not include supervision of probation or parole, or constraint
4194 incidental to release on bail.

4195 (2) **Permitting or Facilitating Escape.** A public servant
4196 concerned in detention commits an offense if he knowingly or
4197 recklessly permits an escape. Any person who knowingly causes or
4198 facilitates an escape commits an offense.

4199 (3) **Effect of Legal Irregularity in Detention.** Irregularity
4200 in bringing about or maintaining detention, or lack of
4201 jurisdiction of the committing or detaining authority, shall not

4202 be a defense to prosecution under this section if the escape is
4203 from a prison or other custodial facility or from detention
4204 pursuant to commitment by official proceedings. In the case of
4205 other detentions, irregularity or lack of jurisdiction shall be a
4206 defense only if:

4207 (a) The escape involved no substantial risk of harm to
4208 the person or property of anyone other than the detainee; or

4209 (b) The detaining authority did not act in good faith
4210 under color of law.

4211 (4) **Grading of Offenses.** An offense under this section is a
4212 felony of the third degree where:

4213 (a) The actor was under arrest for or detained on a
4214 charge of felony or following conviction of crime; or

4215 (b) The actor employs force, threat, deadly weapon or
4216 other dangerous instrumentality to effect the escape; or

4217 (c) A public servant concerned in detention of persons
4218 convicted of crime purposely facilitates or permits an escape from
4219 a detention facility.

4220 Otherwise an offense under this section is a misdemeanor.

4221 **SECTION 163.** (1) **Escape Implements.** A person commits a
4222 misdemeanor if he unlawfully introduces within a detention
4223 facility, or unlawfully provides an inmate with, any weapon, tool
4224 or other thing which may be useful for escape. An inmate commits
4225 a misdemeanor if he unlawfully procures, makes, or otherwise
4226 provides himself with, or has in his possession, any such
4227 implement of escape. "Unlawfully" means surreptitiously or
4228 contrary to law, regulation or order of the detaining authority.

4229 (2) **Other Contraband.** A person commits a petty misdemeanor
4230 if he provides an inmate with anything which the actor knows it is
4231 unlawful for the inmate to possess.

4232 **SECTION 164.** A person set at liberty by court order, with
4233 or without bail, upon condition that he will subsequently appear
4234 at a specified time and place, commits a misdemeanor if, without

4235 lawful excuse, he fails to appear at that time and place. The
4236 offense constitutes a felony of the third degree where the
4237 required appearance was to answer to a charge of felony, or for
4238 disposition of any such charge, and the actor took flight or went
4239 into hiding to avoid apprehension, trial or punishment. This
4240 section does not apply to obligations to appear incident to
4241 release under suspended sentence or on probation or parole.

4242 ARTICLE 21

4243 ABUSE OF OFFICE

4244 **SECTION 165.** In this article, unless a different meaning
4245 plainly is required, the definitions given in Section 138 of this
4246 act apply.

4247 **SECTION 166.** A person acting or purporting to act in an
4248 official capacity or taking advantage of such actual or purported
4249 capacity commits a misdemeanor if, knowing that his conduct is
4250 illegal, he:

4251 (a) Subjects another to arrest, detention, search,
4252 seizure, mistreatment, dispossession, assessment, lien or other
4253 infringement of personal or property rights; or

4254 (b) Denies or impedes another in the exercise or
4255 enjoyment of any right, privilege, power or immunity.

4256 **SECTION 167.** A public servant commits a misdemeanor if, in
4257 contemplation of official action by himself or by a governmental
4258 unit with which he is associated, or in reliance on information to
4259 which he has access in his official capacity and which has not
4260 been made public, he:

4261 (a) Acquires a pecuniary interest in any property,
4262 transaction or enterprise which may be affected by such
4263 information or official action; or

4264 (b) Speculates or wagers on the basis of such
4265 information or official action; or

4266 (c) Aids another to do any of the foregoing.

4267 OFFENSES AGAINST PUBLIC ORDER AND DECENCY

ARTICLE 22

RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES

SECTION 168. (1) **Riot.** A person is guilty of riot, a

felony of the third degree, if he participates with two (2) or more others in a course of disorderly conduct:

(a) With purpose to commit or facilitate the commission of a felony or misdemeanor;

(b) With purpose to prevent or coerce official action; or

(c) When the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon.

(2) **Failure of Disorderly Persons to Disperse Upon Official Order.** Where three (3) or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance or alarm, a peace officer or other public servant engaged in executing or enforcing the law may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a misdemeanor.

SECTION 169. (1) **Offense Defined.** A person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(a) Engages in fighting or threatening, or in violent or tumultuous behavior; or

(b) Makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

(c) Creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

"Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the

4301 places included are highways, transport facilities, schools,
4302 prisons, apartment houses, places of business or amusement, or any
4303 neighborhood.

4304 (2) **Grading.** An offense under this section is a petty
4305 misdemeanor if the actor's purpose is to cause substantial harm or
4306 serious inconvenience, or if he persists in disorderly conduct
4307 after reasonable warning or request to desist. Otherwise
4308 disorderly conduct is a violation.

4309 **SECTION 170.** A person is guilty of a misdemeanor if he
4310 initiates or circulates a report or warning of an impending
4311 bombing or other crime or catastrophe, knowing that the report or
4312 warning is false or baseless and that it is likely to cause
4313 evacuation of a building, place of assembly, or facility of public
4314 transport, or to cause public inconvenience or alarm.

4315 **SECTION 171.** A person commits a petty misdemeanor if, with
4316 purpose to harass another, he:

4317 (a) Makes a telephone call without purpose of
4318 legitimate communication; or

4319 (b) Insults, taunts or challenges another in a manner
4320 likely to provoke violent or disorderly response; or

4321 (c) Makes repeated communications anonymously or at
4322 extremely inconvenient hours, or in offensively coarse language;
4323 or

4324 (d) Subjects another to an offensive touching; or

4325 (e) Engages in any other course of alarming conduct
4326 serving no legitimate purpose of the actor.

4327 **SECTION 172.** A person is guilty of an offense if he appears
4328 in any public place manifestly under the influence of alcohol,
4329 narcotics or other drug, not therapeutically administered, to the
4330 degree that he may endanger himself or other persons or property,
4331 or annoy persons in his vicinity. An offense under this section
4332 constitutes a petty misdemeanor if the actor has been convicted

4333 hereunder twice before within a period of one (1) year. Otherwise
4334 the offense constitutes a violation.

4335 SECTION 173. A person commits a violation if he loiters or
4336 prowls in a place, at a time, or in manner not usual for
4337 law-abiding individuals under circumstances that warrant alarm for
4338 the safety of persons or property in the vicinity. Among the
4339 circumstances which may be considered in determining whether such
4340 alarm is warranted is the fact that the actor takes flight upon
4341 appearance of a peace officer, refuses to identify himself, or
4342 manifestly endeavors to conceal himself or any object. Unless
4343 flight by the actor or other circumstance makes it impracticable,
4344 a peace officer shall prior to any arrest for an offense under
4345 this section afford the actor an opportunity to dispel any alarm
4346 which would otherwise be warranted, by requesting him to identify
4347 himself and explain his presence and conduct. No person shall be
4348 convicted of an offense under this section if the peace officer
4349 did not comply with the preceding sentence, or if it appears at
4350 trial that the explanation given by the actor was true and, if
4351 believed by the peace officer at the time, would have dispelled
4352 the alarm.

4353 SECTION 174. (1) A person, who, having no legal privilege
4354 to do so, purposely or recklessly obstructs any highway or other
4355 public passage, whether alone or with others, commits a violation,
4356 or, in case he persists after warning by a law officer, a petty
4357 misdemeanor. "Obstructs" means renders impassable without
4358 unreasonable inconvenience or hazard. No person shall be deemed
4359 guilty of recklessly obstructing in violation of this subsection
4360 solely because of a gathering of persons to hear him speak or
4361 otherwise communicate, or solely because of being a member of such
4362 a gathering.

4363 (2) A person in a gathering commits a violation if he
4364 refuses to obey a reasonable official request or order to move:

4365 (a) To prevent obstruction of a highway or other public
4366 passage; or

4367 (b) To maintain public safety by dispersing those
4368 gathered in dangerous proximity to a fire or other hazard.

4369 An order to move, addressed to a person whose speech or other
4370 lawful behavior attracts an obstructing audience, shall not be
4371 deemed reasonable if the obstruction can be readily remedied by
4372 police control of the size or location of the gathering.

4373 **SECTION 175.** A person commits a misdemeanor if, with purpose
4374 to prevent or disrupt a lawful meeting, procession or gathering,
4375 he does any act tending to obstruct or interfere with it
4376 physically, or makes any utterance, gesture or display designed to
4377 outrage the sensibilities of the group.

4378 **SECTION 176.** A person commits a misdemeanor if he purposely
4379 desecrates any public monument or structure, or place of worship
4380 or burial, or if he purposely desecrates the national flag or any
4381 other object of veneration by the public or a substantial segment
4382 thereof in any public place. "Desecrate" means defacing,
4383 damaging, polluting or otherwise physically mistreating in a way
4384 that the actor knows will outrage the sensibilities of persons
4385 likely to observe or discover his action.

4386 **SECTION 177.** Except as authorized by law, a person who
4387 treats a corpse in a way that he knows would outrage ordinary
4388 family sensibilities commits a misdemeanor.

4389 **SECTION 178.** A person commits a misdemeanor if he purposely
4390 or recklessly:

4391 (a) Subjects any animal to cruel mistreatment; or

4392 (b) Subjects any animal in his custody to cruel
4393 neglect; or

4394 (c) Kills or injures any animal belonging to another
4395 without legal privilege or consent of the owner.

4396 Paragraphs (a) and (b) shall not be deemed applicable to accepted
4397 veterinary practices and activities carried on for scientific
4398 research.

4399 **SECTION 179.** (1) **Unlawful Eavesdropping or Surveillance.** A
4400 person commits a misdemeanor if, except as authorized by law, he:

4401 (a) Trespasses on property with purpose to subject
4402 anyone to eavesdropping or other surveillance in a private place;
4403 or

4404 (b) Installs in any private place, without the consent
4405 of the person or persons entitled to privacy there, any device for
4406 observing, photographing, recording, amplifying or broadcasting
4407 sounds or events in such place, or uses any such unauthorized
4408 installation; or

4409 (c) Installs or uses outside a private place any device
4410 for hearing, recording, amplifying or broadcasting sounds
4411 originating in such place which would not ordinarily be audible or
4412 comprehensible outside, without the consent of the person or
4413 persons entitled to privacy there.

4414 "Private place" means a place where one may reasonably expect to
4415 be safe from casual or hostile intrusion or surveillance, but does
4416 not include a place to which the public or a substantial group
4417 thereof has access.

4418 (2) **Other Breach of Privacy of Messages.** A person commits a
4419 misdemeanor if, except as authorized by law, he:

4420 (a) Intercepts without the consent of the sender or
4421 receiver a message by telephone, telegraph, letter or other means
4422 of communicating privately; but this paragraph does not extend to
4423 (i) overhearing of messages through a regularly installed
4424 instrument on a telephone party line or on an extension, or (ii)
4425 interception by the telephone company or subscriber incident to
4426 enforcement of regulations limiting use of the facilities or
4427 incident to other normal operation and use; or

4428 (b) Divulges without the consent of the sender or
4429 receiver the existence or contents of any such message if the
4430 actor knows that the message was illegally intercepted, or if he
4431 learned of the message in the course of employment with an agency
4432 engaged in transmitting it.

4433 ARTICLE 23

4434 PUBLIC INDECENCY

4435 **SECTION 180.** A person commits a petty misdemeanor if he does
4436 any lewd act which he knows is likely to be observed by others who
4437 would be affronted or alarmed.

4438 **SECTION 181.** (1) **Prostitution.** A person is guilty of
4439 prostitution, a petty misdemeanor, if he or she:

4440 (a) Is an inmate of a house of prostitution or
4441 otherwise engages in sexual activity as a business; or

4442 (b) Loiters in or within view of any public place for
4443 the purpose of being hired to engage in sexual activity. "Sexual
4444 activity" includes homosexual and other deviate sexual relations.
4445 A "house of prostitution" is any place where prostitution or
4446 promotion of prostitution is regularly carried on by one person
4447 under the control, management or supervision of another. An
4448 "inmate" is a person who engages in prostitution in or through the
4449 agency of a house of prostitution. "Public place" means any place
4450 to which the public or any substantial group thereof has access.

4451 (2) **Promoting Prostitution.** A person who knowingly promotes
4452 prostitution of another commits a misdemeanor or felony as
4453 provided in subsection (3). The following acts shall, without
4454 limitation of the foregoing, constitute promoting prostitution:

4455 (a) Owning, controlling, managing, supervising or
4456 otherwise keeping, alone or in association with others, a house of
4457 prostitution or a prostitution business; or

4458 (b) Procuring an inmate for a house of prostitution or
4459 a place in a house of prostitution for one who would be an inmate;
4460 or

4461 (c) Encouraging, inducing, or otherwise purposely
4462 causing another to become or remain a prostitute; or
4463 (d) Soliciting a person to patronize a prostitute; or
4464 (e) Procuring a prostitute for a patron; or
4465 (f) Transporting a person into or within this state
4466 with purpose to promote that person's engaging in prostitution, or
4467 procuring or paying for transportation with that purpose; or
4468 (g) Leasing or otherwise permitting a place controlled
4469 by the actor, alone or in association with others, to be regularly
4470 used for prostitution or the promotion of prostitution, or failure
4471 to make reasonable effort to abate such use by ejecting the
4472 tenant, notifying law enforcement authorities, or other legally
4473 available means; or
4474 (h) Soliciting, receiving, or agreeing to receive any
4475 benefit for doing or agreeing to do anything forbidden by this
4476 subsection.

4477 (3) **Grading of Offenses Under Subsection (2).** An offense
4478 under subsection (2) constitutes a felony of the third degree if:

4479 (a) The offense falls within paragraph (a), (b) or (c)
4480 of subsection (2); or

4481 (b) The actor compels another to engage in or promote
4482 prostitution; or

4483 (c) The actor promotes prostitution of a child under
4484 sixteen (16), whether or not he is aware of the child's age; or

4485 (d) The actor promotes prostitution of his wife, child,
4486 ward or any person for whose care, protection or support he is
4487 responsible. Otherwise the offense is a misdemeanor.

4488 (4) **Presumption from Living off Prostitutes.** A person,
4489 other than the prostitute or the prostitute's minor child or other
4490 legal dependent incapable of self-support, who is supported in
4491 whole or substantial part by the proceeds of prostitution is
4492 presumed to be knowingly promoting prostitution in violation of
4493 subsection (2).

4494 (5) **Patronizing Prostitutes.** A person commits a violation
4495 if he hires a prostitute to engage in sexual activity with him, or
4496 if he enters or remains in a house of prostitution for the purpose
4497 of engaging in sexual activity.

4498 (6) **Evidence.** On the issue whether a place is a house of
4499 prostitution the following shall be admissible evidence: its
4500 general repute; the repute of the persons who reside in or
4501 frequent the place; the frequency, timing and duration of visits
4502 by nonresidents. Testimony of a person against his spouse shall
4503 be admissible to prove offenses under this section.

4504 **SECTION 182.** A person is guilty of a petty misdemeanor if he
4505 loiters in or near any public place for the purpose of soliciting
4506 or being solicited to engage in deviate sexual relations.

4507 **SECTION 183.** (1) **Obscene Defined.** Material is obscene if,
4508 considered as a whole, its predominant appeal is to prurient
4509 interest, that is, a shameful or morbid interest, in nudity, sex
4510 or excretion, and if in addition it goes substantially beyond
4511 customary limits of candor in describing or representing such
4512 matters. Predominant appeal shall be judged with reference to
4513 ordinary adults unless it appears from the character of the
4514 material or the circumstances of its dissemination to be designed
4515 for children or other specially susceptible audience. Undeveloped
4516 photographs, molds, printing plats, and the like, shall be deemed
4517 obscene notwithstanding that processing or other acts may be
4518 required to make the obscenity patent or to disseminate it.

4519 (2) **Offenses.** Subject to the affirmative defense provided
4520 in subsection (3), a person commits a misdemeanor if he knowingly
4521 or recklessly:

4522 (a) Sells, delivers or provides, or offers or agrees to
4523 sell, deliver or provide, any obscene writing, picture, record or
4524 other representation or embodiment of the obscene; or

4525 (b) Presents or directs an obscene play, dance or
4526 performance, or participates in that portion thereof which makes
4527 it obscene; or

4528 (c) Publishes, exhibits or otherwise makes available
4529 any obscene material; or

4530 (d) Possesses any obscene material for purposes of sale
4531 or other commercial dissemination; or

4532 (e) Sells, advertises or otherwise commercially
4533 disseminates material, whether or not obscene, by representing or
4534 suggesting that it is obscene. A person who disseminates or
4535 possesses obscene material in the course of his business is
4536 presumed to do so knowingly or recklessly.

4537 (3) **Justifiable and NonCommercial Private Dissemination.** It
4538 is an affirmative defense to prosecution under this section that
4539 dissemination was restricted to:

4540 (a) Institutions or persons having scientific,
4541 educational, governmental or other similar justification for
4542 possessing obscene material; or

4543 (b) Noncommercial dissemination to personal associates
4544 of the actor.

4545 (4) **Evidence; Adjudication of Obscenity.** In any prosecution
4546 under this section evidence shall be admissible to show:

4547 (a) The character of the audience for which the
4548 material was designed or to which it was directed;

4549 (b) What the predominant appeal of the material would
4550 be for ordinary adults or any special audience to which it was
4551 directed, and what effect, if any, it would probably have on
4552 conduct of such people;

4553 (c) Artistic, literary, scientific, educational or
4554 other merits of the material;

4555 (d) The degree of public acceptance of the material in
4556 the United States;

4557 (e) Appeal to prurient interest, or absence thereof, in
4558 advertising or other promotion of the material; and

4559 (f) The good repute of the author, creator, publisher
4560 or other person from whom the material originated.

4561 Expert testimony and testimony of the author, creator, publisher
4562 or other person from whom the material originated, relating to
4563 factors entering into the determination of the issue of obscenity,
4564 shall be admissible. The court shall dismiss a prosecution for
4565 obscenity if it is satisfied that the material is not obscene.

4566 ARTICLE 24

4567 **SUSPENSION OF SENTENCE; PROBATION**

4568 **SECTION 184.** (1) When the court suspends the imposition of
4569 sentence on a person who has been convicted of a crime or
4570 sentences him to be placed on probation, it shall attach such
4571 reasonable conditions, authorized by this Section, as it deems
4572 necessary to insure that he will lead a law-abiding life or likely
4573 to assist him to do so.

4574 (2) The court, as a condition of its order, may require the
4575 defendant:

4576 (a) To meet his family responsibilities;

4577 (b) To devote himself to a specific employment or
4578 occupation;

4579 (c) To undergo available medical or psychiatric
4580 treatment and to enter and remain in a specified institution, when
4581 required for that purpose;

4582 (d) To pursue a prescribed secular course of study or
4583 vocational training;

4584 (e) To attend or reside in a facility established for
4585 the instruction, recreation or residence of persons on probation;

4586 (f) To refrain from frequenting unlawful or
4587 disreputable places or consorting with disreputable persons;

4588 (g) To have in his possession no firearm or other
4589 dangerous weapon unless granted written permission;

4590 (h) To make restitution of the fruits of his crime or
4591 to make reparation, in an amount he can afford to pay, for the
4592 loss or damage caused thereby;

4593 (i) To remain within the jurisdiction of the court and
4594 to notify the court or the probation officer of any change in his
4595 address or his employment;

4596 (j) To report as directed to the court or the probation
4597 officer and to permit the officer to visit his home;

4598 (k) To post a bond, with or without surety, conditioned
4599 on the performance of any of the foregoing obligations;

4600 (l) To satisfy any other conditions reasonably related
4601 to the rehabilitation of the defendant and not unduly restrictive
4602 of his liberty or incompatible with his freedom of conscience.

4603 (3) When the court sentences a person who has been convicted
4604 of a felony or misdemeanor to be placed on probation, it may
4605 require him to serve a term of imprisonment not exceeding thirty
4606 (30) days as an additional condition of its order. The term of
4607 imprisonment imposed hereunder shall be treated as part of the
4608 term of probation, and in the event of a sentence of imprisonment
4609 upon the revocation of probation, the term of imprisonment served
4610 hereunder shall not be credited toward service of such subsequent
4611 sentence.

4612 (4) The defendant shall be given a copy of this article and
4613 written notice of any requirements imposed pursuant to this
4614 section, stated with sufficient specificity to enable him to guide
4615 himself accordingly.

4616 **SECTION 185.** (1) When the court has suspended sentence or
4617 has sentenced a defendant to be placed on probation, the period of
4618 the suspension or probation shall be five (5) years upon
4619 conviction of a felony or two (2) years upon conviction of a
4620 misdemeanor or a petty misdemeanor, unless the defendant is sooner
4621 discharged by order of the court. The court, on application of a
4622 probation officer or of the defendant, or on its own motion, may

4623 discharge the defendant at any time. On conviction of a
4624 violation, a suspended sentence constitutes an unconditional
4625 discharge.

4626 (2) During the period of the suspension or probation, the
4627 court, on application of a probation officer or of the defendant,
4628 or on its own motion, may modify the requirements imposed on the
4629 defendant or add further requirements authorized by Section 184 of
4630 this act. The court shall eliminate any requirement that imposes
4631 an unreasonable burden on the defendant.

4632 (3) Upon the termination of the period of suspension or
4633 probation or the earlier discharge of the defendant, the defendant
4634 shall be relieved of any obligations imposed by the order of the
4635 court and shall have satisfied his sentence for the crime.

4636 **SECTION 186.** (1) At any time before the discharge of the
4637 defendant or the termination of the period of suspension or
4638 probation:

4639 (a) The court may summon the defendant to appear before
4640 it or may issue a warrant for his arrest;

4641 (b) A probation or peace officer, having probable cause
4642 to believe that the defendant has failed to comply with a
4643 requirement imposed as a condition of the order or that he has
4644 committed another crime, may arrest him without a warrant;

4645 (c) The court, if there is probable cause to believe
4646 that the defendant has committed another crime or if he has been
4647 held to answer therefor, may commit him without bail, pending a
4648 determination of the charge by the court having jurisdiction
4649 thereof;

4650 (d) The court, if satisfied that the defendant has
4651 inexcusably failed to comply with a substantial requirement
4652 imposed as a condition of the order or if he has been convicted of
4653 another crime, may revoke the suspension or probation and sentence
4654 or resentence the defendant, as provided in this section.

4655 (2) When the court revokes a suspension or probation, it may
4656 impose on the defendant any sentence that might have been imposed
4657 originally for the crime of which he was convicted, except that
4658 the defendant shall not be sentenced to imprisonment unless:

4659 (a) He has been convicted of another crime; or

4660 (b) His conduct indicates that his continued liberty
4661 involves undue risk that he will commit another crime; or

4662 (c) Such disposition is essential to vindicate the
4663 authority of the court.

4664 **SECTION 187.** The court shall not revoke a suspension or
4665 probation or increase the requirements imposed thereby on the
4666 defendant except after a hearing upon written notice to the
4667 defendant of the grounds on which such action is proposed. The
4668 defendant shall have the right to hear and controvert the evidence
4669 against him, to offer evidence in his defense and to be
4670 represented by counsel.

4671 **SECTION 188.** (1) When the court has suspended sentence or
4672 has sentenced the defendant to be placed on probation and the
4673 defendant has fully complied with the requirements imposed as a
4674 condition of such order and has satisfied the sentence, the Court
4675 may order that so long as the defendant is not convicted of
4676 another crime, the judgment shall not constitute a conviction for
4677 the purpose of any disqualification or disability imposed by law
4678 upon conviction of a crime.

4679 (2) Proof of a conviction as relevant evidence upon the
4680 trial or determination of any issue or for the purpose of
4681 impeaching the defendant as a witness is not a disqualification or
4682 disability within the meaning of this section.

4683 **SECTION 189.** A judgment suspending sentence or sentencing a
4684 defendant to be placed on probation shall be deemed tentative, to
4685 the extent provided in this article, but for all other purposes
4686 shall constitute a final judgment.

4687 ARTICLE 25

4688

FINES

4689 SECTION 190. (1) When a defendant is sentenced to pay a
4690 fine, the court may grant permission for the payment to be made
4691 within a specified period of time or in specified installments.
4692 If no such permission is embodied in the sentence, the fine shall
4693 be payable forthwith.

4694 (2) When a defendant sentenced to pay a fine is also
4695 sentenced to probation, the court may make the payment of the fine
4696 a condition of probation.

4697 (3) The defendant shall pay a fine or any installment
4698 thereof to the court. In the event of default in payment, such
4699 agency shall take appropriate action for its collection.

4700 (4) Unless otherwise provided by law, all fines collected
4701 shall be paid over to the state and shall become part of the
4702 general funds of the State and shall be subject to general
4703 appropriation.

4704 SECTION 191. (1) When a defendant sentenced to pay a fine
4705 defaults in the payment thereof or of any installment, the court,
4706 upon the motion of the state or upon its own motion, may require
4707 him to show cause why his default should not be treated as
4708 contumacious and may issue a summons or a warrant of arrest for
4709 his appearance, unless the defendant shows that his default was
4710 not attributable to a willful refusal to obey the order of the
4711 court, or to a failure on his part to make a good faith effort to
4712 obtain the funds required for the payment, the court shall find
4713 that his default was contumacious and may order him committed
4714 unless the fine or a specified part thereof is paid. The term of
4715 imprisonment for such contumacious nonpayment of the fine shall be
4716 specified in the order of commitment and shall not exceed one day
4717 for each Five Dollars (\$5.00) of the fine, thirty (30) days if the
4718 fine was imposed upon conviction of a violation or a petty
4719 misdemeanor or one (1) year in any other case, whichever is the
4720 shorter period. When a fine is imposed on a corporation or an

4721 unincorporated association, it is the duty of the person or
4722 persons authorized to make disbursements from the assets of the
4723 corporation or association to pay it from such assets and their
4724 failure so to do may be held contumacious under this subsection.
4725 A person committed for nonpayment of a fine shall be given credit
4726 towards its payment for each day of imprisonment, at the rate
4727 specified in the order of commitment.

4728 (2) If it appears that the defendant's default in the
4729 payment of a fine is not contumacious, the court may make an order
4730 allowing the defendant additional time for payment, reducing the
4731 amount thereof or of each installment, or revoking the fine or the
4732 unpaid portion thereof in whole or in part.

4733 (3) Upon any default in the payment of a fine or any
4734 installment thereof, execution may be levied and such other
4735 measures may be taken for the collection of the fine or the unpaid
4736 balance thereof as are authorized for the collection of an unpaid
4737 civil judgment entered against the defendant in an action on a
4738 debt. The levy of execution for the collection of a fine shall
4739 not discharge a defendant committed to imprisonment for nonpayment
4740 of the fine until the amount of the fine has actually been
4741 collected.

4742 **SECTION 192.** A defendant who has been sentenced to pay a
4743 fine and who is not in contumacious default in the payment thereof
4744 may at any time petition the court which sentenced him for a
4745 revocation of the fine or of any unpaid portion thereof. If it
4746 appears to the satisfaction of the court that the circumstances
4747 which warranted the imposition of the fine have changed, or that
4748 it would otherwise be unjust to require payment, the court may
4749 revoke the fine or the unpaid portion thereof in whole or in part.

ARTICLE 26

SHORT-TERM IMPRISONMENT

4752 **SECTION 193.** (1) Within the appropriation allotted
4753 therefor, the several counties, cities and the Department of

4754 Corrections may construct, equip and maintain suitable buildings,
4755 structures and facilities for the operation and for the necessary
4756 expansion and diversification of local short-term institutions,
4757 including lockups, jails, houses of correction, work farms and
4758 such other institutions as may be required for the following
4759 purposes:

4760 (a) The custody, control, correctional treatment and
4761 rehabilitation of persons sentenced or committed to imprisonment
4762 for a fixed term of one (1) year or less;

4763 (b) The custody, control and temporary detention of
4764 persons committed to the Department of Corrections, until they are
4765 removed to the reception center or to another institution in the
4766 department;

4767 (c) The detention of persons charged with crime and
4768 committed for hearing or for trial;

4769 (d) The detention of persons committed to secure their
4770 attendance as witnesses, and for other detentions authorized by
4771 law.

4772 (2) The Commissioner of the Department of Corrections shall
4773 annually review, on the basis of visitation, inspection and
4774 reports pursuant to Section 248 of this act, the adequacy of the
4775 institutions for short-term imprisonment in the several counties,
4776 cities and other political subdivisions of the state in the light
4777 of the number of persons committed thereto, the physical
4778 facilities thereof and programs conducted therein. No later than
4779 his next annual report, the commissioner shall report on any
4780 inadequacies of such facilities, including his recommendations for
4781 the alteration or expansion of existing institutions, for the
4782 construction of new institutions, for the combination of two (2)
4783 or more local institutions of the same or of different political
4784 subdivisions of the state, or for such other measures to meet the
4785 situation as may be appropriate. In making his recommendations,
4786 the commissioner may indicate whether, in his opinion, the

4787 alteration, expansion or new construction can best be undertaken
4788 by the political subdivisions concerned, or by the Department of
4789 Corrections.

4790 (3) In reviewing the adequacy of the institutions for
4791 short-term imprisonment, the Commissioner of the Department of
4792 Corrections shall consider whether the facilities available in the
4793 several political subdivisions of the State afford adequate
4794 opportunity for the segregation and classification of prisoners,
4795 for the isolation and treatment of ill prisoners, for the
4796 treatment of alcoholic and drug-addicted prisoners, for
4797 diversified security and custody, and for opportunities for
4798 vocational and rehabilitative training.

4799 (4) Upon the recommendation or with the approval of the
4800 Commissioner of the Department of Corrections, counties, cities,
4801 and other political subdivisions of the state having institutions
4802 for short-term imprisonment may establish joint institutions or
4803 combine two (2) or more existing facilities for short-term
4804 imprisonment, and may make such agreements for the sharing of the
4805 costs of construction and maintenance as may be authorized by law.

4806 (5) No county, city, or other political subdivision of the
4807 state shall construct or establish an institution for short-term
4808 imprisonment, unless the plans for the establishment and
4809 construction of such institution are approved by the Commissioner
4810 of the Department of Corrections.

4811 **SECTION 194.** (1) The Warden, or other administrative head
4812 of an institution for short-term imprisonment, shall establish and
4813 maintain, in accordance with the regulations of the Department of
4814 Corrections, a central file in the institution containing an
4815 individual file for each prisoner. Each prisoner's file shall as
4816 far as practicable include: (a) his admission summary; (b) his
4817 pre-sentence investigation report, if any; (c) the official
4818 records of his conviction and commitment, as well as earlier
4819 criminal records, if any; (d) progress reports from treatment and

4820 custodial staff; (e) reports of his disciplinary infractions and
4821 of their disposition; and (f) other pertinent data concerning his
4822 background, conduct, associations and family relationships. The
4823 content of the prisoners' files shall be confidential and shall
4824 not be subject to public inspection except by court order for good
4825 cause shown and shall not be accessible to prisoners in the
4826 institution.

4827 (2) The governing body of each county, city or other
4828 political subdivision of the state having one or more institutions
4829 for short-term imprisonment shall appoint a classification
4830 committee consisting of five (5) members of the institutional
4831 staffs and of qualified citizens of the county, city or other
4832 political subdivision. If a physician has been appointed to serve
4833 the institutions, he shall be an ex officio member of the
4834 committee. All committee members shall serve without compensation
4835 but shall be paid their necessary travel expenses and per diem as
4836 provided by law.

4837 (3) As soon as practicable after a prisoner who has been
4838 sentenced to a definite term of thirty (30) days or more is
4839 received in the institution, and no later than the expiration of
4840 the first third of his term, the classification committee shall
4841 study his file and interview him, and shall aid the Warden or
4842 other administrative head of the institution in determining the
4843 prisoner's program of treatment, training, employment, care and
4844 custody. The classification committee may also recommend the
4845 transfer of the prisoner to another institution which in its
4846 opinion is more suitable for him.

4847 (4) The Warden or other administrative head of the
4848 institution may, on his own motion or upon the recommendation of
4849 the classification committee, apply to the court for an order to
4850 transfer to prisoner to another institution for short-term
4851 imprisonment, within or outside of the county, city or other
4852 political subdivision of the state.

4853 SECTION 195. (1) In institutions for short-term
4854 imprisonment the following groups shall be segregated for each
4855 other:

4856 (a) Female prisoners from male prisoners; and

4857 (b) Prisoners under the age of twenty-two (22) from
4858 older prisoners; and

4859 (c) Persons detained for hearing or trial from
4860 prisoners under sentence of imprisonment or committed for
4861 contumacious default in the payment of fines; and

4862 (d) Persons detained for hearing or trial or under
4863 sentence from material witnesses and other persons detained under
4864 civil commitment.

4865 (2) When an institutional physician finds that a prisoner
4866 suffers from a physical disease or defect, or when an
4867 institutional physician or psychologist finds that a prisoner
4868 suffers from a mental disease or defect, the Warden or other
4869 administrative head may order such prisoner to be segregated from
4870 other prisoners, and if the physician or psychologist, as the case
4871 may be, is of the opinion that he cannot be given proper treatment
4872 at the institution, the Warden or other administrative head may
4873 transfer him to another institution in the county, city or other
4874 political subdivision of the state where proper treatment is
4875 available, or to a hospital, if any, operated by the county, city
4876 or other political subdivision of the state if such hospital has
4877 adequate facilities, including detention facilities when
4878 necessary, to receive and treat the prisoner. If proper treatment
4879 or facilities are not available in an institution or a hospital
4880 operated by the county, city, or other political subdivision of
4881 the state the Warden or other administrative head may transfer him
4882 to an institution or hospital operated by another county, city or
4883 other political subdivision of the state, where such treatment and
4884 facilities are available, if such hospital or institution is ready
4885 to receive him, under such arrangements for reimbursement of costs

4886 as may be authorized by law. The Warden or other administrative
4887 head may request the Commissioner of the Department of Corrections
4888 to permit such prisoner to be transferred for examination, study
4889 and treatment to the medical-correctional facility, if any, or to
4890 another institution in the department where proper treatment is
4891 available. The Commissioner of the Department of Corrections
4892 shall permit such transfer whenever such institutions in the
4893 department have available room to receive the prisoner.

4894 (3) When an institutional physician finds upon examination
4895 that a prisoner suffers from a physical disease or defect that
4896 cannot, in his opinion, be properly treated in any institution or
4897 hospital of the county, city or other political subdivision of the
4898 state or of another county, city or other subdivision of the
4899 state, or in the Department of Corrections, such prisoner, upon
4900 the direction of the Warden or other administrative head and with
4901 the approval of the Commissioner of the Department of Corrections,
4902 may receive treatment in, or may be transferred to, for the
4903 purpose of receiving treatment in, any other available hospital.
4904 The Warden or other administrative head, in accordance with
4905 regulations of the Department of Corrections, shall make
4906 appropriate arrangements with other public or private agencies for
4907 the transportation to, and for the care, custody and security of
4908 the prisoner in such hospital. While receiving treatment in such
4909 hospital, the prisoner shall remain subject to the jurisdiction
4910 and custody of the institution to which he was committed, and
4911 shall be returned thereto when, prior to the expiration of his
4912 sentence, such hospital treatment is no longer necessary.

4913 (4) When two (2) psychiatrists approved by the Department of
4914 Health find upon examination that a prisoner suffers from a mental
4915 disease or defect that cannot, in their opinion, be properly
4916 treated in any institution in the Department of corrections, such
4917 prisoner, upon the direction of the Warden or other administrative
4918 head and with the approval of the Commissioner of the Department

4919 of Corrections, may be transferred for treatment, with the
4920 approval of the Department of Health, to a psychiatric facility in
4921 such department. The Warden or other administrative head, in
4922 accordance with the regulations of the Department of Corrections,
4923 shall make appropriate arrangements with the Department of Health
4924 for the transportation to, and for the custody and security of the
4925 prisoner in such psychiatric facility. A prisoner receiving
4926 treatment in such a psychiatric facility shall remain subject to
4927 the jurisdiction and custody of the institution to which he was
4928 committed, and shall be returned thereto when, prior to the
4929 expiration of his sentence, treatment in such facility is no
4930 longer necessary. A prisoner receiving treatment in a psychiatric
4931 facility in the Department of Health who continues in need of
4932 treatment at the time of his release or discharge shall be dealt
4933 with in accordance with subsection (5) of this section.

4934 (5) When two (2) psychiatrists approved by the Department of
4935 Health find upon examination that a prisoner about to be
4936 discharged from an institution suffers from a mental disease or
4937 defect of such a nature that his release or discharge will
4938 endanger the public safety or the safety of the prisoner, the
4939 Warden or other administrative head, with the approval of the
4940 Commissioner of the Department of Corrections, shall transfer him
4941 to, or if he has already been transferred, permit him to remain
4942 in, the Department of Health to be dealt with in accordance with
4943 the law applicable to the civil commitment and detention of
4944 persons suffering from such disease or defect.

4945 **SECTION 196.** (1) Upon admission to a facility for
4946 short-term imprisonment, each prisoner shall be given a physical
4947 examination, and if he is suspected of having a communicable
4948 disease, he shall be quarantined until he is known to be free from
4949 such disease. Each prisoner shall receive such medical and dental
4950 care as may be necessary during his period of commitment, but at

4951 his request, he may be permitted to provide such care for himself
4952 at his own expense.

4953 (2) Each prisoner shall be adequately fed and clothed in
4954 accordance with regulations of the Department of Corrections. No
4955 prisoner shall be required to wear stripes or other degrading
4956 apparel.

4957 **SECTION 197.** The Warden or other administrative head of an
4958 institution for short-term imprisonment shall establish, subject
4959 to regulation of the Department of Corrections, an appropriate
4960 program for his institution, designed as far as practicable to
4961 prepare and assist each prisoner to assume his responsibilities
4962 and to conform to the requirements of law. In developing such a
4963 program, the Warden or other administrative head shall seek to
4964 make available to each prisoner capable of benefiting therefrom
4965 academic or vocational training, participation in productive work,
4966 religious and recreational activities and such therapeutic
4967 measures as are practicable. No prisoner shall be ordered or
4968 compelled, however, to participate in religious activities.

4969 **SECTION 198.** (1) The Warden or other administrative head of
4970 each correctional institution shall be responsible for the
4971 discipline, control and safe custody of the prisoners therein. No
4972 prisoner shall be punished except upon the order of the Warden or
4973 other administrative head of the institution or of a deputy
4974 designated by him for the purpose; nor shall any punishment be
4975 imposed otherwise that in accordance with the provisions of this
4976 section. The right to punish or to inflict punishment shall not
4977 be delegated to any prisoner or group of prisoners and no Warden
4978 or other administrative head shall permit any such prisoner or
4979 group of prisoners to assume authority over any other prisoner or
4980 group of prisoners.

4981 (2) Except in flagrant or serious cases, punishment for a
4982 breach of discipline shall consist of deprivation of privileges.
4983 In case of assault, escape, or attempt to escape, or other serious

4984 or flagrant breach of discipline, the Warden or other
4985 administrative head may order that a prisoner's reduction of term
4986 for good behavior in accordance with Section 200 of this act be
4987 forfeited. For serious or flagrant breach of discipline, the
4988 Warden or other administrative head may confine the prisoner, in
4989 accordance with the regulations of the Department of Corrections,
4990 to a disciplinary cell for a period not to exceed ten (10) days,
4991 and may order that the prisoner, during all or part of the period
4992 of such solitary confinement, be put on a monotonous but adequate
4993 and healthful diet. A prisoner in solitary confinement shall be
4994 visited by a physician at least once every twenty-four (24) hours.

4995 (3) No cruel, inhuman or corporal punishment shall be used
4996 on any prisoner, nor is the use of force on any prisoner
4997 justifiable except as provided by this act and the rules and
4998 regulations of the Department of Corrections consistent therewith.

4999 (4) The Warden or other administrative head of an
5000 institution shall maintain a record of breaches of rules, of the
5001 disposition of each case, and of the punishment, if any, for each
5002 such breach. Each breach of the rules by a prisoner shall be
5003 entered in his file, together with the disposition or punishment
5004 therefor.

5005 **SECTION 199.** (1) To establish good habits of work and
5006 responsibility, for the vocational training of prisoners, and to
5007 reduce the cost of institutional operation, prisoners shall be
5008 employed so far as possible in constructive and diversified
5009 activities in the production of goods, services and foodstuffs to
5010 maintain the institution and its inmates, for the use of the
5011 county, city or other political subdivision of the state, and for
5012 other purposes expressly authorized by law. To accomplish these
5013 purposes, the Warden or other administrative head, with the
5014 approval of the Commissioner of the Department of Corrections,
5015 shall establish and maintain work programs, including, to the
5016 extent practicable, prison industries and prison farms in his

5017 institution, and may enter into arrangements with the departments
5018 of the state, or of the county, city or other political
5019 subdivision of the state, for the employment of prisoners in the
5020 improvement of public works and ways, and in the improvement and
5021 conservation of the natural resources owned by the state.

5022 (2) No prisoner shall be required to engage in excessive
5023 labor, and no prisoner shall be required to perform any work for
5024 which he is declared unfit by the institutional physician.

5025 (3) The Commissioner of the Department of Corrections shall
5026 make rules and regulations governing the hours and conditions of
5027 labor of prisoners in correctional institutions of the counties,
5028 cities or other political subdivision of the state and the rates
5029 of prisoners' compensation for employment. In determining the
5030 rates of compensation, such regulations may take into
5031 consideration the quantity and quality of the work performed by a
5032 prisoner, whether or not such work was performed during regular
5033 working hours, the skill required for its performance, as well as
5034 the economic value of similar work outside of correctional
5035 institutions. Prisoners' wage payments shall be set aside by the
5036 Warden or other administrative head in a separate fund. The
5037 regulations may provide for the making of deductions from
5038 prisoners' wages to defray part or all of the cost of prisoner
5039 maintenance, but a sufficient amount shall remain after such
5040 deduction to enable the prisoner to contribute to the support of
5041 his dependents, if any, to make necessary purchases from the
5042 commissary, and to set aside sums to be paid to him at the time of
5043 his release from the institution.

5044 (4) The labor or time of a prisoner shall not be sold,
5045 contracted or hired out, but prisoners may work for other
5046 departments of the state or of the county, city or other political
5047 subdivision of the state in accordance with arrangements made
5048 pursuant to subsection (1) of this section.

5049 (5) All departments and agencies of the county, city or
5050 other political subdivision of the state and institutions and
5051 agencies which are supported in whole or in part by such political
5052 subdivision, shall purchase or draw from the correctional
5053 institution all articles and products required by them which are
5054 produced or manufactured by prison labor in such correctional
5055 institutions, unless excepted from this requirement by the
5056 appropriate authority of the county, city or other political
5057 subdivision of the state in accordance with rules and regulations
5058 of such authority to carry out the purposes of this subsection.
5059 Any surplus articles and products not so purchased shall be
5060 disposed of to the departments and agencies of the state and of
5061 other counties, cities or other political subdivisions of the
5062 state. The Governor or other appropriate authority may, by rule
5063 or regulations, provide for the manner in which standards and
5064 qualifications for such articles and products shall be set, for
5065 the manner in which the needs of departments, agencies and
5066 institutions of the state and its political subdivisions shall be
5067 estimated in advance, for the manner in which the price for such
5068 articles and products shall be determined, and for the manner in
5069 which purchases shall be made and payment credited.

5070 (6) Within the appropriation allotted therefor, the Warden
5071 or other administrative head shall make appropriate arrangements
5072 for the compensation of prisoners for damages from injuries
5073 arising out of their employment.

5074 **SECTION 200.** For good behavior and faithful performance of
5075 duties, the term of imprisonment of a prisoner sentenced or
5076 committed for a definite term of more than thirty (30) days shall
5077 be reduced by five (5) days for each month of such term. Such
5078 reductions of terms may be forfeited, withheld or restored by the
5079 Warden or other administrative head of the institution, in
5080 accordance with the regulations of the Department of Corrections.

5081 SECTION 201. (1) When a defendant is sentenced or committed
5082 for a fixed term of one (1) year or less, the court may in its
5083 order grant him the privilege of leaving the institution during
5084 necessary and reasonable hours for any of the following purposes:

5085 (a) To work at his employment;

5086 (b) To seek employment;

5087 (c) To conduct his own business or to engage in other
5088 self-employment, including, in the case of a woman, housekeeping
5089 and attending to the needs of her family;

5090 (d) To attend an educational institution;

5091 (e) To obtain medical treatment;

5092 (f) To devote time to any other purpose approved by the
5093 court.

5094 (2) Whenever a prisoner who has been granted the privilege
5095 of leaving the institution under this section is not engaged in
5096 the activity for which such leave is granted, he shall be confined
5097 in the institution.

5098 (3) A prisoner sentenced to ordinary confinement may
5099 petition the court at any time after sentence for the privilege of
5100 leaving the institution under this section and may renew his
5101 petition in the discretion the court. The court may withdraw the
5102 privilege at any time by order entered with or without notice.

5103 (4) If the prisoner has been granted permission to leave the
5104 institution to seek or take employment, the court's probation
5105 department shall assist him in obtaining suitable employment.
5106 Employment shall not be deemed suitable if the wages or working
5107 conditions or other circumstances present a danger of exploitation
5108 or of interference in a labor dispute in the establishment in
5109 which the prisoner would be employed.

5110 (5) If a prisoner is employed for wages or salary, the
5111 Warden or other administrative head shall collect the same, or
5112 shall require the prisoner to turn over his wages or salary in
5113 full when received, and shall deposit the same in a trust account

5114 and shall keep a ledger showing the status of the account of each
5115 prisoner. Earnings levied upon pursuant to writ of attachment or
5116 execution or in other lawful manner shall not be collected
5117 hereunder, but when the Warden or other administrative head has
5118 requested transmittal of earnings prior to levy, such request
5119 shall have priority. When an employer transmits such earnings to
5120 the Warden or other administrative head pursuant to this
5121 subsection he shall have no liability to the prisoner for such
5122 earnings. From such earnings the probation service shall pay the
5123 prisoner's board and personal expenses both inside and outside the
5124 institution, shall deduct so much of the costs of administration
5125 of this section as is allocable to such prisoner, and shall deduct
5126 installments on fines, if any, and, to the extent directed by the
5127 court, shall pay the support of the prisoner's dependents. If
5128 sufficient funds are available after making the foregoing
5129 payments, the Warden or other administrative head may, with the
5130 consent of the prisoner, pay, in whole or in part, any unpaid
5131 debts of the prisoner. Any balance shall be retained, and shall
5132 be paid to the prisoner at the time of his discharge.

5133 (6) A prisoner who is serving his sentence pursuant to this
5134 section shall be eligible for a reduction of his term for good
5135 behavior and faithful performance of duties in accordance with
5136 Section 200 of this act in the same manner as if he had served his
5137 term in ordinary confinement.

5138 (7) The Warden or other administrative head may deny the
5139 prisoner the exercise of this privilege to leave the institution
5140 for a period not to exceed five (5) days for any breach of
5141 discipline or other violation of regulations.

5142 (8) The court shall not make an order granting the privilege
5143 of leaving the institution under this section unless it is
5144 satisfied the Warden or other administrative head has certified
5145 that there are adequate facilities for the administration of such

5179 (3) Reception classification boards shall examine and study
5180 all persons committed to the Department of Corrections and may
5181 retain any prisoner in the reception center only for such period
5182 as may be required to complete such examination and study and to
5183 effect his transfer to another institution. The board shall
5184 investigate each prisoner's medical, psychological, social,
5185 educational and vocational condition and history, and the
5186 motivation of his offense.

5187 Upon the conclusion of its study of a prisoner, a reception
5188 classification board shall submit its report, including its
5189 recommendations and the reasons therefor, to the Commissioner of
5190 the Department of Corrections. The board's recommendation shall
5191 include the classification of the prisoner according to such
5192 system of prisoner classification as the Commissioner of the
5193 Department of Corrections may establish by regulation, the
5194 institution or unit to which the prisoner's transfer is
5195 recommended, the degree and kind of custodial control recommended
5196 for the protection of society, and the program of treatment for
5197 the rehabilitation of the prisoner, including in such program such
5198 recommendations for medical and psychological treatment and
5199 educational and vocational training as may be appropriate. The
5200 board's report may, in addition, contain the dissenting views, if
5201 any, of any of its members.

5202 (4) Upon receipt of the reception classification board's
5203 report, the Commissioner of the Department of Corrections shall
5204 designate the institution or unit to which the prisoner shall be
5205 transferred.

5206 (5) A reception center shall forward copies of the report of
5207 its reception classification board to the institution to which the
5208 prisoner is transferred, to the Parole Board and to the clerk of
5209 the court which sentenced the prisoner, to be made a part of such
5210 prisoner's file.

5211 (6) The Commissioner of the Department of Corrections may at
5212 any time order a prisoner transferred to a reception center for
5213 further examination and study and for new recommendations
5214 concerning his classification, custodial control and
5215 rehabilitative treatment, or he may order such prisoner's
5216 immediate transfer to another institution without such further
5217 examination and study.

5218 **SECTION 204.** (1) Within the appropriation allotted
5219 therefor, the Commissioner of the Department of Corrections shall
5220 construct, equip and maintain suitable buildings, structures and
5221 facilities for the operation and for the necessary expansion and
5222 diversification of the state correctional system, including
5223 prisons, reformatories, reception centers, parole and probation
5224 hostels and such other institutions as may be required for the
5225 custody, control, correctional treatment and rehabilitation of
5226 persons committed to the Department of Corrections.

5227 (2) The Commissioner of the Department of Corrections shall
5228 annually review the adequacy of the state correctional system in
5229 the light of the number of persons committed thereto as well as in
5230 the light of the need for diversified facilities. No later than
5231 his next annual report, the commissioner shall report on any
5232 inadequacies of the state correctional system, including his
5233 recommendations for the alteration or expansion of the existing
5234 institutions, for the construction of new institutions, or for
5235 such other measures to meet the situation as may be appropriate,
5236 whenever the system fails to provide, when practicable, the
5237 following institutions:

5238 (a) One or more maximum security institutions
5239 accommodating in each such institution or in separate units
5240 thereof no more than two thousand (2,000) prisoners;

5241 (b) One or more medium security institutions
5242 accommodating in each such institution or in separate units
5243 thereof no more than two thousand (2,000) prisoners;

5244 (c) One or more minimum security institutions
5245 accommodating in each such institution or in separate units
5246 thereof no more than two thousand (2,000) prisoners, which
5247 institutions may include unfenced farms, camps, colonies, housing
5248 for outside work areas, and similar facilities, and may, in
5249 addition to their regular uses, be employed also for parole
5250 preparation of prisoners and for the detention of prisoners during
5251 temporary suspension of parole, and for other similar purposes;

5252 (d) Special institutional facilities for the vocational
5253 and rehabilitative training of young adult offenders, as defined
5254 in Section 59 of this act, providing, if need be by separate
5255 units, for diversified security and custody;

5256 (e) A medical-correctional facility to keep prisoners
5257 with difficult or chronic medical and psychiatric problems, which,
5258 if the number of persons committed to the department reaches four
5259 hundred (400), is a separate institution;

5260 (f) One or more institutions for female prisoners
5261 committed to the department, providing, if need be by separate
5262 units, for diversified security and custody;

5263 (3) When the Commissioner of the Department of Corrections
5264 finds that certain classes or categories of persons committed to
5265 the department require specialized treatment, or treatment of a
5266 kind that it is not feasible to provide within the state
5267 correctional system, the Commissioner of the Department of
5268 Corrections shall seek to place such prisoners in institutions
5269 providing such treatment in another jurisdiction, and may agree to
5270 pay reimbursement therefor. A prisoner so transferred to an
5271 out-of-state institution shall be subject to the rules and
5272 regulations of such institution concerning the custody, conduct
5273 and discipline of its inmates, but shall remain subject to the
5274 provisions of this act concerning his term, reduction of term for
5275 good behavior and release on parole.

5276 SECTION 205. (1) The Warden or other administrative head of
5277 a correctional institution shall establish and maintain, in
5278 accordance with the regulations of the department, a central file
5279 in the institution containing an individual file for each
5280 prisoner. Each prisoner's file shall include: (a) his admission
5281 summary; (b) his presentence investigation report; (c) the
5282 report and recommendation of the reception classification board;
5283 (d) the official records of his conviction and commitment as well
5284 as earlier criminal records, if any; (e) progress reports and
5285 admission-orientation reports from treatment and custodial staff;
5286 (f) reports of his disciplinary infractions, and of their
5287 disposition; (g) his parole plan, prepared in accordance with
5288 Section 219 of this act; and (h) other pertinent data concerning
5289 his background, conduct, associations and family relationships.
5290 Each prisoner's file shall be carefully reviewed before any
5291 decision is made concerning his classification, reclassification
5292 or parole release. The content of the prisoner's files shall be
5293 confidential and shall not be subject to public inspection except
5294 by court order for good cause shown and shall not be accessible to
5295 prisoners in the institution.

5296 (2) The Warden or other administrative head in each
5297 correctional institution shall appoint a treatment classification
5298 committee with himself or his representative as chairman, and
5299 consisting of representatives of the treatment, custodial and
5300 parole services, of medical, psychiatric or psychological
5301 personnel, of personnel concerned with the education and
5302 vocational training of inmates, and of such other persons, as he
5303 may designate. Members of the treatment classification committee
5304 shall serve at the pleasure of the Warden or other administrative
5305 head.

5306 (3) When a prisoner is transferred to a correctional
5307 institution from a reception center or from any other institution,
5308 the classification committee of such receiving institution shall,

5309 within two (2) months of receiving the prisoner, study his
5310 presentence investigation report, his criminal history and escape
5311 record, if any, the report of the reception classification board,
5312 the admission-orientation reports of the custodial and treatment
5313 officers of the institution, the attitudes and preferences of the
5314 prisoner and such other relevant information as may be available
5315 in the prisoner's file or from other sources and shall aid the
5316 Warden or other administrative head of the institution in
5317 determining the prisoner's program of treatment, training,
5318 employment, care and custody.

5319 (4) The classification committee, or a subcommittee thereof
5320 designated by the Warden or other administrative head, shall
5321 review the program of each prisoner at regular intervals and
5322 whenever a member of the committee so requests, and shall
5323 recommend to the Warden such changes in the prisoner's program of
5324 treatment, training, employment, care and custody as it considers
5325 necessary or desirable.

5326 (5) Approximately three (3) months before a prisoner will be
5327 considered by the Parole Board for release on parole, the
5328 classification committee shall reexamine the prisoner's individual
5329 file, shall prepare a report summarizing and evaluating the
5330 prisoner's progress, and may recommend to the Warden or other
5331 administrative head (a) that the prisoner be reclassified for
5332 preparole preparation at that institution or at another
5333 institution after transfer thereto or (b) that the prisoner's
5334 reclassification for preparole preparation be postponed, for a
5335 definite or indefinite period of time, stating the reason for such
5336 recommendation in the record. A copy of the classification
5337 committee's report shall be forwarded to the Parole Board, and
5338 shall be available to such board in advance of the prisoner's
5339 hearing before the Parole Board.

5340 (6) The Warden or other administrative head of the
5341 institution shall have final authority to determine matters of

5342 treatment classification within his institution and to recommend
5343 to the Commissioner of the Department of Corrections the transfer
5344 of any prisoner.

5345 SECTION 206. (1) When an institutional physician finds that
5346 a prisoner suffers from a physical disease or defect, or when an
5347 institutional physician or psychologist finds that a prisoner
5348 suffers from a mental disease or defect, the Warden or other
5349 administrative head may order such prisoner to be segregated from
5350 other prisoners, and if the physician or psychologist, as the case
5351 may be, is of the opinion that he cannot be given proper treatment
5352 at that institution, the Warden or other administrative head shall
5353 recommend to the Commissioner of the Department of Corrections
5354 that such prisoner be transferred for examination, study and
5355 treatment to the medical-correctional facility, if any, or to
5356 another institution in the department where proper treatment is
5357 available.

5358 (2) When an institutional physician finds upon examination
5359 that a prisoner suffers from a physical disease or defect that
5360 cannot, in his opinion, be properly treated in any institution in
5361 the Department of Corrections, such prisoner, upon the
5362 recommendation of the Warden or other administrative head and the
5363 order of the Commissioner of the Department of Corrections, may
5364 receive treatment in, or may be transferred to, for the purpose of
5365 receiving treatment in, a hospital outside the Department of
5366 Corrections. The Commissioner of the Department of Corrections,
5367 shall make appropriate arrangements with other public or private
5368 agencies for the transportation to, and for the care, custody and
5369 security of the prisoner in, such outside hospital. While
5370 receiving treatment in such outside hospital, the prisoner shall
5371 remain subject to the jurisdiction and custody of the Department
5372 of Corrections, and shall be returned to the Department of
5373 Corrections when, prior to the expiration of his sentence, such
5374 hospital treatment is no longer necessary.

5375 (3) When two (2) psychiatrists approved by the Department of
5376 Health find upon examination that a prisoner suffers from a mental
5377 disease or defect that cannot, in their opinion, be properly
5378 treated in any institution in the Department of Corrections, such
5379 prisoner, upon the recommendation of the Warden or other
5380 administrative head and the order of the Commissioner of the
5381 Department of Corrections, may be transferred for treatment, with
5382 the approval of the Department of Health, to a psychiatric
5383 facility in such department. The Commissioner of the Department
5384 of Corrections shall make appropriate arrangements with the
5385 Department of Health for the transportation to, and for the
5386 custody and security of the prisoner in such psychiatric facility.
5387 A prisoner receiving treatment in such a psychiatric facility
5388 shall remain subject to the jurisdiction and custody of the
5389 Department of Corrections, and shall be returned to the Department
5390 of Corrections when, prior to the expiration of his sentence,
5391 treatment in such facility is no longer necessary. A prisoner
5392 receiving treatment in a psychiatric facility in the Department of
5393 Health who continues in need of treatment at the time of his
5394 release or discharge shall be dealt with in accordance with
5395 subsection (4) of this section.

5396 (4) When two (2) psychiatrists approved by the Department of
5397 Health find upon examination that a prisoner about to be released
5398 or discharged from an institution suffers from a mental disease or
5399 defect of such a nature that his release or discharge will
5400 endanger the public safety or the safety of the prisoner, the
5401 Commissioner of the Department of Corrections shall transfer him
5402 to, or if he has already been transferred, permit him to remain
5403 in, the Department of Health to be dealt with in accordance with
5404 law applicable to the civil commitment and detention of persons
5405 suffering from such disease or defect.

5406 **SECTION 207.** (1) Upon admission to a state correctional
5407 institution, each prisoner shall be given a physical examination,

5408 and shall be kept apart from other prisoners for a period of
5409 quarantine until he is known to be free from communicable disease
5410 and until he has been classified in accordance with Section 205 of
5411 this act. Each prisoner shall have regular medical and dental
5412 care.

5413 (2) Each prisoner shall be adequately fed and clothed in
5414 accordance with regulations of the Department. No prisoner shall
5415 be required to wear stripes or other degrading apparel.

5416 **SECTION 208.** The Commissioner of the Department of
5417 Corrections, shall establish an appropriate program for each
5418 institution, designed as far as practicable to prepare and assist
5419 each prisoner to assume his responsibilities and to conform to the
5420 requirements of law. In developing such programs, the
5421 commissioner shall seek to make available to each prisoner capable
5422 of benefiting therefrom academic or vocational training,
5423 participation in productive work, religious and recreational
5424 activities and such therapeutic measures as are practicable. No
5425 prisoner shall be ordered or compelled, however, to participate in
5426 religious activities.

5427 **SECTION 209.** (1) The Warden or other administrative head of
5428 each correctional institution shall be responsible for the
5429 discipline, control and safe custody of the prisoners therein. No
5430 prisoner shall be punished except upon the order of the Warden or
5431 other administrative head of the institution or of a deputy
5432 designated by him for the purpose; nor shall any punishment be
5433 imposed otherwise than in accordance with the provisions of this
5434 section.

5435 (2) The Warden or other administrative head of each
5436 correctional institution shall appoint a committee on adjustment
5437 from among the staff of the institution, which shall include a
5438 member of the treatment service, a member of the custodial
5439 service, and an institutional physician. The Warden or other
5440 administrative head may designate himself or a deputy as chairman

5441 of the committee. The committee shall give notice to any prisoner
5442 who has been reported for a breach of discipline, shall determine
5443 after a hearing whether the prisoner has committed an intentional
5444 breach of the rules, and shall recommend to the Warden or other
5445 administrative head an appropriate disposition of the matter
5446 subject to the provisions of this section. No prisoner shall be
5447 punished until he has had such a hearing, but the recommendation
5448 of the committee shall not be binding on the Warden or other
5449 administrative head or his deputy.

5450 (3) Except in flagrant or serious cases, punishment for a
5451 breach of the rules shall consist of deprivation of privileges.
5452 In cases of assault, escape, or attempt to escape, or other
5453 serious or flagrant breach of the rules, the committee on
5454 adjustment may recommend to the Warden or other administrative
5455 head, and he may order, that a prisoner's reduction of term for
5456 good behavior and faithful performance of duties be forfeited or
5457 withheld in accordance with Section 216 of this act. For serious
5458 or flagrant breach of the rules, the committee on adjustment, in
5459 accordance with the regulations of the department, may also
5460 recommend, and the Warden or other administrative head may order,
5461 that the offender be confined in a disciplinary cell for a period
5462 not to exceed thirty (30) days. The committee on adjustment may
5463 recommend, and the Warden or other administrative head may order,
5464 that a prisoner, during all or part of the period of such solitary
5465 confinement, be put on a monotonous but adequate and healthful
5466 diet. A prisoner in solitary confinement shall be visited by a
5467 physician at least once every twenty-four (24) hours.

5468 (4) No cruel, inhuman or corporal punishment shall be used
5469 on any prisoner, nor is the use of force on any prisoner
5470 justifiable except as provided by Article 3 of this act and the
5471 rules and regulations of the department consistent therewith.

5472 (5) The Warden or other administrative head of an
5473 institution shall maintain a record of breaches of rules, of the

5474 disposition of each case, and of the punishment, if any, for each
5475 such breach. Each breach of the rules by a prisoner shall be
5476 entered in his file, together with the disposition or punishment
5477 therefor.

5478 (6) The committee on adjustment shall recommend to the
5479 Warden or other administrative head that a prisoner who is
5480 considered to be incorrigible by reason of frequent intentional
5481 breaches of discipline, or who is detrimental to the discipline or
5482 the morale of the institution, be reported to the Commissioner of
5483 the Department of Corrections for transfer to another institution
5484 for stricter safekeeping and close confinement.

5485 **SECTION 210.** (1) To establish good habits of work and
5486 responsibility, for the vocational training of prisoners, and to
5487 reduce the cost of prison operation, prisoners shall be employed
5488 so far as possible in constructive and diversified activities in
5489 the production of goods, services and foodstuffs to maintain the
5490 institution and its inmates, for state use and for other purposes
5491 expressly authorized by law. To accomplish these purposes, the
5492 Commissioner of the Department of Corrections shall establish and
5493 maintain prison industries and prison farms in appropriate
5494 correctional institutions, and may enter into arrangements with
5495 other departments for the employment of prisoners in the
5496 improvement of public works and ways and in the improvement and
5497 conservation of the natural resources owned by the state.

5498 (2) No prisoner shall be required to engage in excessive
5499 labor, and no prisoner shall be required to perform any work for
5500 which he is declared unfit by the medical department.

5501 (3) The commissioner shall make rules and regulations
5502 governing the hours and conditions of labor of prisoners in
5503 correctional institutions, and the rates of prisoners'
5504 compensation for employment. In determining the rates of
5505 compensation, such regulations may take into consideration the
5506 quantity and quality of the work performed by a prisoner whether

5507 or not such work was performed during regular working hours, the
5508 skill required for its performance, as well as the economic value
5509 of similar work outside of correctional institutions. Prisoners'
5510 wage payments shall be set aside by the warden or other
5511 administrative head in a separate fund. The regulations may
5512 provide for the making of deductions from prisoners' wages to
5513 defray part or all of the cost of prisoner maintenance, but a
5514 sufficient amount shall remain after such deduction to enable the
5515 prisoner to contribute to the support of his dependents, if any,
5516 to make necessary purchases from the commissary, and to set aside
5517 sums to be paid to him at the time of his release from the
5518 institution.

5519 (4) The labor or time of any prisoner committed to the
5520 Department of Corrections shall not be sold, contracted or hired
5521 out, but prisoners may work for other departments of the state in
5522 accordance with arrangements made pursuant to subsection (1) of
5523 this section.

5524 (5) All departments and agencies of the state, and all
5525 institutions and agencies which are supported in whole or in part
5526 by the state shall purchase from the Department of Corrections all
5527 articles and products required by them which are produced or
5528 manufactured by prison labor in state correctional institutions,
5529 unless excepted from this requirement by the Governor or other
5530 appropriate authority in accordance with rules and regulations
5531 promulgated by the Governor or other appropriate authority to
5532 carry out the purposes of this subsection. The Governor or other
5533 appropriate authority may, by rule or regulation, provide for the
5534 manner in which standards and qualifications for such articles and
5535 products shall be set, for the manner in which the needs of
5536 departments, agencies and institutions shall be estimated in
5537 advance, for the manner in which the price for such articles and
5538 products shall be determined, and for the manner in which
5539 purchases shall be made and payment credited.

5540 (6) Within the appropriation allotted therefor, the
5541 commissioner shall make appropriate arrangements for the
5542 compensation of prisoners for damages from injuries arising out of
5543 their employment.

5544 SECTION 211. (1) The Commissioner of the Department of
5545 Corrections shall formulate rules or regulations governing
5546 compassionate leave from institutions and, in accordance with such
5547 rules or regulations, may permit any prisoner to leave his
5548 institution for short periods of time, either by himself or in the
5549 custody of an officer, to visit a close relative who is seriously
5550 ill, to attend the funeral of a close relative, to return to his
5551 home during what appears to be his own last illness, or to return
5552 to his home for other compelling reasons which strongly appeal to
5553 compassion.

5554 (2) The rules or regulations shall provide for the manner in
5555 which compassionate leave shall be granted, for its duration, and
5556 for the custody, transportation and care of the prisoner during
5557 his leave. They shall also provide for the manner in which the
5558 expense connected with such leave shall be borne, and may allow
5559 the prisoner, or anyone in his behalf, to reimburse the state for
5560 such expense.

5561 (3) The Commissioner of the Department of Corrections, on
5562 the recommendation of the Parole Board, may grant a pre-parole
5563 furlough, not to exceed two (2) weeks, to any prisoner whose
5564 parole release date has been fixed in accordance with Section 220
5565 of this act by the Parole Board. The purpose of such a furlough
5566 shall be to enable the prisoner to secure employment, to find
5567 adequate living quarters for himself and his family, or,
5568 generally, to make more effective plans and arrangements towards
5569 his release on parole.

5570 SECTION 212. When a prisoner is released from an
5571 institution, either on parole or upon final discharge, he shall be
5572 returned any personal possessions taken from him upon his

5573 commitment, and the warden or other administrative head shall
5574 furnish him with decent clothing appropriate for the season of the
5575 year, a transportation ticket to the place where he will reside,
5576 the earnings set aside for him in the wage fund, and such
5577 additional sum of money as may be prescribed by regulation of the
5578 department to enable him to meet his immediate needs. If at the
5579 time of his release a prisoner is too ill or feeble or otherwise
5580 unable to use public means of transportation, the warden or other
5581 administrative head may, subject to the rules and regulations of
5582 the department, make special arrangements for his transportation
5583 to the place where he will reside.

5584 ARTICLE 28

5585 RELEASE ON PAROLE

5586 **SECTION 213.** For good behavior and faithful performance of
5587 duties, the term of a prisoner sentenced to imprisonment for an
5588 indefinite term with a maximum in excess of one (1) year, shall be
5589 reduced by six (6) days for each month of such term. In addition,
5590 for especially meritorious behavior or exceptional performance of
5591 his duties, a prisoner may received a further reduction, not to
5592 exceed six (6) days, for any month of imprisonment. The total of
5593 all such reductions shall be deducted:

5594 (a) From his minimum term of imprisonment, to determine
5595 the date of his eligibility for release on parole; and

5596 (b) From his maximum term of imprisonment, to determine
5597 the date when his release on parole becomes mandatory.

5598 **SECTION 214.** For good conduct in conformity with the
5599 conditions of parole, a parolee's parole term shall be reduced by
5600 six (6) days for each month of such parole term. The total of
5601 such reductions shall be deducted:

5602 (a) From his minimum parole term to determine the date
5603 of his eligibility for discharge from parole; and

5604 (b) From the maximum of his parole term to determine
5605 the date when his discharge from parole becomes mandatory.

5606 **SECTION 215.** (1) Reductions of term of imprisonment in
5607 accordance with Section 213 of this act shall be awarded by the
5608 warden of the institution. In the case of reductions for
5609 especially meritorious behavior, or exceptional performance of
5610 duties, the award shall be made only upon the recommendation of
5611 the Committee on Adjustment or similar committee of the
5612 institution.

5613 (2) Reductions of parole terms in accordance with Section
5614 214 of this act shall be awarded by the Parole Board.

5615 **SECTION 216.** (1) Reductions of terms of imprisonment for
5616 good behavior and faithful performance of duties may be forfeited,
5617 withheld and restored by the warden of the institution after
5618 hearing by the Committee on Adjustment of the institution, but no
5619 reduction of a prison term shall be forfeited or withheld after a
5620 prisoner is released on parole.

5621 (2) Reductions of parole terms for good behavior may be
5622 forfeited, withheld and restored by the Parole Board.

5623 **SECTION 217.** The warden of the institution shall regularly
5624 report all reductions of prison terms for good behavior and
5625 faithful performance of duties, and all forfeitures and
5626 restorations of such reductions to the Commissioner of the
5627 Department of Corrections. On the basis of such report, the
5628 commissioner shall inform the Parole Board of all prisoners who
5629 are expected to become eligible for release on parole or whose
5630 release on parole will become mandatory within the next three (3)
5631 months.

5632 **SECTION 218.** Every prisoner sentenced to an indefinite term
5633 of imprisonment shall be eligible for release on parole upon
5634 completion of his minimum term less reductions granted in
5635 accordance with Section 213 of this act, or, if there is no
5636 minimum, at any time. Within sixty (60) days before the
5637 expiration of such minimum less reductions, or, if there is no
5638 minimum, within ninety (90) days of his commitment, the prisoner

5639 shall have a hearing before the Parole Board or a member or
5640 members designated by the board. The hearing shall be conducted
5641 in an informal manner, but a verbatim record of the proceedings
5642 shall be made and preserved.

5643 SECTION 219. (1) Each prisoner in advance of his parole
5644 hearing shall prepare a parole plan, setting forth the manner of
5645 life he intends to lead if released on parole, including such
5646 specific information as to where and with whom he will reside and
5647 what occupation or employment he will follow. The institutional
5648 parole staff shall render reasonable aid to the prisoner in the
5649 preparation of his plan and in securing information for submission
5650 to the Parole Board.

5651 (2) A prisoner shall be permitted to advise with any persons
5652 whose assistance he reasonably desires, including his own legal
5653 counsel, in preparing for a hearing before the Parole Board.

5654 SECTION 220. (1) The Parole Board shall render its decision
5655 regarding a prisoner's release on parole within a reasonable time
5656 after hearing. The decision shall be by majority vote of the
5657 Parole Board. The decision shall be based on the entire record
5658 before the board, which shall include the opinion of the member
5659 who presided at the hearing. In its decision the board shall
5660 either fix the prisoner's release date, or it shall defer the case
5661 for later reconsideration.

5662 (2) If the board fixes the release date, such date shall be
5663 not less than sixty (60) days nor more than six (6) months from
5664 the date of the prisoner's parole hearing, or from the date of
5665 last reconsideration of his case by the board, unless there are
5666 special reasons for fixing an earlier or later release date.

5667 (3) If the board defers the case for later reconsideration,
5668 it shall review the record at least once a year until a release
5669 date is fixed. The board may in its discretion order a
5670 reconsideration or a rehearing of the case at any time.

5671 (4) If the board fixes no earlier release date, a prisoner's
5672 release on parole shall become mandatory at the expiration of his
5673 maximum term of imprisonment, less reductions allowed in
5674 accordance with Section 213 of this act.

5675 **SECTION 221.** (1) Whenever the Parole Board considers the
5676 first release of a prisoner who is eligible for release on parole,
5677 it shall be the policy of the board to order his release, unless
5678 the board is of the opinion that his release should be deferred
5679 because:

5680 (a) There is substantial risk that he will not conform
5681 to the conditions of parole; or

5682 (b) His release at that time would depreciate the
5683 seriousness of his crime or promote disrespect for law; or

5684 (c) His release would have a substantially adverse
5685 effect on institutional discipline; or

5686 (d) His continued correctional treatment, medical care
5687 or vocational or other training in the institution will
5688 substantially enhance his capacity to lead a law-abiding life when
5689 released at a later date.

5690 (2) In making its determination regarding a prisoner's
5691 release on parole, it shall be the policy of the Parole Board to
5692 take into account each of the following factors:

5693 (a) The prisoner's personality, including his maturity,
5694 stability, sense of responsibility and any apparent development in
5695 his personality which may promote or hinder his conformity to law;

5696 (b) The adequacy of the prisoner's parole plan;

5697 (c) The prisoner's ability and readiness to assume
5698 obligations and undertake responsibilities;

5699 (d) The prisoner's intelligence and training;

5700 (e) The prisoner's family status and whether he has
5701 relatives who display an interest in him, or whether he has other
5702 close and constructive associations in the community;

5703 (f) The prisoner's employment history, his occupational
5704 skills and the stability of his past employment;

5705 (g) The type of residence, neighborhood or community in
5706 which the prisoner plans to live;

5707 (h) The prisoner's past use of narcotics, or past
5708 habitual and excessive use of alcohol;

5709 (i) The prisoner's mental or physical make-up,
5710 including any disability or handicap which may affect his
5711 conformity to law;

5712 (j) The prisoner's prior criminal record, including the
5713 nature and circumstances, recency and frequency of previous
5714 offenses;

5715 (k) The prisoner's attitude toward law and authority;

5716 (l) The prisoner's conduct in the institution,
5717 including particularly whether he has taken advantage of the
5718 opportunities for self-improvement afforded by the institutional
5719 program, whether he has been punished for misconduct within six
5720 (6) months prior to his hearing or reconsideration for parole
5721 release, whether he has forfeited any reductions of term during
5722 his period of imprisonment and whether such reductions have been
5723 restored at the time of hearing or reconsideration;

5724 (m) The prisoner's conduct and attitude during any
5725 previous experience of probation or parole and the recency of such
5726 experience.

5727 **SECTION 222.** Before making a determination regarding a
5728 prisoner's release on parole, the Parole Board shall cause to be
5729 brought before it all of the following records and information
5730 regarding the prisoner:

5731 (a) A report prepared by the institutional parole
5732 staff, relating to his personality, social history and adjustment
5733 to authority, and including any recommendations which the
5734 institutional staff may make.

5735 (b) All official reports of his prior criminal record,
5736 including reports and records of earlier probation and parole
5737 experiences;

5738 (c) The presentence investigation report of the
5739 sentencing court;

5740 (d) Recommendations regarding his parole made at the
5741 time of sentencing by the sentencing judge or the prosecutor;

5742 (e) The reports of any physical, mental and psychiatric
5743 examinations of the prisoner;

5744 (f) Any relevant information which may be submitted by
5745 the prisoner, his attorney, the victim of his crime or by other
5746 persons;

5747 (g) The prisoner's parole plan;

5748 (h) Such other relevant information concerning the
5749 prisoner as may be reasonably available.

5750 **SECTION 223.** A parolee is eligible for discharge from parole
5751 upon the satisfactory completion of the minimum parole term less
5752 reductions for good behavior.

5753 **SECTION 224.** If, in the opinion of the Parole Board, a
5754 parolee does not require guidance and supervision, the board may
5755 dispense with or terminate such supervision. When a parolee is
5756 eligible for discharge from parole in accordance with Section 223
5757 of this act, the board may discharge him from parole, if, in its
5758 opinion, such discharge is not incompatible with the protection of
5759 the public. A parolee's discharge from parole or from
5760 recommitment for violation of parole becomes mandatory upon
5761 completion of the maximum parole term less reductions for good
5762 behavior.

5763 **SECTION 225.** (1) When a prisoner is released on parole, the
5764 Parole Board shall require as a condition of his parole that he
5765 refrain from engaging in criminal conduct. The Parole Board may
5766 also require, either at the time of his release on parole or at

5767 any time and from time to time while he remains under parole, that
5768 he conform to any of the following conditions of parole:

5769 (a) Meet his specified family responsibilities;

5770 (b) Devote himself to an approved employment or
5771 occupation;

5772 (c) Remain within the geographic limits fixed in his
5773 certificate of parole, unless granted written permission to leave
5774 such limits;

5775 (d) Report, as directed, in person and within
5776 thirty-six (36) hours of his release, to his parole officer;

5777 (e) Report in person to his parole officer at such
5778 regular intervals as may be required;

5779 (f) Reside at the place fixed in his certificate of
5780 parole and notify his parole officer of any change in his address
5781 or employment;

5782 (g) Have in his possession no firearm or other
5783 dangerous weapon unless granted written permission;

5784 (h) Submit himself to available medical or psychiatric
5785 treatment, if the board shall so require;

5786 (i) Refrain from associating with persons known to him
5787 to be engaged in criminal activities or, without permission of his
5788 parole officer, with persons known to him to have been convicted
5789 of a crime;

5790 (j) Satisfy any other conditions specially related to
5791 the cause of his offense and not unduly restrictive of his liberty
5792 or incompatible with his freedom of conscience.

5793 (2) Before release on parole, a parolee shall be provided
5794 with a certificate of parole setting forth the conditions of his
5795 parole.

5796 **SECTION 226.** The Parole Board may in appropriate cases
5797 require a parolee, as a condition of his parole, either at the
5798 time of his release on parole or at any time and from time to time
5799 while he remains under parole supervision, to reside in a parole

5800 hostel, boarding home, hospital or other special residence
5801 facility for such a period and under such supervision or treatment
5802 as the board may deem appropriate.

5803 SECTION 227. (1) When a parolee has been returned to the
5804 institution, the Parole Board shall hold a hearing within sixty
5805 (60) days of his return to determine whether his parole should be
5806 revoked. The parolee shall have reasonable notice of the charges
5807 filed. The institutional parole staff shall render reasonable aid
5808 to the parolee in preparation for the hearing and he shall be
5809 permitted to advise with his own legal counsel. At the hearing
5810 the parolee may admit, deny or explain the violation charged, and
5811 he may present proof, including affidavits and other evidence, in
5812 support of his contention. A verbatim record of the hearing shall
5813 be made and preserved.

5814 (2) The board may order revocation of parole if it is
5815 satisfied, upon substantial evidence, that:

5816 (a) The parolee has failed, without a satisfactory
5817 excuse, to comply with a substantial requirement imposed as a
5818 condition of his parole; and

5819 (b) The violation of condition involves:

5820 (i) The commission of another crime; or

5821 (ii) Conduct indicating a substantial risk that
5822 the parolee will commit another crime; or

5823 (iii) Conduct indicating that the parolee is
5824 unwilling to comply with proper conditions of parole.

5825 (3) Parole revocation shall be by majority vote of the
5826 board.

5827 SECTION 228. (1) If the parole administrator has reasonable
5828 cause to believe that a parolee has violated a condition of
5829 parole, he shall notify the Parole Board, and shall cause the
5830 appropriate district parole supervisor to submit the parolee's
5831 record to the board. After consideration of the records

5832 submitted, and after such further investigation as it may deem
5833 appropriate, the board may order:

5834 (a) That the parolee receive a reprimand and warning
5835 from the board;

5836 (b) That parole supervision and reporting be
5837 intensified;

5838 (c) That reductions for good behavior be forfeited or
5839 withheld;

5840 (d) That the parolee be remanded, without revocation of
5841 parole, to a residence facility specified in Section 226 of this
5842 act for such a period and under such supervision or treatment as
5843 the board may deem appropriate;

5844 (e) That the parolee be required to conform to one or
5845 more additional conditions of parole which may be imposed in
5846 accordance with Section 225 of this act;

5847 (f) That the parolee be arrested and returned to
5848 prison, there to await a hearing to determine whether his parole
5849 should be revoked.

5850 (2) If a parole officer or district parole supervisor has
5851 reasonable cause to believe that a parolee has violated or is
5852 about to violate a condition of his parole and that an emergency
5853 situation exists, so that awaiting action by the Parole Board
5854 under subsection (1) of this section would create an undue risk to
5855 the public or to the parolee, such parole officer or district
5856 parole supervisor may arrest such parolee without a warrant, and
5857 may call on any peace officer to assist him in so doing. The
5858 parolee, whether arrested hereunder with or without a warrant,
5859 shall be detained in the local jail, lockup or other detention
5860 facility, pending action by the Parole Board. Immediately after
5861 such arrest and detention, the parole officer or district parole
5862 supervisor concerned shall notify the board and submit a written
5863 report of the reason for such arrest. After consideration of such
5864 written report, the board or a member of the board shall, with all

5865 practicable speed, make a preliminary determination, and shall
5866 either order the parolee's release from detention or order his
5867 return to the institution from which he was paroled, there to
5868 await a hearing to determine whether or not his parole shall be
5869 revoked. The board's preliminary determination to order the
5870 parolee's release from detention shall not, however, be deemed to
5871 bar further proceedings under subsection (1) of this section.

5872 **SECTION 229.** (1) A parolee whose parole is revoked for
5873 violation of the conditions of parole shall be recommitted for the
5874 remainder of his maximum parole term, after credit thereon for the
5875 period served on parole prior to the violation and for reductions
5876 for good behavior earned while on parole.

5877 (2) A parolee whose parole has been revoked may be
5878 considered by the Parole Board for reparole at any time. He shall
5879 be entitled to a hearing and consideration for reparole after
5880 serving a further period of imprisonment equal to one-third (1/3)
5881 of the remainder of his maximum parole term, or after serving a
5882 period of six (6) months, whichever is longer.

5883 (3) Except in the case of a parolee who has absconded from
5884 the jurisdiction or from his place of residence, action revoking a
5885 parolee's parole and recommitting him for violation of the
5886 conditions of parole must be taken before the expiration of his
5887 maximum parole term less reductions for good behavior. A parolee
5888 who has absconded from the jurisdiction, or from his place of
5889 residence, shall be treated as a parole violator and whenever he
5890 is apprehended shall be subject to recommitment or to supervision
5891 for the balance of his parole term remaining on the date when he
5892 absconded.

5893 **SECTION 230.** (1) If a warrant or detainer is placed against
5894 a prisoner by a court, parole agency or other authority of this or
5895 any other jurisdiction, the parole administrator shall inquire and
5896 seek to determine, before such prisoner becomes eligible for

5897 parole, whether the authority concerned intends to execute or
5898 withdraw the writ when the prisoner is released.

5899 (2) If the authority notifies the parole administrator that
5900 it intends to execute such writ when the prisoner is released, the
5901 parole administrator shall advise the authority concerned of the
5902 sentence under which the prisoner is held, the time of parole
5903 eligibility, any decision of the Parole Board relating to the
5904 prisoner, and of the nature of his adjustment during imprisonment,
5905 and shall give reasonable notice to such authority of the
5906 prisoner's release date.

5907 (3) The Parole Board may parole a prisoner who is eligible
5908 for release to a warrant or detainer. If a prisoner is paroled to
5909 such a warrant or detainer the Parole Board may provide, as a
5910 condition of his release, that if the charges on which the warrant
5911 or detainer is based are dismissed, or are satisfied after
5912 conviction and sentence, prior to the expiration of his maximum
5913 parole term, the authority to whose warrant or detainer he is
5914 released shall return him to serve the remainder of his maximum
5915 parole term or such part thereof as the board may determine.

5916 (4) If a person paroled to a warrant or detainer is
5917 thereafter sentenced and placed on probation, or released on
5918 parole in another jurisdiction prior to the expiration of his
5919 maximum parole term less reduction for good behavior in this
5920 state, the Parole Board may permit him to serve the remainder of
5921 his parole term, or such part thereof as the board may determine,
5922 concurrently with his new probation or parole term. Such
5923 concurrent terms may be served in either of the two (2)
5924 jurisdictions, and supervision shall be administered in accordance
5925 with the provisions of the Interstate Compact for the Supervision
5926 of Parolees and Probationers.

5927 **SECTION 231.** No court shall have jurisdiction to review or
5928 set aside, except for the denial of a hearing when a right to be
5929 heard is conferred by law:

5962 impeaching the convicted person as a witness is not a
5963 disqualification or disability within the meaning of this article.

5964 **SECTION 233.** A person holding any public office who is
5965 convicted of a crime shall forfeit such office if:

5966 (a) He is convicted under the laws of this state of a
5967 felony or under the laws of another jurisdiction of a crime which,
5968 if committed within this state, would be a felony; or

5969 (b) He is convicted of a crime involving malfeasance in
5970 such office or dishonesty; or

5971 (c) The Constitution or a statute other than this act
5972 so provides.

5973 **SECTION 234.** Notwithstanding any other provision of law, a
5974 person who is convicted of a crime shall be disqualified:

5975 (a) From voting in a primary or election if and only so
5976 long as he is committed under a sentence of imprisonment; and

5977 (b) From serving as a juror until he has satisfied his
5978 sentence.

5979 **SECTION 235.** (1) Notwithstanding any other provision of
5980 law, the fact that a person has been convicted of a crime or that
5981 he is under sentence therefor, whether of imprisonment or
5982 otherwise, does not render him incompetent to testify in a legal
5983 proceeding.

5984 (2) Upon the order of the circuit court, the warden or other
5985 administrative head of an institution in which a prisoner is
5986 confined shall arrange for the production of the prisoner to
5987 testify at the place designated in the order. Such order shall be
5988 issued whenever the court is satisfied that the testimony of the
5989 prisoner is required in a judicial or administrative proceeding
5990 and that the ends of justice cannot be satisfied by taking his
5991 deposition at the institution where he is confined.

5992 (3) Subject to regulations of the Department of Corrections
5993 as to institutions subject to its jurisdiction, the warden or
5994 other administrative head of an institution in which a prisoner is

5995 confined may, in his discretion, permit the prisoner to leave the
5996 institution, either alone or in the custody of an officer, for the
5997 purpose of testifying in a legal proceeding in which he is a party
5998 or has been called as a witness. In granting such permission, the
5999 warden or administrative head may require that the prisoner or
6000 party calling him to testify defray the reasonable costs of
6001 providing for his custody while absent from the institution.

6002 (4) Subject to regulations of the Department of Corrections
6003 as to institutions subject to its jurisdiction, the warden or
6004 other administrative head of an institution in which a prisoner is
6005 confined shall permit the prisoner to give testimony by deposition
6006 or in response to interrogatories, when such testimony is desired
6007 in a legal proceeding, and shall make suitable arrangements to
6008 facilitate the taking of such deposition in the institution.

6009 **SECTION 236.** (1) A person confined under a sentence of
6010 imprisonment shall have the same right to appoint an agent,
6011 attorney-in-fact or trustee to act in his behalf with respect to
6012 his property or economic interests as if he were not so confined.

6013 (2) Upon the application of a person confined or about to be
6014 confined under a sentence of imprisonment, the chancery court of
6015 the county where the prisoner resided at the time of sentence or
6016 where the sentence was imposed may appoint a trustee to safeguard
6017 his property and economic interests during the period of his
6018 commitment. The trustee shall have such power and authority as
6019 the court designates in the order of appointment but, unless the
6020 order otherwise provides, shall have all the power and authority
6021 conferred by a general power of attorney.

6022 **SECTION 237.** (1) In the cases specified in this subsection
6023 the court may order that so long as the defendant is not convicted
6024 of another crime, the judgment shall not thereafter constitute a
6025 conviction for the purpose of any disqualification or disability
6026 imposed by law because of the conviction of a crime:

6027 (a) In sentencing a young adult offender to the special
6028 term provided by Section 59(2) of this act or to any sentence
6029 other than one of imprisonment; or

6030 (b) When the court has theretofore suspended sentence
6031 or has sentenced the defendant to be placed on probation and the
6032 defendant has fully complied with the requirements imposed as a
6033 condition of such order and has satisfied the sentence; or

6034 (c) When the court has theretofore sentenced the
6035 defendant to imprisonment and the defendant has been released on
6036 parole, has fully complied with the conditions of parole and has
6037 been discharged; or

6038 (d) When the court has theretofore sentenced the
6039 defendant, the defendant has fully satisfied the sentence and has
6040 since led a law-abiding life for at least two (2) years.

6041 (2) In the cases specified in this subsection, the court
6042 which sentenced a defendant may enter an order vacating the
6043 judgment of conviction:

6044 (a) When an offender has been discharged from probation
6045 or parole before the expiration of the maximum term thereof; or

6046 (b) When a defendant has fully satisfied the sentence
6047 and has since led a law-abiding life for at least five (5) years.

6048 (3) An order entered under subsection (1) or (2) of this
6049 section:

6050 (a) Has only prospective operation and does not require
6051 the restoration of the defendant to any office, employment or
6052 position forfeited or lost in accordance with this article; and

6053 (b) Does not preclude proof of the conviction as
6054 evidence of the commission of the crime, whenever the fact of its
6055 commission is relevant to the determination of an issue involving
6056 the rights or liabilities of someone other than the defendant; and

6057 (c) Does not preclude consideration of the conviction
6058 for purposes of sentence if the defendant subsequently is
6059 convicted of another crime; and

6060 (d) Does not preclude proof of the conviction as
6061 evidence of the commission of the crime, whenever the fact of its
6062 commission is relevant to the exercise of the discretion of a
6063 court, agency or official authorized to pass upon the competency
6064 of the defendant to perform a function or to exercise a right or
6065 privilege which such court, agency or official is empowered to
6066 deny, except that in such case the court, agency or official shall
6067 also give due weight to the issuance of the order; and

6068 (e) Does not preclude proof of the conviction as
6069 evidence of the commission of the crime, whenever the fact of its
6070 commission is relevant for the purpose of impeaching the defendant
6071 as a witness, except that the issuance of the order may be adduced
6072 for the purpose of his rehabilitation; and

6073 (f) Does not justify a defendant in stating that he has
6074 not been convicted of a crime, unless he also calls attention to
6075 the order.

6076 ARTICLE 30

6077 DEPARTMENT OF CORRECTIONS

6078 SECTION 238. There shall be in the state government a
6079 Department of Corrections, which shall be charged with the
6080 following responsibilities:

6081 (a) To maintain, administer, and to establish state
6082 correctional institutions, including prisons, reformatories,
6083 reception centers, parole and probation hostels, state
6084 misdemeanor institutions and such other facilities as may be
6085 required for the custody, control, correctional treatment and
6086 rehabilitation of committed offenders, and for the safekeeping of
6087 such other persons as may be remanded thereto in accordance with
6088 law;

6089 (b) To administer the release of prisoners under parole
6090 supervision and to administer parole services in the institutions
6091 and in the community;

6092 (c) To establish personnel standards and supervision
6093 policies for all probation services in the state, and to
6094 administer probation field services in any county or other
6095 governmental subdivision of this state which has no probation
6096 service of its own;

6097 (d) To develop policies and programs for the
6098 correctional treatment and rehabilitation of offenders committed
6099 to institutions in the department;

6100 (e) To establish standards for the management,
6101 operation, personnel and program of, and to exercise powers of
6102 supervision, visitation and inspection over, all institutions in
6103 the state for the detention of persons charged with or convicted
6104 of an offense, or for the safekeeping of such other persons as may
6105 be remanded thereto in accordance with law, and to close any such
6106 institution which is inadequate.

6107 **SECTION 239.** (1) The Department of Corrections shall be
6108 under the direction of the Commissioner of the Department of
6109 Corrections, who shall be appointed by the Governor for a term
6110 which shall be concurrent with the term of the appointing
6111 Governor. His salary shall be fixed by the Legislature within the
6112 appropriation therefor.

6113 (2) The Commissioner of Corrections shall:

6114 (a) Supervise and be responsible for the administration
6115 of the department;

6116 (b) Establish and administer, with the advice of the
6117 Commission of Correction and Community Services, programs and
6118 policies for the operation of the institutions in the department,
6119 and for the correction and rehabilitation of prisoners;

6120 (c) Appoint and remove and remove deputy directors as
6121 provided by law and delegate appropriate powers and duties to
6122 them;

6123 (d) Appoint and remove subordinate officers of the
6124 department, other than the board and Division of Parole, in

6125 accordance with law, and delegate appropriate powers and duties to
6126 them;

6127 (e) Make rules and regulations for the government,
6128 correctional treatment and rehabilitation of prisoners, the
6129 administration of institutions in the department, and the
6130 regulation of officers and employees under his jurisdiction;

6131 (f) Order the assignment and transfer of prisoners
6132 committed to the custody of the Department of Corrections to
6133 institutions of the department;

6134 (g) Collect, develop and maintain statistical
6135 information concerning offenders, sentencing practices and
6136 correctional treatment as may be useful in practical penological
6137 research or in the development of treatment programs;

6138 (h) Exercise, in accordance with law, supervisory power
6139 over all institutions in the state for the detention of persons
6140 charged with or convicted of an offense, or for the safekeeping of
6141 such other persons as may be remanded thereto in accordance with
6142 law;

6143 (i) Transmit to the Governor annually, on or before the
6144 first day of January, a detailed report of the operations of the
6145 department for the preceding calendar year, which report shall be
6146 transmitted by the Governor to the Legislature;

6147 (j) Exercise all powers and perform all duties
6148 necessary and proper in carrying out his responsibilities.

6149 **SECTION 240.** (1) There shall be in the Department of
6150 Corrections the following divisions and independent boards:

6151 (a) Division of Treatment Services;

6152 (b) Division of Custodial Services;

6153 (c) Division of Young Adult Correction;

6154 (d) Division of Fiscal Control;

6155 (e) Division of Prison Industries;

6156 (f) Division of Research and Training;

6157 (g) Division of Parole;

- 6158 (h) Division of Probation;
6159 (i) Commission of Correction and Community Services;
6160 (j) Parole Board.

6161 The Commissioner of the Department of Corrections may, after
6162 consultation with and on the advice of the Commission of
6163 Correction and Community Services, establish additional divisions,
6164 consolidate such additional divisions with other divisions, or
6165 abolish them, and he may establish, consolidate or abolish bureaus
6166 or other administrative subdivisions in any division.

6167 (2) There shall be in each institution in the Department of
6168 Corrections a warden or other administrative head and two (2)
6169 associate wardens or administrative heads designated,
6170 respectively, as associate warden on treatment and associate
6171 warden on custody. The warden in each institution shall be
6172 responsible to the Commissioner of the Department of Corrections
6173 for the custody, control and correctional treatment of prisoners
6174 and for the general administration of the institution. Associate
6175 wardens in each institution shall advise and be responsible to the
6176 warden, and shall have such powers and duties as the warden may
6177 delegate to them in accordance with law or pursuant to the
6178 directions of the Commissioner of Corrections.

6179 **SECTION 241.** (1) The Division of Treatment Services shall
6180 be charged with the supervision of programs of education and
6181 training, including academic, vocational and industrial training,
6182 and correctional treatment and rehabilitation, and parole
6183 preparation in the institutions of the department, excepting only
6184 institutions for young adult offenders.

6185 (2) The Division of Treatment Services shall be headed by
6186 the Deputy Director of Treatment Services, who shall act as the
6187 staff advisor of the Commissioner of the Department of Corrections
6188 in regard to correctional treatment, and who shall exercise such
6189 power and perform such duties as the commissioner may delegate to
6190 him. The Deputy Director of Treatment Services shall be appointed

6191 by, and serve during the pleasure of, the commissioner. He shall
6192 be a person with appropriate experience in the field of education,
6193 correctional treatment or rehabilitation and appropriate training
6194 in relevant disciplines. His salary shall be fixed by the
6195 commissioner within the appropriation therefor.

6196 **SECTION 242.** (1) The Division of Custodial Services shall
6197 be charged with the custody, control, safekeeping, protection and
6198 discipline of prisoners in the institutions of the department,
6199 excepting only institutions for young adult offenders.

6200 (2) The Division of Custodial Services shall be headed by
6201 the Deputy Director for Custodial Services, who shall act as the
6202 staff advisor of the Commissioner of the Department of Corrections
6203 in regard to matters of custody and discipline, and who shall
6204 exercise such powers and perform such duties as the commissioner
6205 may delegate to him. The Deputy Director for Custodial Services
6206 shall be appointed by, and serve during the pleasure of, the
6207 commissioner. He shall be a person with appropriate experience in
6208 a position of responsibility in the management of institutions or
6209 in law enforcement work. His salary shall be fixed by the
6210 commissioner within the appropriation therefor.

6211 **SECTION 243.** (1) The Division of Young Adult Correction
6212 shall be charged with the supervision of institutions and
6213 facilities for the custody, control, treatment and rehabilitation
6214 of young adult offenders, and in cooperation with the Commission
6215 of Correction and Community Services, with the planning and
6216 establishment of diversified facilities and programs for the
6217 treatment and rehabilitation of young adult offenders.

6218 (2) The Division of Young Adult Correction shall be headed
6219 by the Deputy Director for Young Adult Correction, who shall act
6220 as the staff advisor of the Commissioner of the Department of
6221 Corrections in regard to matters of custody, control and treatment
6222 of young adult offenders, and who shall exercise such powers and
6223 perform such duties as the commissioner may delegate to him. The

6224 Deputy Director for Young Adult Correction shall be appointed by,
6225 and serve during the pleasure of, the commissioner. He shall be a
6226 person with appropriate experience in the fields of youth
6227 guidance, correctional treatment and rehabilitation, or
6228 appropriate training in relevant disciplines at a recognized
6229 university. His salary shall be fixed by the commissioner with
6230 the appropriation therefor.

6231 **SECTION 244.** (1) The Division of Prison Industries shall be
6232 charged with the general supervision of industries in the
6233 institutions of the department.

6234 (2) The Division of Prison Industries shall be headed by the
6235 Deputy Director for Prison Industries, who shall be the staff
6236 advisor of the Commissioner of the Department of Corrections in
6237 regard to the industries in the institutions of the department,
6238 and who shall exercise such powers and perform such duties as the
6239 commissioner may delegate to him. The Deputy Director for Prison
6240 Industries shall be appointed by, and serve during the pleasure
6241 of, the commissioner. He shall be a person with appropriate
6242 experience in the management of institutional industries, or in
6243 industrial management. His salary shall be fixed by the
6244 commissioner within the appropriation therefor.

6245 **SECTION 245.** (1) The Division of Fiscal Control shall be
6246 charged with the establishment and maintenance of an accounting
6247 and auditing system in accordance with the state finance law for
6248 the Department of Corrections, its institutions, and all of its
6249 divisions, and boards other than the Division of Parole and the
6250 Parole Board. The Division of Fiscal Control shall also be
6251 responsible for the preparation of the department's proposed
6252 annual budget, except for the annual budget of the Division of
6253 Parole and the Parole Board, which shall be prepared in accordance
6254 with Section 256 of this act.

6255 (2) The Division of Fiscal Control shall be headed by the
6256 Deputy Director for Fiscal Control, who shall be the staff advisor

6257 of the Commissioner of the Department of Corrections in regard to
6258 fiscal matters, and who shall exercise such powers and perform
6259 such duties as the commissioner may delegate to him. The Deputy
6260 Director for Fiscal Control shall be appointed by, and serve
6261 during the pleasure of, the commissioner. He shall be a person
6262 with appropriate experience in a position of responsibility in
6263 accounting or managerial work, or with appropriate training in
6264 relevant disciplines at a recognized university or school of
6265 business or administration. His salary shall be fixed by the
6266 commissioner within the appropriation therefor.

6267 **SECTION 246.** (1) The Division of Research and Training
6268 shall be charged:

6269 (a) With the collection, development and maintenance of
6270 statistical and other information concerning the dispositions by
6271 criminal courts of the state, length of sentences imposed and
6272 length of sentences actually served, release on parole, success or
6273 failure on parole, discharge from parole supervision, success or
6274 failure on probation, recidivism, and concerning such other
6275 aspects of sentencing practice and correctional treatment as may
6276 be useful in practical penological research or in the development
6277 of treatment programs; and

6278 (b) With the conduct of training programs designed to
6279 equip personnel for duty in the correctional institutions and
6280 services of the state and to raise and maintain the educational
6281 standards and the level of performance of correctional personnel.

6282 (2) The Division of Research and Training shall be headed by
6283 the Deputy Director for Research and Training, who shall be the
6284 staff advisor of the Commissioner of the Department of Corrections
6285 in regard to all matters of penological research in the department
6286 and who shall exercise such powers and perform such duties as the
6287 commissioner may delegate to him. The Deputy Director for
6288 Research and Training shall be appointed by, and serve during the
6289 pleasure of, the commissioner. He shall be a person with

6290 appropriate experience in statistical research or research in the
6291 social sciences, with appropriate training in relevant
6292 disciplines. His salary shall be fixed by the commissioner within
6293 the appropriation therefor.

6294 SECTION 247. (1) The Commission of Correction and Community
6295 Services shall consist of the Commissioner of the Department of
6296 Corrections, the Chairman of the Parole Board, the Parole
6297 Administrator, the Probation Administrator, the Deputy Director
6298 for Treatment Services, the Deputy Director for Young Adult
6299 Correction, two (2) judges sitting in courts of general criminal
6300 jurisdiction, one (1) of which shall be a youth court judge,
6301 designated by the Governor, and four (4) public members, appointed
6302 by the Governor, one (1) of whom shall be a psychiatrist and one
6303 (1) a professional educator. The judicial and public members
6304 shall be appointed for a term of four (4) years; all other members
6305 shall serve during their terms of office. The commissioner shall
6306 act as chairman of the commission. All members of the commission
6307 shall serve without compensation, but each member shall receive
6308 per diem and shall be reimbursed for his necessary travel and
6309 other expenses actually incurred in the discharge of his duties on
6310 the commission.

6311 (2) The Commission of Correction and Community Services
6312 shall meet at least every three (3) months, and whenever called
6313 into session by the chairman, at the request of the Governor, of
6314 the Deputy Director for Young Adult Correction under subsection
6315 (4) of this section, of any two (2) or more members of the
6316 commission, or on his own motion.

6317 (3) The Commission of Correction and Community services
6318 shall advise the Governor and the Director of Corrections
6319 concerning correctional policy and programs, including
6320 particularly the following:

6321 (a) The need for, and the development of new or
6322 specialized institutions, facilities or programs;

6323 (b) The need for, and the effectuation of collaboration
6324 and liaison within the department, and between the department and
6325 community agencies and resources, in order to promote the
6326 readjustment and rehabilitation of offenders in institutions or
6327 under parole or probation supervision in the community;

6328 (c) The need for, and the development of useful
6329 researches in penology, correctional treatment, criminal law or in
6330 the disciplines relevant thereto.

6331 (4) Whenever requested by the Deputy Director for Young
6332 Adult Correction, the Commission of Correction and Community
6333 Services shall meet to consider, and to advise the Department of
6334 Corrections concerning the need for, and the development of,
6335 services and facilities for young adult offenders, and concerning
6336 researches necessary or useful in evaluating the effectiveness of
6337 correctional treatment of such offenders.

6338 (5) The commission or one or more of its members may visit
6339 and inspect any institution, state or local, for the detention of
6340 persons charged with or convicted of an offense, and for the
6341 safekeeping of such other persons as may be remanded thereto in
6342 accordance with law, and may inform and advise the Commissioner of
6343 the Department of Corrections in regard to any such institution's
6344 physical or other condition, its discipline, management, program
6345 and its general adequacy or inadequacy. The commission or one or
6346 more of its members shall have full access to the grounds and
6347 buildings and to the books and records belonging or relating to
6348 any such institution, as well as the right to subpoena witnesses,
6349 take proof or hear testimony under oath relating to any such
6350 institution.

6351 (6) The commission may employ a staff director and such
6352 other personnel as may be necessary to help perform its functions,
6353 and may prescribe their duties.

6354 **SECTION 248.** (1) The Commissioner of the Department of
6355 Corrections, or any person to whom he has delegated such power in

6356 writing, shall visit and inspect any institution in the state for
6357 the detention of persons charged with or convicted of an offense,
6358 or for the safekeeping of such other persons as may be remanded
6359 thereto in accordance with law. He shall have full access to the
6360 grounds, buildings, books and records belonging or relating to any
6361 such institution, and may require the warden or other head of such
6362 institution to provide information relating thereto in person or
6363 in written response to a questionnaire. He shall have the power,
6364 in connection with the inspection of any such institution, to
6365 issue subpoenas, compel the attendance of witnesses and the
6366 production of books, papers and other documents relating to such
6367 institution or its officers, and to administer oaths and to take
6368 the testimony of persons under oath.

6369 (2) If the commissioner finds, after inspection of an
6370 institution, that the laws or regulations relating to the
6371 construction, management and affairs of such institution and the
6372 care, custody, treatment and discipline of its prisoners are being
6373 violated, or that the prisoners are cruelly, negligently or
6374 improperly treated, or that there is improper or inadequate
6375 provision for their sustenance, clothing, care or other condition
6376 necessary to their discipline and welfare, the commissioner may in
6377 writing order the warden or other head of such institution to
6378 remedy the situation within such period of time as the
6379 commissioner may deem appropriate under the circumstances. If the
6380 commissioner's order is not complied within the time provided, the
6381 commissioner may order the institution to be closed until such
6382 time as he finds that his order has been or is being complied
6383 with. When an order closing an institution is made, it shall be
6384 unlawful to detain or confine any person therein. Whenever an
6385 inspection of an institution discloses violation of law in its
6386 management or conduct, the commissioner shall report such
6387 violation to the appropriate law enforcement official.

6421 body thereof, or as an executive officer or employee of any
6422 political party, organization, association or committee. Each
6423 member of the board shall receive an annual salary to be fixed by
6424 the Legislature, within the appropriation therefor, and shall be
6425 reimbursed for his necessary travel and other expenses actually
6426 incurred in the discharge of his duties.

6427 **SECTION 251.** (1) The Parole Board shall, in accordance with
6428 Article 28:

6429 (a) Determine the time of release on parole of
6430 prisoners eligible for such release;

6431 (b) Fix the conditions of parole, revoke parole, issue
6432 or authorize the issuance of warrants for the arrest of parole
6433 violators, and impose other sanctions short of revocation for
6434 violation of conditions of parole;

6435 (c) Determine the time of discharge from parole.

6436 (2) The Parole Board shall, when requested by the Governor,
6437 advise him concerning applications for pardon, reprieve, or
6438 commutation, and shall when so requested make such investigation
6439 and collect such records concerning the facts and circumstances of
6440 a prisoner's crime, his past criminal record, social history, and
6441 physical, mental or psychiatric condition as may bear on such
6442 application.

6443 (3) The Parole Board shall cooperate with the Commission of
6444 Correction and Community Services in the development and promotion
6445 of effective parole policies.

6446 (4) The Parole Board shall annually, on or before the first
6447 day of January, transmit to the Commissioner of the Department of
6448 Corrections a detailed report of its work for the preceding
6449 calendar year. The annual report shall be transmitted by the
6450 commissioner to the Governor for submission to the Legislature.

6451 (5) The board or any member thereof shall have the power, in
6452 the performance of official duties, to issue subpoenas, compel the
6453 attendance of witnesses, and the production of books, papers and

6487 SECTION 253. (1) The Commissioner of the Department of
6488 Corrections by and with the advice of the Commission of Correction
6489 and Community Services shall appoint and assign the wardens or
6490 other administrative heads for each of the correctional
6491 institutions of the department. The commissioner shall appoint
6492 professional, technical, skilled, and other subordinate officers
6493 and employees as may be required for the effective administration
6494 of the correctional institutions of the department and in the case
6495 of institutional employees he shall consider the recommendations
6496 of the respective wardens or other administrative heads of
6497 institutions.

6498 (2) The governing authorities of the county, municipality or
6499 other political subdivision of the state shall appoint and assign
6500 the wardens or other administrative heads for each of the
6501 correctional institutions of such political subdivision, subject
6502 to approval by the commissioner. In the case of correctional
6503 institutions serving more than one (1) such political subdivision
6504 of the state, the appointment shall be made in the same manner by
6505 the governing authorities of such subdivisions acting jointly.
6506 The warden or other administrative head of such correctional
6507 institution shall appoint professional, technical, skilled, and
6508 other subordinate officers and employees as may be required for
6509 the effective administration of the correctional institution in
6510 accordance with the regulations of the Department of Corrections.

6511 (3) Personnel in the custodial and treatment program of
6512 institutions shall have such special training or experience in
6513 correctional matters as the commissioner may require.

6514 (4) No male person shall be appointed or assigned to
6515 positions involving the immediate supervision and control of
6516 female prisoners.

6517 (5) Civilian instructors certified by the State Department
6518 of Education shall, as far as practicable, be employed for the
6519 academic and vocational training of prisoners.

6520 (6) Each new officer or employee in the custodial or
6521 treatment program of a correctional institution shall participate
6522 in an institutional training program for new employees. Every
6523 officer and employee in the Department of Corrections shall
6524 participate in such in-service training programs as the
6525 commissioner may require from time to time.

6526 SECTION 254. The warden or other administrative head of each
6527 correctional institution in the Department of Corrections and of
6528 each correctional institution of a county, city or other
6529 appropriate political subdivision of the state shall be its chief
6530 executive officer, and, subject to the supervisory authority
6531 conferred by law on the Commissioner of the Department of
6532 Corrections, shall be responsible for its efficient and humane
6533 maintenance and operation, and for its security. The duties and
6534 powers of his office shall include the following:

6535 (a) To receive, retain in imprisonment, and to release,
6536 in accordance with law, prisoners duly committed to the department
6537 and transferred to the institution, or duly committed to the
6538 institution;

6539 (b) To enforce the provisions of law and the
6540 regulations of the department for the administration of the
6541 institution, the government of its officers, and the treatment,
6542 training, employment, care, discipline and custody of the
6543 prisoners;

6544 (c) To take proper measures to protect the safety of
6545 the prisoners and personnel of the institution;

6546 (d) To take proper measures to prevent the escape of
6547 prisoners and to effect their recapture;

6548 (e) To maintain and improve the buildings, grounds and
6549 appurtenances of the institution;

6550 (f) To make recommendations to the director concerning
6551 the appointment of professional, technical, skilled and other
6552 subordinate officers and employees, in accordance with Section ____

6553 in the case of institutions in the Department of Corrections, and
6554 to appoint such subordinate officers and employees, in accordance
6555 with Section 253 of this act in the case of institutions of
6556 counties, cities or other political subdivision of the state.

6557 (g) To establish and administer rules, including rules
6558 for the operation of the institution and for the proper
6559 classification and separation of prisoners therein, consistent
6560 with the provisions of this Code, the general policies and
6561 regulations of the department, and subject to the prior approval
6562 of such rules by the commissioner;

6563 (h) To maintain and preserve the central prisoner file,
6564 in accordance with Section 194 or Section 205 of this act, and to
6565 maintain and preserve records on the management and operation of
6566 the institution, including records concerning its industries and
6567 the wage funds of prisoners, and to report thereon to the
6568 Commissioner of the Department of Corrections at such times as the
6569 commissioner may require.

6570 **SECTION 255.** No female prisoner committed to the department
6571 shall be kept in any correctional institution used for the
6572 imprisonment of men.

6573 ARTICLE 33

6574 **DIVISION OF PAROLE**

6575 **SECTION 256.** (1) The Division of Parole shall be charged
6576 with the administration of parole services in the community. The
6577 division shall consist of the field parole service and of such
6578 other employees as may be necessary in carrying out its functions.

6579 (2) The Division of Parole shall be under the direction of
6580 the Parole Administrator, who shall be appointed by, and serve
6581 during the pleasure of the Commissioner of the Department of
6582 Corrections. The Parole Administrator shall be a person with
6583 appropriate experience in a field of correctional administration,
6584 or appropriate training in relevant disciplines at a recognized

6585 university. His salary shall be fixed by the commissioner within
6586 the appropriation therefor.

6587 (3) The Division of Parole shall establish and maintain its
6588 own accounting and auditing system in accordance with the state
6589 finance laws and shall prepare and submit its own proposed annual
6590 budget, including therein the proposed annual budget of the parole
6591 Board, separate from the proposed annual budget of the Department
6592 of Corrections.

6593 **SECTION 257.** The Parole Administrator shall:

6594 (a) Establish and administer standards, policies and
6595 procedures for the field parole service;

6596 (b) Appoint district parole supervisors, field parole
6597 officers and such other employees as may be required to carry out
6598 adequate parole supervision of all parolees from correctional
6599 institutions of the state and prescribe their powers and duties;

6600 (c) Cooperate closely with the Parole Board, the
6601 criminal courts, the Deputy Director for Treatment Services, the
6602 institutional parole staffs and other institutional personnel;

6603 (d) Make recommendations to the Parole Board in cases
6604 of violation of the conditions of parole, issue warrants for the
6605 arrest of parole violators when so instructed by the board, notify
6606 the wardens or other administrative heads of institutions of
6607 determinations made by the board, and upon instruction of the
6608 board issue certificates of parole and of parole revocation to the
6609 institutions, and certificates of discharge from parole to
6610 parolees;

6611 (e) Carry out the provisions of Section 256 of this act
6612 in cooperation with the Parole Board.

6613 **SECTION 258.** (1) The field parole service, consisting of
6614 field parole officers working under the immediate direction of
6615 district parole supervisors, and under the ultimate direction of
6616 the Parole Administrator, shall be responsible for the
6617 investigation, supervision and assistance of parolees. The field

6618 parole service shall be sufficient in size to assure that no
6619 parole officer carries a case load larger than is compatible with
6620 adequate parole investigation or supervision.

6621 (2) Field parole officers shall:

6622 (a) Make investigations, prior to a prisoner's release
6623 on parole, in cooperation with institutional parole officers and
6624 the Parole Board, to determine the adequacy of parole plans
6625 submitted by prisoners who are candidates for parole, and made
6626 reasonable advance preparations for their release on parole;

6627 (b) Help parolees in conforming to the conditions of
6628 parole, and in making a successful adjustment in the community;

6629 (c) Supervise parolees, and in supervising them visit
6630 each parolee's home from time to time, and require that each
6631 parolee report to his parole officer as frequently as may be
6632 required in the light of his personality and adjustment, but no
6633 less frequently than twice a month during the first year of
6634 parole, except in unusual cases;

6635 (d) Admonish parolees who appear in danger of violating
6636 the conditions of parole, and report to the appropriate district
6637 supervisor serious or persistent violations which may require
6638 action by the Parole Board, and, in emergency situations, exercise
6639 the power of arrest as provided in Section 228 of this act.

6640 (3) District parole supervisors shall:

6641 (a) Make regular reports to the Parole Administrator
6642 concerning the adjustment of parolees under their supervision;

6643 (b) Inform the Parole Administrator when, in the
6644 district parole supervisor's opinion, any eligible parolee's
6645 conduct and attitude warrant his discharge from supervision, or
6646 when any parolee's violation of the conditions of parole is of
6647 sufficient seriousness to require action by the Parole Board, and,
6648 in emergency situations, exercise the power of arrest as provided
6649 in Section 228 of this act.

6650 ARTICLE 34

6651 **DIVISION OF PROBATION**

6652 **SECTION 259.** (1) The Division of Probation shall be charged
6653 with the general supervision of the administration of probation
6654 services in the state, with the establishment of probation
6655 policies and standards, and with the administration of field
6656 probation services in any county or other governmental subdivision
6657 of this state which has no probation service of its own. The
6658 division shall consist of the field probation service and of such
6659 other employees as may be necessary in carrying out its functions.

6660 (2) The Division of Probation shall be under the direction
6661 of the Probation Administrator, who shall be appointed by, and
6662 serve during the pleasure of, the Commissioner of the Department
6663 of Corrections. The Probation Administrator shall be a person
6664 with appropriate experience in a field of correctional
6665 administration, or appropriate training in relevant disciplines at
6666 a recognized university. His salary shall be fixed by the
6667 commissioner within the appropriation therefor.

6668 **SECTION 260.** The Probation Administrator shall:

6669 (a) Supervise the administration of probation services
6670 in the state and, with the advice of the Commission of Correction
6671 and Community Services, establish policies and standards and make
6672 rules and regulations regarding probation investigation,
6673 supervision, casework and caseloads, record keeping and the
6674 qualification of probation officers;

6675 (b) Keep informed of the operations of all probation
6676 departments throughout the state and inquire into their conduct
6677 and efficiency, and, in this connection, he shall have access to
6678 all probation records and probation offices in the state, and he
6679 may issue subpoenas to compel the attendance of witnesses or the
6680 production of books and papers;

6681 (c) Recommend, in an appropriate case, the removal of
6682 any probation officer from any probation department in the state;

6683 (d) Appoint district probation supervisors, field
6684 probation officers and such other employees as may be required to
6685 carry out adequate probation supervision of persons sentenced to
6686 probation in any county or other governmental subdivision of this
6687 state which has no probation service of its own, and prescribe
6688 their powers and duties;

6689 (e) Cooperate closely with the Commission of Correction
6690 and Community Services and with the criminal courts.

6691 **SECTION 261.** The Probation Administrator, with the advice of
6692 the Commission of Correction and Community Services, may direct
6693 the extension of probation field services to any county or other
6694 governmental subdivision if he finds that such county or other
6695 governmental subdivision is not supplying adequate probation
6696 services to its criminal courts. The administrator shall
6697 determine, after consultation with the criminal courts in the
6698 county or other governmental subdivision concerned, the extent and
6699 duration of such services to be furnished. The administrator may
6700 make agreements with the appropriate authorities concerning
6701 partial or full reimbursement to the Department of Corrections for
6702 the costs of such services.

6703 **SECTION 262.** (1) The field probation service, consisting of
6704 probation officers working under the immediate direction of
6705 district probation supervisors, and under the ultimate direction
6706 of the Probation Administrator, shall be responsible for
6707 presentence and other probation investigations and for the
6708 supervision of persons sentenced to probation by a court in any
6709 county or other governmental subdivision which receives field
6710 probation services in accordance with Section 261 of this act.
6711 The field probation service shall be sufficient in size to assure
6712 that no probation officer carries a caseload larger than is
6713 compatible with adequate probation investigation or supervision.

6714 (2) Probation officers shall:

6715 (a) Make presentence and other probation
6716 investigations, as may be required by law or directed by the court
6717 in which they are serving;

6718 (b) Supervise probationers, and in supervising them
6719 visit each probationer's home from time to time, and require that
6720 he report to the probation officer as frequently as may be
6721 required by the order of the court in accordance with Section 184
6722 of this act, or as may be required by the probation officer
6723 himself in the light of the probationer's personality and
6724 adjustment, but no less frequently than twice a month during the
6725 first year of probation, except in unusual cases;

6726 (c) Admonish probationers who appear in danger of
6727 violating the conditions of the order of probation, in accordance
6728 with Section 184 of this act, and report, in accordance with
6729 procedures established by the appropriate district probation
6730 supervisor, serious or persistent violations to the sentencing
6731 court;

6732 (d) Advise the sentencing court, in accordance with
6733 procedures established by the appropriate district probation
6734 supervisor, when the situation of a probationer requires a
6735 modification of the conditions of the order of probation, or when
6736 a probationer's adjustment is such as to warrant termination of
6737 probation, in accordance with Section 185 of this act.

6738 (3) District probation supervisors shall:

6739 (a) Establish procedures for the direction and guidance
6740 of probation officers under their jurisdiction, and advise such
6741 officers in regard to the most effective performance of their
6742 duties;

6743 (b) Supervise probation officers under their
6744 jurisdiction and evaluate the effectiveness of their casework;

6745 (c) Make regular reports to the Probation Administrator
6746 concerning the activities of probation officers under their

6747 jurisdiction and concerning the adjustment of probationers under
6748 their supervision.

6749 **SECTION 263.** Sections 97-1-1, 97-1-7 and 97-1-9, Mississippi
6750 Code of 1972, which provide for the criminal offenses of
6751 conspiracy and attempts, are repealed.

6752 **SECTION 264.** Sections 97-3-3 and 97-3-5, Mississippi Code of
6753 1972, which provide for the criminal offense of abortion, are
6754 repealed.

6755 **SECTION 265.** Section 97-3-7, Mississippi Code of 1972, which
6756 provides for criminal assaults, is repealed.

6757 **SECTION 266.** Sections 97-3-19, 97-3-21, 97-3-23, 97-3-25,
6758 97-3-27, 97-3-29, 97-3-31, 97-3-33, 97-3-35, 97-3-37, 97-3-39,
6759 97-3-41, 97-3-43, 97-3-45, 97-3-47, 97-3-49, 99-19-101 and
6760 99-19-103, Mississippi Code of 1972, which provide for various
6761 homicide offenses, capital cases sentencing and aiding suicide,
6762 are repealed.

6763 **SECTION 267.** Section 97-3-53, Mississippi Code of 1972,
6764 which provides for the criminal offense of kidnapping, is
6765 repealed.

6766 **SECTION 268.** Sections 97-3-85 and 97-3-87, Mississippi Code
6767 of 1972, which provide for the offense of criminal threats, are
6768 repealed.

6769 **SECTION 269.** Sections 97-3-65, 97-3-67, 97-3-71, 97-3-95,
6770 97-3-97, 97-3-99, 97-3-101 and 97-3-103, Mississippi Code of 1972,
6771 which provide for the crimes of rape and sexual assault, are
6772 repealed.

6773 **SECTION 270.** Sections 97-17-1, 97-17-3, 97-17-5, 97-17-7,
6774 97-17-9, 97-17-11 and 97-17-13, Mississippi Code of 1972, which
6775 provide for the crime of arson, are repealed.

6776 **SECTION 271.** Sections 97-17-19, 97-17-21, 97-17-23,
6777 97-17-25, 97-17-27, 97-17-29, 97-17-31, 97-17-33, 97-17-35 and
6778 97-17-37, Mississippi Code of 1972, which provide for the crime of
6779 burglary, are repealed.

6780 **SECTION 272.** Sections 97-3-73, 97-3-75, 97-3-77, 97-3-79,
6781 97-3-81 and 97-3-83, Mississippi Code of 1972, which provide for
6782 the crime of robbery, are repealed.

6783 **SECTION 273.** Section 97-3-82, Mississippi Code of 1972,
6784 which provides for the crime of extortion, is repealed.

6785 **SECTION 274.** Sections 97-17-45, 97-17-47, 97-17-49,
6786 97-17-51, 97-17-53, 97-17-55, 97-17-58, 97-17-59, 97-17-61,
6787 97-17-63 and 97-17-64, Mississippi Code of 1972, which provide for
6788 the crime of larceny, are repealed.

6789 **SECTION 275.** Section 97-17-67, Mississippi Code of 1972,
6790 which provides for the crime of malicious mischief, is repealed.

6791 **SECTION 276.** Section 97-17-70, Mississippi Code of 1972,
6792 which provides for the crime of receiving stolen property, is
6793 repealed.

6794 **SECTION 277.** Sections 97-21-1, 97-21-3, 97-21-7, 97-21-9,
6795 97-21-11, 97-21-13, 97-21-15, 97-21-17, 97-21-19, 97-21-21,
6796 97-21-23, 97-21-25, 97-21-27, 97-21-29, 97-21-31, 97-21-33,
6797 97-21-35, 97-21-37, 97-21-39, 97-21-41, 97-21-43, 97-21-45,
6798 97-21-47, 97-21-49, 97-21-51, 97-21-53, 97-21-55, 97-21-57,
6799 97-21-59, 97-21-61 and 97-21-63, Mississippi Code of 1972, which
6800 provide for the crime of forgery, are repealed.

6801 **SECTION 278.** Sections 97-19-7, 97-19-9, 97-19-11, 97-19-13,
6802 97-19-15, 97-19-17, 97-19-19, 97-19-21, 97-19-23, 97-19-25,
6803 97-19-27, 97-19-29 and 97-19-31, Mississippi Code of 1972, which
6804 provide for the crime of fraudulent use of credit cards, are
6805 repealed.

6806 **SECTION 279.** Sections 97-19-55 and 97-19-67, Mississippi
6807 Code of 1972, which provide for the crime of fraud for issuing bad
6808 checks, are repealed.

6809 **SECTION 280.** Sections 97-29-13 and 97-29-15, Mississippi
6810 Code of 1972, which provide for the crime of bigamy, are repealed.

6811 **SECTION 281.** Sections 97-29-5, 97-29-27 and 97-29-29,
6812 Mississippi Code of 1972, which provide for the crime of incest,
6813 are repealed.

6814 **SECTION 282.** Section 97-29-31, Mississippi Code of 1972,
6815 which provides for the crime of indecent exposure, is repealed.

6816 **SECTION 283.** Sections 97-9-5, 97-9-7, 97-9-9, 97-9-10,
6817 97-11-11, 97-11-13, 97-11-53, 97-13-1 and 97-13-3, Mississippi
6818 Code of 1972, which provide for the crime of bribery, are
6819 repealed.

6820 **SECTION 284.** Sections 97-9-59, 97-9-61, 97-9-63 and 97-9-65,
6821 Mississippi Code of 1972, which provide for the crime of perjury,
6822 are repealed.

6823 **SECTION 285.** Sections 97-9-45, 97-9-47 and 97-9-49,
6824 Mississippi Code of 1972, which provide for the crime of escape,
6825 are repealed.

6826 **SECTION 286.** Section 97-29-47, Mississippi Code of 1972,
6827 which provides for the crime of public drunkenness, is repealed.

6828 **SECTION 287.** Sections 97-41-1, 97-41-5, 97-41-7, 97-41-9 and
6829 97-41-11, Mississippi Code of 1972, which provide for the crime of
6830 cruelty to animals, are repealed.

6831 **SECTION 288.** Section 47-1-1, Mississippi Code of 1972, is
6832 brought forward as follows:

6833 47-1-1. Every convict sentenced to imprisonment in the
6834 county jail, or to such imprisonment and the payment of a fine, or
6835 the payment of a fine, shall be committed to jail, and shall
6836 remain in close confinement for the full time specified for
6837 imprisonment in the sentence of the court, and in like confinement
6838 until the fine, costs and jail fees be fully paid, unless
6839 discharged in due course of law, or as hereinafter provided. But
6840 no convict shall be held in continuous confinement under a
6841 conviction for any one (1) offense for failure to pay fine and
6842 costs in such case for a period of more than two (2) years.

6843 **SECTION 289.** Section 47-1-3, Mississippi Code of 1972, is
6844 brought forward as follows:

6845 47-1-3. It is the imperative duty of the board of
6846 supervisors in each county in this state to require each convict
6847 sentenced to imprisonment in the county jail and the payment of a
6848 fine and costs, or to imprisonment and payment of costs, or to
6849 payment of fine and costs, to work out the sentence on the county
6850 convict farm or on the public roads or other public works of the
6851 county, or in a contiguous county, as herein provided. But any
6852 convict who is sentenced to the payment of a fine and costs and
6853 who pays such fine and costs shall thereby be relieved from
6854 working out such fine and costs, but the payment in full of such
6855 fine and costs shall not relieve such convict from working out the
6856 full time of his imprisonment as adjudged in his sentence. The
6857 board of supervisors of any county, however, may by an order
6858 spread upon its minutes, giving the reason therefor, and with the
6859 approval of the circuit judge of the district, discharge any aged
6860 or infirm convict upon his making an affidavit of his insolvency
6861 and inability to pay the fine and costs, and filing same with the
6862 clerk of the board of supervisors at any time after the expiration
6863 of his imprisonment.

6864 **SECTION 290.** Section 47-1-5, Mississippi Code of 1972, is
6865 brought forward as follows:

6866 47-1-5. In order to carry out the provisions of Section
6867 47-1-3, the board of supervisors of each county in this state are
6868 authorized and directed, whenever it may be necessary to buy or
6869 lease a sufficient number of acres of land within reasonable and
6870 convenient distance of the county jail to be used by the county as
6871 a county convict farm. They are also authorized to make any
6872 necessary improvements thereon, such as erecting necessary and
6873 convenient buildings, clearing, terracing and ditching and
6874 leveeing, or otherwise repairing and improving such farm, so that
6875 it may be suitable to be used as a farm upon which to work the

6876 convicts committed to the county jail, and they shall employ a
6877 competent and suitable person to be known as foreman of county
6878 farm to superintend such convict farm and manage it and to work
6879 the convicts sentenced to the county jail thereon. The board of
6880 supervisors in each county shall also have full and complete
6881 authority to buy, or rent necessary mules or horses, tractors,
6882 farming tools and implements and all other necessary things
6883 incidental to the successful operation of such convict farm in
6884 such numbers and amounts as they may reasonably contemplate will
6885 be necessary to successfully operate such farm, having in view,
6886 first, the continuous employment of all the convicts able to work
6887 thereon at remunerative labor, and second, the operation of said
6888 farm in the most economical manner consistent with the continuous
6889 working of such convicts.

6890 **SECTION 291.** Section 47-1-7, Mississippi Code of 1972, is
6891 brought forward as follows:

6892 47-1-7. In any county where there are not a sufficient
6893 number of convicts to make it economically feasible for such
6894 county to own and operate a county convict farm as provided for by
6895 law, the board of supervisors of any such county may agree with
6896 the board of supervisors of any contiguous county to own and
6897 operate in common with such contiguous county, a county convict
6898 farm upon which prisoners of both such counties may be detained
6899 and required to work. In like manner the board of supervisors of
6900 any county in which there are not a sufficient number of convicts
6901 to make it economically feasible to own and operate a county
6902 convict farm, may make similar arrangements with any city, town or
6903 village within said county to own and operate said farm in
6904 connection with said city, town or village. In any county where
6905 there are not a sufficient number of convicts to make it
6906 economically feasible for such county to own a farm or to own and
6907 operate a farm with a contiguous county or with a city or town,
6908 the board of supervisors of such county may contract with the

6909 board of supervisors of any contiguous county or with any county
6910 in the same circuit or chancery court district, to have its
6911 prisoners worked by the contiguous county or counties in the same
6912 circuit or chancery court district upon payment made to the board
6913 of supervisors of such contiguous county or counties in the same
6914 circuit or chancery court district for the purpose of detaining
6915 and working such prisoners. The terms of such a contract are to
6916 be agreed upon by and between the two (2) contracting boards and
6917 the same shall not be in violation of the law. Where the board of
6918 supervisors of one (1) county so contracts to work convicts of
6919 another county, all the provisions of Sections 47-1-1 to 47-1-37,
6920 Sections 47-1-41, 47-1-45, 47-1-47 and 47-1-61, Mississippi Code
6921 of 1972, and Section 226 of the Constitution in regard to the
6922 working of convicts shall apply to the convicts contracted for as
6923 herein provided; and the name of the convict or convicts may be
6924 entered on the jail docket of the county contracting to detain and
6925 work the convict or convicts, together with all other information
6926 required by Section 47-1-21.

6927 **SECTION 292.** Section 47-1-9, Mississippi Code of 1972, is
6928 brought forward as follows:

6929 47-1-9. In any county where it is clearly more advantageous
6930 to the county to work the county convicts or some of them on the
6931 public roads of the county, or on other works of the county
6932 exclusively public in their character, the board of supervisors
6933 shall have the authority so to order, and in such cases the board
6934 shall establish all proper regulations for the working, guarding,
6935 safekeeping, clothing, housing and subsistence of convicts while
6936 so working, and shall provide all the necessary equipment for such
6937 purpose. The board shall establish regulations for the discipline
6938 of convicts on said works, and on county farms, when a convict is
6939 persistently idle or refractory, and may enforce such regulations
6940 by penalties.

6941 **SECTION 293.** Section 47-1-11, Mississippi Code of 1972, is
6942 brought forward as follows:

6943 47-1-11. If any convict committed to the county jail is
6944 physically unable to do any kind of manual labor, then, upon the
6945 certificate of the county health officer or physician designated
6946 by the board of supervisors of the county, to this effect, such
6947 convict shall not be required, during the period of such physical
6948 disability, to perform manual labor on the convict farm. But all
6949 convicts shall be required each day to do and perform such work as
6950 they are physically able to do and perform and which will not
6951 impair the health of such convict, or as is not inhumane to
6952 require of him.

6953 **SECTION 294.** Section 47-1-13, Mississippi Code of 1972, is
6954 brought forward as follows:

6955 47-1-13. Any person being held in the county jail in default
6956 of bail to await trial, except those held for treason, murder,
6957 arson, or rape, and except such as the sheriff may deem it
6958 improper to let out, may on application to the sheriff of the
6959 county, be allowed to work on the county farm or on the public
6960 roads or other county public works as other convicts are worked
6961 and at the same wage. The board of supervisors shall settle with
6962 prisoners so working at their regular meetings monthly. But if it
6963 appears that it is not to the best interest of the county to work
6964 such prisoners, the board may decline at any time to employ them.

6965 **SECTION 295.** Section 47-1-15, Mississippi Code of 1972, is
6966 brought forward as follows:

6967 47-1-15. Any convict working under the direction of the
6968 board of supervisors who renders efficient services and complies
6969 with all necessary rules and regulations may have deducted from
6970 the term of his imprisonment one-fourth (1/4) thereof.

6971 **SECTION 296.** Section 47-1-17, Mississippi Code of 1972, is
6972 brought forward as follows:

6973 47-1-17. No convict shall be credited with any wages during
6974 the time of his or her escape; and if any convict escapes while
6975 being worked on a public road, or works on county farm, he or she
6976 may be pursued and retaken by any person, or officer authorized to
6977 make arrests, or board, or anyone entitled to the custody or
6978 services of said convict; and when retaken such convict shall be
6979 required to work out the balance of his term of hire, not counting
6980 the period of such escape, even if the term of imprisonment and
6981 the time for which such convict was first hired had expired before
6982 the recapture. Such convict shall be liable to indictment for
6983 such escape and liable to the same punishment as for an escape
6984 from the custody of the county jail.

6985 **SECTION 297.** Section 47-1-19, Mississippi Code of 1972, is
6986 brought forward as follows:

6987 47-1-19. (1) It shall be unlawful for any county prisoner
6988 or prisoners to be leased or hired to any individual or
6989 corporation for any purpose whatsoever. Nor shall they be worked
6990 under any contractor; but in working them on county farms, or on
6991 the public roads or on any other work, which work must be of an
6992 exclusively public character, they shall be under exclusive
6993 official control and management.

6994 (2) (a) It is lawful for a county or municipality to
6995 provide prisoners for public service work for nonprofit charitable
6996 organizations as defined under Section 501(c)(3) of the Internal
6997 Revenue Code if that nonprofit charitable organization provides
6998 food to charities.

6999 (b) The prisoners participating in the public service
7000 work under paragraph (a) shall remain under the exclusive control
7001 and management of the county or municipality.

7002 (c) A prisoner performing public service work under
7003 this subsection shall be entitled to earned credits as provided
7004 under this chapter.

7005 **SECTION 298.** Section 47-1-21, Mississippi Code of 1972, is
7006 brought forward as follows:

7007 47-1-21. The sheriff of each county shall keep a well bound
7008 alphabetical jail docket. In it he shall promptly enter under the
7009 proper initial the name, age, color and sex of each convict, the
7010 date of his or her commitment, each day worked on the county farm,
7011 time required to be served and amount of fine and costs and the
7012 jail fees charged against the prisoner and the date of discharge.

7013 The sheriff shall submit his docket to the board of
7014 supervisors at each of their regular meetings, and the same shall
7015 be examined carefully by the president of the board, and by any
7016 other members who desire to examine the same, in the presence of
7017 the board while in session.

7018 **SECTION 299.** Section 47-1-23, Mississippi Code of 1972, is
7019 brought forward as follows:

7020 47-1-23. It shall be unlawful for convicts of different
7021 sexes to be confined or worked together.

7022 **SECTION 300.** Section 47-1-27, Mississippi Code of 1972, is
7023 brought forward as follows:

7024 47-1-27. An official, or guard, or other employee, having
7025 the custody of any county prisoner, or any official or employee of
7026 the county having custody of any county prisoner, who shall
7027 maltreat or abuse any such convict, or who shall knowingly permit
7028 the same to be done, or who being under duty to provide sufficient
7029 and wholesome food, clothing, shelter, bathing facilities, or
7030 medical attention to such convict, shall wilfully fail to furnish
7031 the same to such convict, shall be deemed guilty of a misdemeanor,
7032 and on conviction shall be fined in any sum not less than Ten
7033 Dollars (\$10.00) nor more than Five Hundred Dollars (\$500.00), or
7034 shall be imprisoned not less than one (1) month, or shall suffer
7035 both such fine and imprisonment, in the discretion of the court,
7036 and it shall be the duty of the judge of the circuit court of such
7037 county to so charge the grand jury.

7038 **SECTION 301.** Section 47-1-29, Mississippi Code of 1972, is
7039 brought forward as follows:

7040 47-1-29. On complaint by or on behalf of any convict to any
7041 county or county district officer, that such convict had been
7042 improperly treated in any respect, it shall be the duty of such
7043 officer at once to investigate the complaint, and if it is
7044 believed to be well founded, to report the facts to the president
7045 of the board of supervisors, or to the board in session. Upon
7046 such report the board shall cite the person complained of to
7047 appear before it, and such action shall be taken by the board as
7048 shall be proper.

7049 **SECTION 302.** Section 47-1-31, Mississippi Code of 1972, is
7050 brought forward as follows:

7051 47-1-31. Each grand jury which is impaneled shall examine
7052 the records of county prisoners and their treatment and condition
7053 and report the same to the court.

7054 **SECTION 303.** Section 47-1-33, Mississippi Code of 1972, is
7055 brought forward as follows:

7056 47-1-33. The sheriff on receiving each convict shall furnish
7057 such convict with a certificate showing the amount of the fine and
7058 costs, as far as the costs are then known, the beginning and
7059 length of his term of imprisonment. The convict shall be allowed
7060 to have and keep such certificate on or about his person, if he so
7061 desires.

7062 **SECTION 304.** Section 47-1-35, Mississippi Code of 1972, is
7063 brought forward as follows:

7064 47-1-35. (1) The board of supervisors of any county that
7065 now maintains and operates a county penal farm, commonly known as
7066 a "county farm," which farm contains more than five hundred (500)
7067 acres and less than six hundred (600) acres of land, which said
7068 farm has been continuously operating at a loss to the county for a
7069 period of five (5) years or more, and provided said county
7070 contains at least four hundred (400) square miles of territory and

7071 less than four hundred twenty-five (425) square miles of territory
7072 within its boundaries, shall sell, at public sale after receiving
7073 bids as required by law for the letting of public contracts, to
7074 the highest and best bidder for cash, said county farm; provided,
7075 however, that the said board shall retain for the benefit of the
7076 county and shall reserve from said sale, at least one-half (1/2)
7077 of the mineral rights and interests in said lands, with full right
7078 in the said board, in its discretion, to lease said retained and
7079 reserved mineral interests and rights, to the highest and best
7080 bidder after receiving bids therefor in the same manner, at the
7081 same or any other time.

7082 (2) Any and all amounts received from such sale of said
7083 lands and from such lease of said mineral interests or rights,
7084 shall be, on receipt by the board, applied to the payment of the
7085 bonded indebtedness of said county.

7086 **SECTION 305.** Section 47-1-37, Mississippi Code of 1972, is
7087 brought forward as follows:

7088 47-1-37. In the cultivation of crops and the gathering
7089 thereof if it shall appear necessary, from the lack of convict
7090 labor, the board of supervisors may employ free labor at current
7091 prices to work on a county convict farm until such time as the
7092 convict labor may become sufficient to complete and gather the
7093 crops started on such a farm, and pay for the same out of the
7094 county treasury.

7095 **SECTION 306.** Section 47-1-39, Mississippi Code of 1972, is
7096 brought forward as follows:

7097 47-1-39. (1) The governing authorities of municipalities
7098 shall have the power to construct and maintain a municipal prison,
7099 and to regulate the keeping of the same and the prisoners therein,
7100 and to contract with the board of supervisors, which is empowered
7101 in the premises, for the use of the county jail by the
7102 municipality; and to provide for the working of the streets by
7103 municipal prisoners, and to contract with the county for such work

7104 by county prisoners or the working of county roads by municipal
7105 prisoners, or for working same on the county farms. Municipal
7106 prisoners shall be worked on county roads or county farms only in
7107 the county in which the municipality is situated. Males and
7108 females shall be confined in separate cells or compartments.

7109 (2) The municipality shall pay the tuition, living and
7110 travel expenses incurred by a person attending and participating
7111 in the basic and continuing education courses for jail officers.

7112 **SECTION 307.** Section 47-1-41, Mississippi Code of 1972, is
7113 brought forward as follows:

7114 47-1-41. Any person convicted of violating any ordinance of
7115 any city, town or village in this state and sentenced to pay a
7116 fine and costs therefor, and failing to do so, shall be worked on
7117 the streets or other public works of the municipality in the
7118 custody of the street commissioner, or other person designated by
7119 the mayor and board of aldermen, or councilmen of such
7120 municipality and at its expense, and shall receive credit on such
7121 fine and costs as provided in Section 47-1-47 for each day so
7122 worked, and such municipality shall accord the same treatment to
7123 its convicts that is required by this chapter to county convicts.
7124 The responsibility of carrying out the provisions of this section
7125 shall devolve on the mayor and board of aldermen or board of
7126 councilmen of each municipality with reference to its convicts.
7127 In the event it is, in the judgment of the ruling authorities of
7128 any village in the state or of any small town in the state,
7129 unprofitable to work the convicts as above provided, then such
7130 village or town may contract with the board of supervisors of the
7131 county at the best price and take and work such convicts on the
7132 county farm, but the convict shall receive credit of One Dollar
7133 (\$1.00) per day for each day worked, although the county may not
7134 agree to pay so much.

7135 **SECTION 308.** Section 47-1-43, Mississippi Code of 1972, is
7136 brought forward as follows:

7137 47-1-43. The board of supervisors of any county and the
7138 governing authorities of any municipality located within such
7139 county are hereby authorized to enter into agreements providing
7140 for the keeping of persons arrested for offenses committed within
7141 the county in which such municipality is located in the jail
7142 facilities of such municipality pending trial of such person.
7143 Such agreements may provide for the payment to the municipality by
7144 the board of supervisors from any available funds of the county of
7145 a sum not to exceed Five Dollars (\$5.00) for each day or part
7146 thereof during which an offender may be confined in the jail of
7147 the municipality.

7148 **SECTION 309.** Section 47-1-45, Mississippi Code of 1972, is
7149 brought forward as follows:

7150 47-1-45. The board of supervisors of each county is
7151 authorized to make contract with any village or small town within
7152 the county to work its convicts on the county farm. But in
7153 agreeing to take and work such convicts the board of supervisors
7154 shall not agree to pay more per day for the labor of any municipal
7155 convict than in its judgment the labor of such convict is worth to
7156 the county, in order that in the working of such municipal
7157 convicts the county shall not do so at a loss to the county.

7158 **SECTION 310.** Section 47-1-47, Mississippi Code of 1972, is
7159 brought forward as follows:

7160 47-1-47. Every county or municipal convict shall be
7161 comfortably clothed at the expense of the county or municipality,
7162 but all clothing furnished shall remain the property of the county
7163 or municipality, and shall be thoroughly fumigated and disinfected
7164 before being allotted to a convict after having been used by
7165 another, and every convict shall be sufficiently fed, to maintain
7166 his body and induce his good health, with substantial and suitable
7167 food to be furnished and prepared and paid for by the county or
7168 municipality. And every convict for each day's work he is
7169 required to do shall receive credit on his fine and costs assessed

7170 against him of Ten Dollars (\$10.00) per day, until such fine and
7171 costs are fully paid. And in case the convict is serving a
7172 sentence of imprisonment, each day that he works in serving such
7173 sentence shall entitle him credit for equal time on his sentence
7174 of imprisonment, but in no instance shall a convict receive credit
7175 on the fine and costs and on the time sentenced to imprisonment
7176 for the same work. No convict shall be allowed to labor more than
7177 eight (8) hours per day, but shall be required, when able, to
7178 perform eight (8) hours labor each day.

7179 **SECTION 311.** Section 47-1-49, Mississippi Code of 1972, is
7180 brought forward as follows:

7181 47-1-49. In the case of a jail owned jointly by a county and
7182 municipality, under the provisions of Section 17-5-1, the
7183 governing authorities of the county and municipality are hereby
7184 vested with full and complete authority, jurisdiction and control
7185 over such jointly owned jail facility and the governing authority
7186 of the municipality may appoint a jailer who shall be responsible
7187 for all municipal prisoners lodged in said jail in the same manner
7188 in which the sheriff is responsible for state prisoners, and such
7189 jailer shall have the same right of access to the jail as the
7190 sheriff.

7191 **SECTION 312.** Section 47-1-51, Mississippi Code of 1972, is
7192 brought forward as follows:

7193 47-1-51. The jailer of a jail jointly owned by a county and
7194 a municipality shall, in regard to municipal prisoners, provide
7195 daily wholesome and sufficient food and drink, fire and lights
7196 when necessary and proper, and sufficient and clean bedding for
7197 all such prisoners committed to the jail, either before or after
7198 conviction. Any prisoner may, if he thinks fit, supply himself
7199 with meat and drink and bedding, but the same shall pass through
7200 the hands of the jailer to the prisoner.

7201 **SECTION 313.** Section 47-1-55, Mississippi Code of 1972, is
7202 brought forward as follows:

7203 47-1-55. In the case of a jail jointly owned by a county and
7204 a municipality, the circuit judge in the district in which such
7205 jail is located, upon the request and recommendation of either the
7206 sheriff of the county or the marshal or chief of police of the
7207 municipality involved in the joint ownership, may authorize
7208 additional jail guards in cases of emergency and the cost thereof
7209 shall be paid in equal proportions by the county and municipality
7210 involved.

7211 **SECTION 314.** Section 47-1-57, Mississippi Code of 1972, is
7212 brought forward as follows:

7213 47-1-57. (1) When any person confined in jail shall be in
7214 need of medical or surgical aid, the sheriff shall immediately
7215 examine the condition of such prisoner and, if he is of the
7216 opinion that the prisoner needs such aid, he shall call in a nurse
7217 or physician to attend him. If the prisoner be unable to pay the
7218 cost, the account of the nurse or physician, when allowed and
7219 certified as required in respect to accounts of sheriffs for
7220 keeping prisoners, shall be paid, in like manner, out of the
7221 treasury of the county in which a prisoner is charged with the
7222 crime for which he is imprisoned. The board of supervisors may
7223 contract with a physician for the jail by the year.

7224 (2) The board of supervisors of any county may authorize the
7225 sheriff to establish a program under which prisoners expressing
7226 the need for nonemergency medical attention will have access to a
7227 registered nurse who will evaluate their condition and determine
7228 the necessity for treatment by a physician. Charges for such a
7229 visit with a registered nurse shall be paid by the prisoner by
7230 deductions made by the sheriff out of any funds of the prisoner
7231 held by the sheriff or in any other manner satisfactory to the
7232 sheriff; however, such prisoner shall not be required to pay out
7233 of funds of the prisoner held by the sheriff, more than ten
7234 dollars (\$10.00) per visit. If the prisoner is unable to pay the
7235 cost, the cost shall be paid out of the county treasury in the

7236 same manner as provided for payment of other medical costs in
7237 subsection (1) of this section.

7238 **SECTION 315.** Section 47-1-59, Mississippi Code of 1972, is
7239 brought forward as follows:

7240 47-1-59. (1) When the sheriff, marshal or any other peace
7241 officer of this state has in his lawful custody a prisoner who,
7242 through accident, injury or illness, is in need of
7243 hospitalization, such officer may take such prisoner to the
7244 nearest hospital in the county or if there be no hospital in that
7245 county, to the nearest hospital in an adjacent county and if upon
7246 arrival at such hospital any physician licensed to practice
7247 medicine in this state certifies that in his opinion such prisoner
7248 is in need of hospitalization, such prisoner shall be hospitalized
7249 in such hospital for as long as in the opinion of such physician
7250 it is necessary to so hospitalize such prisoner. If, in the
7251 opinion of the sheriff or other peace officer having custody of
7252 such prisoner at the time he is delivered to the aforesaid
7253 hospital, or in the opinion of the director of the university
7254 hospital if the prisoner be brought to that institution, it is
7255 necessary that he be placed under guard while a patient at such
7256 hospital, the sheriff of the county in which the crime he was
7257 placed in custody for committing was alleged to have taken place,
7258 shall furnish the aforesaid guard. When the aforesaid physician
7259 or other reputable physician shall certify that hospitalization no
7260 longer is needed, the prisoner shall be returned to the original
7261 place of detention.

7262 (2) The actual expense of guarding the prisoner in the
7263 hospital shall be paid out of the general funds of the county
7264 where the prisoner was originally confined or arrested. The
7265 expense contracted incident to the hospitalization aforesaid shall
7266 be paid by the prisoner; otherwise he may be hospitalized as a
7267 state aid patient. However, if the prisoner is ineligible for
7268 state aid or the amount available for hospitalization as a state

7269 aid patient is inadequate to pay all such hospital expense of a
7270 prisoner who is financially unable to pay his own expenses, the
7271 board of supervisors of the county where the prisoner was
7272 originally confined or arrested shall, upon presentation of the
7273 certificate of the physician certifying that said prisoner was in
7274 need of hospitalization, pay from the general funds of the county
7275 the reasonable and customary charges for such services or as much
7276 thereof as is not paid by state aid. Any such payment to a
7277 hospital shall be discretionary with the board of supervisors if
7278 its county supports the hospital involved by a special tax levy
7279 for its operation and maintenance.

7280 **SECTION 316.** Section 47-1-61, Mississippi Code of 1972, is
7281 brought forward as follows:

7282 47-1-61. Any sheriff or other person having lawful custody
7283 of any convict who shall fail to discharge such convict when he
7284 shall have served the full time of his sentence and fully paid his
7285 fine and the costs charged against him, shall be guilty of a
7286 misdemeanor and punished accordingly.

7287 **SECTION 317.** Section 47-1-63, Mississippi Code of 1972, is
7288 brought forward as follows:

7289 47-1-63. No person shall be deemed to be a resident of a
7290 county solely because of being incarcerated in a facility under
7291 the jurisdiction of the Department of Corrections that is located
7292 in such county.

7293 **SECTION 318.** Section 47-4-1, Mississippi Code of 1972, is
7294 brought forward as follows:

7295 47-4-1. (1) It is lawful for there to be located within
7296 Wilkinson County and Leflore County a correctional facility
7297 operated entirely by a private entity pursuant to a contractual
7298 agreement between such private entity and the federal government,
7299 any state, or a political subdivision of any state to provide
7300 correctional services to any such public entity for the
7301 confinement of inmates subject to the jurisdiction of such public

7302 entity. Any person confined in such a facility pursuant to the
7303 laws of the jurisdiction from which he is sent shall be considered
7304 lawfully confined within this state. The private entity shall
7305 assume complete responsibility for the inmates and shall be liable
7306 to the State of Mississippi for any illegal or tortious actions of
7307 such inmates.

7308 (2) The Department of Corrections shall contract with the
7309 "Delta Correctional Facility Authority," a public body authorized
7310 in Chapter 852, Local and Private Laws of 1992, for the private
7311 incarceration of not more than one thousand (1,000) state inmates
7312 at a facility in Leflore County. Any contract must comply with
7313 the requirements of Section 47-5-1211 through Section 47-5-1227.

7314 (3) It is lawful for any county to contract with a private
7315 entity for the purpose of providing correctional services for the
7316 confinement of federal inmates subject to the jurisdiction of the
7317 United States. Any person confined in such a facility pursuant to
7318 the laws of the United States shall be considered lawfully
7319 confined within this state. The private entity shall assume
7320 complete responsibility for the inmates and shall be liable to the
7321 county or the State of Mississippi, as the case may be, for any
7322 illegal or tortious actions of the inmates.

7323 (4) It is lawful for there to be located within any county a
7324 correctional facility operated entirely by a private entity and
7325 the federal government to provide correctional services to the
7326 United States for the confinement of federal inmates subject to
7327 the jurisdiction of the United States. Any person confined in a
7328 facility pursuant to the laws of the United States shall be
7329 considered lawfully confined within this state. The private
7330 entity shall assume complete responsibility for the inmates and
7331 shall be liable to the State of Mississippi for any illegal or
7332 tortious actions of the inmates.

7333 A person convicted of simple assault on an employee of a
7334 private correctional facility while such employee is acting within

7335 the scope of his or her duty or employment shall be punished by a
7336 fine of not more than One Thousand Dollars (\$1,000.00) or by
7337 imprisonment for not more than five (5) years, or both.

7338 A person convicted of aggravated assault on an employee of a
7339 private correctional facility while such employee is acting within
7340 the scope of his or her duty or employment shall be punished by a
7341 fine of not more than Five Thousand Dollars (\$5,000.00) or by
7342 imprisonment for not more than thirty (30) years, or both.

7343 (5) If a private entity houses state inmates, the private
7344 entity shall not displace state inmate beds with federal inmate
7345 beds unless the private entity has obtained prior written approval
7346 from the Commissioner of Corrections.

7347 **SECTION 319.** Section 47-4-3, Mississippi Code of 1972, is
7348 brought forward as follows:

7349 47-4-3. (1) Before a private correctional facility may be
7350 located in the county, the board of supervisors shall by
7351 resolution duly adopted and entered on its minutes specify the
7352 location of the facility, the nature and size of the facility, the
7353 type of inmates to be incarcerated and the identity of the private
7354 entity which will operate the facility. The board shall publish a
7355 notice as hereinafter set forth in a newspaper having general
7356 circulation in such county. Such notice shall include location of
7357 the facility, the nature and size of the facility, the type of
7358 inmates to be incarcerated and the identity of the entity which
7359 will operate the facility. Such notice shall include a brief
7360 summary of the provisions of this section pertaining to the
7361 petition for an election on the question of the location of the
7362 private correctional facility in such county. Such notice shall
7363 be published not less than one (1) time each week for at least
7364 three (3) consecutive weeks in at least one (1) newspaper having
7365 general circulation in the county.

7366 (2) If a petition signed by twenty percent (20%), or fifteen
7367 hundred (1500), whichever is less, of the qualified electors of

7368 the county is filed within sixty (60) days of the date of the last
7369 publication of the notice with the board of supervisors requesting
7370 that an election be called on the question of locating such
7371 facility, then the board of supervisors shall adopt a resolution
7372 calling an election to be held within such county upon the
7373 question of the location of such facility. Such election shall be
7374 held, as far as practicable, in the same manner as other elections
7375 are held in counties. At such election, all qualified electors of
7376 the county may vote, and the ballots used at such election shall
7377 have printed thereon a brief statement of the facility to be
7378 constructed and the words "For the construction of the private
7379 correctional facility in (here insert county name) County" and
7380 "Against the construction of the private correctional facility in
7381 (here insert county name) County." The voter shall vote by
7382 placing a cross (x) or check mark (v) opposite his choice on the
7383 proposition. When the results of the election on the question of
7384 the construction of the facility shall have been canvassed by the
7385 election commissioners of the county and certified by them to the
7386 board of supervisors, it shall be the duty of the board of
7387 supervisors to determine and adjudicate whether or not a majority
7388 of the qualified electors who voted thereon in such election voted
7389 in favor of the construction of the facility in such county. If a
7390 majority of the qualified electors who voted in such election vote
7391 against the construction of the facility, then the facility shall
7392 not be constructed in the county.

7393 (3) If no petition as prescribed in subsection (2) of this
7394 section is filed with the board of supervisors within sixty (60)
7395 days of the date of the last publication of the notice, the board
7396 of supervisors shall by a resolution duly adopted and entered on
7397 its minutes, state that no petition was timely filed and the board
7398 may give final approval to the location of the facility.

7399 **SECTION 320.** Section 47-4-5, Mississippi Code of 1972, is
7400 brought forward as follows:

7401 47-4-5. Any local unit of government, or any local unit of
7402 government in cooperation with other local units of government,
7403 may enter into agreements with private sources for the operation
7404 and supervision of juvenile detention centers.

7405 **SECTION 321.** Section 47-5-1, Mississippi Code of 1972, is
7406 brought forward as follows:

7407 47-5-1. It shall be the policy of this state, in the
7408 operation and management of the correctional system, to so manage
7409 and conduct the same in that manner as will be consistent with the
7410 operation of a modern correctional system and with the view of
7411 making the system self-sustaining. Those convicted of violating
7412 the law and sentenced to a term in the state correctional system
7413 shall have humane treatment, and be given opportunity,
7414 encouragement and training in the manner of reformation.

7415 It shall be the policy of this state that the correctional
7416 system shall be operated and managed in the most efficient and
7417 economical manner possible. The Mississippi Department of
7418 Corrections shall so manage and operate the correctional system in
7419 that manner in order to make the system self-sustaining and to
7420 conserve state general fund revenues. The Mississippi Department
7421 of Corrections shall provide leadership to bring about the
7422 earliest possible construction of satisfactory prison inmate
7423 facilities, and shall utilize existing state resources, including
7424 inmates for prison construction labor, when and wherever
7425 practicable, in order to minimize the need for state general funds
7426 for prison construction.

7427 It shall be the policy of this state that periodic
7428 independent internal investigations of the department shall be
7429 conducted to ensure the implementation of state correctional
7430 policies.

7431 **SECTION 322.** Section 47-5-3, Mississippi Code of 1972, is
7432 brought forward as follows:

7433 47-5-3. The plantation known as Parchman owned by the state
7434 in Sunflower and Quitman Counties, and in such other places as are
7435 now or may be hereafter owned or operated by the state for
7436 correctional purposes shall constitute the facilities of the
7437 correctional system for the custody, punishment, confinement at
7438 hard labor and reformation of all persons convicted of felony in
7439 the courts of the state and sentenced to the custody of the
7440 department, and whenever the term "penitentiary" or "state
7441 penitentiary" appears in the laws of the State of Mississippi, it
7442 shall mean any facility under the jurisdiction of the Department
7443 of Corrections which is used for the purposes described herein.

7444 **SECTION 323.** Section 47-5-4, Mississippi Code of 1972, is
7445 brought forward as follows:

7446 47-5-4. For purposes of this chapter, the following words
7447 shall have the meaning ascribed herein unless the context shall
7448 otherwise require:

7449 (a) "Adult" shall mean a person who is eighteen (18)
7450 years of age or older, or any person convicted of any crime not
7451 subject to the provisions of the Youth Court Law, or any person
7452 "certified" to be tried as an adult by any youth court in the
7453 state.

7454 (b) "Juvenile," "minor" or "youthful" shall mean a
7455 person less than eighteen (18) years of age.

7456 (c) "Offender" shall mean any person convicted of a
7457 crime or offense under the laws and ordinances of the state and
7458 its political subdivisions.

7459 (d) "Facility or institution" shall mean any facility
7460 for the custody, care, treatment and study of offenders which is
7461 under the supervision and control of the Department of
7462 Corrections, including but not limited to the State Penitentiary
7463 property located in Sunflower and Quitman Counties.

7464 (e) "Detention" shall mean the temporary care of
7465 juveniles and adults who require secure custody for their own or

7466 the community's protection in a physically restricting facility
7467 prior to adjudication, or retention in a physically restricting
7468 facility upon being taken into custody after an alleged parole or
7469 probation violation.

7470 (f) "Unit of local government" shall mean a county,
7471 city, town, village, or other general purpose political
7472 subdivision of the state.

7473 (g) "Department" shall mean the Mississippi Department
7474 of Corrections.

7475 (h) "Commissioner" shall mean the Commissioner of
7476 Corrections.

7477 (i) "Correctional system" shall mean the facilities,
7478 institutions, programs and personnel of the Department of
7479 Corrections utilized for adult offenders who are committed to the
7480 custody of the department.

7481 **SECTION 324.** Section 47-5-5, Mississippi Code of 1972, is
7482 brought forward as follows:

7483 47-5-5. The commissioner, as soon as possible after passage
7484 of this section, shall prepare a plan to bring about the limited
7485 centralization of facilities within the state correctional system
7486 grounds at Parchman, Mississippi. The commissioner is authorized
7487 and empowered to use any state funds appropriated for such
7488 purposes, together with any available federal funds appropriated
7489 by the United States Congress for improvement of correctional
7490 institutions to construct modern security facilities for housing
7491 of offenders to the end that the state correctional system
7492 achieves the greatest degree of security for said offenders.
7493 Provided, however, that no new facility to house offenders shall
7494 be constructed within two-fifths (2/5) of a mile of any other
7495 offender camp. The commissioner shall bring about centralization
7496 of food facilities, recreational activities, utility services and
7497 other related facilities and correctional services that are
7498 presently decentralized within the correctional system.

7499 It is the intent of the Mississippi Legislature that the
7500 commissioner shall fully utilize existing knowledge, architectural
7501 plans and expertise currently available with the Federal Bureau of
7502 Prisons and the Law Enforcement Assistance Administration to the
7503 end that the State of Mississippi shall have an efficient, modern,
7504 and properly secure state correctional system.

7505 The commissioner is authorized to receive and disburse
7506 private and public grants, gifts and bequests which may be
7507 available to this state for correctional facilities, offender
7508 rehabilitation purposes and related purposes, which said sum so
7509 received shall be subject to all of the laws applicable to the
7510 State Fiscal Management Board.

7511 **SECTION 325.** Section 47-5-8, Mississippi Code of 1972, is
7512 brought forward as follows:

7513 47-5-8. (1) There is created the Mississippi Department of
7514 Corrections, which shall be under the policy direction of the
7515 Governor. The chief administrative officer of the department
7516 shall be the Commissioner of Corrections.

7517 (2) (a) There shall be a Division of Administration and
7518 Finance within the department, which shall have as its chief
7519 administrative officer a Deputy Commissioner for Administration
7520 and Finance who shall be appointed by the commissioner, and shall
7521 be directly responsible to the commissioner.

7522 (b) There shall be a Division of Community Corrections
7523 within the department, which shall have as its chief
7524 administrative officer a Deputy Commissioner for Community
7525 Corrections, who shall be appointed by the commissioner, and shall
7526 be directly responsible to the commissioner. The Probation and
7527 Parole Board shall continue to exercise the authority as provided
7528 by law, but after July 1, 1976, the Division of Community
7529 Corrections shall serve as the administrative agency for the
7530 Probation and Parole Board.

7531 (3) The department shall succeed to the exclusive control of
7532 all records, books, papers, equipment and supplies, and all lands,
7533 buildings and other real and personal property now or hereafter
7534 belonging to or assigned to the use and benefit or under the
7535 control of the Mississippi State Penitentiary and the Mississippi
7536 Probation and Parole Board, except the records of parole process
7537 and revocation and legal matters related thereto, and shall have
7538 the exercise and control of the use, distribution and disbursement
7539 of all funds, appropriations and taxes now or hereafter in
7540 possession, levied, collected or received or appropriated for the
7541 use, benefit, support and maintenance of these two (2) agencies
7542 except as otherwise provided by law, and the department shall have
7543 general supervision of all the affairs of the two (2) agencies
7544 herein named except as otherwise provided by law, and the care and
7545 conduct of all buildings and grounds, business methods and
7546 arrangements of accounts and records, the organization of the
7547 administrative plans of each institution, and all other matters
7548 incident to the proper functioning of the two (2) agencies.

7549 (4) The commissioner may lease the lands for oil, gas,
7550 mineral exploration and other purposes, and contract with other
7551 state agencies for the proper management of lands under such
7552 leases or for the provision of other services, and the proceeds
7553 thereof shall be paid into the General Fund of the state.

7554 **SECTION 326.** Section 47-5-10, Mississippi Code of 1972, is
7555 brought forward as follows:

7556 47-5-10. The department shall have the following powers and
7557 duties:

7558 (a) To accept adult offenders committed to it by the
7559 courts of this state for incarceration, care, custody, treatment
7560 and rehabilitation;

7561 (b) To provide for the care, custody, study, training,
7562 supervision and treatment of adult offenders committed to the
7563 department;

7564 (c) To maintain, administer and exercise executive and
7565 administrative supervision over all state correctional
7566 institutions and facilities used for the custody, training, care,
7567 treatment and after-care supervision of adult offenders committed
7568 to the department; provided, however, that such supervision shall
7569 not extend to any institution or facility for which executive and
7570 administrative supervision has been provided by law through
7571 another agency;

7572 (d) To plan, develop and coordinate a statewide,
7573 comprehensive correctional program designed to train and
7574 rehabilitate offenders in order to prevent, control and retard
7575 recidivism;

7576 (e) To maintain records of persons committed to it, and
7577 to establish programs of research, statistics and planning;

7578 (f) To investigate the grievances of any person
7579 committed to the department, and to inquire into any alleged
7580 misconduct by employees; and for this purpose it may issue
7581 subpoenas and compel the attendance of witnesses and the
7582 production of writings and papers, and may examine under oath any
7583 witnesses who may appear before it;

7584 (g) To administer programs of training and development
7585 of personnel of the department;

7586 (h) To develop and implement diversified programs and
7587 facilities to promote, enhance, provide and assure the
7588 opportunities for the successful custody, training and treatment
7589 of adult offenders properly committed to the department or
7590 confined in any facility under its control. Such programs and
7591 facilities may include but not be limited to institutions, group
7592 homes, halfway houses, diagnostic centers, work and educational
7593 release centers, restitution centers, counseling and supervision
7594 of probation, parole, suspension and compact cases, presentence
7595 investigating and other state and local community-based programs
7596 and facilities;

7597 (i) To receive, hold and use, as a corporate body, any
7598 real, personal and mixed property donated to the department, and
7599 any other corporate authority as shall be necessary for the
7600 operation of any facility at present or hereafter;

7601 (j) To provide those personnel, facilities, programs
7602 and services the department shall find necessary in the operation
7603 of a modern correctional system for the custody, care, study and
7604 treatment of adult offenders placed under its jurisdiction by the
7605 courts and other agencies in accordance with law;

7606 (k) To develop the capacity and administrative network
7607 necessary to deliver advisory consultation and technical
7608 assistance to units of local government for the purpose of
7609 assisting them in developing model local correctional programs for
7610 adult offenders;

7611 (l) To cooperate with other departments and agencies
7612 and with local communities for the development of standards and
7613 programs for better correctional services in this state;

7614 (m) To administer all monies and properties of the
7615 department;

7616 (n) To report annually to the Legislature and the
7617 Governor on the committed persons, institutions and programs of
7618 the department;

7619 (o) To cooperate with the courts and with public and
7620 private agencies and officials to assist in attaining the purposes
7621 of this chapter and Chapter 7 of this title. The department may
7622 enter into agreements and contracts with other departments of
7623 federal, state or local government and with private agencies
7624 concerning the discharge of its responsibilities or theirs. The
7625 department shall have the authority to accept and expend or use
7626 gifts, grants and subsidies from public and private sources;

7627 (p) To make all rules and regulations and exercise all
7628 powers and duties vested by law in the department;

7629 (q) The department may require a search of all persons
7630 entering the grounds and facilities at the correctional system;

7631 (r) To discharge any other power or duty imposed or
7632 established by law.

7633 **SECTION 327.** Section 47-5-20, Mississippi Code of 1972, is
7634 brought forward as follows:

7635 47-5-20. The commissioner shall have the following powers
7636 and duties:

7637 (a) To establish the general policy of the department;

7638 (b) To approve proposals for the location of new
7639 facilities, for major renovation activities, and for the creation
7640 of new programs and divisions within the department as well as for
7641 the abolition of the same; provided, however, that the
7642 commissioner shall approve the location of no new facility unless
7643 the board of supervisors of the county or the governing
7644 authorities of the municipality in which the new facility is to be
7645 located shall have had the opportunity with at least sixty (60)
7646 days' prior notice to disapprove the location of the proposed
7647 facility. If either the board of supervisors or the governing
7648 authorities shall disapprove the facility, it shall not be located
7649 in that county or municipality. Said notice shall be made by
7650 certified mail, return receipt requested, to the members of the
7651 board or governing authorities and to the clerk thereof;

7652 (c) Except as otherwise provided or required by law, to
7653 open bids and approve the sale of any products or manufactured
7654 goods by the department according to applicable provisions of law
7655 regarding bidding and sale of state property, and according to
7656 rules and regulations established by the State Fiscal Management
7657 Board; and

7658 (d) To adopt administrative rules and regulations
7659 including, but not limited to, offender transfer procedures, award
7660 of administrative earned time, personnel procedures, employment
7661 practices.

7662 **SECTION 328.** Section 47-5-23, Mississippi Code of 1972, is
7663 brought forward as follows:

7664 47-5-23. The department shall be vested with the exclusive
7665 responsibility for management and control of the correctional
7666 system, and all properties belonging thereto, subject only to the
7667 limitations of this chapter, and shall be responsible for the
7668 management of affairs of the correctional system and for the
7669 proper care, treatment, feeding, clothing and management of the
7670 offenders confined therein. The commissioner shall have final
7671 authority to employ and discharge all employees of the
7672 correctional system, except as otherwise provided by law.

7673 **SECTION 329.** Section 47-5-24, Mississippi Code of 1972, is
7674 brought forward as follows:

7675 47-5-24. (1) The Governor shall appoint a Commissioner of
7676 Corrections, with the advice and consent of the Senate. Such
7677 commissioner may be removed by the Governor. The commissioner
7678 shall be the chief executive, administrative and fiscal officer of
7679 the department.

7680 (2) The commissioner shall receive an annual salary fixed by
7681 the Governor, not to exceed the maximum authorized by law, in
7682 addition to all actual, necessary expenses incurred in the
7683 discharge of official duties, including mileage as authorized by
7684 law.

7685 (3) The commissioner shall possess the following minimum
7686 qualifications:

7687 (a) A master's degree in corrections, criminal justice,
7688 guidance, social work, or some related field, and at least six (6)
7689 years full-time experience in corrections, including at least
7690 three (3) years of correctional management experience; or

7691 (b) A bachelor's degree in a field described in
7692 subparagraph (a) of this subsection and at least ten (10) years
7693 full-time work in corrections, five (5) years of which shall have
7694 been in correctional management; or

7695 (c) Shall possess at least a bachelor's degree and
7696 relevant experience in fiscal management in the private or public
7697 sector.

7698 (4) The commissioner shall be required, upon assuming the
7699 duties of his office, to execute a good and sufficient bond
7700 payable to the State of Mississippi in the sum of Two Hundred
7701 Fifty Thousand Dollars (\$250,000.00), conditioned upon an accurate
7702 accounting for all monies and property coming into his hands. The
7703 commissioner, upon approval by the Governor, may require of other
7704 officers, employees and agents of the department a good and
7705 sufficient bond in such sum as he may determine, subject to the
7706 minimum requirements set forth herein, payable to the State of
7707 Mississippi upon like condition. The bonds shall be approved by
7708 the Governor and filed with the Secretary of State, and shall be
7709 executed by a surety company authorized to do business under the
7710 laws of this state. The premium on any such bond shall be paid by
7711 the state out of the support and maintenance fund of the
7712 department.

7713 **SECTION 330.** Section 47-5-26, Mississippi Code of 1972, is
7714 brought forward as follows:

7715 47-5-26. (1) The commissioner shall employ the following
7716 personnel:

7717 (a) A Deputy Commissioner for Administration and
7718 Finance, who shall supervise and implement all fiscal policies and
7719 programs within the department, supervise and implement all hiring
7720 and personnel matters within the department, supervise the
7721 department's personnel director, supervise and implement all
7722 purchasing within the department and supervise and implement all
7723 data processing activities within the department, and who shall
7724 serve as the Chief Executive Officer of the Division of
7725 Administration and Finance. He shall possess either:

7726 (i) A master's degree from an accredited four-year
7727 college or university in public or business administration,

7728 accounting, economics or a directly related field, and four (4)
7729 years of experience in work related to the above-described duties,
7730 one (1) year of which must have included line or functional
7731 supervision; or

7732 (ii) A bachelor's degree from an accredited
7733 four-year college or university in public or business
7734 administration, accounting, economics or a directly related field,
7735 and six (6) years of experience in work related to the
7736 above-described duties, one (1) year of which must have included
7737 line or functional supervision. Certification by the State of
7738 Mississippi as a certified public accountant may be substituted
7739 for one (1) year of the required experience.

7740 (b) A Deputy Commissioner for Community Corrections,
7741 who shall initiate and administer programs, including, but not
7742 limited to, supervision of probationers, parolees and
7743 suspensioners, counseling, community-based treatment, interstate
7744 compact administration and enforcement, prevention programs,
7745 halfway houses and group homes, restitution centers, presentence
7746 investigations, and work and educational releases, and shall serve
7747 as the Chief Executive Officer of the Division of Community
7748 Services. The Deputy Commissioner for Community Corrections is
7749 charged with full and complete cooperation with the State Parole
7750 Board and shall make monthly reports to the Chairman of the Parole
7751 Board in the form and type required by the chairman, in his
7752 discretion, for the proper performance of the probation and parole
7753 functions. After a plea or verdict of guilty to a felony is
7754 entered against a person and before he is sentenced, the Deputy
7755 Commissioner for Community Corrections shall procure from any
7756 available source and shall file in the presentence records any
7757 information regarding any criminal history of the person such as
7758 fingerprints, dates of arrests, complaints, civil and criminal
7759 charges, investigative reports of arresting and prosecuting
7760 agencies, reports of the National Crime Information Center, the

7761 nature and character of each offense, noting all particular
7762 circumstances thereof and any similar data about the person. The
7763 Deputy Commissioner for Community Corrections shall keep an
7764 accurate and complete duplicate record of this file and shall
7765 furnish the duplicate to the department. This file shall be
7766 placed in and shall constitute a part of the inmate's master file.
7767 The Deputy Commissioner for Community Corrections shall furnish
7768 this file to the State Parole Board when the file is needed in the
7769 course of its official duties. He shall possess either: (i) a
7770 master's degree in counseling, corrections psychology, guidance,
7771 social work, criminal justice or some related field and at least
7772 four (4) years' full-time experience in such field, including at
7773 least one (1) year of supervisory experience; or (ii) a bachelor's
7774 degree in a field described in subparagraph (i) of this paragraph
7775 and at least six (6) years' full-time work in corrections, one (1)
7776 year of which shall have been at the supervisory level.

7777 (c) A Deputy Commissioner for Institutions, who shall
7778 administer institutions, reception and diagnostic centers,
7779 prerelease centers and other facilities and programs provided
7780 therein, and shall serve as the Chief Executive Officer of the
7781 Division of Institutions. He shall possess either: (i) a
7782 master's degree in counseling, criminal justice, psychology,
7783 guidance, social work, business or some related field, and at
7784 least four (4) years' full-time experience in corrections,
7785 including at least one (1) year of correctional management
7786 experience; or (ii) a bachelor's degree in a field described in
7787 subparagraph (i) of this paragraph and at least six (6) years'
7788 full-time work in corrections, four (4) years of which shall have
7789 been at the correctional management level.

7790 (2) The commissioner shall employ an administrative
7791 assistant for parole matters, who shall be an employee of the
7792 department assigned to the State Parole Board and who shall work
7793 under the guidance and supervision of the board.

7794 (3) The administrative assistant for parole matters shall
7795 receive an annual salary to be established by the Legislature.
7796 The salaries of department employees not established by the
7797 Legislature shall receive an annual salary established by the
7798 State Personnel Board.

7799 (4) The commissioner shall employ a superintendent for the
7800 Parchman facility, Central Mississippi Correctional Facility and
7801 South Mississippi Correctional Institution of the Department of
7802 Corrections. The Superintendent of the Mississippi State
7803 Penitentiary shall reside on the grounds of the Parchman facility.
7804 Each superintendent shall appoint an officer in charge when he is
7805 absent.

7806 Each superintendent shall develop and implement a plan for
7807 the prevention and control of an inmate riot and shall file a
7808 report with the Chairman of the Senate Corrections Committee and
7809 the Chairman of the House Penitentiary Committee on the first day
7810 of each regular session of the Legislature regarding the status of
7811 the plan.

7812 In order that the grievances and complaints of inmates,
7813 employees and visitors at each facility may be heard in a timely
7814 and orderly manner, each superintendent shall appoint or designate
7815 an employee at the facility to hear grievances and complaints and
7816 to report grievances and complaints to the superintendent. Each
7817 superintendent shall institute procedures as are necessary to
7818 provide confidentiality to those who file grievances and
7819 complaints.

7820 **SECTION 331.** Section 47-5-28, Mississippi Code of 1972, is
7821 brought forward as follows:

7822 47-5-28. The commissioner shall have the following powers
7823 and duties:

7824 (a) To implement and administer laws and policy
7825 relating to corrections and coordinate the efforts of the
7826 department with those of the federal government and other state

7827 departments and agencies, county governments, municipal
7828 governments, and private agencies concerned with providing
7829 offender services;

7830 (b) To establish standards, in cooperation with other
7831 state agencies having responsibility as provided by law, provide
7832 technical assistance, and exercise the requisite supervision as it
7833 relates to correctional programs over all state-supported adult
7834 correctional facilities and community-based programs;

7835 (c) To promulgate and publish such rules, regulations
7836 and policies of the department as are needed for the efficient
7837 government and maintenance of all facilities and programs in
7838 accord insofar as possible with currently accepted standards of
7839 adult offender care and treatment.

7840 (d) To provide the Parole Board with suitable and
7841 sufficient office space and support resources and staff necessary
7842 to conducting Parole Board business under the guidance of the
7843 Chairman of the Parole Board;

7844 (e) To make an annual report to the Governor and the
7845 Legislature reflecting the activities of the department and make
7846 recommendations for improvement of the services to be performed by
7847 the department;

7848 (f) To cooperate fully with periodic independent
7849 internal investigations of the department and to file the report
7850 with the Governor and the Legislature;

7851 (g) To perform such other duties necessary to
7852 effectively and efficiently carry out the purposes of the
7853 department as may be directed by the Governor.

7854 **SECTION 332.** Section 47-5-35, Mississippi Code of 1972, is
7855 brought forward as follows:

7856 47-5-35. The Joint Legislative Committee on Performance
7857 Evaluation and Expenditure Review (PEER) shall appoint an auditor
7858 to audit the correctional system, and provide sufficient office
7859 facilities in the Jackson office, who shall be a certified public

7860 accountant or an experienced accountant, whose duty shall be to
7861 audit all accounts of the state correctional system for the
7862 purpose of reporting to the Legislative Budget Office. He shall
7863 report whether supplies and products bought and sold are handled
7864 in accordance with law and when bought on samples and
7865 specifications whether they measure up to such samples and
7866 specifications when the goods are received. The auditor shall
7867 report on the letting of bids and shall make a determination that
7868 all bids are advertised and let in accordance with law and shall
7869 render a report on same. The auditor shall be responsible to make
7870 a periodic inventory on all goods, machinery, livestock, farm
7871 produce or any other property of the correctional system and make
7872 a report thereon to the Legislative Budget Office on such terms
7873 and conditions and as often as required by the committee. The
7874 salaries and expenses of such auditor or his employees shall be
7875 paid from funds appropriated for support of the Legislature or its
7876 committees.

7877 Such auditor shall make, at least, a monthly report to the
7878 Legislative Budget Office and the Chairman of the Corrections
7879 Committee of the Senate and the Chairman of the Penitentiary
7880 Committee in the House of Representatives.

7881 The auditor shall attend all the meetings of the board and
7882 shall be notified by the board of all meetings or specially called
7883 meetings. The Joint Legislative Committee on Performance
7884 Evaluation and Expenditure Review shall provide the auditor with a
7885 secretary and such personnel as it deems necessary.

7886 **SECTION 333.** Section 47-5-37, Mississippi Code of 1972, is
7887 brought forward as follows:

7888 47-5-37. The commissioner shall employ a qualified fiscal
7889 comptroller who shall be a certified public accountant and who
7890 shall be charged with the responsibility of maintaining a modern
7891 accounting system which shall accurately reflect all fiscal
7892 transactions in such manner and in such form as shall be

7893 recommended by the State Fiscal Management Board. The
7894 commissioner shall employ such qualified bookkeepers and other
7895 clerical personnel as required to maintain the accounting system
7896 who shall devote their full time to their duties as employees of
7897 the correctional system. The fiscal comptroller shall make a
7898 monthly report to the Governor and Chairmen of Corrections
7899 Committee of the Senate and the Penitentiary Committee of the
7900 House of Representatives. The fiscal comptroller shall
7901 countersign all checks. The fiscal comptroller shall have sole
7902 responsibility for all purchases and the signing of all purchase
7903 orders issued by the correctional system. Such fiscal comptroller
7904 shall execute a good and sufficient bond payable to the State of
7905 Mississippi in the sum of Fifty Thousand Dollars (\$50,000.00),
7906 conditioned for the satisfactory performance of the duties of his
7907 office, and the accurate accounting of any moneys and properties
7908 coming into his hands.

7909 The commissioner or his designee shall sign all requisitions
7910 for issuance of warrant authorizing any disbursement of any sum or
7911 sums on account of the correctional system, and no money shall be
7912 paid out on any account of the correctional system except on a
7913 requisition for issuance of warrant signed by him or his designee.

7914 **SECTION 334.** Section 47-5-49, Mississippi Code of 1972, is
7915 brought forward as follows:

7916 47-5-49. Neither the commissioner nor any other employee,
7917 save physicians and chaplains not employed for all their time,
7918 shall have or engage in any other business during his normal hours
7919 of employment that may require his personal attention or time. The
7920 Governor, in the case of the commissioner, and the commissioner in
7921 the case of any other employee shall receive prior notification
7922 and approve outside employment and the respective parties named
7923 herein shall punish a violation of this provision by the dismissal
7924 of the employee if the offense justifies such dismissal.

7925 **SECTION 335.** Section 47-5-54, Mississippi Code of 1972, is
7926 brought forward as follows:

7927 47-5-54. Employees assigned to the canine unit of the
7928 department may, upon request, assist law enforcement agencies by
7929 using specially trained dogs in any matter relating to the
7930 tracking, discovery or capture of any person in the enforcement of
7931 criminal statutes pertaining to the possession, sale or use of
7932 narcotics or other dangerous drugs, or in the pursuit of suspected
7933 felons and, while so doing, shall have the status of peace
7934 officers anywhere in the state and shall have the status of law
7935 enforcement officers and peace officers as contemplated by
7936 Sections 45-6-3, 97-3-7 and 97-3-19.

7937 Employees of the department while performing their officially
7938 assigned duties relating to the custody, control, transportation,
7939 recapture or arrest of any offender within the jurisdiction of the
7940 department or any offender of any jail, penitentiary, public
7941 workhouse or overnight lockup of the state or any political
7942 subdivision thereof not within the jurisdiction of the department,
7943 shall have the status of peace officers anywhere in the state in
7944 any matter relating to the custody, control, transportation or
7945 recapture of such offender, and shall have the status of law
7946 enforcement officers and peace officers as contemplated by
7947 Sections 45-6-3, 97-3-7 and 97-3-19.

7948 The commissioner may appoint investigators with the internal
7949 audit division who have been certified by the law enforcement
7950 academy and who shall be empowered to investigate and enforce all
7951 applicable regulations of the department, which are related to the
7952 functions and missions of the department, and all laws of the
7953 State of Mississippi and who shall be empowered to investigate and
7954 enforce all laws of the State of Mississippi in private
7955 correctional facilities and regional county correctional
7956 facilities. These employees shall have the status of law

7957 enforcement officers and peace officers as contemplated by
7958 Sections 45-6-3, 97-3-7 and 97-3-19.

7959 These officers shall be under the supervision of the
7960 commissioner. These officers may perform any service of process
7961 required to be performed at any facility owned by the Department
7962 of Corrections, at any private correctional facility or at any
7963 regional county correctional facility.

7964 The commissioner may promulgate rules regulating the speed of
7965 motor vehicles on roads within the grounds of any correctional
7966 facility and such restrictions may be enforced by employees of the
7967 department by citation or as otherwise prescribed by law.

7968 **SECTION 336.** Section 47-5-99, Mississippi Code of 1972, is
7969 brought forward as follows:

7970 47-5-99. There are hereby created classification hearing
7971 officers and disciplinary hearing officers of the correctional
7972 system to be appointed by the commissioner.

7973 **SECTION 337.** Section 47-5-101, Mississippi Code of 1972, is
7974 brought forward as follows:

7975 47-5-101. The classification and disciplinary hearing
7976 officers shall maintain a record of all actions and orders by
7977 minutes. The hearing officers shall meet on a regular basis.

7978 **SECTION 338.** Section 47-5-103, Mississippi Code of 1972, is
7979 brought forward as follows:

7980 47-5-103. (1) The classification hearing officer shall be
7981 responsible for assigning a classification to each offender within
7982 forty (40) days after the offender's commitment to the custody of
7983 the department. The classification shall determine the offender's
7984 work duties, living quarters, educational, vocational or other
7985 rehabilitation programs, and privileges to be accorded the
7986 offender while in custody of the department. The classification
7987 hearing officer, in assigning classifications, shall consider the
7988 offender's age, offense and surrounding circumstances, the
7989 complete record of the offender's criminal history including

7990 records of law enforcement agencies or of a youth court regarding
7991 that offender's juvenile criminal history, family background,
7992 education, practical or employment experience, interests and
7993 abilities as evidenced by mental and psychological examination and
7994 knowledge obtained by the classification hearing officer in
7995 personal interview with the offender. The classification hearing
7996 officer shall use the above criteria to assign each offender a
7997 classification which will serve and enhance the best interests and
7998 general welfare of the offender. The director or assistant
7999 director of offender services shall approve or disapprove each
8000 classification. The classification hearing officer shall provide
8001 the State Parole Board with a copy of the classification assigned
8002 to each offender in the custody of the department who is eligible
8003 for parole.

8004 (2) The classification board, consisting of the
8005 commissioner, or his designee, deputy commissioner of institutions
8006 and the director of offender services may change an action of the
8007 classification or disciplinary hearing officer if the board makes
8008 a determination that the action of the hearing officer was not
8009 supported by sufficient factual information. The commissioner, in
8010 emergency situations, may suspend the classification of an
8011 offender or offenders for a period of not exceeding fifteen (15)
8012 days to relieve the emergency situation. The classification of
8013 each offender may be reviewed by a classification hearing officer
8014 at least once each year. In no case shall an offender serve as a
8015 servant in the home of any employee other than authorized by the
8016 commissioner.

8017 (3) The classification board shall establish substantive and
8018 procedural rules and regulations governing the assignment and
8019 alteration of inmate classifications, and shall make such rules
8020 and regulations available to any offender upon request.

8021 **SECTION 339.** Section 47-5-104, Mississippi Code of 1972, is
8022 brought forward as follows:

8023 47-5-104. The commissioner shall designate a disciplinary
8024 hearing officer to hear evidence and to make decisions in all
8025 cases when an offender has been issued a rule violation report and
8026 is subject to be demoted or having earned time taken from him.
8027 All proceedings of a disciplinary hearing officer shall be taped
8028 and retained for at least three (3) years. The commissioner shall
8029 not attend any hearings whereby an offender is subject to be
8030 demoted or having earned time taken away.

8031 **SECTION 340.** Section 47-5-110, Mississippi Code of 1972, is
8032 brought forward as follows:

8033 47-5-110. (1) Commitment to any institution or facility
8034 within the jurisdiction of the department shall be to the
8035 department, not to a particular institution or facility. The
8036 commissioner shall assign a newly committed offender to an
8037 appropriate facility consistent with public safety; provided,
8038 however, that any offender who, in the opinion of the sentencing
8039 judge, requires confinement in a maximum security unit shall be
8040 assigned, upon initial commitment, to the Parchman facility. The
8041 commissioner may extend the place of confinement of eligible
8042 offenders as provided under subsection (2) of this section. He
8043 may transfer an offender from one institution to another,
8044 consistent with the commitment and in accordance with treatment,
8045 training and security needs. The commissioner shall have the
8046 authority to transfer inmates from the various correctional
8047 facilities of the department to restitution centers if such
8048 inmates meet the qualifications prescribed in Section 99-37-19.
8049 The commissioner shall prepare appropriate standards of
8050 eligibility for such transfers of offenders from one institution
8051 to another institution and transfers of offenders who meet the
8052 qualifications for placement in restitution centers. The
8053 commissioner shall have the authority to remove the offenders from
8054 restitution centers and to transfer them to other facilities of
8055 the department. The commissioner shall obtain the approval of the

8056 sentencing court before transferring an offender committed to the
8057 department to a restitution center. On the request of the chief
8058 executive officer of the affected unit of local government, the
8059 commissioner may transfer a person detained in a local facility to
8060 a state facility. The commissioner shall determine the cost of
8061 care for that person to be borne by the unit of local government.
8062 The commissioner may assign to a community work center, any
8063 offender who is convicted under the Mississippi Implied Consent
8064 Law and who is sentenced to the custody of the Department of
8065 Corrections, except that if a death or a serious maiming has
8066 occurred during the commission of the violation of the Mississippi
8067 Implied Consent Law, then the offender so convicted may not be
8068 assigned to a community work center.

8069 (2) The department may establish by rule or policy and
8070 procedure a community prerelease program which shall be subject to
8071 the following requirements:

8072 (a) The commissioner may extend the limits of
8073 confinement of offenders serving sentences for violent or
8074 nonviolent crimes who have six (6) months or less remaining before
8075 release on parole, conditional release or discharge to participate
8076 in the program. Parole violators may be allowed to participate in
8077 the program.

8078 (b) Any offender who is referred to the program shall
8079 remain an offender of the department and shall be subject to rules
8080 and regulations of the department pertaining to offenders of the
8081 department until discharged or released on parole or conditional
8082 release by the State Parole Board.

8083 (c) The department shall require the offender to
8084 participate in work or educational or vocational programs and
8085 other activities that may be necessary for the supervision and
8086 treatment of the offender.

8087 (d) An offender assigned to the program shall be
8088 authorized to leave a community prerelease center only for the

8089 purpose and time necessary to participate in the program and
8090 activities authorized in paragraph (c) of this subsection.

8091 (3) The commissioner shall have absolute immunity from
8092 liability for any injury resulting from a determination by the
8093 commissioner that an offender shall be allowed to participate in
8094 the community prerelease program.

8095 (4) (a) The department may by rule or policy and procedure
8096 provide the regimented inmate discipline program and prerelease
8097 service for offenders at each of its major correctional
8098 facilities: Mississippi State Penitentiary, Central Mississippi
8099 Correctional Institution and South Mississippi Correctional
8100 Institution.

8101 (b) The commissioner may establish regimented inmate
8102 discipline and prerelease programs at the South Mississippi
8103 Correctional Institution. Offenders assigned to this facility may
8104 receive the services provided by the regimented inmate discipline
8105 program. The prerelease program may be located on the grounds of
8106 this facility or another facility designated by the commissioner.

8107 (5) This section shall stand repealed on July 1, 2005.

8108 **SECTION 341.** Section 47-5-119, Mississippi Code of 1972, is
8109 brought forward as follows:

8110 47-5-119. Offenders, when received into a facility of the
8111 correctional system, shall be carefully searched. If money be
8112 found on the person of the offender, or received by him at any
8113 time, it shall be taken in charge by the commissioner and placed
8114 to the offender's credit and expended for the offender's benefit
8115 on his written order and under such restrictions as may be
8116 prescribed by law or the rules. If an offender with money charged
8117 to his credit shall die from any cause while in a facility of the
8118 correctional system or be discharged without claiming such money,
8119 the commissioner shall make every effort to give notice of such
8120 fact to the discharged offender or to the beneficiary or
8121 nearest-known relative, if any, of the deceased or discharged

8122 offender, and upon a valid claim presented shall pay out such
8123 money to such discharged offender, beneficiary or nearest
8124 relative. After two (2) years from the date of giving such
8125 notice, or a valid attempt to give such notice, or two (2) years
8126 after the death of such offender, if the beneficiary or nearest
8127 relative is unknown, if such money has not been validly claimed,
8128 the commissioner shall make an affidavit of such fact, which sums
8129 shall escheat to the Correctional System Special Vocational
8130 Training Program Fund to help in offender rehabilitation. Any
8131 officer or employee having charge of the offenders' money who
8132 misappropriates the same, or any part thereof, shall be deemed
8133 guilty of a felony, and upon conviction thereof shall be confined
8134 in the correctional system for a term of not more than five (5)
8135 years. All sums credited to the account of an offender who shall
8136 escape shall immediately, upon the offender's escape, escheat to
8137 the Special Vocational Training Program Fund to help in offender
8138 rehabilitation.

8139 **SECTION 342.** Section 47-5-120, Mississippi Code of 1972, is
8140 brought forward as follows:

8141 47-5-120. (1) Except as otherwise provided by law, the
8142 commissioner may transfer an offender for observation, diagnosis
8143 and treatment to another appropriate state department or
8144 institution, provided that he has given prior written notice to
8145 the administrator of the agency.

8146 (2) The Department of Corrections shall create a Board of
8147 Examiners, hereinafter referred to as the "board," who shall
8148 examine and evaluate the condition of offenders who are apparently
8149 suffering from psychosis, other mental illness, or dependency or
8150 addiction to drugs. The commissioner shall refer such offenders
8151 to the board which shall make a written report of its findings
8152 pertaining to each such offender. If all members of the board
8153 determine that an offender is in need of mental treatment or can
8154 obtain benefit from the programs of treatment for drug dependency

8155 or addiction at a facility of the Department of Mental Health,
8156 then the board may authorize his transfer for observation,
8157 diagnosis, treatment and rehabilitation after prior written notice
8158 to the administrator of the facility of the Department of Mental
8159 Health that is to receive the offender.

8160 (3) The board shall be composed of the following:

8161 (a) A physician on the staff of the Mississippi State
8162 Hospital at Whitfield, Mississippi, or the East Mississippi State
8163 Hospital at Meridian, Mississippi;

8164 (b) A physician on the staff of the Mississippi
8165 Department of Corrections; and

8166 (c) A physician to be selected by the Commissioner of
8167 Corrections who is not an employee of the Department of
8168 Corrections or the Department of Mental Health.

8169 (4) The board shall meet once each month at the correctional
8170 facility located at Parchman, Mississippi. All fees, compensation
8171 and expenses of the board shall be paid from funds appropriated to
8172 or otherwise available to the State Department of Corrections. The
8173 board is authorized to establish such rules and regulations as may
8174 be necessary to carry out the purposes of this section.

8175 (5) While the offender is in another institution, his
8176 sentence shall continue to run. When the director of the
8177 institution to which an offender has been transferred determines
8178 that the offender is not in need of treatment or has recovered
8179 from the condition which occasioned the transfer or has received
8180 the maximum benefit of treatment and rehabilitation, the
8181 commissioner shall provide for his return to the department,
8182 unless his sentence has expired, in which case he shall be issued
8183 a discharge in accordance with law.

8184 **SECTION 343.** Section 47-5-121, Mississippi Code of 1972, is
8185 brought forward as follows:

8186 47-5-121. All female offenders shall be kept separate and
8187 apart from male offenders. Where practicable, the commissioner

8188 shall keep the female offenders within a separate facility from
8189 the male offenders, and shall provide reasonable rules and
8190 regulations for the government of same.

8191 **SECTION 344.** Section 47-5-126, Mississippi Code of 1972, is
8192 brought forward as follows:

8193 47-5-126. All inmates, unless physically unable, shall be
8194 required to perform such work as may be set out in the
8195 policy-making board of the institution.

8196 **SECTION 345.** Section 47-5-138, Mississippi Code of 1972, is
8197 brought forward as follows:

8198 47-5-138. (1) The department may promulgate rules and
8199 regulations to carry out an earned time allowance program based on
8200 the good conduct and performance of an inmate. An inmate is
8201 eligible to receive an earned time allowance of one-half (1/2) of
8202 the period of confinement imposed by the court except those
8203 inmates excluded by law. When an inmate is committed to the
8204 custody of the department, the department shall determine a
8205 conditional earned time release date by subtracting the earned
8206 time allowance from an inmate's term of sentence. This subsection
8207 does not apply to any sentence imposed after June 30, 1995.

8208 (2) An inmate may forfeit all or part of his earned time
8209 allowance for a serious violation of rules. No forfeiture of the
8210 earned time allowance shall be effective except upon approval of
8211 the commissioner or his designee, and forfeited earned time may
8212 not be restored.

8213 (3) (a) For the purposes of this subsection, "final order"
8214 means an order of a state or federal court that dismisses a
8215 lawsuit brought by an inmate while the inmate was in the custody
8216 of the Department of Corrections as frivolous, malicious or for
8217 failure to state a claim upon which relief could be granted.

8218 (b) On receipt of a final order, the department shall
8219 forfeit:

8220 (i) Sixty (60) days of an inmate's accrued earned
8221 time if the department has received one (1) final order as defined
8222 herein;

8223 (ii) One hundred twenty (120) days of an inmate's
8224 accrued earned time if the department has received two (2) final
8225 orders as defined herein;

8226 (iii) One hundred eighty (180) days of an inmate's
8227 accrued earned time if the department has received three (3) or
8228 more final orders as defined herein.

8229 (c) The department may not restore earned time
8230 forfeited under this subsection.

8231 (4) An inmate who meets the good conduct and performance
8232 requirements of the earned time allowance program may be released
8233 on his conditional earned time release date.

8234 (5) For any sentence imposed after June 30, 1995, an inmate
8235 may receive an earned time allowance of four and one-half (4-1/2)
8236 days for each thirty (30) days served if the department determines
8237 that the inmate has complied with the good conduct and performance
8238 requirements of the earned time allowance program. The earned
8239 time allowance under this subsection shall not exceed fifteen
8240 percent (15%) of an inmate's term of sentence.

8241 (6) Any inmate, who is released before the expiration of his
8242 term of sentence under this section, shall be placed under
8243 earned-release supervision until the expiration of the term of
8244 sentence. The inmate shall retain inmate status and remain under
8245 the jurisdiction of the department. The period of earned-release
8246 supervision shall be conducted in the same manner as a period of
8247 supervised parole. The department shall develop rules, terms and
8248 conditions for the earned-release supervision program. The
8249 commissioner shall designate the appropriate hearing officer
8250 within the department to conduct revocation hearings for inmates
8251 violating the conditions of earned-release supervision.

8252 (7) If the earned-release supervision is revoked, the inmate
8253 shall serve the remainder of the sentence and the time the inmate
8254 was on earned-release supervision, shall not be applied to and
8255 shall not reduce his sentence.

8256 **SECTION 346.** Section 47-5-139, Mississippi Code of 1972, is
8257 brought forward as follows:

8258 47-5-139. (1) An inmate shall not be eligible for the
8259 earned time allowance if:

8260 (a) The inmate was sentenced to life imprisonment; but
8261 an inmate, except an inmate sentenced to life imprisonment for
8262 capital murder, who has reached the age of sixty-five (65) or
8263 older and who has served at least fifteen (15) years may petition
8264 the sentencing court for conditional release;

8265 (b) The inmate was convicted as a habitual offender
8266 under Sections 99-19-81 through 99-19-87;

8267 (c) The inmate has forfeited his earned time allowance
8268 by order of the commissioner;

8269 (d) The inmate was convicted of a sex crime; or

8270 (e) The inmate has not served the mandatory time
8271 required for parole eligibility for a conviction of robbery or
8272 attempted robbery with a deadly weapon.

8273 (2) An offender under two (2) or more consecutive sentences
8274 shall be allowed commutation based upon the total term of the
8275 sentences.

8276 (3) All earned time shall be forfeited by the inmate in the
8277 event of escape and/or aiding and abetting an escape. The
8278 commissioner may restore all or part of the earned time if the
8279 escapee returns to the institution voluntarily, without expense to
8280 the state, and without act of violence while a fugitive from the
8281 facility.

8282 (4) Any officer or employee who shall willfully violate the
8283 provisions of this section and be convicted therefor shall be
8284 removed from office or employment.

8285 **SECTION 347.** Section 47-5-140, Mississippi Code of 1972, is
8286 brought forward as follows:

8287 47-5-140. Each county attorney, district attorney, each
8288 member of the Parole Board and circuit judge shall be provided a
8289 copy of a handbook prepared by the commissioner which shall
8290 include a copy of Section 47-5-138 and Section 47-5-139, and shall
8291 clearly show how such sections would apply to an offender
8292 sentenced to terms of various lengths. Each offender shall be
8293 provided a copy of the handbook upon arrival at the correctional
8294 system and have it explained to him as a part of his initial
8295 orientation.

8296 **SECTION 348.** Section 47-5-142, Mississippi Code of 1972, is
8297 brought forward as follows:

8298 47-5-142. (1) In order to provide incentive for offenders
8299 to achieve positive and worthwhile accomplishments for their
8300 personal benefit or the benefit of others, and in addition to any
8301 other administrative reductions of the length of an offender's
8302 sentence, any offender shall be eligible, subject to the
8303 provisions of this section, to receive meritorious earned time as
8304 distinguished from earned time for good conduct and performance.

8305 (2) Subject to approval by the commissioner of the terms and
8306 conditions of the program or project, meritorious earned time may
8307 be awarded for the following: (a) successful completion of
8308 educational or instructional programs; (b) satisfactory
8309 participation in work projects; and (c) satisfactory participation
8310 in any special incentive program.

8311 (3) The programs and activities through which meritorious
8312 earned time may be received shall be published in writing and
8313 posted in conspicuous places at all facilities of the department
8314 and such publication shall be made available to all offenders in
8315 the custody of the department.

8316 (4) The commissioner shall make a determination of the
8317 number of days of reduction of sentence which may be awarded an

8318 offender as meritorious earned time for participation in approved
8319 programs or projects; the number of days shall be determined by
8320 the commissioner on the basis of each particular program or
8321 project. However, in no event shall an offender be awarded in
8322 excess of ten (10) days reduction for each thirty (30) days of
8323 participation in such a program or project. Furthermore, an
8324 offender shall never be allowed to earn more than a total of one
8325 hundred eighty (180) days of meritorious earned time during the
8326 entire time he is under the jurisdiction of the Department of
8327 Corrections. The commissioner may authorize the awarding of all
8328 or any part of meritorious earned time upon an offender's entry
8329 into the correctional system.

8330 (5) No offender shall be awarded any meritorious earned time
8331 while assigned to the maximum security facilities for disciplinary
8332 purposes.

8333 (6) All meritorious earned time shall be forfeited by the
8334 offender in the event of escape and/or aiding and abetting an
8335 escape.

8336 (7) Any officer or employee of the department who shall
8337 willfully violate the provisions of this section and be convicted
8338 therefor shall be removed from office or employment.

8339 (8) An offender may forfeit all or any part of his
8340 meritorious earned time allowance for just cause upon the written
8341 order of the commissioner or his designee. Any meritorious earned
8342 time allowance forfeited under this section shall not be restored
8343 nor shall it be re-earned by the offender.

8344 **SECTION 349.** Section 47-5-173, Mississippi Code of 1972, is
8345 brought forward as follows:

8346 47-5-173. The commissioner, or his designees, may grant
8347 leave to an offender and may take into consideration sickness or
8348 death in the offender's family or the seeking of employment by the
8349 offender in connection with application for parole, for a period
8350 of time not to exceed ten (10) days. Within forty-eight (48)

8351 hours prior to the release of an offender on leave, the director
8352 of records of the department shall give the written notice
8353 required pursuant to Section 47-5-177. However, if an offender is
8354 granted leave because of sickness or death in the offender's
8355 family, written notice shall not be required but the inmate shall
8356 be accompanied by a correctional officer or a law enforcement
8357 officer. In all other cases the commissioner, or his designees,
8358 shall provide required security when deemed necessary. The
8359 commissioner, or his designees, in granting leave, shall take into
8360 consideration the conduct and work performance of the offender.

8361 **SECTION 350.** Section 47-5-177, Mississippi Code of 1972, is
8362 brought forward as follows:

8363 47-5-177. Within forty-eight (48) hours prior to the release
8364 of an offender from the custody of the Department of Corrections
8365 because of discharge, parole, pardon, temporary personal leave or
8366 pass, or otherwise, except for sickness or death in the offender's
8367 family, the Director of Records of the Department of Corrections
8368 shall give written notice of such release which shall include a
8369 copy of the "Release Offense Investigation" and the "Social
8370 Admission Report," to the sheriff of the county and to the chief
8371 of police of the municipality where the offender was convicted. If
8372 the offender is paroled to a county other than the county of
8373 conviction, the Director of Records shall give written notice of
8374 the release to the sheriff, district attorney and circuit judge of
8375 the county and to the chief of police of the municipality where
8376 the offender is paroled and to the sheriff of the county and to
8377 the chief of police of the municipality where the offender was
8378 convicted. The State Department of Corrections shall notify the
8379 parole officer of the county where the offender is paroled or
8380 discharged to probation of any chronic mental disorder incurred by
8381 the offender, of any type of infectious disease for which the
8382 offender has been examined and treated, and of any medications
8383 provided to the offender for such conditions.

8384 The Commissioner of Corrections shall require the Director of
8385 Records to clearly identify the written notice of release of an
8386 offender who has been convicted of arson at any time. The fact
8387 that the offender to be released had been convicted of arson at
8388 any time shall appear prominently on the notice of release and the
8389 sheriff shall notify all officials who are responsible for
8390 investigation of arson within the county of such offender's
8391 release and the chief of police shall notify all such officials
8392 within the municipality of such offender's release.

8393 **SECTION 351.** Section 47-5-901, Mississippi Code of 1972, is
8394 brought forward as follows:

8395 47-5-901. (1) Any person committed, sentenced or otherwise
8396 placed under the custody of the Department of Corrections, on
8397 order of the sentencing court and subject to the other conditions
8398 of this subsection, may serve all or any part of his sentence in
8399 the county jail of the county wherein such person was convicted if
8400 the Commissioner of Corrections determines that physical space is
8401 not available for confinement of such person in the state
8402 correctional institutions. Such determination shall be promptly
8403 made by the Department of Corrections upon receipt of notice of
8404 the conviction of such person. The commissioner shall certify in
8405 writing that space is not available to the sheriff or other
8406 officer having custody of the person. Any person serving his
8407 sentence in a county jail shall be classified in accordance with
8408 Section 47-5-905.

8409 (2) If state prisoners are housed in county jails due to a
8410 lack of capacity at state correctional institutions, the
8411 Department of Corrections shall determine the cost for food and
8412 medical attention for such prisoners. The cost of feeding and
8413 housing offenders confined in such county jails shall be based on
8414 actual costs or contract price per prisoner. In order to maximize
8415 the potential use of county jail space, the Department of
8416 Corrections is encouraged to negotiate a reasonable per day cost

8417 per prisoner, which in no event may exceed Twenty Dollars (\$20.00)
8418 per day per offender.

8419 (3) Upon vouchers submitted by the board of supervisors of
8420 any county housing persons due to lack of space at state
8421 institutions, the Department of Corrections shall pay to such
8422 county, out of any available funds, the actual cost of food, or
8423 contract price per prisoner, not to exceed Twenty Dollars (\$20.00)
8424 per day per offender, as determined under subsection (2) of this
8425 section for each day an offender is so confined beginning the day
8426 that the Department of Corrections receives a certified copy of
8427 the sentencing order and will terminate on the date on which the
8428 offender is released or otherwise removed from the custody of the
8429 county jail, and shall pay the actual cost for medical attention
8430 for prisoners unless the Commissioner of Corrections shall find
8431 that the costs of any medical services rendered are unreasonable.
8432 Such payment shall be placed in the county general fund and shall
8433 be expended only for food and medical attention for such persons.
8434 The Department of Corrections shall not pay a county for offenders
8435 housed in county jails pending a probation or parole revocation
8436 hearing.

8437 (4) A person, on order of the sentencing court, may serve
8438 not more than twenty-four (24) months of his sentence in a county
8439 jail if the person is classified in accordance with Section
8440 47-5-905 and the county jail is an approved county jail for
8441 housing state inmates under federal court order. The sheriff of
8442 the county shall have the right to petition the Commissioner of
8443 Corrections to remove the inmate from the county jail. The county
8444 shall be reimbursed in accordance with subsection (2).

8445 (5) The Attorney General of the State of Mississippi shall
8446 defend the employees of the Department of Corrections and
8447 officials and employees of political subdivisions against any
8448 action brought by any person who was committed to a county jail
8449 under the provisions of this section.

8450 (6) This section does not create in the Department of
8451 Corrections, or its employees or agents, any new liability,
8452 express or implied, nor shall it create in the Department of
8453 Corrections any administrative authority or responsibility for the
8454 construction, funding, administration or operation of county or
8455 other local jails or other places of confinement which are not
8456 staffed and operated on a full-time basis by the Department of
8457 Corrections. The correctional system under the jurisdiction of
8458 the Department of Corrections shall include only those facilities
8459 fully staffed by the Department of Corrections and operated by it
8460 on a full-time basis.

8461 (7) An offender returned to a county for post-conviction
8462 proceedings shall be subject to the provisions of Section 99-19-42
8463 and the county shall not receive the per day allotment for such
8464 offender after the time prescribed for returning the offender to
8465 the Department of Corrections as provided in Section 99-19-42.

8466 **SECTION 352.** Section 47-7-1, Mississippi Code of 1972, is
8467 brought forward as follows:

8468 47-7-1. This chapter shall be known as the "Probation and
8469 Parole Law."

8470 **SECTION 353.** Section 47-7-5, Mississippi Code of 1972, is
8471 brought forward as follows:

8472 47-7-5. (1) The State Parole Board, created under former
8473 Section 47-7-5, is hereby created, continued and reconstituted and
8474 shall be composed of five (5) members. The Governor shall appoint
8475 the members with the advice and consent of the Senate. All terms
8476 shall be at the will and pleasure of the Governor. Any vacancy
8477 shall be filled by the Governor, with the advice and consent of
8478 the Senate. The Governor shall appoint a chairman of the board.

8479 (2) Any person who is appointed to serve on the board shall
8480 possess at least a bachelor's degree or a high school diploma and
8481 four (4) years' work experience. Each member shall devote his
8482 full time to the duties of his office and shall not engage in any

8483 other business or profession or hold any other public office. A
8484 member shall not receive compensation or per diem in addition to
8485 his salary as prohibited under Section 25-3-38. Each member shall
8486 keep such hours and workdays as required of full-time state
8487 employees under Section 25-1-98. Individuals shall be appointed
8488 to serve on the board without reference to their political
8489 affiliations. Each board member, including the chairman, may be
8490 reimbursed for actual and necessary expenses as authorized by
8491 Section 25-3-41; but a member shall not be reimbursed for travel
8492 expenses from his residence to the nearest State Penitentiary.

8493 (3) The board shall have exclusive responsibility for the
8494 granting of parole as provided by Sections 47-7-3 and 47-7-17 and
8495 shall have exclusive authority for revocation of the same. The
8496 board shall have exclusive responsibility for investigating
8497 clemency recommendations upon request of the Governor.

8498 (4) The board, its members and staff, shall be immune from
8499 civil liability for any official acts taken in good faith and in
8500 exercise of the board's legitimate governmental authority.

8501 (5) The budget of the board shall be funded through a
8502 separate line item within the general appropriation bill for the
8503 support and maintenance of the department. Employees of the
8504 department which are employed by or assigned to the board shall
8505 work under the guidance and supervision of the board. There shall
8506 be an executive secretary to the board who shall be responsible
8507 for all administrative and general accounting duties related to
8508 the board. The executive secretary shall keep and preserve all
8509 records and papers pertaining to the board.

8510 (6) The board shall have no authority or responsibility for
8511 supervision of offenders granted a release for any reason,
8512 including, but not limited to, probation, parole or executive
8513 clemency or other offenders requiring the same through interstate
8514 compact agreements. The supervision shall be provided exclusively

8515 by the staff of the Division of Community Corrections of the
8516 department.

8517 (7) The State Parole Board shall review and investigate all
8518 cases where offenders have been diagnosed with a serious illness.
8519 If the Medical Director of the Department of Corrections certifies
8520 to the State Parole Board that an offender is suffering from a
8521 terminal illness, the State Parole Board shall parole the offender
8522 with the approval and consent of the Commissioner of the
8523 Department of Corrections and the medical director.

8524 (8) (a) The Parole Board shall maintain a central registry
8525 of paroled inmates. The Parole Board shall place the following
8526 information on the registry: name, address, photograph, crime for
8527 which paroled, the date of the end of parole or flat-time date and
8528 other information deemed necessary. The Parole Board shall
8529 immediately remove information on a parolee at the end of his
8530 parole or flat-time date.

8531 (b) When a person is placed on parole, the Parole Board
8532 shall inform the parolee of the duty to report to the Parole
8533 Officer any change in address ten (10) days before changing
8534 address.

8535 (c) The Parole Board shall utilize an Internet website
8536 or other electronic means to release or publish the information.

8537 (d) Records maintained on the registry shall be open to
8538 law enforcement agencies and the public and shall be available no
8539 later than July 1, 2003.

8540 (9) This section shall stand repealed on July 1, 2004.

8541 **SECTION 354.** Section 47-7-17, Mississippi Code of 1972, is
8542 brought forward as follows:

8543 47-7-17. Within one (1) year after his admission and at such
8544 intervals thereafter as it may determine, the board shall secure
8545 and consider all pertinent information regarding each offender,
8546 except any under sentence of death or otherwise ineligible for
8547 parole, including the circumstances of his offense, his previous

8548 social history, his previous criminal record, including any
8549 records of law enforcement agencies or of a youth court regarding
8550 that offender's juvenile criminal history, his conduct, employment
8551 and attitude while in the custody of the department, and the
8552 reports of such physical and mental examinations as have been
8553 made. The board shall furnish at least three (3) months' written
8554 notice to each such offender of the date on which he is eligible
8555 for parole.

8556 Before ruling on the application for parole of any offender,
8557 the board may have the offender appear before it and interview
8558 him. The hearing shall be held two (2) months prior to the month
8559 of eligibility in order for the department to address any special
8560 conditions required by the board. No application for parole of a
8561 person convicted of a capital offense shall be considered by the
8562 board unless and until notice of the filing of such application
8563 shall have been published at least once a week for two (2) weeks
8564 in a newspaper published in or having general circulation in the
8565 county in which the crime was committed. The board shall also
8566 give notice of the filing of the application for parole to the
8567 victim of the offense for which the prisoner is incarcerated and
8568 being considered for parole or, in case the offense be homicide, a
8569 designee of the immediate family of the victim, provided the
8570 victim or designated family member has furnished in writing a
8571 current address to the board for such purpose. A parole shall be
8572 ordered only for the best interest of society, not as an award of
8573 clemency; it shall not be considered to be a reduction of sentence
8574 or pardon. An offender shall be placed on parole only when
8575 arrangements have been made for his proper employment or for his
8576 maintenance and care, and when the board believes that he is able
8577 and willing to fulfill the obligations of a law-abiding citizen.
8578 Within forty-eight (48) hours prior to the release of an offender
8579 on parole, the Director of Records of the department shall give
8580 the written notice which is required pursuant to Section 47-5-177.

8581 Every offender while on parole shall remain in the legal custody
8582 of the department from which he was released and shall be amenable
8583 to the orders of the board. The board, upon rejecting the
8584 application for parole of any offender, shall within thirty (30)
8585 days following such rejection furnish that offender in general
8586 terms the reasons therefor in writing. Upon determination by the
8587 board that an offender is eligible for release by parole, notice
8588 shall also be given by the board to the victim of the offense or
8589 the victim's family member, as indicated above, regarding the date
8590 when the offender's release shall occur, provided a current
8591 address of the victim or the victim's family member has been
8592 furnished in writing to the board for such purpose.

8593 Failure to provide notice to the victim or the victim's
8594 family member of the filing of the application for parole or of
8595 any decision made by the board regarding parole shall not
8596 constitute grounds for vacating an otherwise lawful parole
8597 determination nor shall it create any right or liability, civilly
8598 or criminally, against the board or any member thereof.

8599 A letter of protest against granting an offender parole shall
8600 not be treated as the conclusive and only reason for not granting
8601 parole.

8602 The board may adopt such other rules not inconsistent with
8603 law as it may deem proper or necessary with respect to the
8604 eligibility of offenders for parole, the conduct of parole
8605 hearings, or conditions to be imposed upon parolees, including a
8606 condition that the parolee submit, as provided in Section 47-5-601
8607 to any type of breath, saliva or urine chemical analysis test, the
8608 purpose of which is to detect the possible presence of alcohol or
8609 a substance prohibited or controlled by any law of the State of
8610 Mississippi or the United States. The board shall have the
8611 authority to adopt rules permitting certain offenders to be placed
8612 on unsupervised parole. However, in no case shall an offender be

8613 placed on unsupervised parole before he has served a minimum of
8614 three (3) years of supervised parole.

8615 **SECTION 355.** Section 47-7-53, Mississippi Code of 1972, is
8616 brought forward as follows:

8617 47-7-53. On July 1, 2000, the Department of Corrections
8618 shall assume and exercise all the duties, powers and
8619 responsibilities of the State Parole Board. The Commissioner of
8620 Corrections may assign to the appropriate officers and divisions
8621 any powers and duties deemed appropriate to carry out the duties
8622 and powers of the Parole Board. Wherever the terms "State Parole
8623 Board" or "Parole Board" appear in any state law, they shall mean
8624 the Department of Corrections.

8625 **SECTION 356.** Section 47-7-3, Mississippi Code of 1972, is
8626 brought forward as follows:

8627 47-7-3. (1) Every prisoner who has been convicted of any
8628 offense against the State of Mississippi, and is confined in the
8629 execution of a judgment of such conviction in the Mississippi
8630 State Penitentiary for a definite term or terms of one (1) year or
8631 over, or for the term of his or her natural life, whose record of
8632 conduct shows that such prisoner has observed the rules of the
8633 penitentiary, and who has served not less than one-fourth (1/4) of
8634 the total of such term or terms for which such prisoner was
8635 sentenced, or, if sentenced to serve a term or terms of thirty
8636 (30) years or more, or, if sentenced for the term of the natural
8637 life of such prisoner, has served not less than ten (10) years of
8638 such life sentence, may be released on parole as hereinafter
8639 provided, except that:

8640 (a) No prisoner convicted as a confirmed and habitual
8641 criminal under the provisions of Sections 99-19-81 through
8642 99-19-87 shall be eligible for parole;

8643 (b) Any person who shall have been convicted of a sex
8644 crime shall not be released on parole except for a person under

8645 the age of nineteen (19) who has been convicted under Section
8646 97-3-67;

8647 (c) No one shall be eligible for parole until he shall
8648 have served one (1) year of his sentence, unless such person has
8649 accrued any meritorious earned time allowances, in which case he
8650 shall be eligible for parole if he has served (i) nine (9) months
8651 of his sentence or sentences, when his sentence or sentences is
8652 two (2) years or less; (ii) ten (10) months of his sentence or
8653 sentences when his sentence or sentences is more than two (2)
8654 years but no more than five (5) years; and (iii) one (1) year of
8655 his sentence or sentences when his sentence or sentences is more
8656 than five (5) years;

8657 (d) (i) No person shall be eligible for parole who
8658 shall, on or after January 1, 1977, be convicted of robbery or
8659 attempted robbery through the display of a firearm until he shall
8660 have served ten (10) years if sentenced to a term or terms of more
8661 than ten (10) years or if sentenced for the term of the natural
8662 life of such person. If such person is sentenced to a term or
8663 terms of ten (10) years or less, then such person shall not be
8664 eligible for parole. The provisions of this paragraph (d) shall
8665 also apply to any person who shall commit robbery or attempted
8666 robbery on or after July 1, 1982, through the display of a deadly
8667 weapon. This subparagraph (d)(i) shall not apply to persons
8668 convicted after September 30, 1994;

8669 (ii) No person shall be eligible for parole who
8670 shall, on or after October 1, 1994, be convicted of robbery,
8671 attempted robbery or carjacking as provided in Section 97-3-115 et
8672 seq., through the display of a firearm or drive-by shooting as
8673 provided in Section 97-3-109. The provisions of this subparagraph
8674 (d)(ii) shall also apply to any person who shall commit robbery,
8675 attempted robbery, carjacking or a drive-by shooting on or after
8676 October 1, 1994, through the display of a deadly weapon;

8677 (e) No person shall be eligible for parole who, on or
8678 after July 1, 1994, is charged, tried, convicted and sentenced to
8679 life imprisonment without eligibility for parole under the
8680 provisions of Section 99-19-101;

8681 (f) No person shall be eligible for parole who is
8682 charged, tried, convicted and sentenced to life imprisonment under
8683 the provisions of Section 99-19-101;

8684 (g) No person shall be eligible for parole who is
8685 convicted or whose suspended sentence is revoked after June 30,
8686 1995, except that a first offender convicted of a nonviolent crime
8687 after January 1, 2000, may be eligible for parole if the offender
8688 meets the requirements in subsection (1) and this paragraph. In
8689 addition to other requirements, if a first offender is convicted
8690 of a drug or driving under the influence felony, the offender must
8691 complete a drug and alcohol rehabilitation program prior to parole
8692 or the offender may be required to complete a post-release drug
8693 and alcohol program as a condition of parole. For purposes of
8694 this paragraph, "nonviolent crime" means a felony other than
8695 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
8696 occupied dwelling, aggravated assault, kidnapping, felonious abuse
8697 of vulnerable adults, felonies with enhanced penalties, the sale
8698 or manufacture of a controlled substance under the Uniform
8699 Controlled Substances Law, and felony child abuse.

8700 (2) Notwithstanding any other provision of law, an inmate
8701 shall not be eligible to receive earned time, good time or any
8702 other administrative reduction of time which shall reduce the time
8703 necessary to be served for parole eligibility as provided in
8704 subsection (1) of this section; however, this subsection shall not
8705 apply to the advancement of parole eligibility dates pursuant to
8706 the Prison Overcrowding Emergency Powers Act. Moreover,
8707 meritorious earned time allowances may be used to reduce the time
8708 necessary to be served for parole eligibility as provided in
8709 paragraph (c) of subsection (1) of this section.

8710 (3) The State Parole Board shall by rules and regulations
8711 establish a method of determining a tentative parole hearing date
8712 for each eligible offender taken into the custody of the
8713 Department of Corrections. The tentative parole hearing date
8714 shall be determined within ninety (90) days after the department
8715 has assumed custody of the offender. Such tentative parole
8716 hearing date shall be calculated by a formula taking into account
8717 the offender's age upon first commitment, number of prior
8718 incarcerations, prior probation or parole failures, the severity
8719 and the violence of the offense committed, employment history and
8720 other criteria which in the opinion of the board tend to validly
8721 and reliably predict the length of incarceration necessary before
8722 the offender can be successfully paroled.

8723 (4) Any inmate within twenty-four (24) months of his parole
8724 eligibility date and who meets the criteria established by the
8725 classification board shall receive priority for placement in any
8726 educational development and job training programs. Any inmate
8727 refusing to participate in an educational development or job
8728 training program may be ineligible for parole.

8729 **SECTION 357.** Section 47-7-9, Mississippi Code of 1972, is
8730 brought forward as follows:

8731 47-7-9. (1) The circuit judges and county judges in the
8732 districts to which Division of Community Services personnel have
8733 been assigned shall have the power to request of the department
8734 transfer or removal of the division personnel from their court.

8735 (2) (a) Division personnel shall investigate all cases
8736 referred to them for investigation by the board, the division or
8737 by any court in which they are authorized to serve. They shall
8738 furnish to each person released under their supervision a written
8739 statement of the conditions of probation, parole, earned-release
8740 supervision, post-release supervision or suspension and shall
8741 instruct him regarding the same. They shall keep informed
8742 concerning the conduct and conditions of persons under their

8743 supervision and use all suitable methods to aid and encourage them
8744 and to bring about improvements in their conduct and condition.
8745 They shall keep detailed records of their work and shall make such
8746 reports in writing as the court or the board may require.

8747 (b) The division personnel duly assigned to court
8748 districts are hereby vested with all the powers of police officers
8749 or sheriffs to make arrests or perform any other duties required
8750 of policemen or sheriffs which may be incident to the division
8751 personnel responsibilities. All probation and parole officers
8752 hired on or after July 1, 1994, will be placed in the Law
8753 Enforcement Officers' Training Program and will be required to
8754 meet the standards outlined by that program.

8755 (c) It is the intention of the Legislature that insofar
8756 as practicable the case load of each division personnel
8757 supervising offenders in the community (hereinafter field
8758 supervisor) shall not exceed the number of cases that may be
8759 adequately handled.

8760 (3) (a) Division personnel shall be provided to perform
8761 investigation for the court as provided in this subsection.
8762 Division personnel shall conduct presentence investigations on all
8763 persons convicted of a felony in any circuit court of the state,
8764 prior to sentencing and at the request of the circuit court judge
8765 of the court of conviction. The presentence evaluation report
8766 shall consist of a complete record of the offender's criminal
8767 history, educational level, employment history, psychological
8768 condition and such other information as the department or judge
8769 may deem necessary. Division personnel shall also prepare written
8770 victim impact statements at the request of the sentencing judge as
8771 provided in Section 99-19-157.

8772 (b) In order that offenders in the custody of the
8773 department on July 1, 1976, may benefit from the kind of
8774 evaluations authorized in this section, an evaluation report to
8775 consist of the information required hereinabove, supplemented by

8776 an examination of an offender's record while in custody, shall be
8777 compiled by the division upon all offenders in the custody of the
8778 department on July 1, 1976. After a study of such reports by the
8779 State Parole Board those cases which the board believes would
8780 merit some type of executive clemency shall be submitted by the
8781 board to the Governor with its recommendation for the appropriate
8782 executive action.

8783 (c) The department is authorized to accept gifts,
8784 grants and subsidies to conduct this activity.

8785 **SECTION 358.** Section 47-7-23, Mississippi Code of 1972, is
8786 brought forward as follows:

8787 47-7-23. Except as otherwise provided by law, the Department
8788 of Corrections shall have the power and duty to make rules for the
8789 conduct of persons heretofore or hereafter placed on parole under
8790 the supervision of the Department of Corrections and for the
8791 investigation and supervision of such persons, which supervision
8792 may include a condition that such persons submit, as provided in
8793 Section 47-5-601, to any type of breath, saliva or urine chemical
8794 analysis test, the purpose of which is to detect the possible
8795 presence of alcohol or a substance prohibited or controlled by any
8796 law of the State of Mississippi or the United States. The
8797 department shall not make any rules which shall be inconsistent
8798 with the rules imposed by the State Parole Board pursuant to
8799 Section 47-7-17 on offenders who are placed on unsupervised
8800 parole.

8801 **SECTION 359.** Section 47-7-25, Mississippi Code of 1972, is
8802 brought forward as follows:

8803 47-7-25. When an offender is placed on parole he shall
8804 receive, if needed, from the state, civilian clothing and
8805 transportation to the place in which he is to reside. At the
8806 discretion of the board the offender may be advanced such sum for
8807 his temporary maintenance as the board may allow. The aforesaid
8808 gratuities are to be furnished by the Commissioner of Corrections

8809 who is authorized to charge the actual cost of same in his account
8810 as Commissioner of Corrections.

8811 **SECTION 360.** Section 47-7-27, Mississippi Code of 1972, is
8812 brought forward as follows:

8813 47-7-27. The board is hereby authorized at any time, in its
8814 discretion, and upon a showing of probable violation of parole, to
8815 issue a warrant for the return of any paroled offender to the
8816 custody of the Mississippi Department of Corrections. Such
8817 warrant shall authorize all persons named therein to return such
8818 paroled offender to actual custody of the Department of
8819 Corrections from which he was paroled. Pending hearing, as
8820 hereinafter provided, upon any charge of parole violation, the
8821 offender shall remain incarcerated in any other place of detention
8822 designated by the department.

8823 Any field supervisor may arrest an offender without a warrant
8824 or may deputize any other person with power of arrest to do so by
8825 giving him a written statement setting forth that the offender
8826 has, in the judgment of that field supervisor, violated the
8827 conditions of his parole or earned-release supervision. Such
8828 written statement delivered with the offender by the arresting
8829 officer to the official in charge of the department facility from
8830 which the offender was released or other place of detention
8831 designated by the department shall be sufficient warrant for the
8832 detention of the offender.

8833 The field supervisor, after making an arrest, shall present
8834 to the detaining authorities a similar statement of the
8835 circumstances of violation. The field supervisor shall at once
8836 notify the board or department of the arrest and detention of the
8837 offender and shall submit a written report showing in what manner
8838 the offender has violated the conditions of parole or
8839 earned-release supervision. An offender for whose return a
8840 warrant has been issued by the board shall, after the issuance of
8841 such warrant, be deemed a fugitive from justice.

8842 The law now in effect concerning the right of the State of
8843 Mississippi to extradite persons and return fugitives from
8844 justice, from other states to this state, shall not be impaired by
8845 this chapter and shall remain in full force and effect. An
8846 offender convicted of a felony while on parole, whether in the
8847 State of Mississippi or another state, shall immediately have his
8848 parole revoked upon presentment of a certified copy of the
8849 commitment order to the board.

8850 At the next meeting of the board held after the issuance of a
8851 warrant for the retaking of any offender, the board shall be
8852 notified thereof; and if the offender shall have been taken into
8853 custody, he shall then be given an opportunity to appeal to the
8854 board in writing or in person why his parole should not be
8855 revoked. The board may then, or at any time in its discretion,
8856 terminate such parole or modify the terms and conditions thereof.
8857 In the event the board shall revoke parole, the offender shall
8858 serve the remainder of the sentence originally imposed unless at a
8859 later date the board shall think it expedient to grant the
8860 offender a second parole. In case a second parole shall not be
8861 granted, then the offender shall serve the remainder of the
8862 sentence originally imposed, and the time the offender was out on
8863 parole shall not be taken into account to diminish the time for
8864 which he was sentenced.

8865 The chairman and each member of the board and the designated
8866 parole revocation hearing officer, in the discharge of their
8867 duties, are authorized to administer oaths, to summon and examine
8868 witnesses, and take other steps as may be necessary to ascertain
8869 the truth of any matter about which they may have the right to
8870 inquire.

8871 **SECTION 361.** Section 47-7-29, Mississippi Code of 1972, is
8872 brought forward as follows:

8873 47-7-29. Any prisoner who commits a felony while at large
8874 upon parole or earned-release supervision and who is convicted and

8875 sentenced therefor shall be required to serve such sentence after
8876 the original sentence has been completed.

8877 **SECTION 362.** Section 47-7-31, Mississippi Code of 1972, is
8878 brought forward as follows:

8879 47-7-31. Upon request of the Governor the Department of
8880 Corrections shall investigate and report to him with respect to
8881 any case of pardon, commutation of sentence, reprieve, furlough or
8882 remission of fine or forfeiture.

8883 Any attorney of record in the State of Mississippi
8884 representing any person whose record is before the department
8885 shall have the right to inspect such records on file with the
8886 department.

8887 **SECTION 363.** Section 47-7-33, Mississippi Code of 1972, is
8888 brought forward as follows:

8889 47-7-33. When it appears to the satisfaction of any circuit
8890 court or county court in the State of Mississippi, having original
8891 jurisdiction over criminal actions, or to the judge thereof, that
8892 the ends of justice and the best interest of the public, as well
8893 as the defendant, will be served thereby, such court, in termtime
8894 or in vacation, shall have the power, after conviction or a plea
8895 of guilty, except in a case where a death sentence or life
8896 imprisonment is the maximum penalty which may be imposed or where
8897 the defendant has been convicted of a felony on a previous
8898 occasion in any court or courts of the United States and of any
8899 state or territories thereof, to suspend the imposition or
8900 execution of sentence, and place the defendant on probation as
8901 herein provided, except that the court shall not suspend the
8902 execution of a sentence of imprisonment after the defendant shall
8903 have begun to serve such sentence. In placing any defendant on
8904 probation, the court, or judge, shall direct that such defendant
8905 be under the supervision of the Department of Corrections.

8906 When any circuit court or county court places a person on
8907 probation in accordance with the provisions of this section and

8908 that person is ordered to make any payments to his family, if any
8909 member of his family whom he is ordered to support is receiving
8910 public assistance through the State Department of Public Welfare,
8911 the court shall order him to make such payments to the county
8912 welfare officer of the county rendering public assistance to his
8913 family, for the sole use and benefit of said family.

8914 **SECTION 364.** Section 47-7-35, Mississippi Code of 1972, is
8915 brought forward as follows:

8916 47-7-35. The courts referred to in Section 47-7-33 or
8917 47-7-34 shall determine the terms and conditions of probation or
8918 post-release supervision and may alter or modify, at any time
8919 during the period of probation or post-release supervision the
8920 conditions and may include among them the following or any other:

8921 That the, offender shall:

8922 (a) Commit no offense against the laws of this or any
8923 other state of the United States, or of the United States;

8924 (b) Avoid injurious or vicious habits;

8925 (c) Avoid persons or places of disreputable or harmful
8926 character;

8927 (d) Report to the probation and parole officer as
8928 directed;

8929 (e) Permit the probation and parole officer to visit
8930 him at home or elsewhere;

8931 (f) Work faithfully at suitable employment so far as
8932 possible;

8933 (g) Remain within a specified area;

8934 (h) Pay his fine in one (1) or several sums;

8935 (i) Support his dependents;

8936 (j) Submit, as provided in Section 47-5-601, to any
8937 type of breath, saliva or urine chemical analysis test, the
8938 purpose of which is to detect the possible presence of alcohol or
8939 a substance prohibited or controlled by any law of the State of
8940 Mississippi or the United States.

8941 **SECTION 365.** Section 47-7-37, Mississippi Code of 1972, is
8942 brought forward as follows:

8943 47-7-37. The period of probation shall be fixed by the
8944 court, and may at any time be extended or terminated by the court,
8945 or judge in vacation. Such period with any extension thereof
8946 shall not exceed five (5) years, except that in cases of desertion
8947 and/or failure to support minor children, the period of probation
8948 may be fixed and/or extended by the court for so long as the duty
8949 to support such minor children exists.

8950 At any time during the period of probation the court, or
8951 judge in vacation, may issue a warrant for violating any of the
8952 conditions of probation or suspension of sentence and cause the
8953 probationer to be arrested. Any probation and parole officer may
8954 arrest a probationer without a warrant, or may deputize any other
8955 officer with power of arrest to do so by giving him a written
8956 statement setting forth that the probationer has, in the judgment
8957 of the probation and parole officer, violated the conditions of
8958 probation. Such written statement delivered with the probationer
8959 by the arresting officer to the official in charge of a county
8960 jail or other place of detention shall be sufficient warrant for
8961 the detention of the probationer.

8962 The probation and parole officer after making an arrest shall
8963 present to the detaining authorities a similar statement of the
8964 circumstances of violation. The probation and parole officer
8965 shall at once notify the court of the arrest and detention of the
8966 probationer and shall submit a report in writing showing in what
8967 manner the probationer has violated the conditions of probation.
8968 Thereupon, or upon an arrest by warrant as herein provided, the
8969 court, in termtime or vacation, shall cause the probationer to be
8970 brought before it and may continue or revoke all or any part of
8971 the probation or the suspension of sentence, and may cause the
8972 sentence imposed to be executed or may impose any part of the
8973 sentence which might have been imposed at the time of conviction.

8974 If the probationer is arrested in a circuit court district in
8975 the State of Mississippi other than that in which he was
8976 convicted, the probation and parole officer, upon the written
8977 request of the sentencing judge, shall furnish to the circuit
8978 court or the county court of the county in which the arrest is
8979 made, or to the judge of such court, a report concerning the
8980 probationer, and such court or the judge in vacation shall have
8981 authority, after a hearing, to continue or revoke all or any part
8982 of probation or all or any part of the suspension of sentence, and
8983 may in case of revocation proceed to deal with the case as if
8984 there had been no probation. In such case, the clerk of the court
8985 in which the order of revocation is issued shall forward a
8986 transcript of such order to the clerk of the court of original
8987 jurisdiction, and the clerk of that court shall proceed as if the
8988 order of revocation had been issued by the court of original
8989 jurisdiction. Upon the revocation of probation or suspension of
8990 sentence of any offender, such offender shall be placed in the
8991 legal custody of the State Department of Corrections and shall be
8992 subject to the requirements thereof.

8993 Any probationer who removes himself from the State of
8994 Mississippi without permission of the court placing him on
8995 probation, or the court to which jurisdiction has been
8996 transferred, shall be deemed and considered a fugitive from
8997 justice and shall be subject to extradition as now provided by
8998 law. No part of the time that one is on probation shall be
8999 considered as any part of the time that he shall be sentenced to
9000 serve.

9001 The arresting officer, except when a probation and parole
9002 officer, shall be allowed the same fees as now provided by law for
9003 arrest on warrant, and such fees shall be taxed against the
9004 probationer and paid as now provided by law.

9005 The arrest, revocation and recommitment procedures of this
9006 section also apply to persons who are serving a period of
9007 post-release supervision imposed by the court.

9008 **SECTION 366.** Section 47-7-41, Mississippi Code of 1972, is
9009 brought forward as follows:

9010 47-7-41. When a probationer shall be discharged from
9011 probation by the court of original jurisdiction, the field
9012 supervisor, upon receiving a written request from the probationer,
9013 shall forward a written report of the record of the probationer to
9014 the Division of Community Corrections of the department, which
9015 shall present a copy of this report to the Governor. The Governor
9016 may, in his discretion, at any time thereafter by appropriate
9017 executive order restore any civil rights lost by the probationer
9018 by virtue of his conviction or plea of guilty in the court of
9019 original jurisdiction.

9020 **SECTION 367.** Section 47-7-47, Mississippi Code of 1972, is
9021 brought forward as follows:

9022 47-7-47. (1) The judge of any circuit court may place an
9023 offender on a program of earned probation after a period of
9024 confinement as set out herein and the judge may seek the advice of
9025 the commissioner and shall direct that the defendant be under the
9026 supervision of the department.

9027 (2) (a) Any circuit court or county court may, upon its own
9028 motion, acting upon the advice and consent of the commissioner not
9029 earlier than thirty (30) days nor later than one (1) year after
9030 the defendant has been delivered to the custody of the department,
9031 to which he has been sentenced, suspend the further execution of
9032 the sentence and place the defendant on earned probation, except
9033 when a death sentence or life imprisonment is the maximum penalty
9034 which may be imposed or if the defendant has been confined two (2)
9035 or more times for the conviction of a felony on a previous
9036 occasion in any court or courts of the United States and of any

9037 state or territories thereof or has been convicted of a felony
9038 involving the use of a deadly weapon.

9039 (b) The authority granted in this subsection shall be
9040 exercised by the judge who imposed sentence on the defendant, or
9041 his successor.

9042 (c) The time limit imposed by paragraph (a) of this
9043 subsection is not applicable to those defendants sentenced to the
9044 custody of the department prior to April 14, 1977. Persons who
9045 are convicted of crimes that carry mandatory sentences shall not
9046 be eligible for earned probation.

9047 (3) When any circuit or county court places an offender on
9048 earned probation, the court shall give notice to the Mississippi
9049 Department of Corrections within fifteen (15) days of the court's
9050 decision to place the offender on earned probation. Notice shall
9051 be delivered to the central office of the Mississippi Department
9052 of Corrections and to the regional office of the department which
9053 will be providing supervision to the offender on earned probation.

9054 (4) If the court places any person on probation or earned
9055 probation, the court may order the person, as a condition of
9056 probation, to a period of confinement and treatment at a private
9057 or public agency or institution, either within or without the
9058 state, which treats emotional, mental or drug-related problems.
9059 Any person who, as a condition of probation, is confined for
9060 treatment at an out-of-state facility shall be supervised pursuant
9061 to Section 47-7-71, and any person confined at a private agency
9062 shall not be confined at public expense. Time served in any such
9063 agency or institution may be counted as time required to meet the
9064 criteria of subsection (2)(a).

9065 (5) If the court places any person on probation or earned
9066 probation, the court may order the person to make appropriate
9067 restitution to any victim of his crime or to society through the
9068 performance of reasonable work for the benefit of the community.

9069 (6) If the court places any person on probation or earned
9070 probation, the court may order the person, as a condition of
9071 probation, to submit, as provided in Section 47-5-601, to any type
9072 of breath, saliva or urine chemical analysis test, the purpose of
9073 which is to detect the possible presence of alcohol or a substance
9074 prohibited or controlled by any law of the State of Mississippi or
9075 the United States.

9076 **SECTION 368.** Section 47-7-49, Mississippi Code of 1972, is
9077 brought forward as follows:

9078 47-7-49. (1) Any offender on probation, parole,
9079 earned-release supervision, post-release supervision, earned
9080 probation or any other offender under the field supervision of the
9081 Community Services Division of the department shall pay to the
9082 department the sum of Thirty-five Dollars (\$35.00) per month by
9083 certified check or money order unless a hardship waiver is
9084 granted. An offender shall make the initial payment within thirty
9085 (30) days after being released from imprisonment unless a hardship
9086 waiver is granted. A hardship waiver may be granted by the
9087 sentencing court or the Department of Corrections. A hardship
9088 waiver may not be granted for a period of time exceeding ninety
9089 (90) days. The commissioner or his designee shall deposit Thirty
9090 Dollars (\$30.00) of each payment received into a special fund in
9091 the State Treasury, which is hereby created, to be known as the
9092 Community Service Revolving Fund. Expenditures from this fund
9093 shall be made for: (a) the establishment of restitution and
9094 satellite centers; and (b) the establishment, administration and
9095 operation of the department's Drug Identification Program and the
9096 intensive and field supervision program. The Thirty Dollars
9097 (\$30.00) may be used for salaries and to purchase equipment,
9098 supplies and vehicles to be used by the Community Services
9099 Division in the performance of its duties. Expenditures for the
9100 purposes established in this section may be made from the fund
9101 upon requisition by the commissioner, or his designee.

9102 Of the remaining amount, Three Dollars (\$3.00) of each
9103 payment shall be deposited in the Crime Victims' Compensation Fund
9104 created in Section 99-41-29, and Two Dollars (\$2.00) shall be
9105 deposited into the Training Revolving Fund created pursuant to
9106 Section 47-7-51. When a person is convicted of a felony in this
9107 state, in addition to any other sentence it may impose, the court
9108 may, in its discretion, order the offender to pay a state
9109 assessment not to exceed the greater of One Thousand Dollars
9110 (\$1,000.00) or the maximum fine that may be imposed for the
9111 offense, into the Crime Victims' Compensation Fund created
9112 pursuant to Section 99-41-29.

9113 Any federal funds made available to the department for
9114 training or for training facilities, equipment or services shall
9115 be deposited in the Correctional Training Revolving Fund created
9116 in Section 47-7-51. The funds deposited in this account shall be
9117 used to support an expansion of the department's training program
9118 to include the renovation of facilities for training purposes,
9119 purchase of equipment and contracting of training services with
9120 community colleges in the state.

9121 No offender shall be required to make this payment for a
9122 period of time longer than ten (10) years.

9123 (2) The offender may be imprisoned until the payments are
9124 made if the offender is financially able to make the payments and
9125 the court in the county where the offender resides so finds,
9126 subject to the limitations hereinafter set out. The offender
9127 shall not be imprisoned if the offender is financially unable to
9128 make the payments and so states to the court in writing, under
9129 oath, and the court so finds.

9130 (3) This section shall stand repealed from and after June
9131 30, 2004.

9132 **SECTION 369.** This act shall take effect and be in force from
9133 and after its passage.