

By: Representative Dixon

To: Judiciary B

## HOUSE BILL NO. 1058

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 OF  
84 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, 97-3-71,  
107 97-3-95, 97-3-97, 97-3-99, 97-3-101 AND 97-3-103, MISSISSIPPI CODE  
108 OF 1972, WHICH PROVIDE FOR THE CRIMES OF RAPE AND SEXUAL ASSAULT;  
109 TO REPEAL SECTIONS 97-17-1, 97-17-3, 97-17-5, 97-17-7, 97-17-9,  
110 97-17-11 AND 97-17-13, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR  
111 THE CRIME OF ARSON; TO REPEAL SECTIONS 97-17-23, 97-17-25,  
112 97-17-29, 97-17-31, 97-17-33, 97-17-35 AND 97-17-37, MISSISSIPPI  
113 CODE OF 1972, WHICH PROVIDE FOR THE CRIME OF BURGLARY; TO REPEAL  
114 SECTIONS 97-3-73, 97-3-75, 97-3-77, 97-3-79, 97-3-81 AND 97-3-83,  
115 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE CRIME OF ROBBERY;  
116 TO REPEAL SECTION 97-3-82, MISSISSIPPI CODE OF 1972, WHICH  
117 PROVIDES FOR THE CRIME OF EXTORTION; TO REPEAL SECTIONS 97-17-45,  
118 97-17-47, 97-17-49, 97-17-51, 97-17-53, 97-17-55, 97-17-58,  
119 97-17-59, 97-17-61, 97-17-63 AND 97-17-64, MISSISSIPPI CODE OF  
120 1972, WHICH PROVIDE FOR THE CRIME OF LARCENY; TO REPEAL SECTION  
121 97-17-67, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE CRIME  
122 OF MALICIOUS MISCHIEF; TO REPEAL SECTION 97-17-70, MISSISSIPPI  
123 CODE OF 1972, WHICH PROVIDES FOR THE CRIME OF RECEIVING STOLEN  
124 PROPERTY; TO REPEAL SECTIONS 97-21-1, 97-21-3, 97-21-7, 97-21-9,  
125 97-21-11, 97-21-13, 97-21-15, 97-21-17, 97-21-19, 97-21-21,  
126 97-21-23, 97-21-25, 97-21-27, 97-21-29, 97-21-31, 97-21-33,  
127 97-21-35, 97-21-37, 97-21-39, 97-21-41, 97-21-43, 97-21-45,  
128 97-21-47, 97-21-49, 97-21-51, 97-21-53, 97-21-55, 97-21-57,  
129 97-21-59, 97-21-61 AND 97-21-63, MISSISSIPPI CODE OF 1972, WHICH  
130 PROVIDE FOR THE CRIME OF FORGERY; TO REPEAL SECTIONS 97-19-7,  
131 97-19-9, 97-19-11, 97-19-13, 97-19-15, 97-19-17, 97-19-19,  
132 97-19-21, 97-19-23, 97-19-25, 97-19-27, 97-19-29 AND 97-19-31,  
133 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE FRAUDULENT USE OF  
134 CREDIT CARDS; TO REPEAL SECTIONS 97-19-55 AND 97-19-67,  
135 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE CRIME OF FRAUD FOR  
136 ISSUING BAD CHECKS; TO REPEAL SECTIONS 97-29-13 AND 97-29-15,



MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE CRIME OF BIGAMY;  
TO REPEAL SECTIONS 97-29-5, 97-29-27 AND 97-29-29, MISSISSIPPI  
CODE OF 1972, WHICH PROVIDE FOR THE CRIME OF INCEST; TO REPEAL  
SECTION 97-29-31, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE  
CRIME OF INDECENT EXPOSURE; TO REPEAL SECTIONS 97-9-5, 97-9-7,  
97-9-9, 97-9-10, 97-11-11, 97-11-13, 97-11-53, 97-13-1 AND  
97-13-3, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE CRIME OF  
BRIBERY; TO REPEAL SECTIONS 97-9-59, 97-9-61, 97-9-63 AND 97-9-65,  
MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE CRIME OF PERJURY;  
TO REPEAL SECTIONS 97-9-45, 97-9-47 AND 97-9-49, MISSISSIPPI CODE  
OF 1972, WHICH PROVIDE FOR THE CRIME OF ESCAPE; TO REPEAL SECTION  
97-29-47, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE CRIME  
OF PUBLIC DRUNKENNESS; TO REPEAL SECTIONS 97-41-1, 97-41-5,  
97-41-7, 97-41-9 AND 97-41-11, MISSISSIPPI CODE OF 1972, WHICH  
PROVIDE FOR THE CRIME OF CRUELTY TO ANIMALS; TO BRING FORWARD FOR  
PURPOSES OF AMENDMENT SECTIONS 47-1-1, 47-1-3, 47-1-5, 47-1-7,  
47-1-9, 47-1-11, 47-1-13, 47-1-15, 47-1-17, 47-1-19, 47-1-21,  
47-1-23, 47-1-25, 47-1-27, 47-1-29, 47-1-31, 47-1-33, 47-1-35,  
47-1-37, 47-1-39, 47-1-41, 47-1-43, 47-1-45, 47-1-47, 47-1-49,  
47-1-51, 47-1-55, 47-1-57, 47-1-59, 47-1-61 AND 47-1-63,  
MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE INCARCERATION AND  
ADMINISTRATION OF COUNTY AND MUNICIPAL PRISONS AND PRISONERS; TO  
BRING FORWARD FOR PURPOSES OF AMENDMENT SECTIONS 47-4-1, 47-4-3  
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OPERATED CORRECTIONAL FACILITIES; TO BRING FORWARD SECTIONS  
47-5-1, 47-5-3, 47-5-4, 47-5-5, 47-5-8, 47-5-10, 47-5-20, 47-5-23,  
47-5-24, 47-5-26, 47-5-28, 47-5-35, 47-5-37, 47-5-49, 47-5-54,  
47-5-99, 47-5-101, 47-5-103, 47-5-104, 47-5-110, 47-5-119,  
47-5-120, 47-5-121, 47-5-126, 47-5-138, 47-5-139, 47-5-140,  
47-5-142, 47-5-173, 47-5-177 AND 47-5-901, MISSISSIPPI CODE OF  
1972, WHICH CREATE THE CORRECTIONAL SYSTEM FOR THE STATE OF  
MISSISSIPPI AND PRESCRIBE THE DUTIES AND POWERS THEREUNDER; TO  
BRING FORWARD SECTIONS 47-7-1, 47-7-3, 47-7-5, 47-7-9, 47-7-17,  
47-7-23, 47-7-25, 47-7-27, 47-7-29, 47-7-31, 47-7-33, 47-7-35,  
47-7-37, 47-7-41, 47-7-47, 47-7-49 AND 47-7-53 MISSISSIPPI CODE OF  
1972, WHICH PROVIDE FOR PROBATION AND PAROLE AND SPECIFY THE  
POWERS AND DUTIES RELATED THERETO; AND FOR RELATED PURPOSES.

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

## ARTICLE 1

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

(2) Except as provided in subsections (3) and (4) of this  
section, this act does not apply to offenses committed prior to  
its effective date and prosecutions for such offenses shall be



governed by the prior law, which is continued in effect for that purpose, as if this act were not in force. For the purposes of this section, an offense was committed prior to the effective date of this act if any of the elements of the offense occurred prior thereto.

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

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

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

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

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

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



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

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

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

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

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

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

(a) To prevent the commission of offenses;

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

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

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

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

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



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

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

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

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

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

(b) Conduct occurring outside the state is sufficient under the law of this state to constitute an attempt to commit an 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.



**SECTION 5.**

(1) No conduct constitutes an offense unless it is a crime or violation under this act or another statute of this state.

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

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

**SECTION 6.**

(1) A prosecution for murder may be commenced at any time.

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

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

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

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

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

(3) If the period prescribed in subsection (2) has expired, 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 information filed or when a warrant or other process is  
369 issued, provided that such warrant or process is executed without  
370 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



provision extend the period of limitation otherwise applicable by more than three (3) years; or

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

**SECTION 7.** (1) **Prosecution for multiple offenses; limitation on convictions.** When the same conduct of a defendant may establish the commission of more than one (1) offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one (1) offense if:

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

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

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

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

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

(2) **Limitation on separate trials for multiple offenses.** Except as provided in subsection (3) of this section, a defendant shall not be subject to separate trials for multiple offenses



based on the same conduct or arising from the same criminal episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of a single court.

(3) **Authority of court to order separate trials.** When a defendant is charged with two (2) or more offenses based on the same conduct or arising from the same criminal episode, the court, on application of the prosecuting attorney or of the defendant, may order any such charge to be tried separately, if it is satisfied that justice so requires.

(4) **Conviction of included offense permitted.** A defendant may be convicted of an offense included in an offense charged in the indictment or the information. An offense is so included when:

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

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

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



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

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

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

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

(c) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of



guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court. In the latter two (2) cases failure to enter judgment must be for a reason other than a motion of the defendant.

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

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

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

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

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

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

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





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

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

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

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

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

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

(b) The former prosecution was terminated, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been



set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

(c) The former prosecution was improperly terminated, as improper termination is defined in Section 8 of this act, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

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

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

(b) The former prosecution was terminated, after the information was filed or the indictment found, by an acquittal or



by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

(a) When there is evidence of the facts which give rise to the presumption, the issue of the existence of the presumed



fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly negatives the presumed fact; and

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

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

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

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

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

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

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

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



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

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

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

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

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

(p) "Reasonably believes" or "reasonable belief" designates a belief which the actor is not reckless or negligent in holding.

## ARTICLE 2

### GENERAL PRINCIPLES OF LIABILITY

**SECTION 14.** (1) A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

(2) The following are not voluntary acts within the meaning of this section:

(a) A reflex or convulsion;



647                   (b) A bodily movement during unconsciousness or sleep;  
648                   (c) Conduct during hypnosis or resulting from hypnotic  
649 suggestion;  
650                   (d) A bodily movement that otherwise is not a product  
651 of the effort or determination of the actor, either conscious or  
652 habitual.

653           (3) Liability for the commission of an offense may not be  
654 based on an omission unaccompanied by action unless:

655                   (a) The omission is expressly made sufficient by the  
656 law defining the offense; or

657                   (b) A duty to perform the omitted act is otherwise  
658 imposed by law.

659           (4) Possession is an act, within the meaning of this  
660 section, if the possessor knowingly procured or received the thing  
661 possessed or was aware of his control thereof for a sufficient  
662 period to have been able to terminate his possession.

663           **SECTION 15.** (1) **Minimum requirements of culpability.**

664 Except as provided in Section 18 of this act, a person is not  
665 guilty of an offense unless he acted purposely, knowingly,  
666 recklessly or negligently, as the law may require, with respect to  
667 each material element of the offense.

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



exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(3) **Culpability required unless otherwise provided.** When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto.

(4) **Prescribed culpability requirement applies to all material elements.** When the law defining an offense prescribed the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(5) **Substitutes for negligence, recklessness and knowledge.** When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.



(6) **Requirement of purpose satisfied if purpose is conditional.** When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.

(7) **Requirement of knowledge satisfied by knowledge of high probability.** When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.

(8) **Requirement of willfulness satisfied by acting knowingly.** A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

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

(10) **Culpability as determinant of grade of offense.** When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly or negligently, its grade or degree shall be the lowest for which the determinative



kind of culpability is established with respect to any material element of the offense.

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

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

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

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

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

(b) The actual result involves the same kind of injury or harm as that designed or contemplated and is not too remote or accidental in its occurrence to have a just bearing on the actor's liability or on the gravity of his offense.

(3) When recklessly or negligently causing a particular result is an element of an offense, the element is not established 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



mistake of the defendant shall reduce the grade and degree of which he would be guilty had the situation been as he supposed.

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

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

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

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

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

(a) Offenses which constitute violations, unless the requirement involved is included in the definition of the offense or the court determines that its application is consistent with 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 a 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.



**SECTION 20.**

(1) A corporation may be convicted of the commission of an offense if:

(a) The offense is a violation or the offense is defined by a statute other than this act in which a legislative purpose to impose liability on corporations plainly appears and the conduct is performed by an agent of the corporation acting in behalf of the corporation within the scope of his office or employment, except that if the law defining the offense designates the agents for whose conduct the corporation is accountable or the circumstances under which it is accountable, such provisions shall apply; or

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

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

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

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

(a) The offense is defined by a statute other than this 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.



**SECTION 21.**

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

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

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

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

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

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

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



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

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

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

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

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

**SECTION 23.** It is an affirmative defense that the actor, in engaging in the conduct charged to constitute an offense, does no



more than execute an order of his superior in the armed services which he does not know to be unlawful.

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

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

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

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

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

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

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

(b) It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or



known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

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

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

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

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

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

(c) Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in forbidding the offense.

The court shall not dismiss a prosecution under subsection (3) of this section without filing a written statement of its reasons.





**SECTION 26.**

(1) A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting such offense by either:

(a) Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

(b) Employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

(2) Except as provided in subsection (3) of this section, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried by the court in the absence of the jury.

(3) The defense afforded by this section is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

**ARTICLE 3**

**GENERAL PRINCIPLES OF JUSTIFICATION**

**SECTION 27.**

(1) In any prosecution based on conduct which is justifiable under this article, justification is an affirmative defense.



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

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

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

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

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

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

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



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

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

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

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

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

(b) Under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in 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 greater 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



urgency that it would not be reasonable to postpone the entry or movement on such land until a court order is obtained; and

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

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

(2) **Limitations on the use of force.**

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

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

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

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

(i) The arrest is for a felony; and

(ii) The person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he 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 will 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.



**SECTION 35.**

(1) The justification afforded by Sections 30 through 33 of this act, inclusive, is unavailable when:

(a) The actor's belief in the unlawfulness of the force or conduct against which he employs protective force or his belief in the lawfulness of an arrest which he endeavors to effect by force is erroneous; and

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

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

(3) When the actor is justified under Sections 29 through 34 of this act in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or 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  
1540 against whom it is directed and the employment of which  
1541 constitutes an offense or actionable tort or would constitute such  
1542 offense or tort except for a defense (such as the absence of  
1543 intent, negligence, or mental capacity; duress; youth; or  
1544 diplomatic status) not amounting to a privilege to use the force.  
1545 Assent constitutes consent, within the meaning of this section,  
1546 whether or not it otherwise is legally effective, except assent to  
1547 the infliction of death or serious bodily harm.

1548               (b) "Deadly force" means force which the actor uses  
1549 with the purpose of causing or which he knows to create a  
1550 substantial risk of causing death or serious bodily harm.  
1551 Purposely firing a firearm in the direction of another person or  
1552 at a vehicle in which another person is believed to be,



1553 constitutes deadly force. A threat to cause death or serious  
1554 bodily harm, by the production of a weapon or otherwise, so long  
1555 as the actor's purpose is limited to creating an apprehension that  
1556 he will use deadly force if necessary, does not constitute deadly  
1557 force;

1558 (c) "Dwelling" means any building or structure, though  
1559 movable or temporary, or a portion thereof, which is for the time  
1560 being the actor's home or place of lodging.

1561 **ARTICLE 4**  
1562 **RESPONSIBILITY**

1563 **SECTION 38.** (1) A person is not responsible for criminal  
1564 conduct if at the time of such conduct as a result of mental  
1565 disease or defect he lacks substantial capacity either to  
1566 appreciate the criminality of his conduct or to conform his  
1567 conduct to the requirements of law.

1568 (2) As used in this article, the terms "mental disease or  
1569 defect" do not include an abnormality manifested only by repeated  
1570 criminal or otherwise antisocial conduct.

1571 **SECTION 39.** (1) Evidence that the defendant suffered from a  
1572 mental disease or defect is admissible whenever it is relevant to  
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



the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect is admissible in favor of sentence of imprisonment.

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

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

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

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

**SECTION 42.** (1) Whenever the defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or reason to believe that mental disease or defect of 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)



of this section, the court shall hold a hearing thereon, and the burden shall be on the prosecution to establish to the satisfaction of the court that the criminal proceeding is not barred upon such grounds. If the court determines that the proceeding is barred, custody of the person charged shall be surrendered to the youth court, and the case, including all papers and processes relating thereto, shall be transferred.

## ARTICLE 5

### INCHOATE CRIMES

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

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

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

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

(2) **Conduct which may be held substantial step under 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.



**SECTION 49.**

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

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

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

**SECTION 50.**

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

(a) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes 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.



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

(i) No defendant shall be charged with a conspiracy in any county or district other than one in which he entered into such conspiracy or in which an overt act pursuant to such conspiracy was done by him or by a person with whom he conspired; and

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

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

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

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



(7) **Duration of conspiracy.** For purposes of Section 6(4) of this act:

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

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

(c) If an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.

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

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

(b) The person whom he solicits or with whom he conspires is irresponsible or has an immunity to prosecution or 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 have  
2004   negative 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.



(3) **Presumptions as to possession of criminal instruments in automobiles.** Where a weapon or other instrument of crime is found in an automobile, it shall be presumed to be in the possession of the occupant if there is but one (1). If there is more than one (1) occupant, it shall be presumed to be in the possession of all, except under the following circumstances:

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

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

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

**SECTION 54.** A person commits a misdemeanor if, except as authorized by law, he makes, repairs, sells, or otherwise deals in, uses or possesses any offensive weapon. "Offensive weapon" means any bomb, machine gun, sawed-off shotgun, firearm specially made or specially adapted for concealment or silent discharge, any blackjack, sandbag, metal knuckles, dagger or other implement for the infliction of serious bodily injury which serves no common lawful purpose. It is a defense under this section for the





defendant to prove by a preponderance of evidence that he possessed or dealt with the weapon solely as a curio or in a dramatic performance, or that he possessed it briefly in consequence of having found it or taken it from an aggressor, or under circumstances similarly negating any purpose or likelihood that the weapon would be used unlawfully. The presumptions provided in Section 53(3) of this act are applicable to prosecutions under this section.

## ARTICLE 6

### AUTHORIZED DISPOSITION OF OFFENDERS

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

- (a) Felonies of the first degree;
- (b) Felonies of the second degree;
- (c) Felonies of the third degree.

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

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

**SECTION 56.** (1) No person convicted of an offense shall be 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.



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

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

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

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

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

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

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

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

(4) In determining the amount and method of payment of a 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 a  
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.



**SECTION 71.**

(1) The court may sentence a person who has been convicted of a misdemeanor or petty misdemeanor to an extended term of imprisonment if it finds one or more of the grounds specified in this section. The finding of the court shall be incorporated in the record.

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

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

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

The court shall not make such a finding unless:

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

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

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

The court shall not make such a finding unless, with respect 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.



(7) **Offense committed while under suspension of sentence or probation.** When a defendant is convicted of an offense committed while under suspension of sentence or on probation and such suspension or probation is not revoked:

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

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

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

**SECTION 74.** (1) The court shall not impose sentence without first ordering a presentence investigation of the defendant and according due consideration to a written report of such investigation where:

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

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

(c) The defendant will be placed on probation or 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



established at a hearing after the conviction of the defendant and on written notice to him of the ground proposed. Subject to the limitation of subsection (5) of this section, the defendant shall have the right to hear and controvert the evidence against him and to offer evidence upon the issue.

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

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

(2) When a person has been sentenced to imprisonment upon conviction of a felony, whether for an ordinary or extended term, 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



the felony of which the defendant was convicted. The period of his imprisonment prior to resentence and any reduction for good behavior to which he is entitled shall be applied in satisfaction of the final sentence.

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

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

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

(2) When a judgment of conviction is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the maximum term, and from the minimum, if any, of the new sentence. The officer having custody of the



defendant shall furnish a certificate to the court at the time of sentence, showing the period of imprisonment served under the original sentence, and the certificate shall be annexed to the official records of the defendant's new commitment.

**OFFENSES INVOLVING DANGER TO THE PERSON**

**ARTICLE 8**

**CRIMINAL HOMICIDE**

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

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

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

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

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

**SECTION 78.** (1) A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the 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.





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

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

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

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

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

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

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

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

## ARTICLE 9

**ASSAULT; RECKLESS ENDANGERING; THREATS**

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

2872                   (a) Attempts to cause serious bodily injury to another,  
2873 or causes such injury purposely, knowingly or recklessly under  
2874 circumstances manifesting extreme indifference to the value of  
2875 human life; or

2876                   (b) Attempts to cause or purposely or knowingly causes  
2877 bodily injury to another with a deadly weapon.

2878           Aggravated assault under paragraph (a) is a felony of the  
2879 second degree; aggravated assault under paragraph (b) is a felony  
2880 of the third degree.

2881           **SECTION 86.** A person commits a misdemeanor if he recklessly  
2882 engages in conduct which places or may place another person in  
2883 danger of death or serious bodily injury. Recklessness and danger



shall be presumed where a person knowingly points a firearm at or in the direction of another, whether or not the actor believed the firearm to be loaded.

**SECTION 87.** A person is guilty of a felony of the third degree if he threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.

## **ARTICLE 10**

### **KIDNAPPING AND RELATED OFFENSES; COERCION**

**SECTION 88.** In this article, the definitions given in Section 77 of this act apply unless a different meaning plainly is required.

**SECTION 89.** A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:

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

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



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

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

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

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

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

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

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

**SECTION 92.** (1) **Custody of children.** A person commits an offense if he knowingly or recklessly takes or entices any child 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.



**SECTION 93.**

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

- (a) Commit any criminal offense; or
- (b) Accuse anyone of a criminal offense; or
- (c) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or
- (d) Take or withhold action as an official, or cause an official to take or withhold action.

It is an affirmative defense to prosecution based on paragraphs (b), (c) or (d) that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, as by desisting from further misbehavior, making good a wrong done, refraining from taking any action or responsibility for which the actor believes the other disqualified.

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

**ARTICLE 11**

**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 to respective 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.

3131 (5) **Testimony of complainants.** No person shall be convicted  
3132 of any felony under this article upon the uncorroborated testimony  
3133 of the alleged victim. Corroboration may be circumstantial. In  
3134 any prosecution before a jury for an offense under this article,  
3135 the jury shall be instructed to evaluate the testimony of a victim  
3136 or complaining witness with special care in view of the emotional  
3137 involvement of the witness and the difficulty of determining the  
3138 truth with respect to alleged sexual activities carried out in  
3139 private.

3140 **OFFENSES AGAINST PROPERTY**

3141 **ARTICLE 12**

3142 **ARSON, CRIMINAL MISCHIEF,**

3143 **AND OTHER PROPERTY DESTRUCTION**

3144 **SECTION 101.** (1) **Arson.** A person is guilty of arson, a  
3145 felony of the second degree, if he starts a fire or causes an  
3146 explosion with the purpose of:

3147 (a) Destroying a building or occupied structure of  
3148 another; or

3149 (b) Destroying or damaging any property, whether his  
3150 own or another's, to collect insurance for such loss. It shall be  
3151 an affirmative defense to prosecution under this paragraph that  
3152 the actor's conduct did not recklessly endanger any building or



3153 occupied structure of another or place any other person in danger  
3154 of death or bodily injury.

3155       (2) **Reckless burning or exploding.** A person commits a  
3156 felony of the third degree if he purposely starts a fire or causes  
3157 an explosion, whether on his own property or another's, and  
3158 thereby recklessly:

3159               (a) Places another person in danger of death or bodily  
3160 injury; or

3161               (b) Places a building or occupied structure of another  
3162 in danger of damage or destruction.

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



or proprietary interest therein. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another.

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

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

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

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

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

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

(a) Damages tangible property of another purposely, recklessly, or by negligence in the employment of fire,



explosives, or other dangerous means listed in Section 100 of this act; or

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

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

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

## **ARTICLE 13**

### **BURGLARY AND OTHER CRIMINAL INTRUSION**

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

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

(b) "Night" means the period between thirty (30) 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



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

## **ARTICLE 14**

### **ROBBERY**

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

- (a) Inflicts serious bodily injury upon another; or
- (b) Threatens another with or purposely puts him in fear of immediate serious bodily injury; or
- (c) Commits or threatens immediately to commit any felony of the first or second degree.

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

(2) **Grading.** Robbery is a felony of the second degree, except that it is a felony of the first degree if in the course of committing the theft the actor attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury.

## **ARTICLE 15**

### **THEFT AND RELATED OFFENSES**

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

- (a) "Deprive" means: (i) to withhold property of 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 in which the  
3315 location can be changed, including things growing on, affixed to,  
3316 or 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



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

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

**SECTION 109.** (1) **Consolidation of theft offenses.** Conduct denominated theft in this article constitutes a single offense. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this article, notwithstanding the specification of a different manner in the indictment or information, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

(2) **Grading of theft offenses.**

(a) Theft constitutes a felony of the third degree if 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  
3460 goods 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



property subject to a security interest with purpose to hinder enforcement of that interest.

**SECTION 129.** A person commits a misdemeanor if, knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors, or that any other composition or liquidation for the benefit of creditors has been or is about to be made, he:

(a) Destroys, removes, conceals, encumbers, transfers or otherwise deals with any property with purpose to defeat or obstruct the claim of any creditor, or otherwise to obstruct the operation of any law relating to administration of property for the benefit of creditors; or

(b) Knowingly falsifies any writing or record relating to the property; or

(c) Knowingly misrepresents or refuses to disclose to a receiver or other person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the actor could be legally required to furnish in relation to such administration.

**SECTION 130.** An officer, manager or other person directing or participating in the direction of a financial institution commits a misdemeanor if he receives or permits the receipt of a deposit, premium payment or other investment in the institution knowing that:



(a) Due to financial difficulties the institution is about to suspend operations or go into receivership or reorganization; and

(b) The person making the deposit or other payment is unaware of the precarious situation of the institution.

**SECTION 131.** A person commits an offense if he applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted. The offense is a misdemeanor if the amount involved exceeds Fifty Dollars (\$50.00); otherwise it is a petty misdemeanor. "Fiduciary" includes trustee, guardian, executor, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

**SECTION 132.** A person commits a misdemeanor if by deception he causes another to execute any instrument affecting or purporting to affect or likely to affect the pecuniary interest of any person.

## **ARTICLE 17**

### **OFFENSES AGAINST THE FAMILY**

**SECTION 133.** (1) **Bigamy.** A married person is guilty of bigamy, a misdemeanor, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:



3697 (a) The actor believes that the prior spouse is dead;  
3698 or

3699 (b) The actor and the prior spouse have been living  
3700 apart for five (5) consecutive years throughout which the prior  
3701 spouse was not known by the actor to be alive; or

3702 (c) A court has entered a judgment purporting to  
3703 terminate or annul any prior disqualifying marriage, and the actor  
3704 does not know that judgment to be invalid; or

3705 (d) The actor reasonably believes that he is legally  
3706 eligible to remarry.

3707 (2) **Polygamy.** A person is guilty of polygamy, a felony of  
3708 the third degree, if he marries or cohabits with more than one (1)  
3709 spouse at a time in purported exercise of the right of plural  
3710 marriage. The offense is a continuing one until all cohabitation  
3711 and claim of marriage with more than one (1) spouse terminates.  
3712 This section does not apply to parties to a polygamous marriage,  
3713 lawful in the country of which they are residents or nationals,  
3714 while they are in transit through or temporarily visiting this  
3715 state.

3716 (3) **Other Party to bigamous or polygamous marriage.** A  
3717 person is guilty of bigamy or polygamy, as the case may be, if he  
3718 contracts or purports to contract marriage with another knowing  
3719 that the other is thereby committing bigamy or polygamy.

3720 **SECTION 134.** A person is guilty of incest, a felony of the  
3721 third degree, if he knowingly marries or cohabits or has sexual



intercourse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood. "Cohabit" means to live together under the representation or appearance of being married. The relationships referred to herein include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.

**SECTION 135.** (1) **Unjustified abortion.** A person who purposely and unjustifiably terminates the pregnancy of another otherwise than by a live birth commits a felony of the third degree or, where the pregnancy has continued beyond the twenty-sixth week, a felony of the second degree.

(2) **Justifiable abortion.** A licensed physician is justified in terminating a pregnancy if he believes there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother or that the child would be born with grave physical or mental defect, or that the pregnancy resulted from rape, incest, or other felonious intercourse. An illicit intercourse with a girl below the age of sixteen (16) shall be deemed felonious for purposes of this subsection. Justifiable abortions shall be performed only in a licensed hospital except in case of emergency when hospital facilities are unavailable.

(3) **Physicians' certificates; presumption from noncompliance.** No abortion shall be performed unless two (2) physicians, one (1) of whom may be the person performing the



3747 abortion, shall have certified in writing the circumstances which  
3748 they believe to justify the abortion. Such certificate shall be  
3749 submitted before the abortion to the hospital where it is to be  
3750 performed and, in the case of abortion following felonious  
3751 intercourse, to the prosecuting attorney or the police. Failure  
3752 to comply with any of the requirements of this subsection gives  
3753 rise to a presumption that the abortion was unjustified.

3754       (4) **Self-abortion.** A woman whose pregnancy has continued  
3755 beyond the twenty-sixth week commits a felony of the third degree  
3756 if she purposely terminates her own pregnancy otherwise than by a  
3757 live birth, or if she uses instruments, drugs or violence upon  
3758 herself for that purpose. Except as justified under subsection  
3759 (2), a person who induces or knowingly aids a woman to use  
3760 instruments, drugs or violence upon herself for the purpose of  
3761 terminating her pregnancy otherwise than by a live birth commits a  
3762 felony of the third degree whether or not the pregnancy has  
3763 continued beyond the twenty-sixth week.

3764       (5) **Pretended abortion.** A person commits a felony of the  
3765 third degree if, representing that it is his purpose to perform an  
3766 abortion, he does an act adapted to cause abortion in a pregnant  
3767 woman although the woman is in fact not pregnant, or the actor  
3768 does not believe she is. A person charged with unjustified  
3769 abortion under subsection (1) or an attempt to commit that offense  
3770 may be convicted thereof upon proof of conduct prohibited by this  
3771 subsection.



3772           (6) **Distribution of abortifacients.** A person who sells,  
3773 offers to sell, possesses with intent to sell, advertises, or  
3774 displays for sale anything specially designed to terminate a  
3775 pregnancy, or held out by the actor as useful for that purpose,  
3776 commits a misdemeanor, unless:

3777                   (a) The sale, offer or display is to a physician or  
3778 druggist or to an intermediary in a chain of distribution to  
3779 physicians or druggists; or

3780                   (b) The sale is made upon prescription or order of a  
3781 physician; or

3782                   (c) The possession is with intent to sell as authorized  
3783 in paragraphs (a) and (b); or

3784                   (d) The advertising is addressed to persons named in  
3785 paragraph (a) and confined to trade or professional channels not  
3786 likely to reach the general public.

3787           (7) **Section inapplicable to prevention of pregnancy.**

3788 Nothing in this section shall be deemed applicable to the  
3789 prescription, administration or distribution of drugs or other  
3790 substances for avoiding pregnancy, whether by preventing  
3791 implantation of a fertilized ovum or by any other method that  
3792 operated before, at or immediately after fertilization.

3793           **SECTION 136.** A parent, guardian, or other person supervising  
3794 the welfare of a child under eighteen (18) commits a misdemeanor  
3795 if he knowingly endangers the child's welfare by violating a duty  
3796 of care, protection or support.



3797       **SECTION 137.**   **Persistent nonsupport.**   A person commits a  
3798   misdemeanor if he persistently fails to provide support which he  
3799   can provide and which he knows he is legally obliged to provide to  
3800   a spouse, child or other dependent.

3801                   **OFFENSES AGAINST PUBLIC ADMINISTRATION**

3802                               **ARTICLE 18**

3803                                       **BRIBERY AND CORRUPT INFLUENCE**

3804       **SECTION 138.**   Definitions in Articles 18, 19, 20 and 21, of  
3805   this act, unless a different meaning plainly is required:

3806               (a)   "Benefit" means gain or advantage, or anything  
3807   regarded by the beneficiary as gain or advantage, including  
3808   benefit to any other person or entity in whose welfare he is  
3809   interested, but not an advantage promised generally to a group or  
3810   class of voters as a consequence of public measures which a  
3811   candidate engages to support or oppose;

3812               (b)   "Government" includes any branch, subdivision or  
3813   agency of the government of the state or any locality within it;

3814               (c)   "Harm" means loss, disadvantage or injury, or  
3815   anything so regarded by the person affected, including loss,  
3816   disadvantage or injury to any other person or entity in whose  
3817   welfare he is interested;

3818               (d)   "Official proceeding" means a proceeding heard or  
3819   which may be heard before any legislative, judicial,  
3820   administrative or other governmental agency or official authorized  
3821   to take evidence under oath, including any referee, hearing





3822 examiner, commissioner, notary or other person taking testimony or  
3823 deposition in connection with any such proceeding;

3824 (e) "Party official" means a person who holds an  
3825 elective or appointive post in a political party in the United  
3826 States by virtue of which he directs or conducts, or participates  
3827 in directing or conducting party affairs at any level of  
3828 responsibility;

3829 (f) "Pecuniary benefit" is benefit in the form of  
3830 money, property, commercial interests or anything else the primary  
3831 significance of which is economic gain;

3832 (g) "Public servant" means any officer or employee of  
3833 government, including legislators and judges, and any person  
3834 participating as juror, advisor, consultant or otherwise, in  
3835 performing a governmental function; but the term does not include  
3836 witnesses;

3837 (h) "Administrative proceeding" means any proceeding,  
3838 other than a judicial proceeding, the outcome of which is required  
3839 to be based on a record or documentation prescribed by law, or in  
3840 which law or regulation is particularized in application to  
3841 individuals.

3842 **SECTION 139.** A person is guilty of bribery, a felony of the  
3843 third degree, if he offers, confers or agrees to confer upon  
3844 another, or solicits, accepts or agrees to accept from another:

3845 (a) Any pecuniary benefit as consideration for the  
3846 recipient's decision, opinion, recommendation, vote or other



3847 exercise of discretion as a public servant, party official or  
3848 voter; or

3849 (b) Any benefit as consideration for the recipient's  
3850 decision, vote, recommendation or other exercise of official  
3851 discretion in a judicial or administrative proceeding; or

3852 (c) Any benefit as consideration for a violation of a  
3853 known legal duty as public servant or party official.

3854 It is no defense to prosecution under this section that a  
3855 person whom the actor sought to influence was not qualified to act  
3856 in the desired way whether because he had not yet assumed office,  
3857 or lacked jurisdiction, or for any other reason.

3858 **SECTION 140.** (1) **Offenses defined.** A person commits an  
3859 offense if he:

3860 (a) Threatens unlawful harm to any person with purpose  
3861 to influence his decision, opinion, recommendation, vote or other  
3862 exercise of discretion as a public servant, party official or  
3863 voter; or

3864 (b) Threatens harm to any public servant with purpose  
3865 to influence his decision, opinion, recommendation, vote or other  
3866 exercise of discretion in a judicial or administrative proceeding;  
3867 or

3868 (c) Threatens harm to any public servant or party  
3869 official with purpose to influence him to violate his known legal  
3870 duty; or



3871 (d) Privately addresses to any public servant who has  
3872 or will have an official discretion in a judicial or  
3873 administrative proceeding any representation, entreaty, argument  
3874 or other communication with purpose to influence the outcome on  
3875 the basis of considerations other than those authorized by law.

3876 It is no defense to prosecution under this Section that a  
3877 person whom the actor sought to influence was not qualified to act  
3878 in the desired way, whether because he had not yet assumed office,  
3879 or lacked jurisdiction, or for any other reason.

3880 (2) **Grading.** An offense under this section is a misdemeanor  
3881 unless the actor threatened to commit a crime or made a threat  
3882 with purpose to influence a judicial or administrative proceeding,  
3883 in which cases the offense is a felony of the third degree.

3884 **SECTION 141.** A person commits a misdemeanor if he solicits,  
3885 accepts or agrees to accept any pecuniary benefit as compensation  
3886 for having, as public servant, given a decision, opinion,  
3887 recommendation or vote favorable to another, or for having  
3888 otherwise exercised a discretion in his favor, or for having  
3889 violated his duty. A person commits a misdemeanor if he offers,  
3890 confers or agrees to confer compensation acceptance of which is  
3891 prohibited by this section.

3892 **SECTION 142.** A person commits a misdemeanor if he harms  
3893 another by any unlawful act in retaliation for anything lawfully  
3894 done by the latter in the capacity of public servant.



3895           **SECTION 143.**   (1)   **Regulatory and law enforcement officials.**

3896   No public servant in any department or agency exercising  
3897   regulatory functions, or conducting inspections or investigations,  
3898   or carrying on civil or criminal litigation on behalf of the  
3899   government, or having custody of prisoners, shall solicit, accept  
3900   or agree to accept any pecuniary benefit from a person known to be  
3901   subject to such regulation, inspection, investigation or custody,  
3902   or against whom such litigation is known to be pending or  
3903   contemplated.

3904           (2)   **Officials concerned with government contracts and**  
3905   **pecuniary transactions.**   No public servant having any  
3906   discretionary function to perform in connection with contracts,  
3907   purchases, payments, claims or other pecuniary transactions of the  
3908   government shall solicit, accept or agree to accept any pecuniary  
3909   benefit from any person known to be interested in or likely to  
3910   become interested in any such contract, purchase, payment, claim  
3911   or transaction.

3912           (3)   **Judicial and administrative officials.**   No public  
3913   servant having judicial or administrative authority and no public  
3914   servant employed by or in a court or other tribunal having such  
3915   authority, or participating in the enforcement of its decisions,  
3916   shall solicit, accept or agree to accept any pecuniary benefit  
3917   from a person known to be interested in or likely to become  
3918   interested in any matter before such public servant or a tribunal  
3919   with which he is associated.



3920           (4) **Legislative officials.** No legislator or public servant  
3921 employed by the Legislature or by any committee or agency thereof  
3922 shall solicit, accept or agree to accept any pecuniary benefit  
3923 from any person known to be interested in a bill, transaction or  
3924 proceeding, pending or contemplated, before the Legislature or any  
3925 committee or agency thereof.

3926           (5) **Exceptions.** This section shall not apply to:

3927                   (a) Fees prescribed by law to be received by a public  
3928 servant, or any other benefit for which the recipient gives  
3929 legitimate consideration or to which he is otherwise legally  
3930 entitled; or

3931                   (b) Gifts or other benefits conferred on account of  
3932 kinship or other personal, professional or business relationship  
3933 independent of the official status of the receiver; or

3934                   (c) Trivial benefits incidental to personal,  
3935 professional or business contacts and involving no substantial  
3936 risk of undermining official impartiality.

3937           (6) **Offering benefits prohibited.** No person shall knowingly  
3938 confer, or offer or agree to confer, any benefit prohibited by the  
3939 foregoing subsections.

3940           (7) **Grade of offense.** An offense under this section is a  
3941 misdemeanor.

3942           **SECTION 144.** (1) **Receiving compensation.** A public servant  
3943 commits a misdemeanor if he solicits, accepts or agrees to accept  
3944 compensation for advice or other assistance in preparing or



3945 promoting a bill, contract, claim, or other transaction or  
3946 proposal as to which he knows that he has or is likely to have an  
3947 official discretion to exercise.

3948       (2) **Paying compensation.** A person commits a misdemeanor if  
3949 he pays or offers or agrees to pay compensation to a public  
3950 servant with knowledge that acceptance by the public servant is  
3951 unlawful.

3952       **SECTION 145.** (1) **Selling political endorsement.** A person  
3953 commits a misdemeanor if he solicits, receives, agrees to receive,  
3954 or agrees that any political party or other person shall receive,  
3955 any pecuniary benefit as consideration for approval or disapproval  
3956 of an appointment or advancement in public service, or for  
3957 approval or disapproval of any person or transaction for any  
3958 benefit conferred by an official or agency of government.  
3959 "Approval" includes recommendation, failure to disapprove, or any  
3960 other manifestation of favor or acquiescence. "Disapproval"  
3961 includes failure to approve, or any other manifestation of  
3962 disfavor or nonacquiescence.

3963       (2) **Other trading in special influence.** A person commits a  
3964 misdemeanor if he solicits, receives or agrees to receive any  
3965 pecuniary benefit as consideration for exerting special influence  
3966 upon a public servant or procuring another to do so. "Special  
3967 influence" means power to influence through kinship, friendship or  
3968 other relationship, apart from the merits of the transaction.



(3) **Paying for endorsement or special influence.** A person commits a misdemeanor if he offers, confers or agrees to confer any pecuniary benefit receipt of which is prohibited by this section.

## **ARTICLE 19**

### **PERJURY AND OTHER FALSIFICATION**

#### **IN OFFICIAL MATTERS**

**SECTION 146.** In this article, unless a different meaning plainly is required:

(a) The definitions given in Section 138 of this act apply; and

(b) "Statement" means any representation, but includes a representation of opinion, belief or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

**SECTION 147.** (1) **Offense defined.** A person is guilty of perjury, a felony of the third degree, if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

(2) **Materiality.** Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It



3994 is no defense that the declarant mistakenly believed the  
3995 falsification to be immaterial. Whether a falsification is  
3996 material in a given factual situation is a question of law.

3997       (3) **Irregularities no defense.** It is not a defense to  
3998 prosecution under this section that the oath or affirmation was  
3999 administered or taken in an irregular manner or that the declarant  
4000 was not competent to make the statement. A document purporting to  
4001 be made upon oath or affirmation at any time when the actor  
4002 presents it as being so verified shall be deemed to have been duly  
4003 sworn or affirmed.

4004       (4) **Retraction.** No person shall be guilty of an offense  
4005 under this section if he retracted the falsification in the course  
4006 of the proceeding in which it was made before it became manifest  
4007 that the falsification was or would be exposed and before the  
4008 falsification substantially affected the proceeding.

4009       (5) **Inconsistent statements.** Where the defendant made  
4010 inconsistent statements under oath or equivalent affirmation, both  
4011 having been made within the period of the statute of limitations,  
4012 the prosecution may proceed by setting forth the inconsistent  
4013 statements in a single count alleging in the alternative that one  
4014 or the other was false and not believed by the defendant. In such  
4015 case it shall not be necessary for the prosecution to prove which  
4016 statement was false but only that one or the other was false and  
4017 not believed by the defendant to be true.





(6) **Corroboration.** No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

**SECTION 148.** (1) **False swearing in official matters.** A person makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a misdemeanor if:

(a) The falsification occurs in an official proceeding; or

(b) The falsification is intended to mislead a public servant in performing his official function.

(2) **Other false swearing.** A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a petty misdemeanor, if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(3) **Perjury provisions applicable.** Subsections (3) through (6) of Section 146 of this act apply to the present section.

**SECTION 149.** (1) **In general.** A person commits a misdemeanor if, with purpose to mislead a public servant in performing his official function, he:



4043               (a) Makes any written false statement which he does not  
4044 believe to be true; or

4045               (b) Purposely creates a false impression in a written  
4046 application for any pecuniary or other benefit, by omitting  
4047 information necessary to prevent statements therein from being  
4048 misleading; or

4049               (c) Submits or invites reliance on any writing which he  
4050 knows to be forged, altered or otherwise lacking in authenticity;  
4051 or

4052               (d) Submits or invites reliance on any sample,  
4053 specimen, map, boundary mark, or other object which he knows to be  
4054 false.

4055               (2) **Statements "under penalty."** A person commits a petty  
4056 misdemeanor if he makes a written false statement which he does  
4057 not believe to be true, on or pursuant to a form bearing notice,  
4058 authorized by law, to the effect that false statements made  
4059 therein are punishable.

4060               (3) **Perjury provisions applicable.** Subsections (3) through  
4061 (6) of Section 146 of this act, apply to the present section.

4062               **SECTION 150.** A person who knowingly causes a false alarm of  
4063 fire or other emergency to be transmitted to or within any  
4064 organization, official or volunteer, for dealing with emergencies  
4065 involving danger to life or property commits a misdemeanor.



4066           **SECTION 151.**   (1)   **Falsely incriminating another.**   A person

4067   who knowingly gives false information to any law enforcement  
4068   officer with purpose to implicate another commits a misdemeanor.

4069           (2)   **Fictitious reports.**   A person commits a petty  
4070   misdemeanor if he:

4071           (a)   Reports to law enforcement authorities an offense  
4072   or other incident within their concern knowing that it did not  
4073   occur;

4074           (b)   Pretends to furnish such authorities with  
4075   information relating to an offense or incident when he knows he  
4076   has no information relating to such offense or incident.

4077           **SECTION 152.**   (1)   **Tampering.**   A person commits an offense  
4078   if, believing that an official proceeding or investigation is  
4079   pending or about to be instituted, he attempts to induce or  
4080   otherwise cause a witness or informant to:

4081           (a)   Testify or inform falsely; or

4082           (b)   Withhold any testimony, information, document or  
4083   thing; or

4084           (c)   Elude legal process summoning him to testify or  
4085   supply evidence; or

4086           (d)   Absent himself from any proceeding or investigation  
4087   to which he has been legally summoned.

4088           The offense is a felony of third degree if the actor employs  
4089   force, deception, threat or offer of pecuniary benefit.   Otherwise  
4090   it is a misdemeanor.



4091           (2)   **Retaliation against witness or informant.** A person  
4092 commits a misdemeanor if he harms another by any unlawful act in  
4093 retaliation for anything lawfully done in the capacity of witness  
4094 or informant.

4095           (3)   **Witness or informant taking bribe.** A person commits a  
4096 felony of the third degree if he solicits, accepts or agrees to  
4097 accept any benefit in consideration of his doing any of the things  
4098 specified in paragraphs (a) through (d) of subsection (1).

4099           **SECTION 153.** A person commits a misdemeanor if, believing  
4100 that an official proceeding or investigation is pending or about  
4101 to be instituted, he:

4102                   (a) Alters, destroys, conceals or removes any record,  
4103 document or thing with purpose to impair its verity or  
4104 availability in such proceeding or investigation; or

4105                   (b) Makes, presents or uses any record, document or  
4106 thing knowing it to be false and with purpose to mislead a public  
4107 servant who is or may be engaged in such proceeding or  
4108 investigation.

4109           **SECTION 154.** (1)   **Offense defined.** A person commits an  
4110 offense if he:

4111                   (a) Knowingly makes a false entry in, or false  
4112 alteration of, any record, document or thing belonging to, or  
4113 received or kept by, the government for information or record, or  
4114 required by law to be kept by others for information of the  
4115 government; or



(b) Makes, presents or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in paragraph (a); or

(c) Purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(2) **Grading.** An offense under this section is a misdemeanor unless the actor's purpose is to defraud or injure anyone, in which case the offense is a felony of the third degree.

**SECTION 155.** A person commits a misdemeanor if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

## **ARTICLE 20**

### **OBSTRUCTING GOVERNMENTAL OPERATIONS; ESCAPES**

**SECTION 156.** In this article, unless another meaning plainly is required, the definitions given in Section 137 of this act apply.

**SECTION 157.** A person commits a misdemeanor if he purposely obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to



perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

**SECTION 158.** A person commits a misdemeanor if, for the purpose of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

**SECTION 159.** A person commits an offense if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for crime, he:

(a) Harbors or conceals the other; or

(b) Provides or aids in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape; or

(c) Conceals or destroys evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence; or

(d) Warns the other of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law; or

(e) Volunteers false information to a law enforcement officer.



4166           The offense is a felony of third degree if the conduct which  
4167           the actor knows has been charged or is liable to be charged  
4168           against the person aided would constitute a felony of the first or  
4169           second degree. Otherwise it is a misdemeanor.

4170           **SECTION 160.** A person commits an offense if he purposely  
4171           aids another to accomplish an unlawful object of a crime, as by  
4172           safeguarding the proceeds thereof or converting the proceeds into  
4173           negotiable funds. The offense is a felony of the third degree if  
4174           the principal offense was a felony of the first or second degree.  
4175           Otherwise it is a misdemeanor.

4176           **SECTION 161.** A person commits a misdemeanor if he accepts or  
4177           agrees to accept any pecuniary benefit in consideration of  
4178           refraining from reporting to law enforcement authorities the  
4179           commission or suspected commission of any offense or information  
4180           relating to an offense. It is an affirmative defense to  
4181           prosecution under this section that the pecuniary benefit did not  
4182           exceed an amount which the actor believed to be due as restitution  
4183           or indemnification for harm caused by the offense.

4184           **SECTION 162.** (1) **Escape.** A person commits an offense if he  
4185           unlawfully removes himself from official detention or fails to  
4186           return to official detention following temporary leave granted for  
4187           a specific purpose or limited period. "Official detention" means  
4188           arrest, detention in any facility for custody of persons under  
4189           charge or conviction of crime or alleged or found to be  
4190           delinquent, detention for extradition or deportation, or any other



detention for law enforcement purposes; but "official detention" does not include supervision of probation or parole, or constraint incidental to release on bail.

(2) **Permitting or facilitating escape.** A public servant concerned in detention commits an offense if he knowingly or recklessly permits an escape. Any person who knowingly causes or facilitates an escape commits an offense.

(3) **Effect of legal irregularity in detention.** Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, shall not be a defense to prosecution under this section if the escape is from a prison or other custodial facility or from detention pursuant to commitment by official proceedings. In the case of other detentions, irregularity or lack of jurisdiction shall be a defense only if:

(a) The escape involved no substantial risk of harm to the person or property of anyone other than the detainee; or

(b) The detaining authority did not act in good faith under color of law.

(4) **Grading of offenses.** An offense under this section is a felony of the third degree where:

(a) The actor was under arrest for or detained on a charge of felony or following conviction of crime; or

(b) The actor employs force, threat, deadly weapon or other dangerous instrumentality to effect the escape; or





(c) A public servant concerned in detention of persons convicted of crime purposely facilitates or permits an escape from a detention facility.

Otherwise an offense under this section is a misdemeanor.

**SECTION 163.** (1) **Escape implements.** A person commits a misdemeanor if he unlawfully introduces within a detention facility, or unlawfully provides an inmate with, any weapon, tool or other thing which may be useful for escape. An inmate commits a misdemeanor if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any such implement of escape. "Unlawfully" means surreptitiously or contrary to law, regulation or order of the detaining authority.

(2) **Other contraband.** A person commits a petty misdemeanor if he provides an inmate with anything which the actor knows it is unlawful for the inmate to possess.

**SECTION 164.** A person set at liberty by court order, with or without bail, upon condition that he will subsequently appear at a specified time and place, commits a misdemeanor if, without lawful excuse, he fails to appear at that time and place. The offense constitutes a felony of the third degree where the required appearance was to answer to a charge of felony, or for disposition of any such charge, and the actor took flight or went into hiding to avoid apprehension, trial or punishment. This section does not apply to obligations to appear incident to release under suspended sentence or on probation or parole.



4241 **ARTICLE 21**

4242 **ABUSE OF OFFICE**

4243 **SECTION 165.** In this article, unless a different meaning  
4244 plainly is required, the definitions given in Section 138 of this  
4245 act apply.

4246 **SECTION 166.** A person acting or purporting to act in an  
4247 official capacity or taking advantage of such actual or purported  
4248 capacity commits a misdemeanor if, knowing that his conduct is  
4249 illegal, he:

4250 (a) Subjects another to arrest, detention, search,  
4251 seizure, mistreatment, dispossession, assessment, lien or other  
4252 infringement of personal or property rights; or

4253 (b) Denies or impedes another in the exercise or  
4254 enjoyment of any right, privilege, power or immunity.

4255 **SECTION 167.** A public servant commits a misdemeanor if, in  
4256 contemplation of official action by himself or by a governmental  
4257 unit with which he is associated, or in reliance on information to  
4258 which he has access in his official capacity and which has not  
4259 been made public, he:

4260 (a) Acquires a pecuniary interest in any property,  
4261 transaction or enterprise which may be affected by such  
4262 information or official action; or

4263 (b) Speculates or wagers on the basis of such  
4264 information or official action; or

4265 (c) Aids another to do any of the forgoing.



4266                   **OFFENSES AGAINST PUBLIC ORDER AND DECENCY**

4267                   **ARTICLE 22**

4268                   **RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES**

4269           **SECTION 168.**   (1)   **Riot.**   A person is guilty of riot, a  
4270 felony of the third degree, if he participates with two (2) or  
4271 more others in a course of disorderly conduct:

4272                   (a)   With purpose to commit or facilitate the commission  
4273 of a felony or misdemeanor;

4274                   (b)   With purpose to prevent or coerce official action;  
4275 or

4276                   (c)   When the actor or any other participant to the  
4277 knowledge of the actor uses or plans to use a firearm or other  
4278 deadly weapon.

4279           (2)   **Failure of disorderly persons to disperse upon official**  
4280 **order.**   Where three (3) or more persons are participating in a  
4281 course of disorderly conduct likely to cause substantial harm or  
4282 serious inconvenience, annoyance or alarm, a peace officer or  
4283 other public servant engaged in executing or enforcing the law may  
4284 order the participants and others in the immediate vicinity to  
4285 disperse.   A person who refuses or knowingly fails to obey such an  
4286 order commits a misdemeanor.

4287           **SECTION 169.**   (1)   **Offense defined.**   A person is guilty of  
4288 disorderly conduct if, with purpose to cause public inconvenience,  
4289 annoyance or alarm, or recklessly creating a risk thereof, he:



4290                   (a) Engages in fighting or threatening, or in violent  
4291 or tumultuous behavior; or

4292                   (b) Makes unreasonable noise of offensively coarse  
4293 utterance, gesture or display, or addresses abusive language to  
4294 any person present; or

4295                   (c) Creates a hazardous or physically offensive  
4296 condition by any act which serves no legitimate purpose of the  
4297 actor.

4298           "Public" means affecting or likely to affect persons in a  
4299 place to which the public or a substantial group has access; among  
4300 the places included are highways, transport facilities, schools,  
4301 prisons, apartment houses, places of business or amusement, or any  
4302 neighborhood.

4303           (2) **Grading.** An offense under this section is a petty  
4304 misdemeanor if the actor's purpose is to cause substantial harm or  
4305 serious inconvenience, or if he persists in disorderly conduct  
4306 after reasonable warning or request to desist. Otherwise  
4307 disorderly conduct is a violation.

4308           **SECTION 170.** A person is guilty of a misdemeanor if he  
4309 initiates or circulates a report or warning of an impending  
4310 bombing or other crime or catastrophe, knowing that the report or  
4311 warning is false or baseless and that it is likely to cause  
4312 evacuation of a building, place of assembly, or facility of public  
4313 transport, or to cause public inconvenience or alarm.



4314        **SECTION 171.** A person commits a petty misdemeanor if, with  
4315 purpose to harass another, he:

4316            (a) Makes a telephone call without purpose of  
4317 legitimate communication; or

4318            (b) Insults, taunts or challenges another in a manner  
4319 likely to provoke violent or disorderly response; or

4320            (c) Makes repeated communications anonymously or at  
4321 extremely inconvenient hours, or in offensively coarse language;  
4322 or

4323            (d) Subjects another to an offensive touching; or

4324            (e) Engages in any other course of alarming conduct  
4325 serving no legitimate purpose of the actor.

4326        **SECTION 172.** A person is guilty of an offense if he appears  
4327 in any public place manifestly under the influence of alcohol,  
4328 narcotics or other drug, not therapeutically administered, to the  
4329 degree that he may endanger himself or other persons or property,  
4330 or annoy persons in his vicinity. An offense under this section  
4331 constitutes a petty misdemeanor if the actor has been convicted  
4332 hereunder twice before within a period of one (1) year. Otherwise  
4333 the offense constitutes a violation.

4334        **SECTION 173.** A person commits a violation if he loiters or  
4335 prowls in a place, at a time, or in manner not usual for  
4336 law-abiding individuals under circumstances that warrant alarm for  
4337 the safety of persons or property in the vicinity. Among the  
4338 circumstances which may be considered in determining whether such



4339 alarm is warranted is the fact that the actor takes flight upon  
4340 appearance of a peace officer, refuses to identify himself, or  
4341 manifestly endeavors to conceal himself or any object. Unless  
4342 flight by the actor or other circumstance makes it impracticable,  
4343 a peace officer shall prior to any arrest for an offense under  
4344 this section afford the actor an opportunity to dispel any alarm  
4345 which would otherwise be warranted, by requesting him to identify  
4346 himself and explain his presence and conduct. No person shall be  
4347 convicted of an offense under this section if the peace officer  
4348 did not comply with the preceding sentence, or if it appears at  
4349 trial that the explanation given by the actor was true and, if  
4350 believed by the peace officer at the time, would have dispelled  
4351 the alarm.

4352       **SECTION 174.** (1) A person, who, having no legal privilege  
4353 to do so, purposely or recklessly obstructs any highway or other  
4354 public passage, whether alone or with others, commits a violation,  
4355 or, in case he persists after warning by a law officer, a petty  
4356 misdemeanor. "Obstructs" means renders impassable without  
4357 unreasonable inconvenience or hazard. No person shall be deemed  
4358 guilty of recklessly obstructing in violation of this subsection  
4359 solely because of a gathering of persons to hear him speak or  
4360 otherwise communicate, or solely because of being a member of such  
4361 a gathering.

4362       (2) A person in a gathering commits a violation if he  
4363 refuses to obey a reasonable official request or order to move:



4364                   (a) To prevent obstruction of a highway or other public  
4365 passage; or

4366                   (b) To maintain public safety by dispersing those  
4367 gathered in dangerous proximity to a fire or other hazard.

4368 An order to move, addressed to a person whose speech or other  
4369 lawful behavior attracts an obstructing audience, shall not be  
4370 deemed reasonable if the obstruction can be readily remedied by  
4371 police control of the size or location of the gathering.

4372           **SECTION 175.** A person commits a misdemeanor if, with purpose  
4373 to prevent or disrupt a lawful meeting, procession or gathering,  
4374 he does any act tending to obstruct or interfere with it  
4375 physically, or makes any utterance, gesture or display designed to  
4376 outrage the sensibilities of the group.

4377           **SECTION 176.** A person commits a misdemeanor if he purposely  
4378 desecrates any public monument or structure, or place of worship  
4379 or burial, or if he purposely desecrates the national flag or any  
4380 other object of veneration by the public or a substantial segment  
4381 thereof in any public place. "Desecrate" means defacing,  
4382 damaging, polluting or otherwise physically mistreating in a way  
4383 that the actor knows will outrage the sensibilities of persons  
4384 likely to observe or discover his action.

4385           **SECTION 177.** Except as authorized by law, a person who  
4386 treats a corpse in a way that he knows would outrage ordinary  
4387 family sensibilities commits a misdemeanor.



4388           **SECTION 178.**   A person commits a misdemeanor if he purposely  
4389 or recklessly:

4390                   (a)   Subjects any animal to cruel mistreatment; or

4391                   (b)   Subjects any animal in his custody to cruel  
4392 neglect; or

4393                   (c)   Kills or injures any animal belonging to another  
4394 without legal privilege or consent of the owner.

4395           Paragraphs (a) and (b) shall not be deemed applicable to  
4396 accepted veterinary practices and activities carried on for  
4397 scientific research.

4398           **SECTION 179.**   (1)   **Unlawful eavesdropping or surveillance.**   A  
4399 person commits a misdemeanor if, except as authorized by law, he:

4400                   (a)   Trespasses on property with purpose to subject  
4401 anyone to eavesdropping or other surveillance in a private place;  
4402 or

4403                   (b)   Installs in any private place, without the consent  
4404 of the person or persons entitled to privacy there, any device for  
4405 observing, photographing, recording, amplifying or broadcasting  
4406 sounds or events in such place, or uses any such unauthorized  
4407 installation; or

4408                   (c)   Installs or uses outside a private place any device  
4409 for hearing, recording, amplifying or broadcasting sounds  
4410 originating in such place which would not ordinarily be audible or  
4411 comprehensible outside, without the consent of the person or  
4412 persons entitled to privacy there.





4413 "Private place" means a place where one may reasonably expect  
4414 to be safe from casual or hostile intrusion or surveillance, but  
4415 does not include a place to which the public or a substantial  
4416 group thereof has access.

4417 (2) **Other Breach of privacy of messages.** A person commits a  
4418 misdemeanor if, except as authorized by law, he:

4419 (a) Intercepts without the consent of the sender or  
4420 receiver a message by telephone, telegraph, letter or other means  
4421 of communicating privately; but this paragraph does not extend to  
4422 (i) overhearing of messages through a regularly installed  
4423 instrument on a telephone party line or on an extension, or (ii)  
4424 interception by the telephone company or subscriber incident to  
4425 enforcement of regulations limiting use of the facilities or  
4426 incident to other normal operation and use; or

4427 (b) Divulges without the consent of the sender or  
4428 receiver the existence or contents of any such message if the  
4429 actor knows that the message was illegally intercepted, or if he  
4430 learned of the message in the course of employment with an agency  
4431 engaged in transmitting it.

4432 **ARTICLE 23**

4433 **PUBLIC INDECENCY**

4434 **SECTION 180.** A person commits a petty misdemeanor if he does  
4435 any lewd act which he knows is likely to be observed by others who  
4436 would be affronted or alarmed.



4437           **SECTION 181.**   (1)   **Prostitution.**   A person is guilty of

4438 prostitution, a petty misdemeanor, if he or she:

4439           (a)   Is an inmate of a house of prostitution or  
4440 otherwise engages in sexual activity as a business; or

4441           (b)   Loiters in or within view of any public place for  
4442 the purpose of being hired to engage in sexual activity.   "Sexual  
4443 activity" includes homosexual and other deviate sexual relations.  
4444 A "house of prostitution" is any place where prostitution or  
4445 promotion of prostitution is regularly carried on by one (1)  
4446 person under the control, management or supervision of another.  
4447 An "inmate" is a person who engages in prostitution in or through  
4448 the agency of a house of prostitution.   "Public place" means any  
4449 place to which the public or any substantial group thereof has  
4450 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 reputation; the reputation 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



or excretion, and if in addition it goes substantially beyond customary limits of candor in describing or representing such matters. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience. Undeveloped photographs, molds, printing plats, and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(2) **Offenses.** Subject to the affirmative defense provided in subsection (3), a person commits a misdemeanor if he knowingly or recklessly:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any obscene writing, picture, record or other representation or embodiment of the obscene; or

(b) Presents or directs an obscene play, dance or performance, or participates in that portion thereof which makes it obscene; or

(c) Publishes, exhibits or otherwise makes available any obscene material; or

(d) Possesses any obscene material for purposes of sale or other commercial dissemination; or

(e) Sells, advertises or otherwise commercially disseminates material, whether or not obscene, by representing or 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



(f) The good repute of the author, creator, publisher or other person from whom the material originated.

Expert testimony and testimony of the author, creator, publisher or other person from whom the material originated, relating to factors entering into the determination of the issue of obscenity, shall be admissible. The court shall dismiss a prosecution for obscenity if it is satisfied that the material is not obscene.

## **ARTICLE 24**

### **SUSPENSION OF SENTENCE; PROBATION**

**SECTION 184.** (1) When the court suspends the imposition of sentence on a person who has been convicted of a crime or sentences him to be placed on probation, it shall attach such reasonable conditions, authorized by this section, as it deems necessary to insure that he will lead a law-abiding life or likely to assist him to do so.

(2) The court, as a condition of its order, may require the defendant:

(a) To meet his family responsibilities;

(b) To devote himself to a specific employment or occupation;

(c) To undergo available medical or psychiatric treatment and to enter and remain in a specified institution, when required for that purpose;



4583                   (d) To pursue a prescribed secular course of study or  
4584 vocational training;

4585                   (e) To attend or reside in a facility established for  
4586 the instruction, recreation or residence of persons on probation;

4587                   (f) To refrain from frequenting unlawful or  
4588 disreputable places or consorting with disreputable persons;

4589                   (g) To have in his possession no firearm or other  
4590 dangerous weapon unless granted written permission;

4591                   (h) To make restitution of the fruits of his crime or  
4592 to make reparation, in an amount he can afford to pay, for the  
4593 loss or damage caused thereby;

4594                   (i) To remain within the jurisdiction of the court and  
4595 to notify the court or the probation officer of any change in his  
4596 address or his employment;

4597                   (j) To report as directed to the court or the probation  
4598 officer and to permit the officer to visit his home;

4599                   (k) To post a bond, with or without surety, conditioned  
4600 on the performance of any of the foregoing obligations;

4601                   (l) To satisfy any other conditions reasonably related  
4602 to the rehabilitation of the defendant and not unduly restrictive  
4603 of his liberty or incompatible with his freedom of conscience.

4604                   (3) When the court sentences a person who has been convicted  
4605 of a felony or misdemeanor to be placed on probation, it may  
4606 require him to serve a term of imprisonment not exceeding thirty  
4607 (30) days as an additional condition of its order. The term of





imprisonment imposed hereunder shall be treated as part of the term of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall not be credited toward service of such subsequent sentence.

(4) The defendant shall be given a copy of this article and written notice of any requirements imposed pursuant to this section, stated with sufficient specificity to enable him to guide himself accordingly.

**SECTION 185.** (1) When the court has suspended sentence or has sentenced a defendant to be placed on probation, the period of the suspension or probation shall be five (5) years, upon conviction of a felony, or two (2) years upon conviction of a misdemeanor or a petty misdemeanor, unless the defendant is sooner discharged by order of the court. The court, on application of a probation officer or of the defendant, or on its own motion, may discharge the defendant at any time. On conviction of a violation, a suspended sentence constitutes an unconditional discharge.

(2) During the period of the suspension or probation, the court, on application of a probation officer or of the defendant, or on its own motion, may modify the requirements imposed on the defendant or add further requirements authorized by Section 184 of this act. The court shall eliminate any requirement that imposes an unreasonable burden on the defendant.



(3) Upon the termination of the period of suspension or probation or the earlier discharge of the defendant, the defendant shall be relieved of any obligations imposed by the order of the court and shall have satisfied his sentence for the crime.

**SECTION 186.** (1) At any time before the discharge of the defendant or the termination of the period of suspension or probation:

(a) The court may summon the defendant to appear before it or may issue a warrant for his arrest;

(b) A probation or peace officer, having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of the order or that he has committed another crime, may arrest him without a warrant;

(c) The court, if there is probable cause to believe that the defendant has committed another crime or if he has been held to answer therefor, may commit him without bail, pending a determination of the charge by the court having jurisdiction thereof;

(d) The court, if satisfied that the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or if he has been convicted of another crime, may revoke the suspension or probation and sentence or resentence the defendant, as provided in this section.

(2) When the court revokes a suspension or probation, it may impose on the defendant any sentence that might have been imposed



originally for the crime of which he was convicted, except that the defendant shall not be sentenced to imprisonment unless:

- (a) He has been convicted of another crime; or
- (b) His conduct indicates that his continued liberty involves undue risk that he will commit another crime; or
- (c) Such disposition is essential to vindicate the authority of the court.

**SECTION 187.** The court shall not revoke a suspension or probation or increase the requirements imposed thereby on the defendant except after a hearing upon written notice to the defendant of the grounds on which such action is proposed. The defendant shall have the right to hear and controvert the evidence against him, to offer evidence in his defense and to be represented by counsel.

**SECTION 188.** (1) When the court has suspended sentence or has sentenced the defendant to be placed on probation and the defendant has fully complied with the requirements imposed as a condition of such order and has satisfied the sentence, the court may order that so long as the defendant is not convicted of another crime, the judgment shall not constitute a conviction for the purpose of any disqualification or disability imposed by law upon conviction of a crime.

(2) Proof of a conviction as relevant evidence upon the trial or determination of any issue or for the purpose of



impeaching the defendant as a witness is not a disqualification or disability within the meaning of this section.

**SECTION 189.** A judgment suspending sentence or sentencing a defendant to be placed on probation shall be deemed tentative, to the extent provided in this article, but for all other purposes shall constitute a final judgment.

## **ARTICLE 25**

### **FINES**

**SECTION 190.** (1) When a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine shall be payable forthwith.

(2) When a defendant sentenced to pay a fine is also sentenced to probation, the court may make the payment of the fine a condition of probation.

(3) The defendant shall pay a fine or any installment thereof to the court. In the event of default in payment, such agency shall take appropriate action for its collection.

(4) Unless otherwise provided by law, all fines collected shall be paid over to the state and shall become part of the general funds of the state and shall be subject to general appropriation.

**SECTION 191.** (1) When a defendant sentenced to pay a fine defaults in the payment thereof or of any installment, the court,



4707 upon the motion of the state or upon its own motion, may require  
4708 him to show cause why his default should not be treated as  
4709 contumacious and may issue a summons or a warrant of arrest for  
4710 his appearance, unless the defendant shows that his default was  
4711 not attributable to a willful refusal to obey the order of the  
4712 court, or to a failure on his part to make a good faith effort to  
4713 obtain the funds required for the payment, the court shall find  
4714 that his default was contumacious and may order him committed  
4715 unless the fine or a specified part thereof is paid. The term of  
4716 imprisonment for such contumacious nonpayment of the fine shall be  
4717 specified in the order of commitment and shall not exceed one day  
4718 for each Five Dollars (\$5.00) of the fine, thirty (30) days if the  
4719 fine was imposed upon conviction of a violation or a petty  
4720 misdemeanor or one (1) year in any other case, whichever is the  
4721 shorter period. When a fine is imposed on a corporation or an  
4722 unincorporated association, it is the duty of the person or  
4723 persons authorized to make disbursements from the assets of the  
4724 corporation or association to pay it from such assets and their  
4725 failure so to do may be held contumacious under this subsection.  
4726 A person committed for nonpayment of a fine shall be given credit  
4727 towards its payment for each day of imprisonment, at the rate  
4728 specified in the order of commitment.

4729       (2) If it appears that the defendant's default in the  
4730 payment of a fine is not contumacious, the court may make an order  
4731 allowing the defendant additional time for payment, reducing the



amount thereof or of each installment, or revoking the fine or the unpaid portion thereof, in whole or in part.

(3) Upon any default in the payment of a fine or any installment thereof, execution may be levied and such other measures may be taken for the collection of the fine or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the defendant in an action on a debt. The levy of execution for the collection of a fine shall not discharge a defendant committed to imprisonment for nonpayment of the fine until the amount of the fine has actually been collected.

**SECTION 192.** A defendant who has been sentenced to pay a fine and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced him for a revocation of the fine or of any unpaid portion thereof. If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine have changed, or that it would otherwise be unjust to require payment, the court may revoke the fine or the unpaid portion thereof in whole or in part.

## **ARTICLE 26**

### **SHORT-TERM IMPRISONMENT**

**SECTION 193.** (1) Within the appropriation allotted therefor, the several counties, cities and the Department of Corrections may construct, equip and maintain suitable buildings, structures and facilities for the operation and for the necessary



4757 expansion and diversification of local short-term institutions,  
4758 including lockups, jails, houses of correction, work farms and  
4759 such other institutions as may be required for the following  
4760 purposes:

4761           (a) The custody, control, correctional treatment and  
4762 rehabilitation of persons sentenced or committed to imprisonment  
4763 for a fixed term of one (1) year or less;

4764           (b) The custody, control and temporary detention of  
4765 persons committed to the Department of Corrections, until they are  
4766 removed to the reception center or to another institution in the  
4767 department;

4768           (c) The detention of persons charged with crime and  
4769 committed for hearing or for trial;

4770           (d) The detention of persons committed to secure their  
4771 attendance as witnesses, and for other detentions authorized by  
4772 law.

4773           (2) The Commissioner of the Department of Corrections shall  
4774 annually review, on the basis of visitation, inspection and  
4775 reports pursuant to Section 248 of this act, the adequacy of the  
4776 institutions for short-term imprisonment in the several counties,  
4777 cities and other political subdivisions of the state in the light  
4778 of the number of persons committed thereto, the physical  
4779 facilities thereof and programs conducted therein. No later than  
4780 his next annual report, the commissioner shall report on any  
4781 inadequacies of such facilities, including his recommendations for



4782 the alteration or expansion of existing institutions, for the  
4783 construction of new institutions, for the combination of two (2)  
4784 or more local institutions of the same or of different political  
4785 subdivisions of the state, or for such other measures to meet the  
4786 situation as may be appropriate. In making his recommendations,  
4787 the commissioner may indicate whether, in his opinion, the  
4788 alteration, expansion or new construction can best be undertaken  
4789 by the political subdivisions concerned, or by the Department of  
4790 Corrections.

4791 (3) In reviewing the adequacy of the institutions for  
4792 short-term imprisonment, the Commissioner of the Department of  
4793 Corrections shall consider whether the facilities available in the  
4794 several political subdivisions of the state afford adequate  
4795 opportunity for the segregation and classification of prisoners,  
4796 for the isolation and treatment of ill prisoners, for the  
4797 treatment of alcoholic and drug-addicted prisoners, for  
4798 diversified security and custody, and for opportunities for  
4799 vocational and rehabilitative training.

4800 (4) Upon the recommendation or with the approval of the  
4801 Commissioner of the Department of Corrections, counties, cities,  
4802 and other political subdivisions of the state having institutions  
4803 for short-term imprisonment may establish joint institutions or  
4804 combine two (2) or more existing facilities for short-term  
4805 imprisonment, and may make such agreements for the sharing of the  
4806 costs of construction and maintenance as may be authorized by law.





4807           (5) No county, city, or other political subdivision of the  
4808 state shall construct or establish an institution for short-term  
4809 imprisonment, unless the plans for the establishment and  
4810 construction of such institution are approved by the Commissioner  
4811 of the Department of Corrections.

4812           **SECTION 194.** (1) The warden, or other administrative head  
4813 of an institution for short-term imprisonment, shall establish and  
4814 maintain, in accordance with the regulations of the Department of  
4815 Corrections, a central file in the institution containing an  
4816 individual file for each prisoner. Each prisoner's file shall as  
4817 far as practicable include: (a) is admission summary; (b) is  
4818 presentence investigation report, if any; (c) the official records  
4819 of his conviction and commitment, as well as earlier criminal  
4820 records, if any; (d) progress reports from treatment and custodial  
4821 staff; (e) reports of his disciplinary infractions and of their  
4822 disposition; and (f) other pertinent data concerning his  
4823 background, conduct, associations and family relationships. The  
4824 content of the prisoners' files shall be confidential and shall  
4825 not be subject to public inspection except by court order for good  
4826 cause shown and shall not be accessible to prisoners in the  
4827 institution.

4828           (2) The governing body of each county, city or other  
4829 political subdivision of the state having one or more institutions  
4830 for short-term imprisonment shall appoint a classification  
4831 committee consisting of five (5) members of the institutional



4832 staffs and of qualified citizens of the county, city or other  
4833 political subdivision. If a physician has been appointed to serve  
4834 the institutions, he shall be an ex officio member of the  
4835 committee. All committee members shall serve without compensation  
4836 but shall be paid their necessary travel expenses and per diem as  
4837 provided by law.

4838 (3) As soon as practicable after a prisoner who has been  
4839 sentenced to a definite term of thirty (30) days or more is  
4840 received in the institution, and no later than the expiration of  
4841 the first third of his term, the classification committee shall  
4842 study his file and interview him, and shall aid the warden or  
4843 other administrative head of the institution in determining the  
4844 prisoner's program of treatment, training, employment, care and  
4845 custody. The classification committee may also recommend the  
4846 transfer of the prisoner to another institution which in its  
4847 opinion is more suitable for him.

4848 (4) The warden or other administrative head of the  
4849 institution may, on his own motion or upon the recommendation of  
4850 the classification committee, apply to the court for an order to  
4851 transfer the prisoner to another institution for short-term  
4852 imprisonment, within or outside of the county, city or other  
4853 political subdivision of the state.

4854 **SECTION 195.** (1) In institutions for short-term  
4855 imprisonment the following groups shall be segregated from each  
4856 other:



4857                   (a) Female prisoners from male prisoners; and  
4858                   (b) Prisoners under the age of twenty-two (22) from  
4859 older prisoners; and  
4860                   (c) Persons detained for hearing or trial from  
4861 prisoners under sentence of imprisonment or committed for  
4862 contumacious default in the payment of fines; and  
4863                   (d) Persons detained for hearing or trial or under  
4864 sentence from material witnesses and other persons detained under  
4865 civil commitment.

4866           (2) When an institutional physician finds that a prisoner  
4867 suffers from a physical disease or defect, or when an  
4868 institutional physician or psychologist finds that a prisoner  
4869 suffers from a mental disease or defect, the warden or other  
4870 administrative head may order such prisoner to be segregated from  
4871 other prisoners, and if the physician or psychologist, as the case  
4872 may be, is of the opinion that he cannot be given proper treatment  
4873 at the institution, the warden or other administrative head may  
4874 transfer him to another institution in the county, city or other  
4875 political subdivision of the state where proper treatment is  
4876 available, or to a hospital, if any, operated by the county, city  
4877 or other political subdivision of the state if such hospital has  
4878 adequate facilities, including detention facilities when  
4879 necessary, to receive and treat the prisoner. If proper treatment  
4880 or facilities are not available in an institution or a hospital  
4881 operated by the county, city, or other political subdivision of



4882 the state the warden or other administrative head may transfer him  
4883 to an institution or hospital operated by another county, city or  
4884 other political subdivision of the state, where such treatment and  
4885 facilities are available, if such hospital or institution is ready  
4886 to receive him, under such arrangements for reimbursement of costs  
4887 as may be authorized by law. The warden or other administrative  
4888 head may request the Commissioner of the Department of Corrections  
4889 to permit such prisoner to be transferred for examination, study  
4890 and treatment to the medical-correctional facility, if any, or to  
4891 another institution in the department where proper treatment is  
4892 available. The Commissioner of the Department of Corrections  
4893 shall permit such transfer whenever such institutions in the  
4894 department have available room to receive the prisoner.

4895 (3) When an institutional physician finds upon examination  
4896 that a prisoner suffers from a physical disease or defect that  
4897 cannot, in his opinion, be properly treated in any institution or  
4898 hospital of the county, city or other political subdivision of the  
4899 state or of another county, city or other subdivision of the  
4900 state, or in the Department of Corrections, such prisoner, upon  
4901 the direction of the warden or other administrative head and with  
4902 the approval of the Commissioner of the Department of Corrections,  
4903 may receive treatment in, or may be transferred to, for the  
4904 purpose of receiving treatment in, any other available hospital.  
4905 The warden or other administrative head, in accordance with  
4906 regulations of the Department of Corrections, shall make



4907 appropriate arrangements with other public or private agencies for  
4908 the transportation to, and for the care, custody and security of  
4909 the prisoner in such hospital. While receiving treatment in such  
4910 hospital, the prisoner shall remain subject to the jurisdiction  
4911 and custody of the institution to which he was committed, and  
4912 shall be returned thereto when, prior to the expiration of his  
4913 sentence, such hospital treatment is no longer necessary.

4914 (4) When two (2) psychiatrists approved by the Department of  
4915 Health find upon examination that a prisoner suffers from a mental  
4916 disease or defect that cannot, in their opinion, be properly  
4917 treated in any institution in the Department of Corrections, such  
4918 prisoner, upon the direction of the warden or other administrative  
4919 head and with the approval of the Commissioner of the Department  
4920 of Corrections, may be transferred for treatment, with the  
4921 approval of the Department of Health, to a psychiatric facility in  
4922 such department. The warden or other administrative head, in  
4923 accordance with the regulations of the Department of Corrections,  
4924 shall make appropriate arrangements with the Department of Health  
4925 for the transportation to, and for the custody and security of the  
4926 prisoner in such psychiatric facility. A prisoner receiving  
4927 treatment in such a psychiatric facility shall remain subject to  
4928 the jurisdiction and custody of the institution to which he was  
4929 committed, and shall be returned thereto when, prior to the  
4930 expiration of his sentence, treatment in such facility is no  
4931 longer necessary. A prisoner receiving treatment in a psychiatric



4932 facility in the Department of Health who continues in need of  
4933 treatment at the time of his release or discharge shall be dealt  
4934 with in accordance with subsection (5) of this section.

4935 (5) When two (2) psychiatrists approved by the Department of  
4936 Health find upon examination that a prisoner about to be  
4937 discharged from an institution suffers from a mental disease or  
4938 defect of such a nature that his release or discharge will  
4939 endanger the public safety or the safety of the prisoner, the  
4940 warden or other administrative head, with the approval of the  
4941 Commissioner of the Department of Corrections, shall transfer him  
4942 to, or if he has already been transferred, permit him to remain  
4943 in, the Department of Health to be dealt with in accordance with  
4944 the law applicable to the civil commitment and detention of  
4945 persons suffering from such disease or defect.

4946 **SECTION 196.** (1) Upon admission to a facility for  
4947 short-term imprisonment, each prisoner shall be given a physical  
4948 examination, and if he is suspected of having a communicable  
4949 disease, he shall be quarantined until he is known to be free from  
4950 such disease. Each prisoner shall receive such medical and dental  
4951 care as may be necessary during his period of commitment, but at  
4952 his request, he may be permitted to provide such care for himself  
4953 at his own expense.

4954 (2) Each prisoner shall be adequately fed and clothed in  
4955 accordance with regulations of the Department of Corrections. No



4956 prisoner shall be required to wear stripes or other degrading  
4957 apparel.

4958       **SECTION 197.** The warden or other administrative head of an  
4959 institution for short-term imprisonment shall establish, subject  
4960 to regulation of the Department of Corrections, an appropriate  
4961 program for his institution, designed as far as practicable to  
4962 prepare and assist each prisoner to assume his responsibilities  
4963 and to conform to the requirements of law. In developing such a  
4964 program, the warden or other administrative head shall seek to  
4965 make available to each prisoner capable of benefiting therefrom  
4966 academic or vocational training, participation in productive work,  
4967 religious and recreational activities and such therapeutic  
4968 measures as are practicable. No prisoner shall be ordered or  
4969 compelled, however, to participate in religious activities.

4970       **SECTION 198.** (1) The warden or other administrative head of  
4971 each correctional institution shall be responsible for the  
4972 discipline, control and safe custody of the prisoners therein. No  
4973 prisoner shall be punished except upon the order of the warden or  
4974 other administrative head of the institution or of a deputy  
4975 designated by him for the purpose; nor shall any punishment be  
4976 imposed otherwise than in accordance with the provisions of this  
4977 section. The right to punish or to inflict punishment shall not  
4978 be delegated to any prisoner or group of prisoners and no warden  
4979 or other administrative head shall permit any such prisoner or



4980 group of prisoners to assume authority over any other prisoner or  
4981 group of prisoners.

4982 (2) Except in flagrant or serious cases, punishment for a  
4983 breach of discipline shall consist of deprivation of privileges.  
4984 In case of assault, escape, or attempt to escape, or other serious  
4985 or flagrant breach of discipline, the warden or other  
4986 administrative head may order that a prisoner's reduction of term  
4987 for good behavior in accordance with Section 200 of this act be  
4988 forfeited. For serious or flagrant breach of discipline, the  
4989 warden or other administrative head may confine the prisoner, in  
4990 accordance with the regulations of the Department of Corrections,  
4991 to a disciplinary cell for a period not to exceed ten (10) days,  
4992 and may order that the prisoner, during all or part of the period  
4993 of such solitary confinement, be put on a monotonous but adequate  
4994 and healthful diet. A prisoner in solitary confinement shall be  
4995 visited by a physician at least once every twenty-four (24) hours.

4996 (3) No cruel, inhuman or corporal punishment shall be used  
4997 on any prisoner, nor is the use of force on any prisoner  
4998 justifiable except as provided by this act and the rules and  
4999 regulations of the Department of Corrections consistent therewith.

5000 (4) The warden or other administrative head of an  
5001 institution shall maintain a record of breaches of rules, of the  
5002 disposition of each case, and of the punishment, if any, for each  
5003 such breach. Each breach of the rules by a prisoner shall be





entered in his file, together with the disposition or punishment therefor.

**SECTION 199.** (1) To establish good habits of work and responsibility, for the vocational training of prisoners, and to reduce the cost of institutional operation, prisoners shall be employed so far as possible in constructive and diversified activities in the production of goods, services and foodstuffs to maintain the institution and its inmates, for the use of the county, city or other political subdivision of the state, and for other purposes expressly authorized by law. To accomplish these purposes, the warden or other administrative head, with the approval of the Commissioner of the Department of Corrections, shall establish and maintain work programs, including, to the extent practicable, prison industries and prison farms in his institution, and may enter into arrangements with the departments of the state, or of the county, city or other political subdivision of the state, for the employment of prisoners in the improvement of public works and ways, and in the improvement and conservation of the natural resources owned by the state.

(2) No prisoner shall be required to engage in excessive labor, and no prisoner shall be required to perform any work for which he is declared unfit by the institutional physician.

(3) The Commissioner of the Department of Corrections shall make rules and regulations governing the hours and conditions of labor of prisoners in correctional institutions of the counties,



5029 cities or other political subdivision of the state and the rates  
5030 of prisoners' compensation for employment. In determining the  
5031 rates of compensation, such regulations may take into  
5032 consideration the quantity and quality of the work performed by a  
5033 prisoner, whether or not such work was performed during regular  
5034 working hours, the skill required for its performance, as well as  
5035 the economic value of similar work outside of correctional  
5036 institutions. Prisoners' wage payments shall be set aside by the  
5037 warden or other administrative head in a separate fund. The  
5038 regulations may provide for the making of deductions from  
5039 prisoners' wages to defray part or all of the cost of prisoner  
5040 maintenance, but a sufficient amount shall remain after such  
5041 deduction to enable the prisoner to contribute to the support of  
5042 his dependents, if any, to make necessary purchases from the  
5043 commissary, and to set aside sums to be paid to him at the time of  
5044 his release from the institution.

5045       (4) The labor or time of a prisoner shall not be sold,  
5046 contracted or hired out, but prisoners may work for other  
5047 departments of the state or of the county, city or other political  
5048 subdivision of the state in accordance with arrangements made  
5049 pursuant to subsection (1) of this section.

5050       (5) All departments and agencies of the county, city or  
5051 other political subdivision of the state and institutions and  
5052 agencies which are supported, in whole or in part, by such  
5053 political subdivision, shall purchase or draw from the



5054 correctional institution all articles and products required by  
5055 them which are produced or manufactured by prison labor in such  
5056 correctional institutions, unless excepted from this requirement  
5057 by the appropriate authority of the county, city or other  
5058 political subdivision of the state in accordance with rules and  
5059 regulations of such authority to carry out the purposes of this  
5060 subsection. Any surplus articles and products not so purchased  
5061 shall be disposed of to the departments and agencies of the state  
5062 and of other counties, cities or other political subdivisions of  
5063 the state. The Governor or other appropriate authority may, by  
5064 rule or regulations, provide for the manner in which standards and  
5065 qualifications for such articles and products shall be set, for  
5066 the manner in which the needs of departments, agencies and  
5067 institutions of the state and its political subdivisions shall be  
5068 estimated in advance, for the manner in which the price for such  
5069 articles and products shall be determined, and for the manner in  
5070 which purchases shall be made and payment credited.

5071 (6) Within the appropriation allotted therefor, the warden  
5072 or other administrative head shall make appropriate arrangements  
5073 for the compensation of prisoners for damages from injuries  
5074 arising out of their employment.

5075 **SECTION 200.** For good behavior and faithful performance of  
5076 duties, the term of imprisonment of a prisoner sentenced or  
5077 committed for a definite term of more than thirty (30) days shall  
5078 be reduced by five (5) days for each month of such term. Such



5079 reductions of terms may be forfeited, withheld or restored by the  
5080 warden or other administrative head of the institution, in  
5081 accordance with the regulations of the Department of Corrections.

5082       **SECTION 201.** (1) When a defendant is sentenced or committed  
5083 for a fixed term of one (1) year or less, the court may in its  
5084 order grant him the privilege of leaving the institution during  
5085 necessary and reasonable hours for any of the following purposes:

- 5086               (a) To work at his employment;  
5087               (b) To seek employment;  
5088               (c) To conduct his own business or to engage in other  
5089 self-employment, including, in the case of a woman, housekeeping  
5090 and attending to the needs of her family;  
5091               (d) To attend an educational institution;  
5092               (e) To obtain medical treatment;  
5093               (f) To devote time to any other purpose approved by the  
5094 court.

5095       (2) Whenever a prisoner who has been granted the privilege  
5096 of leaving the institution under this section is not engaged in  
5097 the activity for which such leave is granted, he shall be confined  
5098 in the institution.

5099       (3) A prisoner sentenced to ordinary confinement may  
5100 petition the court at any time after sentence for the privilege of  
5101 leaving the institution under this section and may renew his  
5102 petition in the discretion of the court. The court may withdraw  
5103 the privilege at any time by order entered with or without notice.



5104           (4) If the prisoner has been granted permission to leave the  
5105 institution to seek or take employment, the court's probation  
5106 department shall assist him in obtaining suitable employment.  
5107 Employment shall not be deemed suitable if the wages or working  
5108 conditions or other circumstances present a danger of exploitation  
5109 or of interference in a labor dispute in the establishment in  
5110 which the prisoner would be employed.

5111           (5) If a prisoner is employed for wages or salary, the  
5112 warden or other administrative head shall collect the same, or  
5113 shall require the prisoner to turn over his wages or salary in  
5114 full when received, and shall deposit the same in a trust account  
5115 and shall keep a ledger showing the status of the account of each  
5116 prisoner. Earnings levied upon pursuant to writ of attachment or  
5117 execution or in other lawful manner shall not be collected  
5118 hereunder, but when the warden or other administrative head has  
5119 requested transmittal of earnings prior to levy, such request  
5120 shall have priority. When an employer transmits such earnings to  
5121 the warden or other administrative head pursuant to this  
5122 subsection he shall have no liability to the prisoner for such  
5123 earnings. From such earnings the probation service shall pay the  
5124 prisoner's board and personal expenses both inside and outside the  
5125 institution, shall deduct so much of the costs of administration  
5126 of this section as is allocable to such prisoner, and shall deduct  
5127 installments on fines, if any, and, to the extent directed by the  
5128 court, shall pay the support of the prisoner's dependents. If



5129 sufficient funds are available after making the foregoing  
5130 payments, the warden or other administrative head may, with the  
5131 consent of the prisoner, pay, in whole or in part, any unpaid  
5132 debts of the prisoner. Any balance shall be retained, and shall  
5133 be paid to the prisoner at the time of his discharge.

5134 (6) A prisoner who is serving his sentence pursuant to this  
5135 section shall be eligible for a reduction of his term for good  
5136 behavior and faithful performance of duties in accordance with  
5137 Section 200 of this act in the same manner as if he had served his  
5138 term in ordinary confinement.

5139 (7) The warden or other administrative head may deny the  
5140 prisoner the exercise of this privilege to leave the institution  
5141 for a period not to exceed five (5) days for any breach of  
5142 discipline or other violation of regulations.

5143 (8) The court shall not make an order granting the privilege  
5144 of leaving the institution under this section unless it is  
5145 satisfied the warden or other administrative head has certified  
5146 that there are adequate facilities for the administration of such  
5147 privilege in the institution in which the defendant will be  
5148 confined.

5149 **SECTION 202.** When a prisoner sentenced or committed for a  
5150 definite term of one (1) year or less is discharged from an  
5151 institution, he shall be returned any personal possessions taken  
5152 from him upon his commitment, and the warden or other  
5153 administrative head shall furnish him with a transportation



ticket, or with the cost of transportation, to the place where he was sentenced, or to any other place not more distant.

## ARTICLE 27

### LONG-TERM IMPRISONMENT

**SECTION 203.** (1) The Commissioner of the Department of Corrections shall, when practicable, establish, equip and maintain one or more centers for the reception and classification of young adult offenders as defined in Section 59 of this act, and one or more such centers for other persons committed to the Department of Corrections. When practicable, a reception center shall be a separate institution, but until it is established as such, it may be located in, or be contiguous to, another institution and may share its facilities. When a reception center shares the facilities of another institution, however, the administration and personnel of the center shall be independent of such other institution, and prisoners in such center shall be segregated from prisoners in the institution whose facilities it shares.

(2) The Commissioner of the Department of Corrections shall appoint a reception classification board for each reception center, which shall include a representative of the Commissioner of the Department of Corrections, a physician, a psychiatrist or clinical psychologist, a representative of the treatment services, a representative of the custodial services, and such other persons as the commissioner may designate. Members of a reception



5178 classification board shall serve at the pleasure of the  
5179 Commissioner of the Department of Corrections.

5180       (3) Reception classification boards shall examine and study  
5181 all persons committed to the Department of Corrections and may  
5182 retain any prisoner in the reception center only for such period  
5183 as may be required to complete such examination and study and to  
5184 effect his transfer to another institution. The board shall  
5185 investigate each prisoner's medical, psychological, social,  
5186 educational and vocational condition and history, and the  
5187 motivation of his offense.

5188       Upon the conclusion of its study of a prisoner, a reception  
5189 classification board shall submit its report, including its  
5190 recommendations and the reasons therefor, to the Commissioner of  
5191 the Department of Corrections. The board's recommendation shall  
5192 include the classification of the prisoner according to such  
5193 system of prisoner classification as the Commissioner of the  
5194 Department of Corrections may establish by regulation, the  
5195 institution or unit to which the prisoner's transfer is  
5196 recommended, the degree and kind of custodial control recommended  
5197 for the protection of society, and the program of treatment for  
5198 the rehabilitation of the prisoner, including in such program such  
5199 recommendations for medical and psychological treatment and  
5200 educational and vocational training as may be appropriate. The  
5201 board's report may, in addition, contain the dissenting views, if  
5202 any, of any of its members.





5203           (4) Upon receipt of the reception classification board's  
5204 report, the Commissioner of the Department of Corrections shall  
5205 designate the institution or unit to which the prisoner shall be  
5206 transferred.

5207           (5) A reception center shall forward copies of the report of  
5208 its reception classification board to the institution to which the  
5209 prisoner is transferred, to the Parole Board and to the clerk of  
5210 the court which sentenced the prisoner, to be made a part of such  
5211 prisoner's file.

5212           (6) The Commissioner of the Department of Corrections may at  
5213 any time order a prisoner transferred to a reception center for  
5214 further examination and study and for new recommendations  
5215 concerning his classification, custodial control and  
5216 rehabilitative treatment, or he may order such prisoner's  
5217 immediate transfer to another institution without such further  
5218 examination and study.

5219           **SECTION 204.** (1) Within the appropriation allotted  
5220 therefor, the Commissioner of the Department of Corrections shall  
5221 construct, equip and maintain suitable buildings, structures and  
5222 facilities for the operation and for the necessary expansion and  
5223 diversification of the state correctional system, including  
5224 prisons, reformatories, reception centers, parole and probation  
5225 hostels and such other institutions as may be required for the  
5226 custody, control, correctional treatment and rehabilitation of  
5227 persons committed to the Department of Corrections.



5228           (2) The Commissioner of the Department of Corrections shall  
5229 annually review the adequacy of the state correctional system in  
5230 the light of the number of persons committed thereto as well as in  
5231 the light of the need for diversified facilities. No later than  
5232 his next annual report, the commissioner shall report on any  
5233 inadequacies of the state correctional system, including his  
5234 recommendations for the alteration or expansion of the existing  
5235 institutions, for the construction of new institutions, or for  
5236 such other measures to meet the situation as may be appropriate,  
5237 whenever the system fails to provide, when practicable, the  
5238 following institutions:

5239           (a) One or more maximum security institutions  
5240 accommodating in each such institution or in separate units  
5241 thereof no more than two thousand (2,000) prisoners;

5242           (b) One or more medium security institutions  
5243 accommodating in each such institution or in separate units  
5244 thereof no more than two thousand (2,000) prisoners;

5245           (c) One or more minimum security institutions  
5246 accommodating in each such institution or in separate units  
5247 thereof no more than two thousand (2,000) prisoners, which  
5248 institutions may include unfenced farms, camps, colonies, housing  
5249 for outside work areas, and similar facilities, and may, in  
5250 addition to their regular uses, be employed also for parole  
5251 preparation of prisoners and for the detention of prisoners during  
5252 temporary suspension of parole, and for other similar purposes;



5253           (d) Special institutional facilities for the vocational  
5254 and rehabilitative training of young adult offenders, as defined  
5255 in Section 59 of this act, providing, if need be by separate  
5256 units, for diversified security and custody;

5257           (e) A medical-correctional facility to keep prisoners  
5258 with difficult or chronic medical and psychiatric problems, which,  
5259 if the number of persons committed to the department reaches four  
5260 hundred (400), is a separate institution;

5261           (f) One or more institutions for female prisoners  
5262 committed to the department, providing, if need be by separate  
5263 units, for diversified security and custody;

5264           (3) When the Commissioner of the Department of Corrections  
5265 finds that certain classes or categories of persons committed to  
5266 the department require specialized treatment, or treatment of a  
5267 kind that it is not feasible to provide within the state  
5268 correctional system, the Commissioner of the Department of  
5269 Corrections shall seek to place such prisoners in institutions  
5270 providing such treatment in another jurisdiction, and may agree to  
5271 pay reimbursement therefor. A prisoner so transferred to an  
5272 out-of-state institution shall be subject to the rules and  
5273 regulations of such institution concerning the custody, conduct  
5274 and discipline of its inmates, but shall remain subject to the  
5275 provisions of this act concerning his term, reduction of term for  
5276 good behavior and release on parole.



**SECTION 205.**

(1) The warden or other administrative head of a correctional institution shall establish and maintain, in accordance with the regulations of the department, a central file in the institution containing an individual file for each prisoner. Each prisoner's file shall include: (a) his admission summary; (b) his presentence investigation report; (c) the report and recommendation of the reception classification board; (d) the official records of his conviction and commitment as well as earlier criminal records, if any; (e) progress reports and admission-orientation reports from treatment and custodial staff; (f) reports of his disciplinary infractions, and of their disposition; (g) his parole plan, prepared in accordance with Section 219 of this act; and (h) other pertinent data concerning his background, conduct, associations and family relationships. Each prisoner's file shall be carefully reviewed before any decision is made concerning his classification, reclassification or parole release. The content of the prisoner's files shall be confidential and shall not be subject to public inspection except by court order for good cause shown and shall not be accessible to prisoners in the institution.

(2) The warden or other administrative head in each correctional institution shall appoint a treatment classification committee with himself or his representative as chairman, and consisting of representatives of the treatment, custodial and parole services, of medical, psychiatric or psychological



5302 personnel, of personnel concerned with the education and  
5303 vocational training of inmates, and of such other persons, as he  
5304 may designate. Members of the treatment classification committee  
5305 shall serve at the pleasure of the warden or other administrative  
5306 head.

5307       (3) When a prisoner is transferred to a correctional  
5308 institution from a reception center or from any other institution,  
5309 the classification committee of such receiving institution shall,  
5310 within two (2) months of receiving the prisoner, study his  
5311 presentence investigation report, his criminal history and escape  
5312 record, if any, the report of the reception classification board,  
5313 the admission-orientation reports of the custodial and treatment  
5314 officers of the institution, the attitudes and preferences of the  
5315 prisoner and such other relevant information as may be available  
5316 in the prisoner's file or from other sources and shall aid the  
5317 warden or other administrative head of the institution in  
5318 determining the prisoner's program of treatment, training,  
5319 employment, care and custody.

5320       (4) The classification committee, or a subcommittee thereof  
5321 designated by the warden or other administrative head, shall  
5322 review the program of each prisoner at regular intervals and  
5323 whenever a member of the committee so requests, and shall  
5324 recommend to the warden such changes in the prisoner's program of  
5325 treatment, training, employment, care and custody as it considers  
5326 necessary or desirable.



5327           (5) Approximately three (3) months before a prisoner will be  
5328 considered by the Parole Board for release on parole, the  
5329 classification committee shall reexamine the prisoner's individual  
5330 file, shall prepare a report summarizing and evaluating the  
5331 prisoner's progress, and may recommend to the warden or other  
5332 administrative head (a) that the prisoner be reclassified for  
5333 preparole preparation at that institution or at another  
5334 institution after transfer thereto or (b) that the prisoner's  
5335 reclassification for preparole preparation be postponed, for a  
5336 definite or indefinite period of time, stating the reason for such  
5337 recommendation in the record. A copy of the classification  
5338 committee's report shall be forwarded to the Parole Board, and  
5339 shall be available to such board in advance of the prisoner's  
5340 hearing before the Parole Board.

5341           (6) The warden or other administrative head of the  
5342 institution shall have final authority to determine matters of  
5343 treatment classification within his institution and to recommend  
5344 to the Commissioner of the Department of Corrections the transfer  
5345 of any prisoner.

5346           **SECTION 206.** (1) When an institutional physician finds that  
5347 a prisoner suffers from a physical disease or defect, or when an  
5348 institutional physician or psychologist finds that a prisoner  
5349 suffers from a mental disease or defect, the warden or other  
5350 administrative head may order such prisoner to be segregated from  
5351 other prisoners, and if the physician or psychologist, as the case



5352 may be, is of the opinion that he cannot be given proper treatment  
5353 at that institution, the warden or other administrative head shall  
5354 recommend to the Commissioner of the Department of Corrections  
5355 that such prisoner be transferred for examination, study and  
5356 treatment to the medical-correctional facility, if any, or to  
5357 another institution in the department where proper treatment is  
5358 available.

5359       (2) When an institutional physician finds upon examination  
5360 that a prisoner suffers from a physical disease or defect that  
5361 cannot, in his opinion, be properly treated in any institution in  
5362 the Department of Corrections, such prisoner, upon the  
5363 recommendation of the warden or other administrative head and the  
5364 order of the Commissioner of the Department of Corrections, may  
5365 receive treatment in, or may be transferred to, for the purpose of  
5366 receiving treatment in, a hospital outside the Department of  
5367 Corrections. The Commissioner of the Department of Corrections,  
5368 shall make appropriate arrangements with other public or private  
5369 agencies for the transportation to, and for the care, custody and  
5370 security of the prisoner in, such outside hospital. While  
5371 receiving treatment in such outside hospital, the prisoner shall  
5372 remain subject to the jurisdiction and custody of the Department  
5373 of Corrections, and shall be returned to the Department of  
5374 Corrections when, prior to the expiration of his sentence, such  
5375 hospital treatment is no longer necessary.



(3) When two (2) psychiatrists approved by the Department of Health find upon examination that a prisoner suffers from a mental disease or defect that cannot, in their opinion, be properly treated in any institution in the Department of Corrections, such prisoner, upon the recommendation of the warden or other administrative head and the order of the Commissioner of the Department of Corrections, may be transferred for treatment, with the approval of the Department of Health, to a psychiatric facility in such department. The Commissioner of the Department of Corrections shall make appropriate arrangements with the Department of Health for the transportation to, and for the custody and security of the prisoner in such psychiatric facility. A prisoner receiving treatment in such a psychiatric facility shall remain subject to the jurisdiction and custody of the Department of Corrections, and shall be returned to the Department of Corrections when, prior to the expiration of his sentence, treatment in such facility is no longer necessary. A prisoner receiving treatment in a psychiatric facility in the Department of Health who continues in need of treatment at the time of his release or discharge shall be dealt with in accordance with subsection (4) of this section.

(4) When two (2) psychiatrists approved by the Department of Health find upon examination that a prisoner about to be released or discharged from an institution suffers from a mental disease or defect of such a nature that his release or discharge will





5401 endanger the public safety or the safety of the prisoner, the  
5402 Commissioner of the Department of Corrections shall transfer him  
5403 to, or if he has already been transferred, permit him to remain  
5404 in, the Department of Health to be dealt with in accordance with  
5405 law applicable to the civil commitment and detention of persons  
5406 suffering from such disease or defect.

5407       **SECTION 207.** (1) Upon admission to a state correctional  
5408 institution, each prisoner shall be given a physical examination,  
5409 and shall be kept apart from other prisoners for a period of  
5410 quarantine until he is known to be free from communicable disease  
5411 and until he has been classified in accordance with Section 205 of  
5412 this act. Each prisoner shall have regular medical and dental  
5413 care.

5414       (2) Each prisoner shall be adequately fed and clothed in  
5415 accordance with regulations of the Department. No prisoner shall  
5416 be required to wear stripes or other degrading apparel.

5417       **SECTION 208.** The Commissioner of the Department of  
5418 Corrections, shall establish an appropriate program for each  
5419 institution, designed as far as practicable to prepare and assist  
5420 each prisoner to assume his responsibilities and to conform to the  
5421 requirements of law. In developing such programs, the  
5422 commissioner shall seek to make available to each prisoner capable  
5423 of benefiting therefrom academic or vocational training,  
5424 participation in productive work, religious and recreational  
5425 activities and such therapeutic measures as are practicable. No



5426 prisoner shall be ordered or compelled, however, to participate in  
5427 religious activities.

5428       **SECTION 209.** (1) The warden or other administrative head of  
5429 each correctional institution shall be responsible for the  
5430 discipline, control and safe custody of the prisoners therein. No  
5431 prisoner shall be punished except upon the order of the warden or  
5432 other administrative head of the institution or of a deputy  
5433 designated by him for the purpose; nor shall any punishment be  
5434 imposed otherwise than in accordance with the provisions of this  
5435 section.

5436       (2) The warden or other administrative head of each  
5437 correctional institution shall appoint a committee on adjustment  
5438 from among the staff of the institution, which shall include a  
5439 member of the treatment service, a member of the custodial  
5440 service, and an institutional physician. The warden or other  
5441 administrative head may designate himself or a deputy as chairman  
5442 of the committee. The committee shall give notice to any prisoner  
5443 who has been reported for a breach of discipline, shall determine  
5444 after a hearing whether the prisoner has committed an intentional  
5445 breach of the rules, and shall recommend to the warden or other  
5446 administrative head an appropriate disposition of the matter  
5447 subject to the provisions of this section. No prisoner shall be  
5448 punished until he has had such a hearing, but the recommendation  
5449 of the committee shall not be binding on the warden or other  
5450 administrative head or his deputy.



5451           (3) Except in flagrant or serious cases, punishment for a  
5452 breach of the rules shall consist of deprivation of privileges.  
5453 In cases of assault, escape, or attempt to escape, or other  
5454 serious or flagrant breach of the rules, the committee on  
5455 adjustment may recommend to the warden or other administrative  
5456 head, and he may order, that a prisoner's reduction of term for  
5457 good behavior and faithful performance of duties be forfeited or  
5458 withheld in accordance with Section 216 of this act. For serious  
5459 or flagrant breach of the rules, the committee on adjustment, in  
5460 accordance with the regulations of the department, may also  
5461 recommend, and the warden or other administrative head may order,  
5462 that the offender be confined in a disciplinary cell for a period  
5463 not to exceed thirty (30) days. The committee on adjustment may  
5464 recommend, and the warden or other administrative head may order,  
5465 that a prisoner, during all or part of the period of such solitary  
5466 confinement, be put on a monotonous but adequate and healthful  
5467 diet. A prisoner in solitary confinement shall be visited by a  
5468 physician at least once every twenty-four (24) hours.

5469           (4) No cruel, inhuman or corporal punishment shall be used  
5470 on any prisoner, nor is the use of force on any prisoner  
5471 justifiable except as provided by Article 3 of this act and the  
5472 rules and regulations of the department consistent therewith.

5473           (5) The warden or other administrative head of an  
5474 institution shall maintain a record of breaches of rules, of the  
5475 disposition of each case, and of the punishment, if any, for each



5476 such breach. Each breach of the rules by a prisoner shall be  
5477 entered in his file, together with the disposition or punishment  
5478 therefor.

5479 (6) The committee on adjustment shall recommend to the  
5480 warden or other administrative head that a prisoner who is  
5481 considered to be incorrigible by reason of frequent intentional  
5482 breaches of discipline, or who is detrimental to the discipline or  
5483 the morale of the institution, be reported to the Commissioner of  
5484 the Department of Corrections for transfer to another institution  
5485 for stricter safekeeping and close confinement.

5486 **SECTION 210.** (1) To establish good habits of work and  
5487 responsibility, for the vocational training of prisoners, and to  
5488 reduce the cost of prison operation, prisoners shall be employed  
5489 so far as possible in constructive and diversified activities in  
5490 the production of goods, services and foodstuffs to maintain the  
5491 institution and its inmates, for state use and for other purposes  
5492 expressly authorized by law. To accomplish these purposes, the  
5493 Commissioner of the Department of Corrections shall establish and  
5494 maintain prison industries and prison farms in appropriate  
5495 correctional institutions, and may enter into arrangements with  
5496 other departments for the employment of prisoners in the  
5497 improvement of public works and ways and in the improvement and  
5498 conservation of the natural resources owned by the state.



5499           (2) No prisoner shall be required to engage in excessive  
5500 labor, and no prisoner shall be required to perform any work for  
5501 which he is declared unfit by the medical department.

5502           (3) The commissioner shall make rules and regulations  
5503 governing the hours and conditions of labor of prisoners in  
5504 correctional institutions, and the rates of prisoners'  
5505 compensation for employment. In determining the rates of  
5506 compensation, such regulations may take into consideration the  
5507 quantity and quality of the work performed by a prisoner whether  
5508 or not such work was performed during regular working hours, the  
5509 skill required for its performance, as well as the economic value  
5510 of similar work outside of correctional institutions. Prisoners'  
5511 wage payments shall be set aside by the warden or other  
5512 administrative head in a separate fund. The regulations may  
5513 provide for the making of deductions from prisoners' wages to  
5514 defray part or all of the cost of prisoner maintenance, but a  
5515 sufficient amount shall remain after such deduction to enable the  
5516 prisoner to contribute to the support of his dependents, if any,  
5517 to make necessary purchases from the commissary, and to set aside  
5518 sums to be paid to him at the time of his release from the  
5519 institution.

5520           (4) The labor or time of any prisoner committed to the  
5521 Department of Corrections shall not be sold, contracted or hired  
5522 out, but prisoners may work for other departments of the state in



5523 accordance with arrangements made pursuant to subsection (1) of  
5524 this section.

5525       (5) All departments and agencies of the state, and all  
5526 institutions and agencies which are supported, in whole or in  
5527 part, by the state shall purchase from the Department of  
5528 Corrections all articles and products required by them which are  
5529 produced or manufactured by prison labor in state correctional  
5530 institutions, unless excepted from this requirement by the  
5531 Governor or other appropriate authority in accordance with rules  
5532 and regulations promulgated by the Governor or other appropriate  
5533 authority to carry out the purposes of this subsection. The  
5534 Governor or other appropriate authority may, by rule or  
5535 regulation, provide for the manner in which standards and  
5536 qualifications for such articles and products shall be set, for  
5537 the manner in which the needs of departments, agencies and  
5538 institutions shall be estimated in advance, for the manner in  
5539 which the price for such articles and products shall be  
5540 determined, and for the manner in which purchases shall be made  
5541 and payment credited.

5542       (6) Within the appropriation allotted therefor, the  
5543 commissioner shall make appropriate arrangements for the  
5544 compensation of prisoners for damages from injuries arising out of  
5545 their employment.

5546       **SECTION 211.** (1) The Commissioner of the Department of  
5547 Corrections shall formulate rules or regulations governing



5548 compassionate leave from institutions and, in accordance with such  
5549 rules or regulations, may permit any prisoner to leave his  
5550 institution for short periods of time, either by himself or in the  
5551 custody of an officer, to visit a close relative who is seriously  
5552 ill, to attend the funeral of a close relative, to return to his  
5553 home during what appears to be his own last illness, or to return  
5554 to his home for other compelling reasons which strongly appeal to  
5555 compassion.

5556       (2) The rules or regulations shall provide for the manner in  
5557 which compassionate leave shall be granted, for its duration, and  
5558 for the custody, transportation and care of the prisoner during  
5559 his leave. They shall also provide for the manner in which the  
5560 expense connected with such leave shall be borne, and may allow  
5561 the prisoner, or anyone in his behalf, to reimburse the state for  
5562 such expense.

5563       (3) The Commissioner of the Department of Corrections, on  
5564 the recommendation of the Parole Board, may grant a pre-parole  
5565 furlough, not to exceed two (2) weeks, to any prisoner whose  
5566 parole release date has been fixed in accordance with Section 220  
5567 of this act by the Parole Board. The purpose of such a furlough  
5568 shall be to enable the prisoner to secure employment, to find  
5569 adequate living quarters for himself and his family, or,  
5570 generally, to make more effective plans and arrangements towards  
5571 his release on parole.



**SECTION 212.**

When a prisoner is released from an institution, either on parole or upon final discharge, he shall be returned any personal possessions taken from him upon his commitment, and the warden or other administrative head shall furnish him with decent clothing appropriate for the season of the year, a transportation ticket to the place where he will reside, the earnings set aside for him in the wage fund, and such additional sum of money as may be prescribed by regulation of the department to enable him to meet his immediate needs. If at the time of his release a prisoner is too ill or feeble or otherwise unable to use public means of transportation, the warden or other administrative head may, subject to the rules and regulations of the department, make special arrangements for his transportation to the place where he will reside.

**ARTICLE 28**

**RELEASE ON PAROLE**

**SECTION 213.**

For good behavior and faithful performance of duties, the term of a prisoner sentenced to imprisonment for an indefinite term with a maximum in excess of one (1) year, shall be reduced by six (6) days for each month of such term. In addition, for especially meritorious behavior or exceptional performance of his duties, a prisoner may receive further reduction, not to exceed six (6) days, for any month of imprisonment. The total of all such reductions shall be deducted:





(a) From his minimum term of imprisonment, to determine the date of his eligibility for release on parole; and

(b) From his maximum term of imprisonment, to determine the date when his release on parole becomes mandatory.

**SECTION 214.** For good conduct in conformity with the conditions of parole, a parolee's parole term shall be reduced by six (6) days for each month of such parole term. The total of such reductions shall be deducted:

(a) From his minimum parole term to determine the date of his eligibility for discharge from parole; and

(b) From the maximum of his parole term to determine the date when his discharge from parole becomes mandatory.

**SECTION 215.** (1) Reductions of term of imprisonment in accordance with Section 213 of this act shall be awarded by the warden of the institution. In the case of reductions for especially meritorious behavior, or exceptional performance of duties, the award shall be made only upon the recommendation of the Committee on Adjustment or similar committee of the institution.

(2) Reductions of parole terms in accordance with Section 214 of this act shall be awarded by the Parole Board.

**SECTION 216.** (1) Reductions of terms of imprisonment for good behavior and faithful performance of duties may be forfeited, withheld and restored by the warden of the institution after hearing by the Committee on Adjustment of the institution, but no



reduction of a prison term shall be forfeited or withheld after a prisoner is released on parole.

(2) Reductions of parole terms for good behavior may be forfeited, withheld and restored by the Parole Board.

**SECTION 217.** The warden of the institution shall regularly report all reductions of prison terms for good behavior and faithful performance of duties, and all forfeitures and restorations of such reductions to the Commissioner of the Department of Corrections. On the basis of such report, the commissioner shall inform the Parole Board of all prisoners who are expected to become eligible for release on parole or whose release on parole will become mandatory within the next three (3) months.

**SECTION 218.** Every prisoner sentenced to an indefinite term of imprisonment shall be eligible for release on parole upon completion of his minimum term less reductions granted in accordance with Section 213 of this act, or, if there is no minimum, at any time. Within sixty (60) days before the expiration of such minimum less reductions, or, if there is no minimum, within ninety (90) days of his commitment, the prisoner shall have a hearing before the Parole Board or a member or members designated by the board. The hearing shall be conducted in an informal manner, but a verbatim record of the proceedings shall be made and preserved.



**SECTION 219.**

(1) Each prisoner in advance of his parole hearing shall prepare a parole plan, setting forth the manner of life he intends to lead if released on parole, including such specific information as to where and with whom he will reside and what occupation or employment he will follow. The institutional parole staff shall render reasonable aid to the prisoner in the preparation of his plan and in securing information for submission to the Parole Board.

(2) A prisoner shall be permitted to advise with any persons whose assistance he reasonably desires, including his own legal counsel, in preparing for a hearing before the Parole Board.

**SECTION 220.**

(1) The Parole Board shall render its decision regarding a prisoner's release on parole within a reasonable time after hearing. The decision shall be by majority vote of the Parole Board. The decision shall be based on the entire record before the board, which shall include the opinion of the member who presided at the hearing. In its decision the board shall either fix the prisoner's release date, or it shall defer the case for later reconsideration.

(2) If the board fixes the release date, such date shall be not less than sixty (60) days nor more than six (6) months from the date of the prisoner's parole hearing, or from the date of last reconsideration of his case by the board, unless there are special reasons for fixing an earlier or later release date.



(3) If the board defers the case for later reconsideration, it shall review the record at least once a year until a release date is fixed. The board may in its discretion order a reconsideration or a rehearing of the case at any time.

(4) If the board fixes no earlier release date, a prisoner's release on parole shall become mandatory at the expiration of his maximum term of imprisonment, less reductions allowed in accordance with Section 213 of this act.

**SECTION 221.** (1) Whenever the Parole Board considers the first release of a prisoner who is eligible for release on parole, it shall be the policy of the board to order his release, unless the board is of the opinion that his release should be deferred because:

(a) There is substantial risk that he will not conform to the conditions of parole; or

(b) His release at that time would depreciate the seriousness of his crime or promote disrespect for law; or

(c) His release would have a substantially adverse effect on institutional discipline; or

(d) His continued correctional treatment, medical care or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life when released at a later date.



(2) In making its determination regarding a prisoner's release on parole, it shall be the policy of the Parole Board to take into account each of the following factors:

(a) The prisoner's personality, including his maturity, stability, sense of responsibility and any apparent development in his personality which may promote or hinder his conformity to law;

(b) The adequacy of the prisoner's parole plan;

(c) The prisoner's ability and readiness to assume obligations and undertake responsibilities;

(d) The prisoner's intelligence and training;

(e) The prisoner's family status and whether he has relatives who display an interest in him, or whether he has other close and constructive associations in the community;

(f) The prisoner's employment history, his occupational skills and the stability of his past employment;

(g) The type of residence, neighborhood or community in which the prisoner plans to live;

(h) The prisoner's past use of narcotics, or past habitual and excessive use of alcohol;

(i) The prisoner's mental or physical makeup, including any disability or handicap which may affect his conformity to law;

(j) The prisoner's prior criminal record, including the nature and circumstances, recency and frequency of previous offenses;

(k) The prisoner's attitude toward law and authority;



5717           (1) The prisoner's conduct in the institution,  
5718 including particularly whether he has taken advantage of the  
5719 opportunities for self-improvement afforded by the institutional  
5720 program, whether he has been punished for misconduct within six  
5721 (6) months prior to his hearing or reconsideration for parole  
5722 release, whether he has forfeited any reductions of term during  
5723 his period of imprisonment and whether such reductions have been  
5724 restored at the time of hearing or reconsideration;

5725           (m) The prisoner's conduct and attitude during any  
5726 previous experience of probation or parole and the recency of such  
5727 experience.

5728           **SECTION 222.** Before making a determination regarding a  
5729 prisoner's release on parole, the Parole Board shall cause to be  
5730 brought before it all of the following records and information  
5731 regarding the prisoner:

5732           (a) A report prepared by the institutional parole  
5733 staff, relating to his personality, social history and adjustment  
5734 to authority, and including any recommendations which the  
5735 institutional staff may make.

5736           (b) All official reports of his prior criminal record,  
5737 including reports and records of earlier probation and parole  
5738 experiences;

5739           (c) The presentence investigation report of the  
5740 sentencing court;



(d) Recommendations regarding his parole made at the time of sentencing by the sentencing judge or the prosecutor;

(e) The reports of any physical, mental and psychiatric examinations of the prisoner;

(f) Any relevant information which may be submitted by the prisoner, his attorney, the victim of his crime or by other persons;

(g) The prisoner's parole plan;

(h) Such other relevant information concerning the prisoner as may be reasonably available.

**SECTION 223.** A parolee is eligible for discharge from parole upon the satisfactory completion of the minimum parole term less reductions for good behavior.

**SECTION 224.** If, in the opinion of the Parole Board, a parolee does not require guidance and supervision, the board may dispense with or terminate such supervision. When a parolee is eligible for discharge from parole in accordance with Section 223 of this act, the board may discharge him from parole, if, in its opinion, such discharge is not incompatible with the protection of the public. A parolee's discharge from parole or from recommitment for violation of parole becomes mandatory upon completion of the maximum parole term less reductions for good behavior.

**SECTION 225.** (1) When a prisoner is released on parole, the Parole Board shall require as a condition of his parole that he



5766 refrain from engaging in criminal conduct. The Parole Board may  
5767 also require, either at the time of his release on parole or at  
5768 any time and from time to time while he remains under parole, that  
5769 he conform to any of the following conditions of parole:

5770 (a) Meet his specified family responsibilities;

5771 (b) Devote himself to an approved employment or  
5772 occupation;

5773 (c) Remain within the geographic limits fixed in his  
5774 certificate of parole, unless granted written permission to leave  
5775 such limits;

5776 (d) Report, as directed, in person and within  
5777 thirty-six (36) hours of his release, to his parole officer;

5778 (e) Report in person to his parole officer at such  
5779 regular intervals as may be required;

5780 (f) Reside at the place fixed in his certificate of  
5781 parole and notify his parole officer of any change in his address  
5782 or employment;

5783 (g) Have in his possession no firearm or other  
5784 dangerous weapon unless granted written permission;

5785 (h) Submit himself to available medical or psychiatric  
5786 treatment, if the board shall so require;

5787 (i) Refrain from associating with persons known to him  
5788 to be engaged in criminal activities or, without permission of his  
5789 parole officer, with persons known to him to have been convicted  
5790 of a crime;





5791           (j) Satisfy any other conditions specially related to  
5792 the cause of his offense and not unduly restrictive of his liberty  
5793 or incompatible with his freedom of conscience.

5794           (2) Before release on parole, a parolee shall be provided  
5795 with a certificate of parole setting forth the conditions of his  
5796 parole.

5797           **SECTION 226.** The Parole Board may in appropriate cases  
5798 require a parolee, as a condition of his parole, either at the  
5799 time of his release on parole or at any time and from time to time  
5800 while he remains under parole supervision, to reside in a parole  
5801 hostel, boarding home, hospital or other special residence  
5802 facility for such a period and under such supervision or treatment  
5803 as the board may deem appropriate.

5804           **SECTION 227.** (1) When a parolee has been returned to the  
5805 institution, the Parole Board shall hold a hearing within sixty  
5806 (60) days of his return to determine whether his parole should be  
5807 revoked. The parolee shall have reasonable notice of the charges  
5808 filed. The institutional parole staff shall render reasonable aid  
5809 to the parolee in preparation for the hearing and he shall be  
5810 permitted to advise with his own legal counsel. At the hearing  
5811 the parolee may admit, deny or explain the violation charged, and  
5812 he may present proof, including affidavits and other evidence, in  
5813 support of his contention. A verbatim record of the hearing shall  
5814 be made and preserved.



5815           (2) The board may order revocation of parole if it is  
5816 satisfied, upon substantial evidence, that:

5817               (a) The parolee has failed, without a satisfactory  
5818 excuse, to comply with a substantial requirement imposed as a  
5819 condition of his parole; and

5820               (b) The violation of condition involves:

5821                     (i) The commission of another crime; or

5822                     (ii) Conduct indicating a substantial risk that  
5823 the parolee will commit another crime; or

5824                     (iii) Conduct indicating that the parolee is  
5825 unwilling to comply with proper conditions of parole.

5826           (3) Parole revocation shall be by majority vote of the  
5827 board.

5828           **SECTION 228.** (1) If the parole administrator has reasonable  
5829 cause to believe that a parolee has violated a condition of  
5830 parole, he shall notify the Parole Board, and shall cause the  
5831 appropriate district parole supervisor to submit the parolee's  
5832 record to the board. After consideration of the records  
5833 submitted, and after such further investigation as it may deem  
5834 appropriate, the board may order:

5835               (a) That the parolee receive a reprimand and warning  
5836 from the board;

5837               (b) That parole supervision and reporting be  
5838 intensified;



5839                   (c) That reductions for good behavior be forfeited or  
5840 withheld;

5841                   (d) That the parolee be remanded, without revocation of  
5842 parole, to a residence facility specified in Section 226 of this  
5843 act for such a period and under such supervision or treatment as  
5844 the board may deem appropriate;

5845                   (e) That the parolee be required to conform to one or  
5846 more additional conditions of parole which may be imposed in  
5847 accordance with Section 225 of this act;

5848                   (f) That the parolee be arrested and returned to  
5849 prison, there to await a hearing to determine whether his parole  
5850 should be revoked.

5851           (2) If a parole officer or district parole supervisor has  
5852 reasonable cause to believe that a parolee has violated or is  
5853 about to violate a condition of his parole and that an emergency  
5854 situation exists, so that awaiting action by the Parole Board  
5855 under subsection (1) of this section would create an undue risk to  
5856 the public or to the parolee, such parole officer or district  
5857 parole supervisor may arrest such parolee without a warrant, and  
5858 may call on any peace officer to assist him in so doing. The  
5859 parolee, whether arrested hereunder with or without a warrant,  
5860 shall be detained in the local jail, lockup or other detention  
5861 facility, pending action by the Parole Board. Immediately after  
5862 such arrest and detention, the parole officer or district parole  
5863 supervisor concerned shall notify the board and submit a written



report of the reason for such arrest. After consideration of such written report, the board or a member of the board shall, with all practicable speed, make a preliminary determination, and shall either order the parolee's release from detention or order his return to the institution from which he was paroled, there to await a hearing to determine whether or not his parole shall be revoked. The board's preliminary determination to order the parolee's release from detention shall not, however, be deemed to bar further proceedings under subsection (1) of this section.

**SECTION 229.** (1) A parolee whose parole is revoked for violation of the conditions of parole shall be recommitted for the remainder of his maximum parole term, after credit thereon for the period served on parole prior to the violation and for reductions for good behavior earned while on parole.

(2) A parolee whose parole has been revoked may be considered by the Parole Board for reparole at any time. He shall be entitled to a hearing and consideration for reparole after serving a further period of imprisonment equal to one-third (1/3) of the remainder of his maximum parole term, or after serving a period of six (6) months, whichever is longer.

(3) Except in the case of a parolee who has absconded from the jurisdiction or from his place of residence, action revoking a parolee's parole and recommitting him for violation of the conditions of parole must be taken before the expiration of his maximum parole term less reductions for good behavior. A parolee



5889 who has absconded from the jurisdiction, or from his place of  
5890 residence, shall be treated as a parole violator and whenever he  
5891 is apprehended shall be subject to recommitment or to supervision  
5892 for the balance of his parole term remaining on the date when he  
5893 absconded.

5894       **SECTION 230.** (1) If a warrant or detainer is placed against  
5895 a prisoner by a court, parole agency or other authority of this or  
5896 any other jurisdiction, the parole administrator shall inquire and  
5897 seek to determine, before such prisoner becomes eligible for  
5898 parole, whether the authority concerned intends to execute or  
5899 withdraw the writ when the prisoner is released.

5900       (2) If the authority notifies the parole administrator that  
5901 it intends to execute such writ when the prisoner is released, the  
5902 parole administrator shall advise the authority concerned of the  
5903 sentence under which the prisoner is held, the time of parole  
5904 eligibility, any decision of the Parole Board relating to the  
5905 prisoner, and of the nature of his adjustment during imprisonment,  
5906 and shall give reasonable notice to such authority of the  
5907 prisoner's release date.

5908       (3) The Parole Board may parole a prisoner who is eligible  
5909 for release to a warrant or detainer. If a prisoner is paroled to  
5910 such a warrant or detainer the Parole Board may provide, as a  
5911 condition of his release, that if the charges on which the warrant  
5912 or detainer is based are dismissed, or are satisfied after  
5913 conviction and sentence, prior to the expiration of his maximum



parole term, the authority to whose warrant or detainer he is released shall return him to serve the remainder of his maximum parole term or such part thereof as the board may determine.

(4) If a person paroled to a warrant or detainer is thereafter sentenced and placed on probation, or released on parole in another jurisdiction prior to the expiration of his maximum parole term less reduction for good behavior in this state, the Parole Board may permit him to serve the remainder of his parole term, or such part thereof as the board may determine, concurrently with his new probation or parole term. Such concurrent terms may be served in either of the two (2) jurisdictions, and supervision shall be administered in accordance with the provisions of the Interstate Compact for the Supervision of Parolees and Probationers.

**SECTION 231.** No court shall have jurisdiction to review or set aside, except for the denial of a hearing when a right to be heard is conferred by law:

(a) The action of an authorized official of the Department of Corrections or of the Parole Board withholding, forfeiting or refusing to restore a reduction of a prison or parole term for good behavior; or

(b) The orders or decisions of the Parole Board regarding, but not limited to, the release or deferment of release on parole of a prisoner whose maximum prison term has not expired, the imposition or modification of conditions of parole, the



revocation of parole, the termination or restoration of parole supervision or the discharge from parole or from reimprisonment before the end of the parole term.

## ARTICLE 29

### LOSS AND RESTORATION OF RIGHTS INCIDENT TO CONVICTION OR IMPRISONMENT

**SECTION 232.** (1) No person shall suffer any legal disqualification or disability because of his conviction of a crime or his sentence on such conviction, unless the disqualification or disability involves the deprivation of a right or privilege which is:

(a) Necessarily incident to execution of the sentence of the court; or

(b) Provided by the Constitution or this act; or

(c) Provided by a statute other than this act, when the conviction is of a crime defined by such statute; or

(d) Provided by the judgment, order or regulation of a court, agency or official exercising a jurisdiction conferred by law, or by the statute defining such jurisdiction, when the commission of the crime or the conviction or the sentence is reasonably related to the competency of the individual to exercise the right or privilege of which he is deprived.

(2) Proof of a conviction as relevant evidence upon the trial or determination of any issue, or for the purpose of



impeaching the convicted person as a witness is not a  
disqualification or disability within the meaning of this article.

**SECTION 233.** A person holding any public office who is  
convicted of a crime shall forfeit such office if:

(a) He is convicted under the laws of this state of a  
felony or under the laws of another jurisdiction of a crime which,  
if committed within this state, would be a felony; or

(b) He is convicted of a crime involving malfeasance in  
such office or dishonesty; or

(c) The Constitution or a statute other than this act  
so provides.

**SECTION 234.** Notwithstanding any other provision of law, a  
person who is convicted of a crime shall be disqualified:

(a) From voting in a primary or election if and only so  
long as he is committed under a sentence of imprisonment; and

(b) From serving as a juror until he has satisfied his  
sentence.

**SECTION 235.** (1) Notwithstanding any other provision of  
law, the fact that a person has been convicted of a crime or that  
he is under sentence therefor, whether of imprisonment or  
otherwise, does not render him incompetent to testify in a legal  
proceeding.

(2) Upon the order of the circuit court, the warden or other  
administrative head of an institution in which a prisoner is  
confined shall arrange for the production of the prisoner to





testify at the place designated in the order. Such order shall be issued whenever the court is satisfied that the testimony of the prisoner is required in a judicial or administrative proceeding and that the ends of justice cannot be satisfied by taking his deposition at the institution where he is confined.

(3) Subject to regulations of the Department of Corrections as to institutions subject to its jurisdiction, the warden or other administrative head of an institution in which a prisoner is confined may, in his discretion, permit the prisoner to leave the institution, either alone or in the custody of an officer, for the purpose of testifying in a legal proceeding in which he is a party or has been called as a witness. In granting such permission, the warden or administrative head may require that the prisoner or party calling him to testify defray the reasonable costs of providing for his custody while absent from the institution.

(4) Subject to regulations of the Department of Corrections as to institutions subject to its jurisdiction, the warden or other administrative head of an institution in which a prisoner is confined shall permit the prisoner to give testimony by deposition or in response to interrogatories, when such testimony is desired in a legal proceeding, and shall make suitable arrangements to facilitate the taking of such deposition in the institution.

**SECTION 236.** (1) A person confined under a sentence of imprisonment shall have the same right to appoint an agent,



attorney-in-fact or trustee to act in his behalf with respect to his property or economic interests as if he was not so confined.

(2) Upon the application of a person confined or about to be confined under a sentence of imprisonment, the chancery court of the county where the prisoner resided at the time of sentence or where the sentence was imposed may appoint a trustee to safeguard his property and economic interests during the period of his commitment. The trustee shall have such power and authority as the court designates in the order of appointment but, unless the order otherwise provides, shall have all the power and authority conferred by a general power of attorney.

**SECTION 237.** (1) In the cases specified in this subsection the court may order that so long as the defendant is not convicted of another crime, the judgment shall not thereafter constitute a conviction for the purpose of any disqualification or disability imposed by law because of the conviction of a crime:

(a) In sentencing a young adult offender to the special term provided by Section 59(2) of this act or to any sentence other than one of imprisonment; or

(b) When the court has theretofore suspended sentence or has sentenced the defendant to be placed on probation and the defendant has fully complied with the requirements imposed as a condition of such order and has satisfied the sentence; or

(c) When the court has theretofore sentenced the defendant to imprisonment and the defendant has been released on



6037 parole, has fully complied with the conditions of parole and has  
6038 been discharged; or

6039 (d) When the court has theretofore sentenced the  
6040 defendant, the defendant has fully satisfied the sentence and has  
6041 since led a law-abiding life for at least two (2) years.

6042 (2) In the cases specified in this subsection, the court  
6043 which sentenced a defendant may enter an order vacating the  
6044 judgment of conviction:

6045 (a) When an offender has been discharged from probation  
6046 or parole before the expiration of the maximum term thereof; or

6047 (b) When a defendant has fully satisfied the sentence  
6048 and has since led a law-abiding life for at least five (5) years.

6049 (3) An order entered under subsection (1) or (2) of this  
6050 section:

6051 (a) Has only prospective operation and does not require  
6052 the restoration of the defendant to any office, employment or  
6053 position forfeited or lost in accordance with this article; and

6054 (b) Does not preclude proof of the conviction as  
6055 evidence of the commission of the crime, whenever the fact of its  
6056 commission is relevant to the determination of an issue involving  
6057 the rights or liabilities of someone other than the defendant; and

6058 (c) Does not preclude consideration of the conviction  
6059 for purposes of sentence if the defendant subsequently is  
6060 convicted of another crime; and



6061 (d) Does not preclude proof of the conviction as  
6062 evidence of the commission of the crime, whenever the fact of its  
6063 commission is relevant to the exercise of the discretion of a  
6064 court, agency or official authorized to pass upon the competency  
6065 of the defendant to perform a function or to exercise a right or  
6066 privilege which such court, agency or official is empowered to  
6067 deny, except that in such case the court, agency or official shall  
6068 also give due weight to the issuance of the order; and

6069 (e) Does not preclude proof of the conviction as  
6070 evidence of the commission of the crime, whenever the fact of its  
6071 commission is relevant for the purpose of impeaching the defendant  
6072 as a witness, except that the issuance of the order may be adduced  
6073 for the purpose of his rehabilitation; and

6074 (f) Does not justify a defendant in stating that he has  
6075 not been convicted of a crime, unless he also calls attention to  
6076 the order.

6077 **ARTICLE 30**

6078 **DEPARTMENT OF CORRECTIONS**

6079 **SECTION 238.** There shall be in the state government a  
6080 Department of Corrections, which shall be charged with the  
6081 following responsibilities:

6082 (a) To maintain, administer, and to establish state  
6083 correctional institutions, including prisons, reformatories,  
6084 reception centers, parole and probation hostels, state  
6085 misdemeanor institutions and such other facilities as may be



6086 required for the custody, control, correctional treatment and  
6087 rehabilitation of committed offenders, and for the safekeeping of  
6088 such other persons as may be remanded thereto in accordance with  
6089 law;

6090           (b) To administer the release of prisoners under parole  
6091 supervision and to administer parole services in the institutions  
6092 and in the community;

6093           (c) To establish personnel standards and supervision  
6094 policies for all probation services in the state, and to  
6095 administer probation field services in any county or other  
6096 governmental subdivision of this state which has no probation  
6097 service of its own;

6098           (d) To develop policies and programs for the  
6099 correctional treatment and rehabilitation of offenders committed  
6100 to institutions in the department;

6101           (e) To establish standards for the management,  
6102 operation, personnel and program of, and to exercise powers of  
6103 supervision, visitation and inspection over, all institutions in  
6104 the state for the detention of persons charged with or convicted  
6105 of an offense, or for the safekeeping of such other persons as may  
6106 be remanded thereto in accordance with law, and to close any such  
6107 institution which is inadequate.

6108           **SECTION 239.** (1) The Department of Corrections shall be  
6109 under the direction of the Commissioner of the Department of  
6110 Corrections, who shall be appointed by the Governor for a term



6111 which shall be concurrent with the term of the appointing  
6112 Governor. His salary shall be fixed by the Legislature within the  
6113 appropriation therefor.

6114 (2) The Commissioner of Corrections shall:

6115 (a) Supervise and be responsible for the administration  
6116 of the department;

6117 (b) Establish and administer, with the advice of the  
6118 Commission of Correction and Community Services, programs and  
6119 policies for the operation of the institutions in the department,  
6120 and for the correction and rehabilitation of prisoners;

6121 (c) Appoint and remove deputy directors as provided by  
6122 law and delegate appropriate powers and duties to 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



correctional treatment as may be useful in practical penological research or in the development of treatment programs;

(h) Exercise, in accordance with law, supervisory power over all institutions in the state for the detention of persons charged with or convicted of an offense, or for the safekeeping of such other persons as may be remanded thereto in accordance with law;

(i) Transmit to the Governor annually, on or before the first day of January, a detailed report of the operations of the department for the preceding calendar year, which report shall be transmitted by the Governor to the Legislature;

(j) Exercise all powers and perform all duties necessary and proper in carrying out his responsibilities.

**SECTION 240.** (1) There shall be in the Department of Corrections the following divisions and independent boards:

(a) Division of Treatment Services;

(b) Division of Custodial Services;

(c) Division of Young Adult Correction;

(d) Division of Fiscal Control;

(e) Division of Prison Industries;

(f) Division of Research and Training;

(g) Division of Parole;

(h) Division of Probation;

(i) Commission of Correction and Community Services;

(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.



(2) The Division of Prison Industries shall be headed by the Deputy Director for Prison Industries, who shall be the staff advisor of the Commissioner of the Department of Corrections in regard to the industries in the institutions of the department, and who shall exercise such powers and perform such duties as the commissioner may delegate to him. The Deputy Director for Prison Industries shall be appointed by, and serve during the pleasure of, the commissioner. He shall be a person with appropriate experience in the management of institutional industries, or in industrial management. His salary shall be fixed by the commissioner within the appropriation therefor.

**SECTION 245.** (1) The Division of Fiscal Control shall be charged with the establishment and maintenance of an accounting and auditing system in accordance with the state finance law for the Department of Corrections, its institutions, and all of its divisions, and boards other than the Division of Parole and the Parole Board. The Division of Fiscal Control shall also be responsible for the preparation of the department's proposed annual budget, except for the annual budget of the Division of Parole and the Parole Board, which shall be prepared in accordance with Section 256 of this act.

(2) The Division of Fiscal Control shall be headed by the Deputy Director for Fiscal Control, who shall be the staff advisor of the Commissioner of the Department of Corrections in regard to 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





unlawful to detain or confine any person therein. Whenever an inspection of an institution discloses violation of law in its management or conduct, the commissioner shall report such violation to the appropriate law enforcement official.

**SECTION 249.** Except as otherwise provided by this act, the officers and employees of the department, its divisions and boards, shall be appointed, promoted and discharged in accordance with the laws governing the State Personnel Board.

### **ARTICLE 31**

#### **BOARD OF PAROLE**

**SECTION 250.** (1) There is hereby created within the Department of Corrections Independent Parole Board, to consist of five (5) members, to be appointed by the Governor from a panel of candidates submitted by the Commission of Correction and Community Services. Members selected shall be persons of good character and judicious temperament who possess specialized skills evidenced by training or past experience in fields related to correctional administration and criminology. At least one (1) member of the board shall be a member of the bar of this state. The term of office of each member of the board shall be six (6) years and until his successor is appointed, except that the members first appointed to the board, one (1) shall be appointed to serve for a term of two (2) years, two (2) for a term of four (4) years and two (2) for a term of six (6) years. A member appointed to fill a vacancy occurring other than by expiration of a term shall be



6409 appointed for the remainder of the unexpired term of the member  
6410 whom he succeeds. Members may be reappointed for additional  
6411 six-year terms. They may be removed by the Governor solely for  
6412 corruption or disability, and after an opportunity to be heard.  
6413 The Governor shall, from time to time, designate one (1) of the  
6414 members to serve as chairman of the board during such member's  
6415 term of office.

6416 (2) Each member shall devote full time to the duties of his  
6417 office, and shall not engage in any other business or profession,  
6418 or hold any other public office. No member shall, at the time of  
6419 his appointment or during his tenure, serve as the representative  
6420 of any political party, or of any executive committee or governing  
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  
6454 other documents pertinent to the subject of its inquiry, and to  
6455 administer oaths and to take the testimony of persons under oath.

6456 **SECTION 252.** (1) The Board of Parole may from time to time  
6457 designate one or more of its members to serve as a young adult



6458 division of the board. All decisions of the young adult division  
6459 shall be by majority vote, but if the young adult division  
6460 consists of less than three (3) members, its decisions shall not  
6461 be effective until voted by a majority of a quorum of the whole  
6462 Parole Board. When the young adult division has been established,  
6463 it shall have all of the powers and duties of the board in respect  
6464 to young adult offenders committed to the custody of the Division  
6465 of Young Adult Correction of the Department of Corrections.

6466 (2) The Parole Board, or if the young adult division has  
6467 been established, the division shall:

6468 (a) Hold a parole hearing of every young adult offender  
6469 sentenced in accordance with Section 59 of this act to a term of  
6470 imprisonment without a minimum and with a maximum of four (4)  
6471 years, within ninety (90) days of such offender's date of  
6472 commitment, in order to fix his release date or to defer the case  
6473 for later reconsideration;

6474 (b) Interview every young adult offender who has been  
6475 remanded to the Department of Corrections prior to sentence for  
6476 observation and study in a reception center, to study his record  
6477 and advise the court of its findings and recommendations before  
6478 sentence;

6479 (c) Consult with the Deputy Director of Young Adult  
6480 Correction concerning correctional policy and programs in  
6481 institutions and treatment facilities serving young adult  
6482 offenders, and concerning such special programs of intensive



6483 correctional and rehabilitative treatment as may be required for  
6484 such offenders.

6485 **ARTICLE 32**

6486 **ADMINISTRATION OF INSTITUTIONS**

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 253(1) in the case of institutions in the Department of  
6554 Corrections, and to appoint such subordinate officers and  
6555 employees, in accordance with Section 253(2) of this act in the  
6556 case of institutions of counties, cities or other political  
6557 subdivision of the state.



6558                   (g) To establish and administer rules, including rules  
6559 for the operation of the institution and for the proper  
6560 classification and separation of prisoners therein, consistent  
6561 with the provisions of this Code, the general policies and  
6562 regulations of the department, and subject to the prior approval  
6563 of such rules by the commissioner;

6564                   (h) To maintain and preserve the central prisoner file,  
6565 in accordance with Section 194 or Section 205 of this act, and to  
6566 maintain and preserve records on the management and operation of  
6567 the institution, including records concerning its industries and  
6568 the wage funds of prisoners, and to report thereon to the  
6569 Commissioner of the Department of Corrections at such times as the  
6570 commissioner may require.

6571           **SECTION 255.** No female prisoner committed to the department  
6572 shall be kept in any correctional institution used for the  
6573 imprisonment of men.

6574   **ARTICLE 33**

6575   **DIVISION OF PAROLE**

6576           **SECTION 256.** (1) The Division of Parole shall be charged  
6577 with the administration of parole services in the community. The  
6578 division shall consist of the field parole service and of such  
6579 other employees as may be necessary in carrying out its functions.

6580           (2) The Division of Parole shall be under the direction of  
6581 the Parole Administrator, who shall be appointed by, and serve  
6582 during the pleasure of the Commissioner of the Department of





6583 Corrections. The Parole Administrator shall be a person with  
6584 appropriate experience in a field of correctional administration,  
6585 or appropriate training in relevant disciplines at a recognized  
6586 university. His salary shall be fixed by the commissioner within  
6587 the appropriation therefor.

6588 (3) The Division of Parole shall establish and maintain its  
6589 own accounting and auditing system in accordance with the state  
6590 finance laws and shall prepare and submit its own proposed annual  
6591 budget, including therein, the proposed annual budget of the  
6592 Parole Board, separate from the proposed annual budget of the  
6593 Department of Corrections.

6594 **SECTION 257.** The Parole Administrator shall:

6595 (a) Establish and administer standards, policies and  
6596 procedures for the field parole service;

6597 (b) Appoint district parole supervisors, field parole  
6598 officers and such other employees as may be required to carry out  
6599 adequate parole supervision of all parolees from correctional  
6600 institutions of the state and prescribe their powers and duties;

6601 (c) Cooperate closely with the Parole Board, the  
6602 criminal courts, the Deputy Director for Treatment Services, the  
6603 institutional parole staffs and other institutional personnel;

6604 (d) Make recommendations to the Parole Board in cases  
6605 of violation of the conditions of parole, issue warrants for the  
6606 arrest of parole violators when so instructed by the board, notify  
6607 the wardens or other administrative heads of institutions of



6608 determinations made by the board, and upon instruction of the  
6609 board issue certificates of parole and of parole revocation to the  
6610 institutions, and certificates of discharge from parole to  
6611 parolees;

6612 (e) Carry out the provisions of Section 256 of this act  
6613 in cooperation with the Parole Board.

6614 **SECTION 258.** (1) The field parole service, consisting of  
6615 field parole officers working under the immediate direction of  
6616 district parole supervisors, and under the ultimate direction of  
6617 the Parole Administrator, shall be responsible for the  
6618 investigation, supervision and assistance of parolees. The field  
6619 parole service shall be sufficient in size to assure that no  
6620 parole officer carries a case load larger than is compatible with  
6621 adequate parole investigation or supervision.

6622 (2) Field parole officers shall:

6623 (a) Make investigations, prior to a prisoner's release  
6624 on parole, in cooperation with institutional parole officers and  
6625 the Parole Board, to determine the adequacy of parole plans  
6626 submitted by prisoners who are candidates for parole, and made  
6627 reasonable advance preparations for their release on parole;

6628 (b) Help parolees in conforming to the conditions of  
6629 parole, and in making a successful adjustment in the community;

6630 (c) Supervise parolees, and in supervising them, visit  
6631 each parolee's home from time to time, and require that each  
6632 parolee report to his parole officer as frequently as may be



required in the light of his personality and adjustment, but no less frequently than twice a month during the first year of parole, except in unusual cases;

(d) Admonish parolees who appear in danger of violating the conditions of parole, and report to the appropriate district supervisor serious or persistent violations which may require action by the Parole Board, and, in emergency situations, exercise the power of arrest as provided in Section 228 of this act.

(3) District parole supervisors shall:

(a) Make regular reports to the Parole Administrator concerning the adjustment of parolees under their supervision;

(b) Inform the Parole Administrator when, in the district parole supervisor's opinion, any eligible parolee's conduct and attitude warrant his discharge from supervision, or when any parolee's violation of the conditions of parole is of sufficient seriousness to require action by the Parole Board, and, in emergency situations, exercise the power of arrest as provided in Section 228 of this act.

## **ARTICLE 34**

### **DIVISION OF PROBATION**

**SECTION 259.** (1) The Division of Probation shall be charged with the general supervision of the administration of probation services in the state, with the establishment of probation policies and standards, and with the administration of field probation services in any county or other governmental subdivision



6658 of this state which has no probation service of its own. The  
6659 division shall consist of the field probation service and of such  
6660 other employees as, may be necessary, in carrying out its  
6661 functions.

6662 (2) The Division of Probation shall be under the direction  
6663 of the probation administrator, who shall be appointed by, and  
6664 serve during the pleasure of, the Commissioner of the Department  
6665 of Corrections. The probation administrator shall be a person  
6666 with appropriate experience in a field of correctional  
6667 administration, or appropriate training in relevant disciplines at  
6668 a recognized university. His salary shall be fixed by the  
6669 commissioner within the appropriation therefor.

6670 **SECTION 260.** The probation administrator shall:

6671 (a) Supervise the administration of probation services  
6672 in the state and, with the advice of the Commission of Correction  
6673 and Community Services, establish policies and standards and make  
6674 rules and regulations regarding probation investigation,  
6675 supervision, casework and caseloads, record keeping and the  
6676 qualification of probation officers;

6677 (b) Keep informed of the operations of all probation  
6678 departments throughout the state and inquire into their conduct  
6679 and efficiency, and, in this connection, he shall have access to  
6680 all probation records and probation offices in the state, and he  
6681 may issue subpoenas to compel the attendance of witnesses or the  
6682 production of books and papers;



(c) Recommend, in an appropriate case, the removal of any probation officer from any probation department in the state;

(d) Appoint district probation supervisors, field probation officers and such other employees as may be required to carry out adequate probation supervision of persons sentenced to probation in any county or other governmental subdivision of this state which has no probation service of its own, and prescribe their powers and duties;

(e) Cooperate closely with the Commission of Correction and Community Services and with the criminal courts.

**SECTION 261.** The probation administrator, with the advice of the Commission of Correction and Community Services, may direct the extension of probation field services to any county or other governmental subdivision if he finds that such county or other governmental subdivision is not supplying adequate probation services to its criminal courts. The administrator shall determine, after consultation with the criminal courts in the county or other governmental subdivision concerned, the extent and duration of such services to be furnished. The administrator may make agreements with the appropriate authorities concerning partial or full reimbursement to the Department of Corrections for the costs of such services.

**SECTION 262.** (1) The field probation service, consisting of probation officers working under the immediate direction of district probation supervisors, and under the ultimate direction



6708 of the probation administrator, shall be responsible for  
6709 presentence and other probation investigations and for the  
6710 supervision of persons sentenced to probation by a court in any  
6711 county or other governmental subdivision which receives field  
6712 probation services in accordance with Section 261 of this act.  
6713 The field probation service shall be sufficient in size to assure  
6714 that no probation officer carries a caseload larger than is  
6715 compatible with adequate probation investigation or supervision.

6716 (2) Probation officers shall:

6717 (a) Make presentence and other probation  
6718 investigations, as may be required by law or directed by the court  
6719 in which they are serving;

6720 (b) Supervise probationers, and in supervising them,  
6721 visit each probationer's home from time to time, and require that  
6722 he report to the probation officer as frequently as may be  
6723 required by the order of the court in accordance with Section 184  
6724 of this act, or as may be required by the probation officer  
6725 himself in the light of the probationer's personality and  
6726 adjustment, but no less frequently than twice a month during the  
6727 first year of probation, except in unusual cases;

6728 (c) Admonish probationers who appear in danger of  
6729 violating the conditions of the order of probation, in accordance  
6730 with Section 184 of this act, and report, in accordance with  
6731 procedures established by the appropriate district probation



6732 supervisor, serious or persistent violations to the sentencing  
6733 court;

6734 (d) Advise the sentencing court, in accordance with  
6735 procedures established by the appropriate district probation  
6736 supervisor, when the situation of a probationer requires a  
6737 modification of the conditions of the order of probation, or when  
6738 a probationer's adjustment is such as to warrant termination of  
6739 probation, in accordance with Section 185 of this act.

6740 (3) District probation supervisors shall:

6741 (a) Establish procedures for the direction and guidance  
6742 of probation officers under their jurisdiction, and advise such  
6743 officers in regard to the most effective performance of their  
6744 duties;

6745 (b) Supervise probation officers under their  
6746 jurisdiction and evaluate the effectiveness of their casework;

6747 (c) Make regular reports to the probation administrator  
6748 concerning the activities of probation officers under their  
6749 jurisdiction and concerning the adjustment of probationers under  
6750 their supervision.

6751 **SECTION 263.** Sections 97-1-1, 97-1-7 and 97-1-9, Mississippi  
6752 Code of 1972, which provide for the criminal offenses of  
6753 conspiracy and attempts, are repealed.

6754 **SECTION 264.** Sections 97-3-3 and 97-3-5, Mississippi Code of  
6755 1972, which provide for the criminal offense of abortion, are  
6756 repealed.



6757           **SECTION 265.** Section 97-3-7, Mississippi Code of 1972, which  
6758 provides for criminal assaults, is repealed.

6759           **SECTION 266.** Sections 97-3-19, 97-3-21, 97-3-23, 97-3-25,  
6760 97-3-27, 97-3-29, 97-3-31, 97-3-33, 97-3-35, 97-3-37, 97-3-39,  
6761 97-3-41, 97-3-43, 97-3-45, 97-3-47, 97-3-49, 99-19-101 and  
6762 99-19-103, Mississippi Code of 1972, which provide for various  
6763 homicide offenses, capital cases sentencing and aiding suicide,  
6764 are repealed.

6765           **SECTION 267.** Section 97-3-53, Mississippi Code of 1972,  
6766 which provides for the criminal offense of kidnapping, is  
6767 repealed.

6768           **SECTION 268.** Sections 97-3-85 and 97-3-87, Mississippi Code  
6769 of 1972, which provide for the offense of criminal threats, are  
6770 repealed.

6771           **SECTION 269.** Sections 97-3-65, 97-3-71, 97-3-95, 97-3-97,  
6772 97-3-99, 97-3-101 and 97-3-103, Mississippi Code of 1972, which  
6773 provide for the crimes of rape and sexual assault, are repealed.

6774           **SECTION 270.** Sections 97-17-1, 97-17-3, 97-17-5, 97-17-7,  
6775 97-17-9, 97-17-11 and 97-17-13, Mississippi Code of 1972, which  
6776 provide for the crime of arson, are repealed.

6777           **SECTION 271.** Sections 97-17-23, 97-17-25, 97-17-29,  
6778 97-17-31, 97-17-33, 97-17-35 and 97-17-37, Mississippi Code of  
6779 1972, which provide for the crime of 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 county  
6834 jail, or to such imprisonment and the payment of a fine, or the  
6835 payment of a fine, shall be committed to jail, and shall remain in  
6836 close confinement for the full time specified for imprisonment in  
6837 the sentence of the court, and in like confinement until the fine,  
6838 costs and jail fees be fully paid, unless discharged in due course  
6839 of law, or as hereinafter provided. But no convict shall be held  
6840 in continuous confinement under a conviction for any one (1)  
6841 offense for failure to pay fine and costs in such case for a  
6842 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 contracting boards and the  
6917 same shall not be in violation of the law. Where the board of  
6918 supervisors of one county so contracts to work convicts of another  
6919 county, all the provisions of Sections 47-1-1 through 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





may be pursued and retaken by any person, or officer authorized to make arrests, or board, or any one entitled to the custody or services of said convict; and when retaken such convict shall be required to work out the balance of his term of hire, not counting the period of such escape, even if the term of imprisonment and the time for which such convict was first hired had expired before the recapture. Such convict shall be liable to indictment for such escape and liable to the same punishment as for an escape from the custody of the county jail.

**SECTION 297.** Section 47-1-19, Mississippi Code of 1972, is brought forward as follows:

47-1-19. (1) It is unlawful for any county-housed state inmate or county prisoner or prisoners to be leased or hired to any individual or corporation for any purpose whatsoever. Nor shall they be worked under any contractor; but in working them on county farms, or on the public roads or on any other work, which work must be of an exclusively public character, they shall be under exclusive official control and management.

(2) (a) It is lawful for a state, county or municipality to provide prisoners for public service work for nonprofit charitable organizations as defined under Section 501(c)(3) of the Internal Revenue Code if that nonprofit charitable organization provides food to charities. In addition, it is lawful for a state, county or municipality to provide prisoners for public service work for



7000 churches according to criteria approved by the Department of  
7001 Corrections.

7002 (b) The prisoners participating in the public service  
7003 work under paragraph (a) shall remain under the exclusive control  
7004 and management of the county or municipality.

7005 (c) A prisoner performing public service work under  
7006 this subsection shall be entitled to earned credits as provided  
7007 under this chapter.

7008 **SECTION 298.** Section 47-1-21, Mississippi Code of 1972, is  
7009 brought forward as follows:

7010 47-1-21. The sheriff of each county shall keep a well bound  
7011 alphabetical jail docket. In it he shall promptly enter under the  
7012 proper initial the name, age, color and sex of each convict, the  
7013 date of his or her commitment, each day worked on the county farm,  
7014 time required to be served and amount of fine and costs and the  
7015 jail fees charged against the prisoner and the date of discharge.

7016 The sheriff shall submit his docket to the board of  
7017 supervisors at each of their regular meetings, and the same shall  
7018 be examined carefully by the president of the board, and by any  
7019 other members who desire to examine the same, in the presence of  
7020 the board while in session.

7021 **SECTION 299.** Section 47-1-23, Mississippi Code of 1972, is  
7022 brought forward as follows:

7023 47-1-23. It shall be unlawful for convicts of different  
7024 sexes to be confined or worked together.



7025           **SECTION 300.** Section 47-1-25, Mississippi Code of 1972, is  
7026 brought forward as follows:

7027           47-1-25. Each county officer or officers, for any district  
7028 of a county shall at all times have free access to convicts in the  
7029 custody of any official for the purpose of investigating their  
7030 condition and treatment. The sheriff or his deputies shall visit  
7031 the convict camp or county farms where the convicts of his county  
7032 are kept or worked at least once in every month and more often if  
7033 necessary. He shall make a thorough inspection and investigation  
7034 of the treatment of convicts and report the same in writing to the  
7035 board of supervisors. For failure to perform duty in this respect  
7036 the board of supervisors may fine the sheriff Twenty-five Dollars  
7037 (\$25.00).

7038           **SECTION 301.** Section 47-1-27, Mississippi Code of 1972, is  
7039 brought forward as follows:

7040           47-1-27. An official, or guard, or other employee, having  
7041 the custody of any county prisoner, or any official or employee of  
7042 the county having custody of any county prisoner, who shall  
7043 maltreat or abuse any such convict, or who shall knowingly permit  
7044 the same to be done, or who being under duty to provide sufficient  
7045 and wholesome food, clothing, shelter, bathing facilities, or  
7046 medical attention to such convict, shall willfully fail to furnish  
7047 the same to such convict, shall be deemed guilty of a  
7048 misdemeanor \* \* \* and, on conviction, shall be fined in any sum  
7049 not less than Ten Dollars (\$10.00) nor more than Five Hundred



Dollars (\$500.00), or shall be imprisoned not less than one (1) month, or shall suffer both such fine and imprisonment, in the discretion of the court, and it shall be the duty of the judge of the circuit court of such county to so charge the grand jury.

**SECTION 302.** Section 47-1-29, Mississippi Code of 1972, is brought forward as follows:

47-1-29. On complaint by or on behalf of any convict to any county or county district officer, that such convict had been improperly treated in any respect, it shall be the duty of such officer at once to investigate the complaint, and if it is believed to be well-founded, to report the facts to the president of the board of supervisors, or to the board in session. Upon such report the board shall cite the person complained of to appear before it, and such action shall be taken by the board as shall be proper.

**SECTION 303.** Section 47-1-31, Mississippi Code of 1972, is brought forward as follows:

47-1-31. Each grand jury which is impaneled shall examine the records of county prisoners and their treatment and condition and report the same to the court.

**SECTION 304.** Section 47-1-33, Mississippi Code of 1972, is brought forward as follows:

47-1-33. The sheriff on receiving each convict shall furnish such convict with a certificate showing the amount of the fine and costs, as far as the costs are then known, the beginning and



length of his term of imprisonment. The convict shall be allowed to have and keep such certificate on or about his person, if he so desires.

**SECTION 305.** Section 47-1-35, Mississippi Code of 1972, is brought forward as follows:

47-1-35. (1) The board of supervisors of any county that now maintains and operates a county penal farm, commonly known as a "county farm," which farm contains more than five hundred (500) acres and less than six hundred (600) acres of land, which said farm has been continuously operating at a loss to the county for a period of five (5) years or more, and provided said county contains at least four hundred (400) square miles of territory and less than four hundred twenty-five (425) square miles of territory within its boundaries, shall sell, at public sale after receiving bids as required by law for the letting of public contracts, to the highest and best bidder for cash, said county farm; provided, however, that the said board shall retain for the benefit of the county and shall reserve from said sale, at least one-half (1/2) of the mineral rights and interests in said lands, with full right in the said board, in its discretion, to lease said retained and reserved mineral interests and rights, to the highest and best bidder after receiving bids therefor in the same manner, at the same or any other time.

(2) Any and all amounts received from such sale of said lands and from such lease of said mineral interests or rights,



7100 shall be, on receipt by the board, applied to the payment of the  
7101 bonded indebtedness of said county.

7102       **SECTION 306.** Section 47-1-37, Mississippi Code of 1972, is  
7103 brought forward as follows:

7104       47-1-37. In the cultivation of crops and the gathering  
7105 thereof if it shall appear necessary, from the lack of convict  
7106 labor, the board of supervisors may employ free labor at current  
7107 prices to work on a county convict farm until such time as the  
7108 convict labor may become sufficient to complete and gather the  
7109 crops started on such a farm, and pay for the same out of the  
7110 county treasury.

7111       **SECTION 307.** Section 47-1-39, Mississippi Code of 1972, is  
7112 brought forward as follows:

7113       47-1-39. (1) The governing authorities of municipalities  
7114 shall have the power to construct and maintain a municipal prison,  
7115 and to regulate the keeping of the same and the prisoners therein,  
7116 and to contract with the board of supervisors, which is empowered  
7117 in the premises, for the use of the county jail by the  
7118 municipality; and to provide for the working of the streets by  
7119 municipal prisoners, and to contract with the county for such work  
7120 by county prisoners or the working of county roads by municipal  
7121 prisoners, or for working same on the county farms. Municipal  
7122 prisoners shall be worked on county roads or county farms only in  
7123 the county in which the municipality is situated. Males and  
7124 females shall be confined in separate cells or compartments.



(2) The municipality shall pay the tuition, living and travel expenses incurred by a person attending and participating in the basic and continuing education courses for jail officers.

**SECTION 308.** Section 47-1-41, Mississippi Code of 1972, is brought forward as follows:

47-1-41. (1) Any person convicted of violating any ordinance of any city, town or village in this state and sentenced to pay a fine and costs therefor, and failing to do so, may be worked on the streets or other public works of the municipality in the custody of the street commissioner, or other person designated by the mayor and board of aldermen, or councilmen of such municipality and at its expense, and shall receive credit on such fine and costs as provided in Section 99-19-20 for each day so worked, and such municipality shall accord the same treatment to its convicts that is required by this chapter to county convicts. The responsibility of carrying out the provisions of this section shall devolve on the mayor and board of aldermen or board of councilmen of each municipality with reference to its convicts. In the event it is, in the judgment of the ruling authorities of any village in the state or of any small town in the state, unprofitable to work the convicts as above provided, then such village or town may contract with the board of supervisors of the county at the best price and take and work such convicts on the county farm, but the convict shall receive credit at the rate provided in Section 99-19-20 for each day worked.



7150           (2) If a convict is unable to work or if the city, town or  
7151 village is unable to provide work for the convict, the convict  
7152 shall receive the credit provided in Section 99-19-20 for each day  
7153 of confinement.

7154           **SECTION 319.** Section 47-1-43, Mississippi Code of 1972, is  
7155 brought forward as follows:

7156           47-1-43. The board of supervisors of any county and the  
7157 governing authorities of any municipality located within such  
7158 county are hereby authorized to enter into agreements providing  
7159 for the keeping of persons arrested for offenses committed within  
7160 the county in which such municipality is located in the jail  
7161 facilities of such municipality pending trial of such person.  
7162 Such agreements may provide for the payment to the municipality by  
7163 the board of supervisors from any available funds of the county of  
7164 a sum not to exceed Five Dollars (\$5.00) for each day or part  
7165 thereof during which an offender may be confined in the jail of  
7166 the municipality.

7167           **SECTION 310.** Section 47-1-45, Mississippi Code of 1972, is  
7168 brought forward as follows:

7169           47-1-45. The board of supervisors of each county is  
7170 authorized to make contract with any village or small town within  
7171 the county to work its convicts on the county farm. But in  
7172 agreeing to take and work such convicts the board of supervisors  
7173 shall not agree to pay more per day for the labor of any municipal  
7174 convict than in its judgment the labor of such convict is worth to





the county, in order that in the working of such municipal convicts the county shall not do so at a loss to the county.

**SECTION 311.** Section 47-1-47, Mississippi Code of 1972, is brought forward as follows:

47-1-47. (1) Every county or municipal convict shall be comfortably clothed at the expense of the county or municipality, but all clothing furnished shall remain the property of the county or municipality, and shall be thoroughly fumigated and disinfected before being allotted to a convict after having been used by another, and every convict shall be sufficiently fed, to maintain his body and induce his good health, with substantial and suitable food to be furnished and prepared and paid for by the county or municipality. Every convict, for each day's work he is required to do, shall receive credit on his fine and costs assessed against him at the rate provided under Section 99-19-20, until such fine and costs are fully paid. In case the convict is serving a sentence of imprisonment, each day that he works in serving such sentence shall entitle him credit for equal time on his sentence of imprisonment, but in no instance shall a convict receive credit on the fine and costs and on the time sentenced to imprisonment for the same work. No convict shall be allowed to labor more than eight (8) hours per day, but shall be required, when able, to perform eight (8) hours labor each day.

(2) If a convict is unable to work or if the county or the municipality is unable to provide work for the convict, the



7200 convict shall receive the credit provided in Section 99-19-20 for  
7201 each day of imprisonment.

7202       **SECTION 312.** Section 47-1-49, Mississippi Code of 1972, is  
7203 brought forward as follows:

7204       47-1-49. In the case of a jail owned jointly by a county and  
7205 municipality, under the provisions of Section 17-5-1, the  
7206 governing authorities of the county and municipality are hereby  
7207 vested with full and complete authority, jurisdiction and control  
7208 over such jointly owned jail facility and the governing authority  
7209 of the municipality may appoint a jailer who shall be responsible  
7210 for all municipal prisoners lodged in said jail in the same manner  
7211 in which the sheriff is responsible for state prisoners, and such  
7212 jailer shall have the same right of access to the jail as the  
7213 sheriff.

7214       **SECTION 313.** Section 47-1-51, Mississippi Code of 1972, is  
7215 brought forward as follows:

7216       47-1-51. The jailer of a jail jointly owned by a county and  
7217 a municipality shall, in regard to municipal prisoners, provide  
7218 daily wholesome and sufficient food and drink, fire and lights  
7219 when necessary and proper, and sufficient and clean bedding for  
7220 all such prisoners committed to the jail, either before or after  
7221 conviction. Any prisoner may, if he thinks fit, supply himself  
7222 with meat and drink and bedding, but the same shall pass through  
7223 the hands of the jailer to the prisoner.



7224           **SECTION 314.** Section 47-1-55, Mississippi Code of 1972, is  
7225 brought forward as follows:

7226           47-1-55. In the case of a jail jointly owned by a county and  
7227 a municipality, the circuit judge in the district in which such  
7228 jail is located, upon the request and recommendation of either the  
7229 sheriff of the county or the marshal or chief of police of the  
7230 municipality involved in the joint ownership, may authorize  
7231 additional jail guards in cases of emergency and the cost thereof  
7232 shall be paid in equal proportions by the county and municipality  
7233 involved.

7234           **SECTION 315.** Section 47-1-57, Mississippi Code of 1972, is  
7235 brought forward as follows:

7236           47-1-57. (1) When any person confined in jail shall be in  
7237 need of medical or surgical aid, the sheriff shall immediately  
7238 examine the condition of such prisoner and, if he is of the  
7239 opinion that the prisoner needs such aid, he shall call in a nurse  
7240 or physician to attend him. If the prisoner be unable to pay the  
7241 cost, the account of the nurse or physician, when allowed and  
7242 certified as required in respect to accounts of sheriffs for  
7243 keeping prisoners, shall be paid, in like manner, out of the  
7244 treasury of the county in which a prisoner is charged with the  
7245 crime for which he is imprisoned. The board of supervisors may  
7246 contract with a physician for the jail by the year.

7247           (2) The board of supervisors of any county may authorize the  
7248 sheriff to establish a program under which prisoners expressing



7249 the need for nonemergency medical attention will have access to a  
7250 registered nurse who will evaluate their condition and determine  
7251 the necessity for treatment by a physician. Charges for such a  
7252 visit with a registered nurse shall be paid by the prisoner by  
7253 deductions made by the sheriff out of any funds of the prisoner  
7254 held by the sheriff or in any other manner satisfactory to the  
7255 sheriff; however, such prisoner shall not be required to pay out  
7256 of funds of the prisoner held by the sheriff, more than Ten  
7257 Dollars (\$10.00) per visit. If the prisoner is unable to pay the  
7258 cost, the cost shall be paid out of the county treasury in the  
7259 same manner as provided for payment of other medical costs in  
7260 subsection (1) of this section.

7261       **SECTION 316.** Section 47-1-59, Mississippi Code of 1972, is  
7262 brought forward as follows:

7263       47-1-59. (1) When the sheriff, marshal or any other peace  
7264 officer of this state has in his lawful custody a prisoner who,  
7265 through accident, injury or illness, is in need of  
7266 hospitalization, such officer may take such prisoner to the  
7267 nearest hospital in the county or if there be no hospital in that  
7268 county, to the nearest hospital in an adjacent county and if upon  
7269 arrival at such hospital any physician licensed to practice  
7270 medicine in this state certifies that in his opinion such prisoner  
7271 is in need of hospitalization, such prisoner shall be hospitalized  
7272 in such hospital for as long as in the opinion of such physician  
7273 it is necessary to so hospitalize such prisoner. If, in the



7274 opinion of the sheriff or other peace officer having custody of  
7275 such prisoner at the time he is delivered to the aforesaid  
7276 hospital, or in the opinion of the director of the university  
7277 hospital if the prisoner be brought to that institution, it is  
7278 necessary that he be placed under guard while a patient at such  
7279 hospital, the sheriff of the county in which the crime he was  
7280 placed in custody for committing was alleged to have taken place,  
7281 shall furnish the aforesaid guard. When the aforesaid physician  
7282 or other reputable physician shall certify that hospitalization no  
7283 longer is needed, the prisoner shall be returned to the original  
7284 place of detention.

7285       (2) The actual expense of guarding the prisoner in the  
7286 hospital shall be paid out of the general funds of the county  
7287 where the prisoner was originally confined or arrested. The  
7288 expense contracted incident to the hospitalization aforesaid shall  
7289 be paid by the prisoner; otherwise he may be hospitalized as a  
7290 state aid patient. However, if the prisoner is ineligible for  
7291 state aid or the amount available for hospitalization as a state  
7292 aid patient is inadequate to pay all such hospital expense of a  
7293 prisoner who is financially unable to pay his own expenses, the  
7294 board of supervisors of the county where the prisoner was  
7295 originally confined or arrested shall, upon presentation of the  
7296 certificate of the physician certifying that said prisoner was in  
7297 need of hospitalization, pay from the general funds of the county  
7298 the reasonable and customary charges for such services or as much



7299 thereof as is not paid by state aid. Any such payment to a  
7300 hospital shall be discretionary with the board of supervisors if  
7301 its county supports the hospital involved by a special tax levy  
7302 for its operation and maintenance.

7303       **SECTION 317.** Section 47-1-61, Mississippi Code of 1972, is  
7304 brought forward as follows:

7305       47-1-61. Any sheriff or other person having lawful custody  
7306 of any convict who shall fail to discharge such convict when he  
7307 shall have served the full time of his sentence and fully paid his  
7308 fine and the costs charged against him, shall be guilty of a  
7309 misdemeanor and punished accordingly.

7310       **SECTION 318.** Section 47-1-63, Mississippi Code of 1972, is  
7311 brought forward as follows:

7312       47-1-63. No person shall be deemed to be a resident of a  
7313 county solely because of being incarcerated in a facility under  
7314 the jurisdiction of the Department of Corrections that is located  
7315 in such county.

7316       **SECTION 319.** Section 47-4-1, Mississippi Code of 1972, is  
7317 brought forward as follows:

7318       47-4-1. (1) It is lawful for there to be located within  
7319 Wilkinson County and Leflore County a correctional facility  
7320 operated entirely by a private entity pursuant to a contractual  
7321 agreement between such private entity and the federal government,  
7322 any state, or a political subdivision of any state to provide  
7323 correctional services to any such public entity for the



7324 confinement of inmates subject to the jurisdiction of such public  
7325 entity. Any person confined in such a facility pursuant to the  
7326 laws of the jurisdiction from which he is sent shall be considered  
7327 lawfully confined within this state. The private entity shall  
7328 assume complete responsibility for the inmates and shall be liable  
7329 to the State of Mississippi for any illegal or tortious actions of  
7330 such inmates.

7331 (2) The Department of Corrections shall contract with the  
7332 Board of Supervisors of Leflore County for the private  
7333 incarceration of not more than one thousand (1,000) state inmates  
7334 at a facility in Leflore County. Any contract must comply with  
7335 the requirements of Section 47-5-1211 through Section 47-5-1227.

7336 (3) It is lawful for any county to contract with a private  
7337 entity for the purpose of providing correctional services for the  
7338 confinement of federal inmates subject to the jurisdiction of the  
7339 United States. Any person confined in such a facility pursuant to  
7340 the laws of the United States shall be considered lawfully  
7341 confined within this state. The private entity shall assume  
7342 complete responsibility for the inmates and shall be liable to the  
7343 county or the State of Mississippi, as the case may be, for any  
7344 illegal or tortious actions of the inmates.

7345 (4) It is lawful for there to be located within any county a  
7346 correctional facility operated entirely by a private entity and  
7347 the federal government to provide correctional services to the  
7348 United States for the confinement of federal inmates subject to



7349 the jurisdiction of the United States. Any person confined in a  
7350 facility pursuant to the laws of the United States shall be  
7351 considered lawfully confined within this state. The private  
7352 entity shall assume complete responsibility for the inmates and  
7353 shall be liable to the State of Mississippi for any illegal or  
7354 tortious actions of the inmates.

7355 A person convicted of simple assault on an employee of a  
7356 private correctional facility while such employee is acting within  
7357 the scope of his or her duty or employment shall be punished by a  
7358 fine of not more than One Thousand Dollars (\$1,000.00) or by  
7359 imprisonment for not more than five (5) years, or both.

7360 A person convicted of aggravated assault on an employee of a  
7361 private correctional facility while such employee is acting within  
7362 the scope of his or her duty or employment shall be punished by a  
7363 fine of not more than Five Thousand Dollars (\$5,000.00) or by  
7364 imprisonment for not more than thirty (30) years, or both.

7365 (5) The Department of Corrections may contract with the  
7366 Tallahatchie County Correctional Facility authorized in Chapter  
7367 904, Local and Private Laws of 1999, for the private incarceration  
7368 of not more than one thousand (1,000) state inmates at a facility  
7369 in Tallahatchie County. Any contract must comply with the  
7370 requirements of Section 47-5-1211 through Section 47-5-1227. No  
7371 state inmate shall be assigned to the Tallahatchie County  
7372 Correctional Facility unless the inmate cost per day is at least





7373 ten percent (10%) less than the inmate cost per day for housing a  
7374 state inmate at a state correctional facility.

7375 (6) If a private entity houses state inmates, the private  
7376 entity shall not displace state inmate beds with federal inmate  
7377 beds unless the private entity has obtained prior written approval  
7378 from the Commissioner of Corrections.

7379 **SECTION 320.** Section 47-4-3, Mississippi Code of 1972, is  
7380 brought forward as follows:

7381 47-4-3. (1) Before a private correctional facility may be  
7382 located in the county, the board of supervisors shall by  
7383 resolution duly adopted and entered on its minutes specify the  
7384 location of the facility, the nature and size of the facility, the  
7385 type of inmates to be incarcerated and the identity of the private  
7386 entity which will operate the facility. The board shall publish a  
7387 notice as hereinafter set forth in a newspaper having general  
7388 circulation in such county. Such notice shall include location of  
7389 the facility, the nature and size of the facility, the type of  
7390 inmates to be incarcerated and the identity of the entity which  
7391 will operate the facility. Such notice shall include a brief  
7392 summary of the provisions of this section pertaining to the  
7393 petition for an election on the question of the location of the  
7394 private correctional facility in such county. Such notice shall  
7395 be published not less than one (1) time each week for at least  
7396 three (3) consecutive weeks in at least one (1) newspaper having  
7397 general circulation in the county.



7398           (2) If a petition signed by twenty percent (20%), or fifteen  
7399 hundred (1500), whichever is less, of the qualified electors of  
7400 the county is filed within sixty (60) days of the date of the last  
7401 publication of the notice with the board of supervisors requesting  
7402 that an election be called on the question of locating such  
7403 facility, then the board of supervisors shall adopt a resolution  
7404 calling an election to be held within such county upon the  
7405 question of the location of such facility. Such election shall be  
7406 held, as far as practicable, in the same manner as other elections  
7407 are held in counties. At such election, all qualified electors of  
7408 the county may vote, and the ballots used at such election shall  
7409 have printed thereon a brief statement of the facility to be  
7410 constructed and the words "For the construction of the private  
7411 correctional facility in (here insert county name) County" and  
7412 "Against the construction of the private correctional facility in  
7413 (here insert county name) County." The voter shall vote by  
7414 placing a cross (X) or check mark (✓) opposite his choice on the  
7415 proposition. When the results of the election on the question of  
7416 the construction of the facility shall have been canvassed by the  
7417 election commissioners of the county and certified by them to the  
7418 board of supervisors, it shall be the duty of the board of  
7419 supervisors to determine and adjudicate whether or not a majority  
7420 of the qualified electors who voted thereon in such election voted  
7421 in favor of the construction of the facility in such county. If a  
7422 majority of the qualified electors who voted in such election vote



7423 against the construction of the facility, then the facility shall  
7424 not be constructed in the county.

7425 (3) If no petition as prescribed in subsection (2) of this  
7426 section is filed with the board of supervisors within sixty (60)  
7427 days of the date of the last publication of the notice, the board  
7428 of supervisors shall by a resolution duly adopted and entered on  
7429 its minutes, state that no petition was timely filed and the board  
7430 may give final approval to the location of the facility.

7431 **SECTION 321.** Section 47-4-5, Mississippi Code of 1972, is  
7432 brought forward as follows:

7433 47-4-5. Any local unit of government, or any local unit of  
7434 government in cooperation with other local units of government,  
7435 may enter into agreements with private sources for the operation  
7436 and supervision of juvenile detention centers.

7437 **SECTION 322.** Section 47-5-1, Mississippi Code of 1972, is  
7438 brought forward as follows:

7439 47-5-1. It shall be the policy of this state, in the  
7440 operation and management of the correctional system, to so manage  
7441 and conduct the same in that manner as will be consistent with the  
7442 operation of a modern correctional system and with the view of  
7443 making the system self-sustaining. Those convicted of violating  
7444 the law and sentenced to a term in the state correctional system  
7445 shall have humane treatment, and be given opportunity,  
7446 encouragement and training in the manner of reformation.



7447           It shall be the policy of this state that the correctional  
7448 system shall be operated and managed in the most efficient and  
7449 economical manner possible. The Mississippi Department of  
7450 Corrections shall so manage and operate the correctional system in  
7451 that manner in order to make the system self-sustaining and to  
7452 conserve state general fund revenues. The Mississippi Department  
7453 of Corrections shall provide leadership to bring about the  
7454 earliest possible construction of satisfactory prison inmate  
7455 facilities, and shall utilize existing state resources, including  
7456 inmates for prison construction labor, when and wherever  
7457 practicable, in order to minimize the need for state general funds  
7458 for prison construction.

7459           It shall be the policy of this state that periodic  
7460 independent internal investigations of the department shall be  
7461 conducted to ensure the implementation of state correctional  
7462 policies.

7463           **SECTION 323.** Section 47-5-3, Mississippi Code of 1972, is  
7464 brought forward as follows:

7465           47-5-3. The plantation known as Parchman owned by the state  
7466 in Sunflower and Quitman Counties, and in such other places as are  
7467 now or may be hereafter owned or operated by the state for  
7468 correctional purposes shall constitute the facilities of the  
7469 correctional system for the custody, punishment, confinement at  
7470 hard labor and reformation of all persons convicted of felony in  
7471 the courts of the state and sentenced to the custody of the



department, and whenever the term "Penitentiary" or "State Penitentiary" appears in the laws of the State of Mississippi, it shall mean any facility under the jurisdiction of the Department of Corrections which is used for the purposes described herein.

**SECTION 324.** Section 47-5-4, Mississippi Code of 1972, is brought forward as follows:

47-5-4. For purposes of this chapter, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Adult" shall mean a person who is eighteen (18) years of age or older, or any person convicted of any crime not subject to the provisions of the Youth Court Law, or any person "certified" to be tried as an adult by any youth court in the state.

(b) "Juvenile," "minor" or "youthful" shall mean a person less than eighteen (18) years of age.

(c) "Offender" shall mean any person convicted of a crime or offense under the laws and ordinances of the state and its political subdivisions.

(d) "Facility or institution" shall mean any facility for the custody, care, treatment and study of offenders which is under the supervision and control of the Department of Corrections, including but not limited to the State Penitentiary property located in Sunflower and Quitman Counties.



7496                   (e) "Detention" shall mean the temporary care of  
7497 juveniles and adults who require secure custody for their own or  
7498 the community's protection in a physically restricting facility  
7499 prior to adjudication, or retention in a physically restricting  
7500 facility upon being taken into custody after an alleged parole or  
7501 probation violation.

7502                   (f) "Unit of local government" shall mean a county,  
7503 city, town, village, or other general purpose political  
7504 subdivision of the state.

7505                   (g) "Department" shall mean the Mississippi Department  
7506 of Corrections.

7507                   (h) "Commissioner" shall mean the Commissioner of  
7508 Corrections.

7509                   (i) "Correctional system" shall mean the facilities,  
7510 institutions, programs and personnel of the Department of  
7511 Corrections utilized for adult offenders who are committed to the  
7512 custody of the department.

7513                   **SECTION 325.** Section 47-5-5, Mississippi Code of 1972, is  
7514 brought forward as follows:

7515                   47-5-5. The commissioner, as soon as possible after passage  
7516 of this section, shall prepare a plan to bring about the limited  
7517 centralization of facilities within the state correctional system  
7518 grounds at Parchman, Mississippi. The commissioner is authorized  
7519 and empowered to use any state funds appropriated for such  
7520 purposes, together with any available federal funds appropriated



7521 by the United States Congress for improvement of correctional  
7522 institutions to construct modern security facilities for housing  
7523 of offenders to the end that the state correctional system  
7524 achieves the greatest degree of security for said offenders.  
7525 Provided, however, that no new facility to house offenders shall  
7526 be constructed within two-fifths (2/5) of a mile of any other  
7527 offender camp. The commissioner shall bring about centralization  
7528 of food facilities, recreational activities, utility services and  
7529 other related facilities and correctional services that are  
7530 presently decentralized within the correctional system.

7531 It is the intent of the Mississippi Legislature that the  
7532 commissioner shall fully utilize existing knowledge, architectural  
7533 plans and expertise currently available with the Federal Bureau of  
7534 Prisons and the Law Enforcement Assistance Administration to the  
7535 end that the State of Mississippi shall have an efficient, modern,  
7536 and properly secure state correctional system.

7537 The commissioner is authorized to receive and disburse  
7538 private and public grants, gifts and bequests which may be  
7539 available to this state for correctional facilities, offender  
7540 rehabilitation purposes and related purposes, which said sum so  
7541 received shall be subject to all of the laws applicable to  
7542 the \* \* \* Department of Finance and Administration.

7543 **SECTION 326.** Section 47-5-8, Mississippi Code of 1972, is  
7544 brought forward as follows:



7545           47-5-8. (1) There is created the Mississippi Department of  
7546 Corrections, which shall be under the policy direction of the  
7547 Governor. The chief administrative officer of the department  
7548 shall be the Commissioner of Corrections.

7549           (2) (a) There shall be a Division of Administration and  
7550 Finance within the department, which shall have as its chief  
7551 administrative officer a Deputy Commissioner for Administration  
7552 and Finance who shall be appointed by the commissioner, and shall  
7553 be directly responsible to the commissioner.

7554           (b) There shall be a Division of Community Corrections  
7555 within the department, which shall have as its chief  
7556 administrative officer a Deputy Commissioner for Community  
7557 Corrections, who shall be appointed by the commissioner, and shall  
7558 be directly responsible to the commissioner. The Probation and  
7559 Parole Board shall continue to exercise the authority as provided  
7560 by law, but after July 1, 1976, the Division of Community  
7561 Corrections shall serve as the administrative agency for the  
7562 Probation and Parole Board.

7563           (3) The department shall succeed to the exclusive control of  
7564 all records, books, papers, equipment and supplies, and all lands,  
7565 buildings and other real and personal property now or hereafter  
7566 belonging to or assigned to the use and benefit or under the  
7567 control of the Mississippi State Penitentiary and the Mississippi  
7568 Probation and Parole Board, except the records of parole process  
7569 and revocation and legal matters related thereto, and shall have





7570 the exercise and control of the use, distribution and disbursement  
7571 of all funds, appropriations and taxes now or hereafter in  
7572 possession, levied, collected or received or appropriated for the  
7573 use, benefit, support and maintenance of these two (2) agencies  
7574 except as otherwise provided by law, and the department shall have  
7575 general supervision of all the affairs of the two (2) agencies  
7576 herein named except as otherwise provided by law, and the care and  
7577 conduct of all buildings and grounds, business methods and  
7578 arrangements of accounts and records, the organization of the  
7579 administrative plans of each institution, and all other matters  
7580 incident to the proper functioning of the two (2) agencies.

7581 (4) The commissioner may lease the lands for oil, gas,  
7582 mineral exploration and other purposes, and contract with other  
7583 state agencies for the proper management of lands under such  
7584 leases or for the provision of other services, and the proceeds  
7585 thereof shall be paid into the General Fund of the state.

7586 **SECTION 327.** Section 47-5-10, Mississippi Code of 1972, is  
7587 brought forward as follows:

7588 47-5-10. The department shall have the following powers and  
7589 duties:

7590 (a) To accept adult offenders committed to it by the  
7591 courts of this state for incarceration, care, custody, treatment  
7592 and rehabilitation;



7593           (b) To provide for the care, custody, study, training,  
7594 supervision and treatment of adult offenders committed to the  
7595 department;

7596           (c) To maintain, administer and exercise executive and  
7597 administrative supervision over all state correctional  
7598 institutions and facilities used for the custody, training, care,  
7599 treatment and after-care supervision of adult offenders committed  
7600 to the department; provided, however, that such supervision shall  
7601 not extend to any institution or facility for which executive and  
7602 administrative supervision has been provided by law through  
7603 another agency;

7604           (d) To plan, develop and coordinate a statewide,  
7605 comprehensive correctional program designed to train and  
7606 rehabilitate offenders in order to prevent, control and retard  
7607 recidivism;

7608           (e) To maintain records of persons committed to it, and  
7609 to establish programs of research, statistics and planning:

7610                 (i) An offender's records shall include a single  
7611 cover sheet that contains the following information about the  
7612 offender: name, including any aliases; department inmate number;  
7613 social security number; photograph; court of conviction; cause  
7614 number; date of conviction; date of sentence; total number of days  
7615 in the department's custody or number of days creditable toward  
7616 time served on each charge; date of actual custody; and date of  
7617 any revocation of a suspended sentence;



7618                   (ii) The department shall maintain an offender's  
7619 cover sheet in the course of its regularly conducted business  
7620 activities and shall include an offender's cover sheet in each  
7621 request from a court, prosecutor or law enforcement agency for a  
7622 summary of an offender's records with the department, also known  
7623 as a "pen-pack." The cover sheet shall conform to Rules 803(6)  
7624 and 803(8) of the Mississippi Rules of Evidence for admission as  
7625 an exception to the hearsay rule and may be admissible when  
7626 properly authenticated according to evidentiary rules and when  
7627 offered for the purpose of enhanced sentencing under Section  
7628 41-29-147, 99-19-81 or 99-19-83 or other similar purposes; and

7629                   (iii) This subsection is not intended to conflict  
7630 with an offender's right of confrontation in criminal proceedings  
7631 under the state or federal constitution;

7632                   (f) To investigate the grievances of any person  
7633 committed to the department, and to inquire into any alleged  
7634 misconduct by employees; and for this purpose it may issue  
7635 subpoenas and compel the attendance of witnesses and the  
7636 production of writings and papers, and may examine under oath any  
7637 witnesses who may appear before it;

7638                   (g) To administer programs of training and development  
7639 of personnel of the department;

7640                   (h) To develop and implement diversified programs and  
7641 facilities to promote, enhance, provide and assure the  
7642 opportunities for the successful custody, training and treatment



7643 of adult offenders properly committed to the department or  
7644 confined in any facility under its control. Such programs and  
7645 facilities may include but not be limited to institutions, group  
7646 homes, halfway houses, diagnostic centers, work and educational  
7647 release centers, restitution centers, counseling and supervision  
7648 of probation, parole, suspension and compact cases, presentence  
7649 investigating and other state and local community-based programs  
7650 and facilities;

7651 (i) To receive, hold and use, as a corporate body, any  
7652 real, personal and mixed property donated to the department, and  
7653 any other corporate authority as shall be necessary for the  
7654 operation of any facility at present or hereafter;

7655 (j) To provide those personnel, facilities, programs  
7656 and services the department shall find necessary in the operation  
7657 of a modern correctional system for the custody, care, study and  
7658 treatment of adult offenders placed under its jurisdiction by the  
7659 courts and other agencies in accordance with law;

7660 (k) To develop the capacity and administrative network  
7661 necessary to deliver advisory consultation and technical  
7662 assistance to units of local government for the purpose of  
7663 assisting them in developing model local correctional programs for  
7664 adult offenders;

7665 (l) To cooperate with other departments and agencies  
7666 and with local communities for the development of standards and  
7667 programs for better correctional services in this state;



7668                   (m) To administer all monies and properties of the  
7669 department;

7670                   (n) To report annually to the Legislature and the  
7671 Governor on the committed persons, institutions and programs of  
7672 the department;

7673                   (o) To cooperate with the courts and with public and  
7674 private agencies and officials to assist in attaining the purposes  
7675 of this chapter and Chapter 7 of this title. The department may  
7676 enter into agreements and contracts with other departments of  
7677 federal, state or local government and with private agencies  
7678 concerning the discharge of its responsibilities or theirs. The  
7679 department shall have the authority to accept and expend or use  
7680 gifts, grants and subsidies from public and private sources;

7681                   (p) To make all rules and regulations and exercise all  
7682 powers and duties vested by law in the department;

7683                   (q) The department may require a search of all persons  
7684 entering the grounds and facilities at the correctional system;

7685                   (r) To discharge any other power or duty imposed or  
7686 established by law.

7687           **SECTION 328.** Section 47-5-20, Mississippi Code of 1972, is  
7688 brought forward as follows:

7689           47-5-20. The commissioner shall have the following powers  
7690 and duties:

7691                   (a) To establish the general policy of the department;



7692           (b) To approve proposals for the location of new  
7693 facilities, for major renovation activities, and for the creation  
7694 of new programs and divisions within the department as well as for  
7695 the abolition of the same; provided, however, that the  
7696 commissioner shall approve the location of no new facility unless  
7697 the board of supervisors of the county or the governing  
7698 authorities of the municipality in which the new facility is to be  
7699 located shall have had the opportunity with at least sixty (60)  
7700 days' prior notice to disapprove the location of the proposed  
7701 facility. If either the board of supervisors or the governing  
7702 authorities shall disapprove the facility, it shall not be located  
7703 in that county or municipality. Said notice shall be made by  
7704 certified mail, return receipt requested, to the members of the  
7705 board or governing authorities and to the clerk thereof;

7706           (c) Except as otherwise provided or required by law, to  
7707 open bids and approve the sale of any products or manufactured  
7708 goods by the department according to applicable provisions of law  
7709 regarding bidding and sale of state property, and according to  
7710 rules and regulations established by the State Fiscal Management  
7711 Board; and

7712           (d) To adopt administrative rules and regulations  
7713 including, but not limited to, offender transfer procedures, award  
7714 of administrative earned time, personnel procedures, employment  
7715 practices.



7716           **SECTION 330.** Section 47-5-23, Mississippi Code of 1972, is  
7717 brought forward as follows:

7718           47-5-23. The department shall be vested with the exclusive  
7719 responsibility for management and control of the correctional  
7720 system, and all properties belonging thereto, subject only to the  
7721 limitations of this chapter, and shall be responsible for the  
7722 management of affairs of the correctional system and for the  
7723 proper care, treatment, feeding, clothing and management of the  
7724 offenders confined therein. The commissioner shall have final  
7725 authority to employ and discharge all employees of the  
7726 correctional system, except as otherwise provided by law.

7727           **SECTION 331.** Section 47-5-24, Mississippi Code of 1972, is  
7728 brought forward as follows:

7729           47-5-24. (1) The Governor shall appoint a Commissioner of  
7730 Corrections, with the advice and consent of the Senate. Such  
7731 commissioner may be removed by the Governor. The commissioner  
7732 shall be the chief executive, administrative and fiscal officer of  
7733 the department.

7734           (2) The commissioner shall receive an annual salary fixed by  
7735 the Governor, not to exceed the maximum authorized by law, in  
7736 addition to all actual, necessary expenses incurred in the  
7737 discharge of official duties, including mileage as authorized by  
7738 law.

7739           (3) The commissioner shall possess the following minimum  
7740 qualifications:



7741           (a) A master's degree in corrections, criminal justice,  
7742 guidance, social work, or some related field, and at least six (6)  
7743 years full-time experience in corrections, including at least  
7744 three (3) years of correctional management experience; or

7745           (b) A bachelor's degree in a field described in  
7746 subparagraph (a) of this subsection and at least ten (10) years  
7747 full-time work in corrections, five (5) years of which shall have  
7748 been in correctional management; or

7749           (c) Shall possess at least a bachelor's degree and  
7750 relevant experience in fiscal management in the private or public  
7751 sector.

7752           (4) The commissioner shall be required, upon assuming the  
7753 duties of his office, to execute a good and sufficient bond  
7754 payable to the State of Mississippi in the sum of Two Hundred  
7755 Fifty Thousand Dollars (\$250,000.00), conditioned upon an accurate  
7756 accounting for all monies and property coming into his hands. The  
7757 commissioner, upon approval by the Governor, may require of other  
7758 officers, employees and agents of the department a good and  
7759 sufficient bond in such sum as he may determine, subject to the  
7760 minimum requirements set forth herein, payable to the State of  
7761 Mississippi upon like condition. The bonds shall be approved by  
7762 the Governor and filed with the Secretary of State, and shall be  
7763 executed by a surety company authorized to do business under the  
7764 laws of this state. The premium on any such bond shall be paid by





7765 the state out of the support and maintenance fund of the  
7766 department.

7767         **SECTION 332.** Section 47-5-26, Mississippi Code of 1972, is  
7768 brought forward as follows:

7769         47-5-26. (1) The commissioner shall employ the following  
7770 personnel:

7771                 (a) A Deputy Commissioner for Administration and  
7772 Finance, who shall supervise and implement all fiscal policies and  
7773 programs within the department, supervise and implement all hiring  
7774 and personnel matters within the department, supervise the  
7775 department's personnel director, supervise and implement all  
7776 purchasing within the department and supervise and implement all  
7777 data processing activities within the department, and who shall  
7778 serve as the Chief Executive Officer of the Division of  
7779 Administration and Finance. He shall possess either:

7780                         (i) A master's degree from an accredited four-year  
7781 college or university in public or business administration,  
7782 accounting, economics or a directly related field, and four (4)  
7783 years of experience in work related to the above-described duties,  
7784 one (1) year of which must have included line or functional  
7785 supervision; or

7786                         (ii) A bachelor's degree from an accredited  
7787 four-year college or university in public or business  
7788 administration, accounting, economics or a directly related field,  
7789 and six (6) years of experience in work related to the



7790 above-described duties, one (1) year of which must have included  
7791 line or functional supervision. Certification by the State of  
7792 Mississippi as a certified public accountant may be substituted  
7793 for one (1) year of the required experience.

7794 (b) A Deputy Commissioner for Community Corrections,  
7795 who shall initiate and administer programs, including, but not  
7796 limited to, supervision of probationers, parolees and  
7797 suspensioners, counseling, community-based treatment, interstate  
7798 compact administration and enforcement, prevention programs,  
7799 halfway houses and group homes, restitution centers, presentence  
7800 investigations, and work and educational releases, and shall serve  
7801 as the Chief Executive Officer of the Division of Community  
7802 Services. The Deputy Commissioner for Community Corrections is  
7803 charged with full and complete cooperation with the State Parole  
7804 Board and shall make monthly reports to the Chairman of the Parole  
7805 Board in the form and type required by the chairman, in his  
7806 discretion, for the proper performance of the probation and parole  
7807 functions. After a plea or verdict of guilty to a felony is  
7808 entered against a person and before he is sentenced, the Deputy  
7809 Commissioner for Community Corrections shall procure from any  
7810 available source and shall file in the presentence records any  
7811 information regarding any criminal history of the person such as  
7812 fingerprints, dates of arrests, complaints, civil and criminal  
7813 charges, investigative reports of arresting and prosecuting  
7814 agencies, reports of the National Crime Information Center, the



7815 nature and character of each offense, noting all particular  
7816 circumstances thereof and any similar data about the person. The  
7817 Deputy Commissioner for Community Corrections shall keep an  
7818 accurate and complete duplicate record of this file and shall  
7819 furnish the duplicate to the department. This file shall be  
7820 placed in and shall constitute a part of the inmate's master file.  
7821 The Deputy Commissioner for Community Corrections shall furnish  
7822 this file to the State Parole Board when the file is needed in the  
7823 course of its official duties. He shall possess either: (i) a  
7824 master's degree in counseling, corrections psychology, guidance,  
7825 social work, criminal justice or some related field and at least  
7826 four (4) years' full-time experience in such field, including at  
7827 least one (1) year of supervisory experience; or (ii) a bachelor's  
7828 degree in a field described in subparagraph (i) of this paragraph  
7829 and at least six (6) years' full-time work in corrections, one (1)  
7830 year of which shall have been at the supervisory level.

7831 (c) A Deputy Commissioner for Institutions, who shall  
7832 administer institutions, reception and diagnostic centers,  
7833 prerelease centers and other facilities and programs provided  
7834 therein, and shall serve as the Chief Executive Officer of the  
7835 Division of Institutions. He shall possess either: (i) a  
7836 master's degree in counseling, criminal justice, psychology,  
7837 guidance, social work, business or some related field, and at  
7838 least four (4) years' full-time experience in corrections,  
7839 including at least one (1) year of correctional management



7840 experience; or (ii) a bachelor's degree in a field described in  
7841 subparagraph (i) of this paragraph and at least six (6) years'  
7842 full-time work in corrections, four (4) years of which shall have  
7843 been at the correctional management level.

7844 (2) The commissioner shall employ an administrative  
7845 assistant for parole matters, who shall be an employee of the  
7846 department assigned to the State Parole Board and who shall work  
7847 under the guidance and supervision of the board.

7848 (3) The administrative assistant for parole matters shall  
7849 receive an annual salary to be established by the Legislature.  
7850 The salaries of department employees not established by the  
7851 Legislature shall receive an annual salary established by the  
7852 State Personnel Board.

7853 (4) The commissioner shall employ a superintendent for the  
7854 Parchman facility, Central Mississippi Correctional Facility and  
7855 South Mississippi Correctional Institution of the Department of  
7856 Corrections. The Superintendent of the Mississippi State  
7857 Penitentiary shall reside on the grounds of the Parchman facility.  
7858 Each superintendent shall appoint an officer in charge when he is  
7859 absent.

7860 Each superintendent shall develop and implement a plan for  
7861 the prevention and control of an inmate riot and shall file a  
7862 report with the Chairman of the Senate Corrections Committee and  
7863 the Chairman of the House Penitentiary Committee on the first day



7864 of each regular session of the Legislature regarding the status of  
7865 the plan.

7866 In order that the grievances and complaints of inmates,  
7867 employees and visitors at each facility may be heard in a timely  
7868 and orderly manner, each superintendent shall appoint or designate  
7869 an employee at the facility to hear grievances and complaints and  
7870 to report grievances and complaints to the superintendent. Each  
7871 superintendent shall institute procedures as are necessary to  
7872 provide confidentiality to those who file grievances and  
7873 complaints.

7874 **SECTION 333.** Section 47-5-28, Mississippi Code of 1972, is  
7875 brought forward as follows:

7876 47-5-28. The commissioner shall have the following powers  
7877 and duties:

7878 (a) To implement and administer laws and policy  
7879 relating to corrections and coordinate the efforts of the  
7880 department with those of the federal government and other state  
7881 departments and agencies, county governments, municipal  
7882 governments, and private agencies concerned with providing  
7883 offender services;

7884 (b) To establish standards, in cooperation with other  
7885 state agencies having responsibility as provided by law, provide  
7886 technical assistance, and exercise the requisite supervision as it  
7887 relates to correctional programs over all state-supported adult  
7888 correctional facilities and community-based programs;



7889           (c) To promulgate and publish such rules, regulations  
7890 and policies of the department as are needed for the efficient  
7891 government and maintenance of all facilities and programs in  
7892 accord insofar as possible with currently accepted standards of  
7893 adult offender care and treatment \* \* \*;

7894           (d) To provide the Parole Board with suitable and  
7895 sufficient office space and support resources and staff necessary  
7896 to conducting Parole Board business under the guidance of the  
7897 Chairman of the Parole Board;

7898           (e) To make an annual report to the Governor and the  
7899 Legislature reflecting the activities of the department and make  
7900 recommendations for improvement of the services to be performed by  
7901 the department;

7902           (f) To cooperate fully with periodic independent  
7903 internal investigations of the department and to file the report  
7904 with the Governor and the Legislature;

7905           (g) To perform such other duties necessary to  
7906 effectively and efficiently carry out the purposes of the  
7907 department as may be directed by the Governor.

7908           **SECTION 334.** Section 47-5-35, Mississippi Code of 1972, is  
7909 brought forward as follows:

7910           47-5-35. The Joint Legislative Committee on Performance  
7911 Evaluation and Expenditure Review (PEER) shall appoint an auditor  
7912 to audit the correctional system, and provide sufficient office  
7913 facilities in the Jackson office, who shall be a certified public



7914 accountant or an experienced accountant, whose duty shall be to  
7915 audit all accounts of the state correctional system for the  
7916 purpose of reporting to the Legislative Budget Office. He shall  
7917 report whether supplies and products bought and sold are handled  
7918 in accordance with law and when bought on samples and  
7919 specifications whether they measure up to such samples and  
7920 specifications when the goods are received. The auditor shall  
7921 report on the letting of bids and shall make a determination that  
7922 all bids are advertised and let in accordance with law and shall  
7923 render a report on same. The auditor shall be responsible to make  
7924 a periodic inventory on all goods, machinery, livestock, farm  
7925 produce or any other property of the correctional system and make  
7926 a report thereon to the Legislative Budget Office on such terms  
7927 and conditions and as often as required by the committee. The  
7928 salaries and expenses of such auditor or his employees shall be  
7929 paid from funds appropriated for support of the Legislature or its  
7930 committees.

7931       Such auditor shall make, at least, a monthly report to the  
7932 Legislative Budget Office and the Chairman of the Corrections  
7933 Committee of the Senate and the Chairman of the Penitentiary  
7934 Committee in the House of Representatives.

7935       The auditor shall attend all the meetings of the board and  
7936 shall be notified by the board of all meetings or specially called  
7937 meetings. The Joint Legislative Committee on Performance



Evaluation and Expenditure Review shall provide the auditor with a secretary and such personnel as it deems necessary.

**SECTION 335.** Section 47-5-37, Mississippi Code of 1972, is brought forward as follows:

47-5-37. The commissioner shall employ a qualified fiscal comptroller who shall be a certified public accountant and who shall be charged with the responsibility of maintaining a modern accounting system which shall accurately reflect all fiscal transactions in such manner and in such form as shall be recommended by the \* \* \* Department of Finance and Administration. The commissioner shall employ such qualified bookkeepers and other clerical personnel as required to maintain the accounting system who shall devote their full time to their duties as employees of the correctional system. The fiscal comptroller shall make a monthly report to the Governor and Chairmen of Corrections Committee of the Senate and the \* \* \* Corrections Committee of the House of Representatives. The fiscal comptroller shall countersign all checks. The fiscal comptroller shall have sole responsibility for all purchases and the signing of all purchase orders issued by the correctional system. Such fiscal comptroller shall execute a good and sufficient bond payable to the State of Mississippi in the sum of Fifty Thousand Dollars (\$50,000.00), conditioned for the satisfactory performance of the duties of his office, and the accurate accounting of any \* \* \* monies and properties coming into his hands.





7963           The commissioner or his designee shall sign all requisitions  
7964 for issuance of warrant authorizing any disbursement of any sum or  
7965 sums on account of the correctional system, and no money shall be  
7966 paid out on any account of the correctional system except on a  
7967 requisition for issuance of warrant signed by him or his designee.

7968           **SECTION 336.** Section 47-5-49, Mississippi Code of 1972, is  
7969 brought forward as follows:

7970           47-5-49. Neither the commissioner nor any other employee,  
7971 save physicians and chaplains not employed for all their time,  
7972 shall have or engage in any other business during his normal hours  
7973 of employment that may require his personal attention or time.  
7974 The Governor, in the case of the commissioner, and the  
7975 commissioner in the case of any other employee shall receive prior  
7976 notification and approve outside employment and the respective  
7977 parties named herein shall punish a violation of this provision by  
7978 the dismissal of the employee if the offense justifies such  
7979 dismissal.

7980           **SECTION 337.** Section 47-5-54, Mississippi Code of 1972, is  
7981 brought forward as follows:

7982           47-5-54. Employees assigned to the canine unit of the  
7983 department may, upon request, assist law enforcement agencies by  
7984 using specially trained dogs in any matter relating to the  
7985 tracking, discovery or capture of any person in the enforcement of  
7986 criminal statutes pertaining to the possession, sale or use of  
7987 narcotics or other dangerous drugs, or in the pursuit of suspected



7988 felons and, while so doing, shall have the status of peace  
7989 officers anywhere in the state and shall have the status of law  
7990 enforcement officers and peace officers as contemplated by  
7991 Sections 45-6-3, 97-3-7 and 97-3-19.

7992 Employees of the department, while performing their  
7993 officially assigned duties relating to the custody, control,  
7994 transportation, recapture or arrest of any offender within the  
7995 jurisdiction of the department or any offender of any jail,  
7996 penitentiary, public workhouse or overnight lockup of the state or  
7997 any political subdivision thereof not within the jurisdiction of  
7998 the department, shall have the status of peace officers anywhere  
7999 in the state in any matter relating to the custody, control,  
8000 transportation or recapture of such offender, and shall have the  
8001 status of law enforcement officers and peace officers as  
8002 contemplated by Sections 45-6-3, 97-3-7 and 97-3-19.

8003 The commissioner may appoint investigators with the  
8004 Corrections Investigation Division who have been certified by the  
8005 Board on Law Enforcement Officer Standards and Training and who  
8006 shall be empowered to investigate and enforce all applicable  
8007 regulations of the department, which are related to the functions  
8008 and missions of the department, and all laws of the State of  
8009 Mississippi and who shall be empowered to investigate and enforce  
8010 all laws of the State of Mississippi in private correctional  
8011 facilities and regional county correctional facilities. These  
8012 employees shall have the status of law enforcement officers and



8013 peace officers as contemplated by Sections 45-6-3, 97-3-7 and  
8014 97-3-19.

8015       These officers shall be under the supervision of the  
8016 commissioner. These officers may perform any service of process  
8017 required to be performed at any facility owned by the Department  
8018 of Corrections, at any private correctional facility or at any  
8019 regional county correctional facility.

8020       The commissioner may promulgate rules regulating the speed of  
8021 motor vehicles on roads within the grounds of any correctional  
8022 facility, and such restrictions may be enforced by employees of  
8023 the department by citation or as otherwise prescribed by law.

8024       **SECTION 338.** Section 47-5-99, Mississippi Code of 1972, is  
8025 brought forward as follows:

8026       47-5-99. There are hereby created classification hearing  
8027 officers and disciplinary hearing officers of the correctional  
8028 system to be appointed by the commissioner.

8029       **SECTION 339.** Section 47-5-101, Mississippi Code of 1972, is  
8030 brought forward as follows:

8031       47-5-101. The classification and disciplinary hearing  
8032 officers shall maintain a record of all actions and orders by  
8033 minutes. The hearing officers shall meet on a regular basis.

8034       **SECTION 340.** Section 47-5-103, Mississippi Code of 1972, is  
8035 brought forward as follows:

8036       47-5-103. (1) The classification hearing officer shall be  
8037 responsible for assigning a classification to each offender within



forty (40) days after the offender's commitment to the custody of the department. The classification shall determine the offender's work duties, living quarters, educational, vocational or other rehabilitation programs, and privileges to be accorded the offender while in custody of the department. The classification hearing officer, in assigning classifications, shall consider the offender's age, offense and surrounding circumstances, the complete record of the offender's criminal history, including records of law enforcement agencies or of a youth court regarding that offender's juvenile criminal history, family background, education, practical or employment experience, interests and abilities as evidenced by mental and psychological examination and knowledge obtained by the classification hearing officer in personal interview with the offender. The classification hearing officer shall use the above criteria to assign each offender a classification which will serve and enhance the best interests and general welfare of the offender. The designee or designees of the commissioner shall approve or disapprove each classification. The classification hearing officer shall provide the State Parole Board with a copy of the classification assigned to each offender in the custody of the department who is eligible for parole.

(2) The classification board, consisting of the commissioner, or his designee, deputy commissioner of institutions and the director of offender services may change an action of the classification or disciplinary hearing officer if the board makes



8063 a determination that the action of the hearing officer was not  
8064 supported by sufficient factual information. The commissioner, in  
8065 emergency situations, may suspend the classification of an  
8066 offender or offenders for a period of not exceeding fifteen (15)  
8067 days to relieve the emergency situation. The classification of  
8068 each offender may be reviewed by a classification hearing officer  
8069 at least once each year. In no case shall an offender serve as a  
8070 servant in the home of any employee other than authorized by the  
8071 commissioner.

8072 (3) The classification board shall establish substantive and  
8073 procedural rules and regulations governing the assignment and  
8074 alteration of inmate classifications, and shall make such rules  
8075 and regulations available to any offender upon request.

8076 **SECTION 341.** Section 47-5-104, Mississippi Code of 1972, is  
8077 brought forward as follows:

8078 47-5-104. The commissioner shall designate a disciplinary  
8079 hearing officer to hear evidence and to make decisions in all  
8080 cases when an offender has been issued a rule violation report and  
8081 is subject to be demoted or having earned time taken from him.  
8082 All proceedings of a disciplinary hearing officer shall be taped  
8083 and retained for at least three (3) years. The commissioner shall  
8084 not attend any hearings whereby an offender is subject to be  
8085 demoted or having earned time taken away.

8086 **SECTION 342.** Section 47-5-110, Mississippi Code of 1972, is  
8087 brought forward as follows:



8088           47-5-110. (1) Commitment to any institution or facility  
8089 within the jurisdiction of the department shall be to the  
8090 department, not to a particular institution or facility. The  
8091 commissioner shall assign a newly committed offender to an  
8092 appropriate facility consistent with public safety; provided,  
8093 however, that any offender who, in the opinion of the sentencing  
8094 judge, requires confinement in a maximum security unit shall be  
8095 assigned, upon initial commitment, to the Parchman facility. The  
8096 commissioner may extend the place of confinement of eligible  
8097 offenders as provided under subsection (2) of this section. He  
8098 may transfer an offender from one (1) institution to another,  
8099 consistent with the commitment and in accordance with treatment,  
8100 training and security needs. The commissioner shall have the  
8101 authority to transfer inmates from the various correctional  
8102 facilities of the department to restitution centers if such  
8103 inmates meet the qualifications prescribed in Section 99-37-19.  
8104 The commissioner shall prepare appropriate standards of  
8105 eligibility for such transfers of offenders from one (1)  
8106 institution to another institution and transfers of offenders who  
8107 meet the qualifications for placement in restitution centers. The  
8108 commissioner shall have the authority to remove the offenders from  
8109 restitution centers and to transfer them to other facilities of  
8110 the department. The commissioner shall obtain the approval of the  
8111 sentencing court before transferring an offender committed to the  
8112 department to a restitution center. On the request of the chief



8113 executive officer of the affected unit of local government, the  
8114 commissioner may transfer a person detained in a local facility to  
8115 a state facility. The commissioner shall determine the cost of  
8116 care for that person to be borne by the unit of local government.  
8117 The commissioner may assign to a community work center, any  
8118 offender who is convicted under the Mississippi Implied Consent  
8119 Law and who is sentenced to the custody of the Department of  
8120 Corrections, except that if a death or a serious maiming has  
8121 occurred during the commission of the violation of the Mississippi  
8122 Implied Consent Law, then the offender so convicted may not be  
8123 assigned to a community work center.

8124 (2) The department may establish by rule or policy and  
8125 procedure a community prerelease program which shall be subject to  
8126 the following requirements:

8127 (a) The commissioner may extend the limits of  
8128 confinement of offenders serving sentences for violent or  
8129 nonviolent crimes who have six (6) months or less remaining before  
8130 release on parole, conditional release or discharge to participate  
8131 in the program. Parole violators may be allowed to participate in  
8132 the program.

8133 (b) Any offender who is referred to the program shall  
8134 remain an offender of the department and shall be subject to rules  
8135 and regulations of the department pertaining to offenders of the  
8136 department until discharged or released on parole or conditional  
8137 release by the State Parole Board.



8138           (c) The department shall require the offender to  
8139 participate in work or educational or vocational programs and  
8140 other activities that may be necessary for the supervision and  
8141 treatment of the offender.

8142           (d) An offender assigned to the program shall be  
8143 authorized to leave a community prerelease center only for the  
8144 purpose and time necessary to participate in the program and  
8145 activities authorized in paragraph (c) of this subsection.

8146           (3) The commissioner shall have absolute immunity from  
8147 liability for any injury resulting from a determination by the  
8148 commissioner that an offender shall be allowed to participate in  
8149 the community prerelease program.

8150           (4) (a) The department may by rule or policy and procedure  
8151 provide the regimented inmate discipline program and prerelease  
8152 service for offenders at each of its major correctional  
8153 facilities: Mississippi State Penitentiary, Central Mississippi  
8154 Correctional Institution and South Mississippi Correctional  
8155 Institution.

8156           (b) The commissioner may establish regimented inmate  
8157 discipline and prerelease programs at the South Mississippi  
8158 Correctional Institution. Offenders assigned to this facility may  
8159 receive the services provided by the regimented inmate discipline  
8160 program. The prerelease program may be located on the grounds of  
8161 this facility or another facility designated by the commissioner.





8162           **SECTION 343.** Section 47-5-119, Mississippi Code of 1972, is  
8163 brought forward as follows:

8164           47-5-119. Offenders, when received into a facility of the  
8165 correctional system, shall be carefully searched. If money be  
8166 found on the person of the offender, or received by him at any  
8167 time, it shall be taken in charge by the commissioner and placed  
8168 to the offender's credit and expended for the offender's benefit  
8169 on his written order and under such restrictions as may be  
8170 prescribed by law or the rules. If an offender with money charged  
8171 to his credit shall die from any cause while in a facility of the  
8172 correctional system or be discharged without claiming such money,  
8173 the commissioner shall make every effort to give notice of such  
8174 fact to the discharged offender or to the beneficiary or  
8175 nearest-known relative, if any, of the deceased or discharged  
8176 offender, and upon a valid claim presented shall pay out such  
8177 money to such discharged offender, beneficiary or nearest  
8178 relative. After two (2) years from the date of giving such  
8179 notice, or a valid attempt to give such notice, or two (2) years  
8180 after the death of such offender, if the beneficiary or nearest  
8181 relative is unknown, if such money has not been validly claimed,  
8182 the commissioner shall make an affidavit of such fact, which sums  
8183 shall escheat to the Correctional System Special Vocational  
8184 Training Program Fund to help in offender rehabilitation. Any  
8185 officer or employee having charge of the offenders' money who  
8186 misappropriates the same, or any part thereof, shall be deemed



8187 guilty of a felony, and upon conviction thereof shall be confined  
8188 in the correctional system for a term of not more than five (5)  
8189 years. All sums credited to the account of an offender who shall  
8190 escape shall immediately, upon the offender's escape, escheat to  
8191 the Special Vocational Training Program Fund to help in offender  
8192 rehabilitation.

8193       **SECTION 344.** Section 47-5-120, Mississippi Code of 1972, is  
8194 brought forward as follows:

8195       47-5-120. (1) Except as otherwise provided by law, the  
8196 commissioner may transfer an offender for observation, diagnosis  
8197 and treatment to another appropriate state department or  
8198 institution, provided that he has given prior written notice to  
8199 the administrator of the agency.

8200       (2) The Department of Corrections shall create a Board of  
8201 Examiners, hereinafter referred to as the "board," who shall  
8202 examine and evaluate the condition of offenders who are apparently  
8203 suffering from psychosis, other mental illness, or dependency or  
8204 addiction to drugs. The commissioner shall refer such offenders  
8205 to the board which shall make a written report of its findings  
8206 pertaining to each such offender. If all members of the board  
8207 determine that an offender is in need of mental treatment or can  
8208 obtain benefit from the programs of treatment for drug dependency  
8209 or addiction at a facility of the Department of Mental Health,  
8210 then the board may authorize his transfer for observation,  
8211 diagnosis, treatment and rehabilitation after prior written notice



8212 to the administrator of the facility of the Department of Mental  
8213 Health that is to receive the offender.

8214 (3) The board shall be composed of the following:

8215 (a) A physician on the staff of the Mississippi State  
8216 Hospital at Whitfield, Mississippi, or the East Mississippi State  
8217 Hospital at Meridian, Mississippi;

8218 (b) A physician on the staff of the Mississippi  
8219 Department of Corrections; and

8220 (c) A physician to be selected by the Commissioner of  
8221 Corrections who is not an employee of the Department of  
8222 Corrections or the Department of Mental Health.

8223 (4) The board shall meet once each month at the correctional  
8224 facility located at Parchman, Mississippi. All fees, compensation  
8225 and expenses of the board shall be paid from funds appropriated to  
8226 or otherwise available to the State Department of Corrections. The  
8227 board is authorized to establish such rules and regulations as may  
8228 be necessary to carry out the purposes of this section.

8229 (5) While the offender is in another institution, his  
8230 sentence shall continue to run. When the director of the  
8231 institution to which an offender has been transferred determines  
8232 that the offender is not in need of treatment or has recovered  
8233 from the condition which occasioned the transfer or has received  
8234 the maximum benefit of treatment and rehabilitation, the  
8235 commissioner shall provide for his return to the department,



unless his sentence has expired, in which case he shall be issued a discharge in accordance with law.

**SECTION 345.** Section 47-5-121, Mississippi Code of 1972, is brought forward as follows:

47-5-121. All female offenders shall be kept separate and apart from male offenders. Where practicable, the commissioner shall keep the female offenders within a separate facility from the male offenders, and shall provide reasonable rules and regulations for the government of same.

**SECTION 346.** Section 47-5-126, Mississippi Code of 1972, is brought forward as follows:

47-5-126. All inmates, unless physically unable, shall be required to perform such work as may be set out in the policymaking board of the institution.

**SECTION 347.** Section 47-5-138, Mississippi Code of 1972, is brought forward as follows:

47-5-138. (1) The department may promulgate rules and regulations to carry out an earned time allowance program based on the good conduct and performance of an inmate. An inmate is eligible to receive an earned time allowance of one-half (1/2) of the period of confinement imposed by the court except those inmates excluded by law. When an inmate is committed to the custody of the department, the department shall determine a conditional earned time release date by subtracting the earned



8260 time allowance from an inmate's term of sentence. This subsection  
8261 does not apply to any sentence imposed after June 30, 1995.

8262 (2) An inmate may forfeit all or part of his earned time  
8263 allowance for a serious violation of rules. No forfeiture of the  
8264 earned time allowance shall be effective except upon approval of  
8265 the commissioner, or his designee, and forfeited earned time may  
8266 not be restored.

8267 (3) (a) For the purposes of this subsection, "final order"  
8268 means an order of a state or federal court that dismisses a  
8269 lawsuit brought by an inmate while the inmate was in the custody  
8270 of the Department of Corrections as frivolous, malicious or for  
8271 failure to state a claim upon which relief could be granted.

8272 (b) On receipt of a final order, the department shall  
8273 forfeit:

8274 (i) Sixty (60) days of an inmate's accrued earned  
8275 time if the department has received one (1) final order as defined  
8276 herein;

8277 (ii) One hundred twenty (120) days of an inmate's  
8278 accrued earned time if the department has received two (2) final  
8279 orders as defined herein;

8280 (iii) One hundred eighty (180) days of an inmate's  
8281 accrued earned time if the department has received three (3) or  
8282 more final orders as defined herein.

8283 (c) The department may not restore earned time  
8284 forfeited under this subsection.



8285           (4) An inmate who meets the good conduct and performance  
8286 requirements of the earned time allowance program may be released  
8287 on his conditional earned time release date.

8288           (5) For any sentence imposed after June 30, 1995, an inmate  
8289 may receive an earned time allowance of four and one-half (4-1/2)  
8290 days for each thirty (30) days served if the department determines  
8291 that the inmate has complied with the good conduct and performance  
8292 requirements of the earned time allowance program. The earned  
8293 time allowance under this subsection shall not exceed fifteen  
8294 percent (15%) of an inmate's term of sentence; however, beginning  
8295 July 1, 2006, no person under the age of twenty-one (21) who has  
8296 committed a nonviolent offense, and who is under the jurisdiction  
8297 of the Department of Corrections, shall be subject to the fifteen  
8298 percent (15%) limitation for earned time allowances as described  
8299 in this subsection (5).

8300           (6) Any inmate, who is released before the expiration of his  
8301 term of sentence under this section, shall be placed under  
8302 earned-release supervision until the expiration of the term of  
8303 sentence. The inmate shall retain inmate status and remain under  
8304 the jurisdiction of the department. The period of earned-release  
8305 supervision shall be conducted in the same manner as a period of  
8306 supervised parole. The department shall develop rules, terms and  
8307 conditions for the earned-release supervision program. The  
8308 commissioner shall designate the appropriate hearing officer



8309 within the department to conduct revocation hearings for inmates  
8310 violating the conditions of earned-release supervision.

8311 (7) If the earned-release supervision is revoked, the inmate  
8312 shall serve the remainder of the sentence, but the time the inmate  
8313 served on earned-release supervision before revocation, shall be  
8314 applied to reduce his sentence.

8315 **SECTION 348.** Section 47-5-139, Mississippi Code of 1972, is  
8316 brought forward as follows:

8317 47-5-139. (1) An inmate shall not be eligible for the  
8318 earned time allowance if:

8319 (a) The inmate was sentenced to life imprisonment; but  
8320 an inmate, except an inmate sentenced to life imprisonment for  
8321 capital murder, who has reached the age of sixty-five (65) or  
8322 older and who has served at least fifteen (15) years may petition  
8323 the sentencing court for conditional release;

8324 (b) The inmate was convicted as a habitual offender  
8325 under Sections 99-19-81 through 99-19-87;

8326 (c) The inmate has forfeited his earned time allowance  
8327 by order of the commissioner;

8328 (d) The inmate was convicted of a sex crime; or

8329 (e) The inmate has not served the mandatory time  
8330 required for parole eligibility for a conviction of robbery or  
8331 attempted robbery with a deadly weapon.



8332           (2) An offender under two (2) or more consecutive sentences  
8333 shall be allowed commutation based upon the total term of the  
8334 sentences.

8335           (3) All earned time shall be forfeited by the inmate in the  
8336 event of escape and/or aiding and abetting an escape. The  
8337 commissioner may restore all or part of the earned time if the  
8338 escapee returns to the institution voluntarily, without expense to  
8339 the state, and without act of violence while a fugitive from the  
8340 facility.

8341           (4) Any officer or employee who shall willfully violate the  
8342 provisions of this section and be convicted therefor shall be  
8343 removed from office or employment.

8344           **SECTION 349.** Section 47-5-140, Mississippi Code of 1972, is  
8345 brought forward as follows:

8346           47-5-140. Each county attorney, district attorney, each  
8347 member of the Parole Board and circuit judge shall be provided a  
8348 copy of a handbook prepared by the commissioner which shall  
8349 include a copy of Section 47-5-138 and Section 47-5-139, and shall  
8350 clearly show how such sections would apply to an offender  
8351 sentenced to terms of various lengths. Each offender shall be  
8352 provided a copy of the handbook upon arrival at the correctional  
8353 system and have it explained to him as a part of his initial  
8354 orientation.

8355           **SECTION 350.** Section 47-5-142, Mississippi Code of 1972, is  
8356 brought forward as follows:





8357           47-5-142. (1) In order to provide incentive for offenders  
8358 to achieve positive and worthwhile accomplishments for their  
8359 personal benefit or the benefit of others, and in addition to any  
8360 other administrative reductions of the length of an offender's  
8361 sentence, any offender shall be eligible, subject to the  
8362 provisions of this section, to receive meritorious earned time as  
8363 distinguished from earned time for good conduct and performance.

8364           (2) Subject to approval by the commissioner of the terms and  
8365 conditions of the program or project, meritorious earned time may  
8366 be awarded for the following: (a) successful completion of  
8367 educational or instructional programs; (b) satisfactory  
8368 participation in work projects; and (c) satisfactory participation  
8369 in any special incentive program.

8370           (3) The programs and activities through which meritorious  
8371 earned time may be received shall be published in writing and  
8372 posted in conspicuous places at all facilities of the department  
8373 and such publication shall be made available to all offenders in  
8374 the custody of the department.

8375           (4) The commissioner shall make a determination of the  
8376 number of days of reduction of sentence which may be awarded an  
8377 offender as meritorious earned time for participation in approved  
8378 programs or projects; the number of days shall be determined by  
8379 the commissioner on the basis of each particular program or  
8380 project.



(5) No offender shall be awarded any meritorious earned time while assigned to the maximum security facilities for disciplinary purposes.

(6) All meritorious earned time shall be forfeited by the offender in the event of escape and/or aiding and abetting an escape.

(7) Any officer or employee of the department who shall willfully violate the provisions of this section and be convicted therefor shall be removed from office or employment.

(8) An offender may forfeit all or any part of his meritorious earned time allowance for just cause upon the written order of the commissioner or his designee. Any meritorious earned time allowance forfeited under this section shall not be restored nor shall it be re-earned by the offender.

**SECTION 351.** Section 47-5-173, Mississippi Code of 1972, is brought forward as follows:

47-5-173. The commissioner, or his designees, may grant leave to an offender and may take into consideration sickness or death in the offender's family or the seeking of employment by the offender in connection with application for parole, for a period of time not to exceed ten (10) days. Within forty-eight (48) hours prior to the release of an offender on leave, the director of records of the department shall give the written notice required pursuant to Section 47-5-177. However, if an offender is granted leave because of sickness or death in the offender's



8406 family, written notice shall not be required but the inmate shall  
8407 be accompanied by a correctional officer or a law enforcement  
8408 officer. In all other cases the commissioner, or his designees,  
8409 shall provide required security when deemed necessary. The  
8410 commissioner, or his designees, in granting leave, shall take into  
8411 consideration the conduct and work performance of the offender.

8412 **SECTION 352.** Section 47-5-177, Mississippi Code of 1972, is  
8413 brought forward as follows:

8414 47-5-177. Within forty-eight (48) hours prior to the release  
8415 of an offender from the custody of the department because of  
8416 discharge, parole, pardon, temporary personal leave or pass, or  
8417 otherwise, except for sickness or death in the offender's family,  
8418 the Director of Records of the department shall give written or  
8419 electronic notice of such release to the sheriff of the county and  
8420 to the chief of police of the municipality where the offender was  
8421 convicted. If the offender is paroled to a county other than the  
8422 county of conviction, the Director of Records shall give written  
8423 or electronic notice of the release to the sheriff, district  
8424 attorney and circuit judge of the county and to the chief of  
8425 police of the municipality where the offender is paroled and to  
8426 the sheriff of the county and to the chief of police of the  
8427 municipality where the offender was convicted. The department  
8428 shall notify the parole officer of the county where the offender  
8429 is paroled or discharged to probation of any chronic mental  
8430 disorder incurred by the offender, of any type of infectious



disease for which the offender has been examined and treated, and  
of any medications provided to the offender for such conditions.

The commissioner shall require the Director of Records to  
clearly identify the notice of release of an offender who has been  
convicted of arson at any time. The fact that the offender to be  
released had been convicted of arson at any time shall appear  
prominently on the notice of release and the sheriff shall notify  
all officials who are responsible for investigation of arson  
within the county of such offender's release and the chief of  
police shall notify all such officials within the municipality of  
such offender's release.

**SECTION 353.** Section 47-5-901, Mississippi Code of 1972, is  
brought forward as follows:

47-5-901. (1) Any person committed, sentenced or otherwise  
placed under the custody of the Department of Corrections, on  
order of the sentencing court and subject to the other conditions  
of this subsection, may serve all or any part of his sentence in  
the county jail of the county wherein such person was convicted if  
the Commissioner of Corrections determines that physical space is  
not available for confinement of such person in the state  
correctional institutions. Such determination shall be promptly  
made by the Department of Corrections upon receipt of notice of  
the conviction of such person. The commissioner shall certify in  
writing that space is not available to the sheriff or other  
officer having custody of the person. Any person serving his



8456 sentence in a county jail shall be classified in accordance with  
8457 Section 47-5-905.

8458 (2) If state prisoners are housed in county jails due to a  
8459 lack of capacity at state correctional institutions, the  
8460 Department of Corrections shall determine the cost for food and  
8461 medical attention for such prisoners. The cost of feeding and  
8462 housing offenders confined in such county jails shall be based on  
8463 actual costs or contract price per prisoner. In order to maximize  
8464 the potential use of county jail space, the Department of  
8465 Corrections is encouraged to negotiate a reasonable per day cost  
8466 per prisoner, which in no event may exceed Twenty Dollars (\$20.00)  
8467 per day per offender.

8468 (3) (a) Upon vouchers submitted by the board of supervisors  
8469 of any county housing persons due to lack of space at state  
8470 institutions, the Department of Corrections shall pay to such  
8471 county, out of any available funds, the actual cost of food, or  
8472 contract price per prisoner, not to exceed Twenty Dollars (\$20.00)  
8473 per day per offender, as determined under subsection (2) of this  
8474 section for each day an offender is so confined beginning the day  
8475 that the Department of Corrections receives a certified copy of  
8476 the sentencing order and will terminate on the date on which the  
8477 offender is released or otherwise removed from the custody of the  
8478 county jail. The department, or its contracted medical provider,  
8479 will pay to a provider of a medical service for any and all  
8480 incarcerated persons from a correctional or detention facility an



8481 amount based upon negotiated fees as agreed to by the medical care  
8482 service providers and the department and/or its contracted medical  
8483 provider. In the absence of negotiated discounted fee schedule,  
8484 medical care service providers will be paid by the department, or  
8485 its contracted medical service provider, an amount no greater than  
8486 the reimbursement rate applicable based on the Mississippi  
8487 Medicaid reimbursement rate. The board of supervisors of any  
8488 county shall not be liable for any cost associated with medical  
8489 attention for prisoners who are pretrial detainees or for  
8490 prisoners who have been convicted that exceeds the Mississippi  
8491 Medicaid reimbursement rate or the reimbursement provided by the  
8492 Department of Corrections, whichever is greater. This limitation  
8493 applies to all medical care services, durable and nondurable  
8494 goods, prescription drugs and medications. Such payment shall be  
8495 placed in the county general fund and shall be expended only for  
8496 food and medical attention for such persons.

8497 (b) Upon vouchers submitted by the board of supervisors  
8498 of any county housing offenders in county jails pending a  
8499 probation or parole revocation hearing, the department shall pay,  
8500 out of any available funds, the reimbursement costs provided in  
8501 paragraph (a).

8502 (c) If the probation or parole of an offender is  
8503 revoked, the additional cost of housing the offender pending the  
8504 revocation hearing shall be assessed as part of the offender's  
8505 court cost and shall be remitted to the department.



8506           (4) A person, on order of the sentencing court, may serve  
8507 not more than twenty-four (24) months of his sentence in a county  
8508 jail if the person is classified in accordance with Section  
8509 47-5-905 and the county jail is an approved county jail for  
8510 housing state inmates under federal court order. The sheriff of  
8511 the county shall have the right to petition the Commissioner of  
8512 Corrections to remove the inmate from the county jail. The county  
8513 shall be reimbursed in accordance with subsection (2).

8514           (5) The Attorney General of the State of Mississippi shall  
8515 defend the employees of the Department of Corrections and  
8516 officials and employees of political subdivisions against any  
8517 action brought by any person who was committed to a county jail  
8518 under the provisions of this section.

8519           (6) This section does not create in the Department of  
8520 Corrections, or its employees or agents, any new liability,  
8521 express or implied, nor shall it create in the Department of  
8522 Corrections any administrative authority or responsibility for the  
8523 construction, funding, administration or operation of county or  
8524 other local jails or other places of confinement which are not  
8525 staffed and operated on a full-time basis by the Department of  
8526 Corrections. The correctional system under the jurisdiction of  
8527 the Department of Corrections shall include only those facilities  
8528 fully staffed by the Department of Corrections and operated by it  
8529 on a full-time basis.



8530           (7) An offender returned to a county for post-conviction  
8531 proceedings shall be subject to the provisions of Section 99-19-42  
8532 and the county shall not receive the per day allotment for such  
8533 offender after the time prescribed for returning the offender to  
8534 the Department of Corrections as provided in Section 99-19-42.

8535           **SECTION 354.** Section 47-7-1, Mississippi Code of 1972, is  
8536 brought forward as follows:

8537           47-7-1. This chapter shall be known as the "Probation and  
8538 Parole Law."

8539           **SECTION 355.** Section 47-7-3, Mississippi Code of 1972, is  
8540 brought forward as follows:

8541           47-7-3. (1) Every prisoner who has been convicted of any  
8542 offense against the State of Mississippi, and is confined in the  
8543 execution of a judgment of such conviction in the Mississippi  
8544 Department of Corrections for a definite term or terms of one (1)  
8545 year or over, or for the term of his or her natural life, whose  
8546 record of conduct shows that such prisoner has observed the rules  
8547 of the department, and who has served not less than one-fourth  
8548 (1/4) of the total of such term or terms for which such prisoner  
8549 was sentenced, or, if sentenced to serve a term or terms of thirty  
8550 (30) years or more, or, if sentenced for the term of the natural  
8551 life of such prisoner, has served not less than ten (10) years of  
8552 such life sentence, may be released on parole as hereinafter  
8553 provided, except that:





8554           (a) No prisoner convicted as a confirmed and habitual  
8555 criminal under the provisions of Sections 99-19-81 through  
8556 99-19-87 shall be eligible for parole;

8557           (b) Any person who shall have been convicted of a sex  
8558 crime shall not be released on parole except for a person under  
8559 the age of nineteen (19) who has been convicted under Section  
8560 97-3-67;

8561           (c) No one shall be eligible for parole until he shall  
8562 have served one (1) year of his sentence, unless such person has  
8563 accrued any meritorious earned time allowances, in which case he  
8564 shall be eligible for parole if he has served (i) nine (9) months  
8565 of his sentence or sentences, when his sentence or sentences is  
8566 two (2) years or less; (ii) ten (10) months of his sentence or  
8567 sentences when his sentence or sentences is more than two (2)  
8568 years but no more than five (5) years; and (iii) one (1) year of  
8569 his sentence or sentences when his sentence or sentences is more  
8570 than five (5) years;

8571           (d) (i) No person shall be eligible for parole who  
8572 shall, on or after January 1, 1977, be convicted of robbery or  
8573 attempted robbery through the display of a firearm until he shall  
8574 have served ten (10) years if sentenced to a term or terms of more  
8575 than ten (10) years or if sentenced for the term of the natural  
8576 life of such person. If such person is sentenced to a term or  
8577 terms of ten (10) years or less, then such person shall not be  
8578 eligible for parole. The provisions of this paragraph (d) (i)



shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon. This paragraph (d)(i) shall not apply to persons convicted after September 30, 1994;

(ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq., through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this paragraph (d)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon;

(e) No person shall be eligible for parole who, on or after July 1, 1994, is charged, tried, convicted and sentenced to life imprisonment without eligibility for parole under the provisions of Section 99-19-101;

(f) No person shall be eligible for parole who is charged, tried, convicted and sentenced to life imprisonment under the provisions of Section 99-19-101;

(g) Notwithstanding the provisions of subsection (1)(c), a person who is convicted of aggravated domestic violence shall not be eligible for parole until he shall have served one (1) year of his sentence;

(h) No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30,



1995, except that an offender convicted of only nonviolent crimes after June 30, 1995, may be eligible for parole if the offender meets the requirements in subsection (1) and this paragraph. In addition to other requirements, if an offender is convicted of a drug or driving under the influence felony, the offender must complete a drug and alcohol rehabilitation program prior to parole or the offender may be required to complete a post-release drug and alcohol program as a condition of parole. For purposes of this paragraph, "nonviolent crime" means a felony other than homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law, felony child abuse, or exploitation or any crime under Section 97-5-33 or Section 97-5-39(2) or 97-5-39(1)(b), 97-5-39(1)(c) or a violation of Section 63-11-30(5). An offender convicted of a violation under Section 41-29-139(a), not exceeding the amounts specified under Section 41-29-139(b), may be eligible for parole. In addition, an offender incarcerated for committing the crime of possession of a controlled substance under the Uniform Controlled Substances Law after July 1, 1995, shall be eligible for parole.

(2) Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction of time which shall reduce the time



8629 necessary to be served for parole eligibility as provided in  
8630 subsection (1) of this section; however, this subsection shall not  
8631 apply to the advancement of parole eligibility dates pursuant to  
8632 the Prison Overcrowding Emergency Powers Act. Moreover,  
8633 meritorious earned time allowances may be used to reduce the time  
8634 necessary to be served for parole eligibility as provided in  
8635 paragraph (c) of subsection (1) of this section.

8636       (3) The State Parole Board shall, by rules and regulations,  
8637 establish a method of determining a tentative parole hearing date  
8638 for each eligible offender taken into the custody of the  
8639 Department of Corrections. The tentative parole hearing date  
8640 shall be determined within ninety (90) days after the department  
8641 has assumed custody of the offender. Such tentative parole  
8642 hearing date shall be calculated by a formula taking into account  
8643 the offender's age upon first commitment, number of prior  
8644 incarcerations, prior probation or parole failures, the severity  
8645 and the violence of the offense committed, employment history,  
8646 whether the offender served in the United States Armed Forces and  
8647 has an honorable discharge, and other criteria which in the  
8648 opinion of the board tend to validly and reliably predict the  
8649 length of incarceration necessary before the offender can be  
8650 successfully paroled.

8651       (4) Any inmate within twenty-four (24) months of his parole  
8652 eligibility date and who meets the criteria established by the  
8653 classification board shall receive priority for placement in any



8654 educational development and job training programs. Any inmate  
8655 refusing to participate in an educational development or job  
8656 training program may be ineligible for parole.

8657       **SECTION 356.** Section 47-7-5, Mississippi Code of 1972, is  
8658 brought forward as follows:

8659       47-7-5. (1) The State Parole Board, created under former  
8660 Section 47-7-5, is hereby created, continued and reconstituted and  
8661 shall be composed of five (5) members. The Governor shall appoint  
8662 the members with the advice and consent of the Senate. All terms  
8663 shall be at the will and pleasure of the Governor. Any vacancy  
8664 shall be filled by the Governor, with the advice and consent of  
8665 the Senate. The Governor shall appoint a chairman of the board.

8666       (2) Any person who is appointed to serve on the board shall  
8667 possess at least a bachelor's degree or a high school diploma and  
8668 four (4) years' work experience. Each member shall devote his  
8669 full time to the duties of his office and shall not engage in any  
8670 other business or profession or hold any other public office. A  
8671 member shall not receive compensation or per diem in addition to  
8672 his salary as prohibited under Section 25-3-38. Each member shall  
8673 keep such hours and workdays as required of full-time state  
8674 employees under Section 25-1-98. Individuals shall be appointed  
8675 to serve on the board without reference to their political  
8676 affiliations. Each board member, including the chairman, may be  
8677 reimbursed for actual and necessary expenses as authorized by  
8678 Section 25-3-41.



8679           (3) The board shall have exclusive responsibility for the  
8680 granting of parole as provided by Sections 47-7-3 and 47-7-17 and  
8681 shall have exclusive authority for revocation of the same. The  
8682 board shall have exclusive responsibility for investigating  
8683 clemency recommendations upon request of the Governor.

8684           (4) The board, its members and staff, shall be immune from  
8685 civil liability for any official acts taken in good faith and in  
8686 exercise of the board's legitimate governmental authority.

8687           (5) The budget of the board shall be funded through a  
8688 separate line item within the general appropriation bill for the  
8689 support and maintenance of the department. Employees of the  
8690 department which are employed by or assigned to the board shall  
8691 work under the guidance and supervision of the board. There shall  
8692 be an executive secretary to the board who shall be responsible  
8693 for all administrative and general accounting duties related to  
8694 the board. The executive secretary shall keep and preserve all  
8695 records and papers pertaining to the board.

8696           (6) The board shall have no authority or responsibility for  
8697 supervision of offenders granted a release for any reason,  
8698 including, but not limited to, probation, parole or executive  
8699 clemency or other offenders requiring the same through interstate  
8700 compact agreements. The supervision shall be provided exclusively  
8701 by the staff of the Division of Community Corrections of the  
8702 department.



8703           (7)   (a)   The Parole Board is authorized to select and place  
8704 offenders in an electronic monitoring program under the conditions  
8705 and criteria imposed by the Parole Board.   The conditions,  
8706 restrictions and requirements of Section 47-7-17 and Sections  
8707 47-5-1001 through 47-5-1015 shall apply to the Parole Board and  
8708 any offender placed in an electronic monitoring program by the  
8709 Parole Board.

8710                   (b)   Any offender placed in an electronic monitoring  
8711 program under this subsection shall pay the program fee provided  
8712 in Section 47-5-1013.   The program fees shall be deposited in the  
8713 special fund created in Section 47-5-1007.

8714                   (c)   The department shall have absolute immunity from  
8715 liability for any injury resulting from a determination by the  
8716 Parole Board that an offender be placed in an electronic  
8717 monitoring program.

8718           (8)   (a)   The Parole Board shall maintain a central registry  
8719 of paroled inmates.   The Parole Board shall place the following  
8720 information on the registry:   name, address, photograph, crime for  
8721 which paroled, the date of the end of parole or flat-time date and  
8722 other information deemed necessary.   The Parole Board shall  
8723 immediately remove information on a parolee at the end of his  
8724 parole or flat-time date.

8725                   (b)   When a person is placed on parole, the Parole Board  
8726 shall inform the parolee of the duty to report to the parole



8727 officer any change in address ten (10) days before changing  
8728 address.

8729 (c) The Parole Board shall utilize an Internet website  
8730 or other electronic means to release or publish the information.

8731 (d) Records maintained on the registry shall be open to  
8732 law enforcement agencies and the public and shall be available no  
8733 later than July 1, 2003.

8734 (9) An affirmative vote of at least four (4) members of the  
8735 Parole Board shall be required to grant parole to an inmate  
8736 convicted of capital murder or a sex crime.

8737 (10) This section shall stand repealed on July 1, 2014.

8738 **SECTION 357.** Section 47-7-9, Mississippi Code of 1972, is  
8739 brought forward as follows:

8740 47-7-9. (1) The circuit judges and county judges in the  
8741 districts to which Division of Community Corrections personnel  
8742 have been assigned shall have the power to request of the  
8743 department transfer or removal of the division personnel from  
8744 their court.

8745 (2) (a) Division personnel shall investigate all cases  
8746 referred to them for investigation by the board, the division or  
8747 by any court in which they are authorized to serve. They shall  
8748 furnish to each person released under their supervision a written  
8749 statement of the conditions of probation, parole, earned-release  
8750 supervision, post-release supervision or suspension and shall  
8751 instruct him regarding the same. They shall keep informed





8752 concerning the conduct and conditions of persons under their  
8753 supervision and use all suitable methods to aid and encourage them  
8754 and to bring about improvements in their conduct and condition.  
8755 They shall keep detailed records of their work and shall make such  
8756 reports in writing as the court or the board may require.

8757 (b) The division personnel duly assigned to court  
8758 districts are hereby vested with all the powers of police officers  
8759 or sheriffs to make arrests or perform any other duties required  
8760 of policemen or sheriffs which may be incident to the division  
8761 personnel responsibilities. All probation and parole officers  
8762 hired on or after July 1, 1994, will be placed in the Law  
8763 Enforcement Officers Training Program and will be required to meet  
8764 the standards outlined by that program.

8765 (c) It is the intention of the Legislature that insofar  
8766 as practicable the case load of each division personnel  
8767 supervising offenders in the community (hereinafter field  
8768 supervisor) shall not exceed the number of cases that may be  
8769 adequately handled.

8770 (3) (a) Division personnel shall be provided to perform  
8771 investigation for the court as provided in this subsection.  
8772 Division personnel shall conduct presentence investigations on all  
8773 persons convicted of a felony in any circuit court of the state,  
8774 prior to sentencing and at the request of the circuit court judge  
8775 of the court of conviction. The presentence evaluation report  
8776 shall consist of a complete record of the offender's criminal



8777 history, educational level, employment history, psychological  
8778 condition and such other information as the department or judge  
8779 may deem necessary. Division personnel shall also prepare written  
8780 victim impact statements at the request of the sentencing judge as  
8781 provided in Section 99-19-157.

8782 (b) In order that offenders in the custody of the  
8783 department on July 1, 1976, may benefit from the kind of  
8784 evaluations authorized in this section, an evaluation report to  
8785 consist of the information required hereinabove, supplemented by  
8786 an examination of an offender's record while in custody, shall be  
8787 compiled by the division upon all offenders in the custody of the  
8788 department on July 1, 1976. After a study of such reports by the  
8789 State Parole Board those cases which the board believes would  
8790 merit some type of executive clemency shall be submitted by the  
8791 board to the Governor with its recommendation for the appropriate  
8792 executive action.

8793 (c) The department is authorized to accept gifts,  
8794 grants and subsidies to conduct this activity.

8795 **SECTION 358.** Section 47-7-17, Mississippi Code of 1972, is  
8796 brought forward as follows:

8797 47-7-17. Within one (1) year after his admission and at such  
8798 intervals thereafter as it may determine, the board shall secure  
8799 and consider all pertinent information regarding each offender,  
8800 except any under sentence of death or otherwise ineligible for  
8801 parole, including the circumstances of his offense, his previous



8802 social history, his previous criminal record, including any  
8803 records of law enforcement agencies or of a youth court regarding  
8804 that offender's juvenile criminal history, his conduct, employment  
8805 and attitude while in the custody of the department, and the  
8806 reports of such physical and mental examinations as have been  
8807 made. The board shall furnish at least three (3) months' written  
8808 notice to each such offender of the date on which he is eligible  
8809 for parole.

8810 Before ruling on the application for parole of any offender,  
8811 the board may have the offender appear before it and interview  
8812 him. The hearing shall be held two (2) months prior to the month  
8813 of eligibility in order for the department to address any special  
8814 conditions required by the board. No application for parole of a  
8815 person convicted of a capital offense shall be considered by the  
8816 board unless and until notice of the filing of such application  
8817 shall have been published at least once a week for two (2) weeks  
8818 in a newspaper published in or having general circulation in the  
8819 county in which the crime was committed. The board shall also  
8820 give notice of the filing of the application for parole to the  
8821 victim of the offense for which the prisoner is incarcerated and  
8822 being considered for parole or, in case the offense be homicide, a  
8823 designee of the immediate family of the victim, provided the  
8824 victim or designated family member has furnished in writing a  
8825 current address to the board for such purpose. A parole shall be  
8826 ordered only for the best interest of society, not as an award of



8827 clemency; it shall not be considered to be a reduction of sentence  
8828 or pardon. An offender shall be placed on parole only when  
8829 arrangements have been made for his proper employment or for his  
8830 maintenance and care, and when the board believes that he is able  
8831 and willing to fulfill the obligations of a law-abiding citizen.  
8832 Within forty-eight (48) hours prior to the release of an offender  
8833 on parole, the Director of Records of the department shall give  
8834 the written notice which is required pursuant to Section 47-5-177.  
8835 Every offender while on parole shall remain in the legal custody  
8836 of the department from which he was released and shall be amenable  
8837 to the orders of the board. The board, upon rejecting the  
8838 application for parole of any offender, shall within thirty (30)  
8839 days following such rejection furnish that offender in general  
8840 terms the reasons therefor in writing. Upon determination by the  
8841 board that an offender is eligible for release by parole, notice  
8842 shall also be given by the board to the victim of the offense or  
8843 the victim's family member, as indicated above, regarding the date  
8844 when the offender's release shall occur, provided a current  
8845 address of the victim or the victim's family member has been  
8846 furnished in writing to the board for such purpose.

8847 Failure to provide notice to the victim or the victim's  
8848 family member of the filing of the application for parole or of  
8849 any decision made by the board regarding parole shall not  
8850 constitute grounds for vacating an otherwise lawful parole



8851 determination nor shall it create any right or liability, civilly  
8852 or criminally, against the board or any member thereof.

8853         A letter of protest against granting an offender parole shall  
8854 not be treated as the conclusive and only reason for not granting  
8855 parole.

8856         The board may adopt such other rules not inconsistent with  
8857 law as it may deem proper or necessary with respect to the  
8858 eligibility of offenders for parole, the conduct of parole  
8859 hearings, or conditions to be imposed upon parolees, including a  
8860 condition that the parolee submit, as provided in Section 47-5-601  
8861 to any type of breath, saliva or urine chemical analysis test, the  
8862 purpose of which is to detect the possible presence of alcohol or  
8863 a substance prohibited or controlled by any law of the State of  
8864 Mississippi or the United States. The board shall have the  
8865 authority to adopt rules permitting certain offenders to be placed  
8866 on unsupervised parole. However, in no case shall an offender be  
8867 placed on unsupervised parole before he has served a minimum of  
8868 three (3) years of supervised parole.

8869         **SECTION 359.** Section 47-7-23, Mississippi Code of 1972, is  
8870 brought forward as follows:

8871         47-7-23. Except as otherwise provided by law, the Department  
8872 of Corrections shall have the power and duty to make rules for the  
8873 conduct of persons heretofore or hereafter placed on parole under  
8874 the supervision of the Department of Corrections and for the  
8875 investigation and supervision of such persons, which supervision



8876 may include a condition that such persons submit, as provided in  
8877 Section 47-5-601, to any type of breath, saliva or urine chemical  
8878 analysis test, the purpose of which is to detect the possible  
8879 presence of alcohol or a substance prohibited or controlled by any  
8880 law of the State of Mississippi or the United States. The  
8881 department shall not make any rules which shall be inconsistent  
8882 with the rules imposed by the State Parole Board pursuant to  
8883 Section 47-7-17 on offenders who are placed on unsupervised  
8884 parole.

8885       **SECTION 360.** Section 47-7-25, Mississippi Code of 1972, is  
8886 brought forward as follows:

8887       47-7-25. When an offender is placed on parole he shall  
8888 receive, if needed, from the state, civilian clothing and  
8889 transportation to the place in which he is to reside. At the  
8890 discretion of the board the offender may be advanced such sum for  
8891 his temporary maintenance as the board may allow. The aforesaid  
8892 gratuities are to be furnished by the Commissioner of Corrections  
8893 who is authorized to charge the actual cost of same in his account  
8894 as Commissioner of Corrections.

8895       **SECTION 361.** Section 47-7-27, Mississippi Code of 1972, is  
8896 brought forward as follows:

8897       47-7-27. (1) The board may, at any time and upon a showing  
8898 of probable violation of parole, issue a warrant for the return of  
8899 any paroled offender to the custody of the department. The  
8900 warrant shall authorize all persons named therein to return the



8901 paroled offender to actual custody of the department from which he  
8902 was paroled. Pending a hearing upon any charge of parole  
8903 violation, the offender shall remain incarcerated in any place of  
8904 detention designated by the department.

8905 (2) Any field supervisor may arrest an offender without a  
8906 warrant or may deputize any other person with power of arrest by  
8907 giving him a written statement setting forth that the offender  
8908 has, in the judgment of that field supervisor, violated the  
8909 conditions of his parole or earned-release supervision. The  
8910 written statement delivered with the offender by the arresting  
8911 officer to the official in charge of the department facility from  
8912 which the offender was released or other place of detention  
8913 designated by the department shall be sufficient warrant for the  
8914 detention of the offender.

8915 (3) The field supervisor, after making an arrest, shall  
8916 present to the detaining authorities a similar statement of the  
8917 circumstances of violation. The field supervisor shall at once  
8918 notify the board or department of the arrest and detention of the  
8919 offender and shall submit a written report showing in what manner  
8920 the offender has violated the conditions of parole or  
8921 earned-release supervision. An offender for whose return a  
8922 warrant has been issued by the board shall, after the issuance of  
8923 the warrant, be deemed a fugitive from justice.

8924 (4) The right of the State of Mississippi to extradite  
8925 persons and return fugitives from justice, from other states to



8926 this state, shall not be impaired by this chapter and shall remain  
8927 in full force and effect. An offender convicted of a felony  
8928 committed while on parole, whether in the State of Mississippi or  
8929 another state, shall immediately have his parole revoked upon  
8930 presentment of a certified copy of the commitment order to the  
8931 board. If an offender is on parole and the offender is convicted  
8932 of a felony for a crime committed prior to the offender being  
8933 placed on parole, whether in the State of Mississippi or another  
8934 state, the offender may have his parole revoked upon presentment  
8935 of a certified copy of the commitment order to the board.

8936 (5) At the next meeting of the board after the issuance of a  
8937 warrant for the return of an offender, if the offender has been  
8938 taken into custody, he shall be given an opportunity to appeal to  
8939 the board in writing or in person why his parole should not be  
8940 revoked. The board may then, or at any time in its discretion,  
8941 terminate the parole or modify the terms and conditions thereof.  
8942 If the board revokes parole, the offender shall serve the  
8943 remainder of the sentence originally imposed, but the time served  
8944 on parole before revocation shall be credited toward the  
8945 offender's sentence. The board may grant the offender a second  
8946 parole. If a second parole shall not be granted, then the  
8947 offender shall serve the remainder of the sentence originally  
8948 imposed, but the time served on parole before revocation shall be  
8949 credited toward the offender's sentence.





8950           (6) The chairman and each member of the board and the  
8951 designated parole revocation hearing officer may, in the discharge  
8952 of their duties, administer oaths, summon and examine witnesses,  
8953 and take other steps as may be necessary to ascertain the truth of  
8954 any matter about which they have the right to inquire.

8955           **SECTION 362.** Section 47-7-29, Mississippi Code of 1972, is  
8956 brought forward as follows:

8957           47-7-29. Any prisoner who commits a felony while at large  
8958 upon parole or earned-release supervision and who is convicted and  
8959 sentenced therefor shall be required to serve such sentence after  
8960 the original sentence has been completed.

8961           **SECTION 363.** Section 47-7-31, Mississippi Code of 1972, is  
8962 brought forward as follows:

8963           47-7-31. Upon request of the Governor the Department of  
8964 Corrections shall investigate and report to him with respect to  
8965 any case of pardon, commutation of sentence, reprieve, furlough or  
8966 remission of fine or forfeiture.

8967           Any attorney of record in the State of Mississippi  
8968 representing any person whose record is before the department  
8969 shall have the right to inspect such records on file with the  
8970 department.

8971           **SECTION 364.** Section 47-7-33, Mississippi Code of 1972, is  
8972 brought forward as follows:

8973           47-7-33. (1) When it appears to the satisfaction of any  
8974 circuit court or county court in the State of Mississippi having



8975 original jurisdiction over criminal actions, or to the judge  
8976 thereof, that the ends of justice and the best interest of the  
8977 public, as well as the defendant, will be served thereby, such  
8978 court, in termtime or in vacation, shall have the power, after  
8979 conviction or a plea of guilty, except in a case where a death  
8980 sentence or life imprisonment is the maximum penalty which may be  
8981 imposed or where the defendant has been convicted of a felony on a  
8982 previous occasion in any court or courts of the United States and  
8983 of any state or territories thereof, to suspend the imposition or  
8984 execution of sentence, and place the defendant on probation as  
8985 herein provided, except that the court shall not suspend the  
8986 execution of a sentence of imprisonment after the defendant shall  
8987 have begun to serve such sentence. In placing any defendant on  
8988 probation, the court, or judge, shall direct that such defendant  
8989 be under the supervision of the Department of Corrections.

8990 (2) When any circuit or county court places an offender on  
8991 probation, the court shall give notice to the Mississippi  
8992 Department of Corrections within fifteen (15) days of the court's  
8993 decision to place the offender on probation. Notice shall be  
8994 delivered to the central office of the Mississippi Department of  
8995 Corrections and to the regional office of the department which  
8996 will be providing supervision to the offender on probation.

8997 (3) When any circuit court or county court places a person  
8998 on probation in accordance with the provisions of this section and  
8999 that person is ordered to make any payments to his family, if any



9000 member of his family whom he is ordered to support is receiving  
9001 public assistance through the State Department of Public Welfare,  
9002 the court shall order him to make such payments to the county  
9003 welfare officer of the county rendering public assistance to his  
9004 family, for the sole use and benefit of said family.

9005       **SECTION 365.** Section 47-7-35, Mississippi Code of 1972, is  
9006 brought forward as follows:

9007       47-7-35. (1) The courts referred to in Section 47-7-33 or  
9008 47-7-34 shall determine the terms and conditions of probation or  
9009 post-release supervision and may alter or modify, at any time  
9010 during the period of probation or post-release supervision, the  
9011 conditions and may include among them the following or any other:

9012       That the offender shall:

9013               (a) Commit no offense against the laws of this or any  
9014 other state of the United States, or of any federal, territorial  
9015 or tribal jurisdiction of the United States;

9016               (b) Avoid injurious or vicious habits;

9017               (c) Avoid persons or places of disreputable or harmful  
9018 character;

9019               (d) Report to the probation and parole officer as  
9020 directed;

9021               (e) Permit the probation and parole officer to visit  
9022 him at home or elsewhere;

9023               (f) Work faithfully at suitable employment so far as  
9024 possible;



9025                   (g)   Remain within a specified area;  
9026                   (h)   Pay his fine in one (1) or several sums;  
9027                   (i)   Support his dependents;  
9028                   (j)   Submit, as provided in Section 47-5-601, to any  
9029 type of breath, saliva or urine chemical analysis test, the  
9030 purpose of which is to detect the possible presence of alcohol or  
9031 a substance prohibited or controlled by any law of the State of  
9032 Mississippi or the United States;  
9033                   (k)   Register as a sex offender if so required under  
9034 Title 45, Chapter 33.  
9035           (2)   When any court places a defendant on misdemeanor  
9036 probation, the court must cause to be conducted a search of the  
9037 probationer's name or other identifying information against the  
9038 registration information regarding sex offenders maintained under  
9039 Title 45, Chapter 33. The search may be conducted using the  
9040 Internet site maintained by the Department of Public Safety Sex  
9041 Offender Registry.

9042           **SECTION 366.** Section 47-7-37, Mississippi Code of 1972, is  
9043 brought forward as follows:

9044           47-7-37. The period of probation shall be fixed by the  
9045 court, and may at any time be extended or terminated by the court,  
9046 or judge in vacation. Such period with any extension thereof  
9047 shall not exceed five (5) years, except that in cases of desertion  
9048 and/or failure to support minor children, the period of probation



may be fixed and/or extended by the court for so long as the duty to support such minor children exists.

At any time during the period of probation, the court, or judge in vacation, may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the probationer to be arrested. Any probation and parole officer may arrest a probationer without a warrant, or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the probation and parole officer, violated the conditions of probation. Such written statement delivered with the probationer by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the probationer.

If a probationer or offender is subject to registration as a sex offender, the court must make a finding that the probationer or offender is not a danger to the public prior to release with or without bail. In determining the danger posed by the release of the offender or probationer, the court may consider the nature and circumstances of the violation and any new offenses charged; the offender or probationer's past and present conduct, including convictions of crimes and any record of arrests without conviction for crimes involving violence or sex crimes; any other evidence of allegations of unlawful sexual conduct or the use of violence by the offender or probationer; the offender or probationer's family



9074 ties, length of residence in the community, employment history and  
9075 mental condition; the offender or probationer's history and  
9076 conduct during the probation or other supervised release and any  
9077 other previous supervisions, including disciplinary records of  
9078 previous incarcerations; the likelihood that the offender or  
9079 probationer will engage again in a criminal course of conduct; the  
9080 weight of the evidence against the offender or probationer; and  
9081 any other facts the court considers relevant.

9082         The probation and parole officer after making an arrest shall  
9083 present to the detaining authorities a similar statement of the  
9084 circumstances of violation. The probation and parole officer  
9085 shall at once notify the court of the arrest and detention of the  
9086 probationer and shall submit a report in writing showing in what  
9087 manner the probationer has violated the conditions of probation.  
9088 Thereupon, or upon an arrest by warrant as herein provided, the  
9089 court, in termtime or vacation, shall cause the probationer to be  
9090 brought before it and may continue or revoke all or any part of  
9091 the probation or the suspension of sentence, and may cause the  
9092 sentence imposed to be executed or may impose any part of the  
9093 sentence which might have been imposed at the time of conviction.

9094         If the probationer is arrested in a circuit court district in  
9095 the State of Mississippi other than that in which he was  
9096 convicted, the probation and parole officer, upon the written  
9097 request of the sentencing judge, shall furnish to the circuit  
9098 court or the county court of the county in which the arrest is



9099 made, or to the judge of such court, a report concerning the  
9100 probationer, and such court or the judge in vacation shall have  
9101 authority, after a hearing, to continue or revoke all or any part  
9102 of probation or all or any part of the suspension of sentence, and  
9103 may in case of revocation proceed to deal with the case as if  
9104 there had been no probation. In such case, the clerk of the court  
9105 in which the order of revocation is issued shall forward a  
9106 transcript of such order to the clerk of the court of original  
9107 jurisdiction, and the clerk of that court shall proceed as if the  
9108 order of revocation had been issued by the court of original  
9109 jurisdiction. Upon the revocation of probation or suspension of  
9110 sentence of any offender, such offender shall be placed in the  
9111 legal custody of the State Department of Corrections and shall be  
9112 subject to the requirements thereof.

9113 Any probationer who removes himself from the State of  
9114 Mississippi without permission of the court placing him on  
9115 probation, or the court to which jurisdiction has been  
9116 transferred, shall be deemed and considered a fugitive from  
9117 justice and shall be subject to extradition as now provided by  
9118 law. No part of the time that one is on probation shall be  
9119 considered as any part of the time that he shall be sentenced to  
9120 serve.

9121 The arresting officer, except when a probation and parole  
9122 officer, shall be allowed the same fees as now provided by law for



9123 arrest on warrant, and such fees shall be taxed against the  
9124 probationer and paid as now provided by law.

9125 The arrest, revocation and recommitment procedures of this  
9126 section also apply to persons who are serving a period of  
9127 post-release supervision imposed by the court.

9128 **SECTION 367.** Section 47-7-41, Mississippi Code of 1972, is  
9129 brought forward as follows:

9130 47-7-41. When a probationer shall be discharged from  
9131 probation by the court of original jurisdiction, the field  
9132 supervisor, upon receiving a written request from the probationer,  
9133 shall forward a written report of the record of the probationer to  
9134 the Division of Community Corrections of the department, which  
9135 shall present a copy of this report to the Governor. The Governor  
9136 may, in his discretion, at any time thereafter by appropriate  
9137 executive order restore any civil rights lost by the probationer  
9138 by virtue of his conviction or plea of guilty in the court of  
9139 original jurisdiction.

9140 **SECTION 368.** Section 47-7-47, Mississippi Code of 1972, is  
9141 brought forward as follows:

9142 47-7-47. (1) The judge of any circuit court may place an  
9143 offender on a program of earned probation after a period of  
9144 confinement as set out herein and the judge may seek the advice of  
9145 the commissioner and shall direct that the defendant be under the  
9146 supervision of the department.





9147           (2)   (a)   Any circuit court or county court may, upon its own  
9148 motion, acting upon the advice and consent of the commissioner not  
9149 earlier than thirty (30) days nor later than one (1) year after  
9150 the defendant has been delivered to the custody of the department,  
9151 to which he has been sentenced, suspend the further execution of  
9152 the sentence and place the defendant on earned probation, except  
9153 when a death sentence or life imprisonment is the maximum penalty  
9154 which may be imposed or if the defendant has been confined two (2)  
9155 or more times for the conviction of a felony on a previous  
9156 occasion in any court or courts of the United States and of any  
9157 state or territories thereof or has been convicted of a felony  
9158 involving the use of a deadly weapon.

9159           (b)   The authority granted in this subsection shall be  
9160 exercised by the judge who imposed sentence on the defendant, or  
9161 his successor.

9162           (c)   The time limit imposed by paragraph (a) of this  
9163 subsection is not applicable to those defendants sentenced to the  
9164 custody of the department prior to April 14, 1977. Persons who  
9165 are convicted of crimes that carry mandatory sentences shall not  
9166 be eligible for earned probation.

9167           (3)   When any circuit or county court places an offender on  
9168 earned probation, the court shall give notice to the Mississippi  
9169 Department of Corrections within fifteen (15) days of the court's  
9170 decision to place the offender on earned probation. Notice shall  
9171 be delivered to the central office of the Mississippi Department



of Corrections and to the regional office of the department which will be providing supervision to the offender on earned probation.

(4) If the court places any person on probation or earned probation, the court may order the person, as a condition of probation, to a period of confinement and treatment at a private or public agency or institution, either within or without the state, which treats emotional, mental or drug-related problems. Any person who, as a condition of probation, is confined for treatment at an out-of-state facility shall be supervised pursuant to Section 47-7-71, and any person confined at a private agency shall not be confined at public expense. Time served in any such agency or institution may be counted as time required to meet the criteria of subsection (2)(a).

(5) If the court places any person on probation or earned probation, the court may order the person to make appropriate restitution to any victim of his crime or to society through the performance of reasonable work for the benefit of the community.

(6) If the court places any person on probation or earned probation, the court may order the person, as a condition of probation, to submit, as provided in Section 47-5-601, to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States.



9196           **SECTION 369.** Section 47-7-49, Mississippi Code of 1972, is  
9197 brought forward as follows:

9198           47-7-49. (1) Any offender on probation, parole,  
9199 earned-release supervision, post-release supervision, earned  
9200 probation or any other offender under the field supervision of the  
9201 Community Services Division of the department shall pay to the  
9202 department the sum of Fifty-five Dollars (\$55.00) per month by  
9203 certified check or money order unless a hardship waiver is  
9204 granted. An offender shall make the initial payment within thirty  
9205 (30) days after being released from imprisonment unless a hardship  
9206 waiver is granted. A hardship waiver may be granted by the  
9207 sentencing court or the Department of Corrections. A hardship  
9208 waiver may not be granted for a period of time exceeding ninety  
9209 (90) days. The commissioner or his designee shall deposit Fifty  
9210 Dollars (\$50.00) of each payment received into a special fund in  
9211 the State Treasury, which is hereby created, to be known as the  
9212 Community Service Revolving Fund. Expenditures from this fund  
9213 shall be made for: (a) the establishment of restitution and  
9214 satellite centers; and (b) the establishment, administration and  
9215 operation of the department's Drug Identification Program and the  
9216 intensive and field supervision program. The Fifty Dollars  
9217 (\$50.00) may be used for salaries and to purchase equipment,  
9218 supplies and vehicles to be used by the Community Services  
9219 Division in the performance of its duties. Expenditures for the



9220 purposes established in this section may be made from the fund  
9221 upon requisition by the commissioner, or his designee.

9222       Of the remaining amount, Three Dollars (\$3.00) of each  
9223 payment shall be deposited into the Crime Victims' Compensation  
9224 Fund created in Section 99-41-29, and Two Dollars (\$2.00) shall be  
9225 deposited into the Training Revolving Fund created pursuant to  
9226 Section 47-7-51. When a person is convicted of a felony in this  
9227 state, in addition to any other sentence it may impose, the court  
9228 may, in its discretion, order the offender to pay a state  
9229 assessment not to exceed the greater of One Thousand Dollars  
9230 (\$1,000.00) or the maximum fine that may be imposed for the  
9231 offense, into the Crime Victims' Compensation Fund created  
9232 pursuant to Section 99-41-29.

9233       Any federal funds made available to the department for  
9234 training or for training facilities, equipment or services shall  
9235 be deposited into the Correctional Training Revolving Fund created  
9236 in Section 47-7-51. The funds deposited in this account shall be  
9237 used to support an expansion of the department's training program  
9238 to include the renovation of facilities for training purposes,  
9239 purchase of equipment and contracting of training services with  
9240 community colleges in the state.

9241       No offender shall be required to make this payment for a  
9242 period of time longer than ten (10) years.

9243       (2) The offender may be imprisoned until the payments are  
9244 made if the offender is financially able to make the payments and



9245 the court in the county where the offender resides so finds,  
9246 subject to the limitations hereinafter set out. The offender  
9247 shall not be imprisoned if the offender is financially unable to  
9248 make the payments and so states to the court in writing, under  
9249 oath, and the court so finds.

9250 (3) This section shall stand repealed from and after June  
9251 30, 2015.

9252 **SECTION 370.** Section 47-7-53, Mississippi Code of 1972, is  
9253 brought forward as follows:

9254 47-7-53. If the Parole Board is abolished, the Department of  
9255 Corrections shall assume and exercise all the duties, powers and  
9256 responsibilities of the State Parole Board. The Commissioner of  
9257 Corrections may assign to the appropriate officers and divisions  
9258 any powers and duties deemed appropriate to carry out the duties  
9259 and powers of the Parole Board. Wherever the terms "State Parole  
9260 Board" or "Parole Board" appear in any state law, they shall mean  
9261 the Department of Corrections.

9262 **SECTION 371.** This act shall take effect and be in force from  
9263 and after July 1, 2013.

